

Governor's Dry Cleaner Council  
Meeting Notes  
2801 Progress St., Madison  
February 26, 2010  
10:00 a.m. – 12:30 p.m.

Attending:

<u>Governor's Council</u>	<u>DNR</u>	<u>WI Fabricare Institute</u>	<u>Guests</u>
Rich Klinke, Chair	Terry Evanson	Brian Swingle	<u>EnviroForensics</u>
Kevin Braden	Jillian Steffes		Steve Henshaw
Jill Fitzgerald	Mary Rose Teves	<u>Reinhart-Boerner</u>	
Jean Tarvin		Don Gallo	<u>Alpha-Terra</u>
			Ken Ebbott

**FUND UPDATES - Jillian**

**1. Temporary Transfer of Funds (EIF to DERF) Update.** Of the \$6 million transfer of funds authorized in last biennial budget, we have spent \$2.25 million to date. Interest has been low so far, about 0.3 %, but it is tied to the overall economy so will likely rise in the future.

Up to \$3.75 million is available from this transfer to pay incoming claims. Jillian anticipates using another \$700,000 before July, which will leave a little over \$3 million for Fiscal Year 2011 and beyond. Loan transfer money will likely last into calendar year 2012, or possibly early 2013. Once these funds are spent, reimbursements will once again be delayed until revenue comes in to cover them.

Recent the details of this transfer of funds were revised to satisfy EPA requests on the terms of the agreement. The primary revision to the agreement requires that a minimum of \$1,000 per year be repaid to EIF. If there are "excess funds" available in DERF, more would be repaid.

**2. Program Revenue.** Program revenue continues to slowly decline. In the past three fiscal quarters, revenue has been down an average of \$40,000 per quarter, which represents a 15% decline in revenues. Anticipated revenue for the current Fiscal Year (ending June 30<sup>th</sup>) is \$900,000

**3. Incoming Claims.** Approximately \$2,000,000 in incoming claims is expected this year. We believe project activity is moving forward due to the availability of funds -- in the previous 12 months less than \$1 million in claims were received.

Rich noted that most dry cleaners are reporting a 10% min decline in business, with some reporting as much as a 28% decline in business. Hopefully business will stabilize in the future?

A question came up as to the average site cost. The DNR's working average/estimate is \$50,000 for site investigation and \$90,000 for remedial action. This is well below the national average. However, this estimate is **not** inclusive of ALL costs, only DERF eligible costs and capped at \$500,000. Vapor Intrusion will be a new wildcard, and may significantly increase costs at sites. Is there a potential that previously closed sites will need to reopen to address vapor intrusion? Terry indicated that this potential does exist. We believe owner/operators would be eligible for DERF reimbursement in the case of reopening a site, up to the statutory limit of \$500,000 total per site.

The current sunset date for DERF is 2032. Current demand projections indicate that the EIF loan will be unpaid and DERF applicants will not be reimbursed by 2032. Will the program be reopened to new applicants someday? The Dry Cleaner industry will need to address funding before considering opening DERF to new applicants because there is not enough money available to reimburse all the applicants currently in the program.

## **INSURANCE WORKING WITH DERF - All**

**1. INSURANCE AND DEDUCTIBLE.** If a claim is being “defended” by insurance, insurance will pay for most or all of the SI. Because insurance is an asset to the dry cleaner, should the dry cleaner still be required to pay the \$10k deductible out of his/her own pocket if/when the site undertakes RA and a claim for reimbursement is submitted to DERF, or can the money paid by insurance during the SI count toward the deductible? Further work is needed to interpret the formula in statute. Preliminarily, the Department believes that payment by an insurance company for site investigation work can be applied to a future DERF deductible.

DECISION: Edwina will work out the formula from the statute (ss 262.65(8)(j)4 and (8m)) to determine how the deductible is calculated into any award from DERF.

**2. BIDDING.** If the applicant has insurance coverage, there is no need to comply with DERF bidding rules because no reimbursement of those costs will be sought. However, the question is whether site investigation (SI) costs need to be bid in order for those costs to be considered “eligible” and therefore counted toward the deductible that the applicant will incur when the remedial action (RA) is undertaken.

One option discussed was changing the statute to insert the words “less the deductible” in the subsection cited above. However, statutory changes take time and a minor wording change may not be worth the effort. It’s preferable to work under the existing statutory language.

Under the current code, many costs are eligible that are not bid, including immediate, interim, and scoping actions. The code specifically requires bidding of SI and RA, however. To date, the DNR has been willing to issue variances when an applicant is unable to secure 3 bids for an SI. The Council agreed that variance procedures seemed appropriate for cases where the SI is undertaken using insurance and there are no alternate bidders. The Council felt strongly that the RA needs to be bid.

DECISION: The DERF applicant will try to solicit SI bids. If they are unable to obtain these bids because a single consultant is offering to obtain insurance coverage, the DNR will be willing to issue a variance to SI bidding requirements in NR 169.

## **PROPOSED LANGUAGE CHANGE IN RULE REGARDING DEMO/RECONSTRUCTION**

Current proposed language could be interpreted loosely to allow for demo and reconstruction of an entire building. This would put a serious financial drain on the fund, and leave little money for those sites just starting out. Perhaps the language could include a cost cap? It may be reasonable for DERF to contribute some amount but the fund cannot afford to bear the entire cost of building

renovation if remedial actions need to be taken beneath the building. The Council discussed an appropriate cost cap on these actions.

DECISION: The proposed language in NR 169.13(2)(f) will be revised by setting a cost cap of \$15,000 on any action involving building structures, components, fixtures that must be removed, reinstalled or replaced due to a necessary remedial action.

Governor's Dry Cleaner Council Meeting  
2801 Progress Drive, Madison  
Friday, February 26, 2010  
Northwoods Conference Room, 10:00 am - 12:30 p.m.

## **Agenda**

1. Welcome & Agenda repair
2. Update on DERF balances and current fund status - Jillian
3. Insurance Coverage for DERF sites & applicable statutory & administrative rules
  - a. DERF deductibles & insurance
  - b. DERF bidding requirements
4. Proposal to create NR 169.13(2)(f) - Terry

**Dry Cleaner Environmental Response  
Reimbursements Paid and Future Requests**

**DERF Payments To Date**

Fiscal Year	Total
FY01	\$1,102,519
FY02	\$592,530
FY03	\$1,218,745
FY04	\$507,983
FY05	\$1,592,017
FY06	\$1,715,114
FY07	\$1,934,885
FY08	\$488,711
FY09	\$850,532
FY10 To Date	\$2,695,212
<b>Total To Date</b>	<b>\$12,698,247</b>

**DERF Pending & Est. Future Requests**

Fiscal Year	Total
<b>Deferred Payments</b>	
(State Lead, etc)	\$ 757,391
FY10	\$ 900,000
FY11	\$ 4,000,000
FY12	\$ 4,000,000
FY13	\$ 4,000,000
FY14	\$ 3,000,000
FY15	\$ 2,500,000
FY16	\$ 2,000,000
FY17	\$ 1,450,000
FY18	\$ 47,690
<b>Total Est Future</b>	<b>\$ 22,655,081</b>

**Total Anticipated Demand for Reimbursements  
from DERF \***

**\$35,353,328**

\* FY01 through Sunset in FY32

## Environmental Response Fund - Version 1 (\$1.025 million revenue)

Long Term Program Funding Estimates with EIF Transfer

### Future Revenue/Credits to DERF

### Future Draws on DERF Balance

	Likely Revenue Available for Reimb. (*)	EIF Transfer (Incoming)	For Reference - EIF Transfer Interest Charges (^)	Reimbursement Claims	Required Min EIF Repayment (to maintain max \$6.2 million debt)	DERF Balance (Revenue/EIF Transfer minus Claims & EIF Interest Min. Payments)
FY10 after Feb	\$ 175,000	\$ 728,000	\$ (3,000)	\$ (900,000)		\$ -
FY11	\$ 725,000	\$ 3,013,000	\$ (46,500)	\$ (4,000,000)	\$ (1,000)	\$ (263,000)
FY12	\$ 725,000		\$ (46,500)	\$ (4,000,000)	\$ (1,000)	\$ (3,539,000)
FY13	\$ 725,000		\$ (210,800)	\$ (4,000,000)	\$ (106,800)	\$ (6,920,800)
FY14	\$ 725,000		\$ (210,800)	\$ (3,000,000)	\$ (210,800)	\$ (9,406,600)
FY15	\$ 725,000		\$ (210,800)	\$ (2,500,000)	\$ (210,800)	\$ (11,392,400)
FY16	\$ 725,000		\$ (210,800)	\$ (2,000,000)	\$ (210,800)	\$ (12,878,200)
FY17	\$ 725,000		\$ (210,800)	\$ (1,450,000)	\$ (210,800)	\$ (13,814,000)
FY18	\$ 725,000		\$ (210,800)	\$ (47,690)	\$ (210,800)	\$ (13,347,490)
FY19	\$ 725,000		\$ (210,800)	\$ -	\$ (210,800)	\$ (12,833,290)
FY20	\$ 725,000		\$ (210,800)	\$ -	\$ (210,800)	\$ (12,319,090)
FY21	\$ 725,000		\$ (210,800)	\$ -	\$ (210,800)	\$ (11,804,890)
FY22	\$ 725,000		\$ (210,800)	\$ -	\$ (210,800)	\$ (11,290,690)
FY23	\$ 725,000		\$ (210,800)	\$ -	\$ (210,800)	\$ (10,776,490)
FY24	\$ 725,000		\$ (210,800)	\$ -	\$ (210,800)	\$ (10,262,290)
FY25	\$ 725,000		\$ (210,800)	\$ -	\$ (210,800)	\$ (9,748,090)
FY26	\$ 725,000		\$ (210,800)	\$ -	\$ (210,800)	\$ (9,233,890)
FY27	\$ 725,000		\$ (210,800)	\$ -	\$ (210,800)	\$ (8,719,690)
FY28	\$ 725,000		\$ (210,800)	\$ -	\$ (210,800)	\$ (8,205,490)
FY29	\$ 725,000		\$ (210,800)	\$ -	\$ (210,800)	\$ (7,691,290)
FY30	\$ 725,000		\$ (210,800)	\$ -	\$ (210,800)	\$ (7,177,090)
FY31	\$ 725,000		\$ (210,800)	\$ -	\$ (210,800)	\$ (6,662,890)
FY32	\$ 725,000		\$ (210,800)	\$ -	\$ (210,800)	\$ (6,148,690)
Sunset - Balance Due	\$ -			\$ -	\$ (6,200,000)	\$ (12,348,690)
	\$ 16,125,000	\$ 3,741,000	\$ (4,312,000)	\$ (21,897,690)	\$ (10,313,000)	

**Est Reimb Claims Remaining \$ 21,897,690**  
(Over Next 10 Years)

**DERF Balance as of FY32 \$(12,348,690)**  
(DERF Sunset Date)

Est. Annual Interest Rate for EIF Transfer (^)	
0.75%	3.40%
short term	long term

### Assumptions:

- (\*) DERF Revenue is projected to be \$1,025,000 / year, with approx \$300,000 going to administrative expenses. Revenue may not meet expectations due to fluxuations in national economy & business outlook for dry cleaning.
- (\*\*) DERF Balance represents **shortfall** if all claims were paid (with DNR/DOR Admin Costs removed as well). Actual reimbursements limited to available funds from revenue, or budget authorization, whichever is greater. Claims received in excess of this figure would not actually receive payment until following FY(s)
- Est Reimbursement Claims based on survey of regional DNR Project Managers of open sites undergoing investigation and remediation. Regional staff provided cost estimates & timelines (or general estimates used if regional N/A)
- Est Reimbursement Claims might be stretched over a longer period of time than originally projected. In practice, we are currently seeing reimbursement requests around \$2 million per year.
- (^ ) Assumes an interest rate on the EIF transfer of 0.75% for FY10-FY12 based on current trends, then 3.4% per year extending further out. This rate fluctuates from month to month based on the daily interest earnings rate of the state investment fund, and will vary. 3.4% is the 10 year average for the past 10 years

## Environmental Response Fund - Version 2 (\$900k Revenue Est)

Long Term Program Funding Estimates with EIF Transfer

### Future Revenue/Credits to DERF

### Future Draws on DERF Balance

	Likely Revenue Available for Reimb. (*)	EIF Transfer (Incoming)	For Reference - EIF Transfer Interest Charges (^)	Reimbursement Claims	Required Min EIF Repayment (to maintain max \$6.2 million debt)	DERF Balance (Revenue/EIF Transfer minus Claims & EIF Interest Min. Payments)
FY10 after Feb	\$ 175,000	\$ 728,000	\$ (3,000)	\$ (900,000)		\$ -
FY11	\$ 600,000	\$ 3,013,000	\$ (46,500)	\$ (4,000,000)	\$ (1,000)	\$ (388,000)
FY12	\$ 600,000		\$ (46,500)	\$ (4,000,000)	\$ (1,000)	\$ (3,789,000)
FY13	\$ 600,000		\$ (210,800)	\$ (4,000,000)	\$ (106,800)	\$ (7,295,800)
FY14	\$ 600,000		\$ (210,800)	\$ (3,000,000)	\$ (210,800)	\$ (9,906,600)
FY15	\$ 600,000		\$ (210,800)	\$ (2,500,000)	\$ (210,800)	\$ (12,017,400)
FY16	\$ 600,000		\$ (210,800)	\$ (2,000,000)	\$ (210,800)	\$ (13,628,200)
FY17	\$ 600,000		\$ (210,800)	\$ (1,450,000)	\$ (210,800)	\$ (14,689,000)
FY18	\$ 600,000		\$ (210,800)	\$ (47,690)	\$ (210,800)	\$ (14,347,490)
FY19	\$ 600,000		\$ (210,800)	\$ -	\$ (210,800)	\$ (13,958,290)
FY20	\$ 600,000		\$ (210,800)	\$ -	\$ (210,800)	\$ (13,569,090)
FY21	\$ 600,000		\$ (210,800)	\$ -	\$ (210,800)	\$ (13,179,890)
FY22	\$ 600,000		\$ (210,800)	\$ -	\$ (210,800)	\$ (12,790,690)
FY23	\$ 600,000		\$ (210,800)	\$ -	\$ (210,800)	\$ (12,401,490)
FY24	\$ 600,000		\$ (210,800)	\$ -	\$ (210,800)	\$ (12,012,290)
FY25	\$ 600,000		\$ (210,800)	\$ -	\$ (210,800)	\$ (11,623,090)
FY26	\$ 600,000		\$ (210,800)	\$ -	\$ (210,800)	\$ (11,233,890)
FY27	\$ 600,000		\$ (210,800)	\$ -	\$ (210,800)	\$ (10,844,690)
FY28	\$ 600,000		\$ (210,800)	\$ -	\$ (210,800)	\$ (10,455,490)
FY29	\$ 600,000		\$ (210,800)	\$ -	\$ (210,800)	\$ (10,066,290)
FY30	\$ 600,000		\$ (210,800)	\$ -	\$ (210,800)	\$ (9,677,090)
FY31	\$ 600,000		\$ (210,800)	\$ -	\$ (210,800)	\$ (9,287,890)
FY32	\$ 600,000		\$ (210,800)	\$ -	\$ (210,800)	\$ (8,898,690)
Sunset - Balance Due	\$ -			\$ -	\$ (6,200,000)	\$ (15,098,690)
	\$ 13,375,000	\$ 3,741,000	\$ (4,312,000)	\$ (21,897,690)	\$ (10,313,000)	

**Est Reimb Claims Remaining \$ 21,897,690**  
(Over Next 10 Years)

**DERF Balance as of FY32 \$(15,098,690)**  
(DERF Sunset Date)

Est. Annual Interest Rate for EIF Transfer (^)	
0.75%	3.40%
short term	long term

### Assumptions:

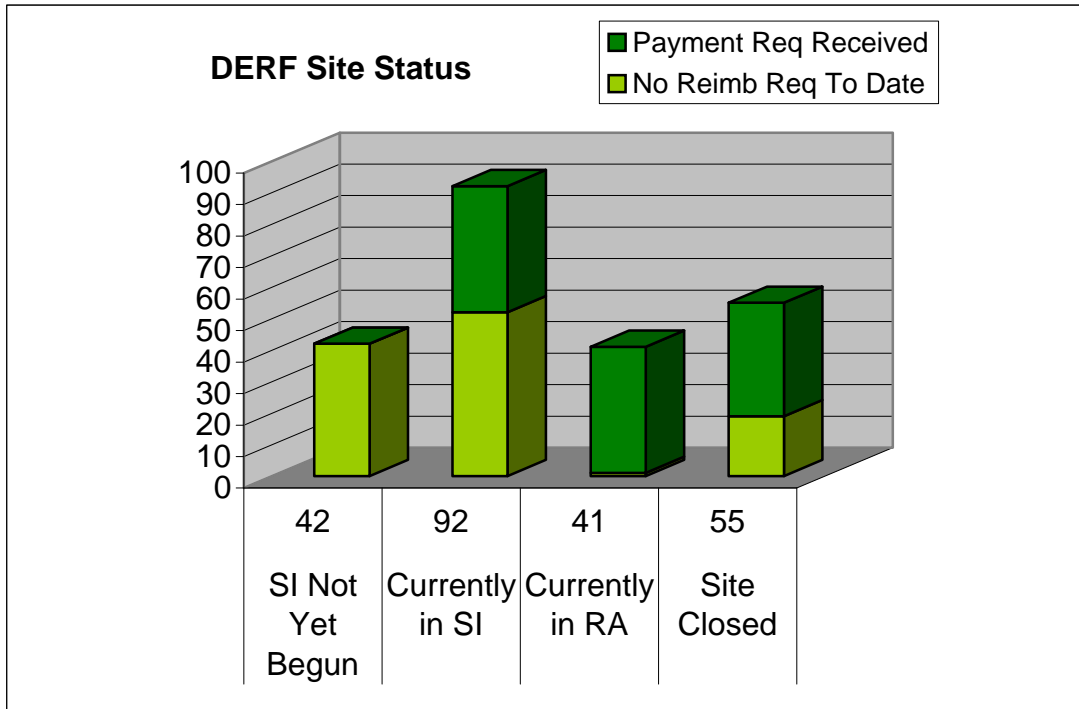
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## DERF Site Status

(updated Feb 24, 2010)

Total Sites Enrolled in DERF		230	% of Total Sites	No Reimb Req To Date	Payment Req Received
SI Not Yet Begun	42	18%	42	0	
Currently in SI	92	40%	52	40	
Currently in RA	41	18%	1	40	
Site Closed	55	24%	19	36	

30% of the sites currently enrolled in DERF joined the program in the last 2 months of enrollment in 2008



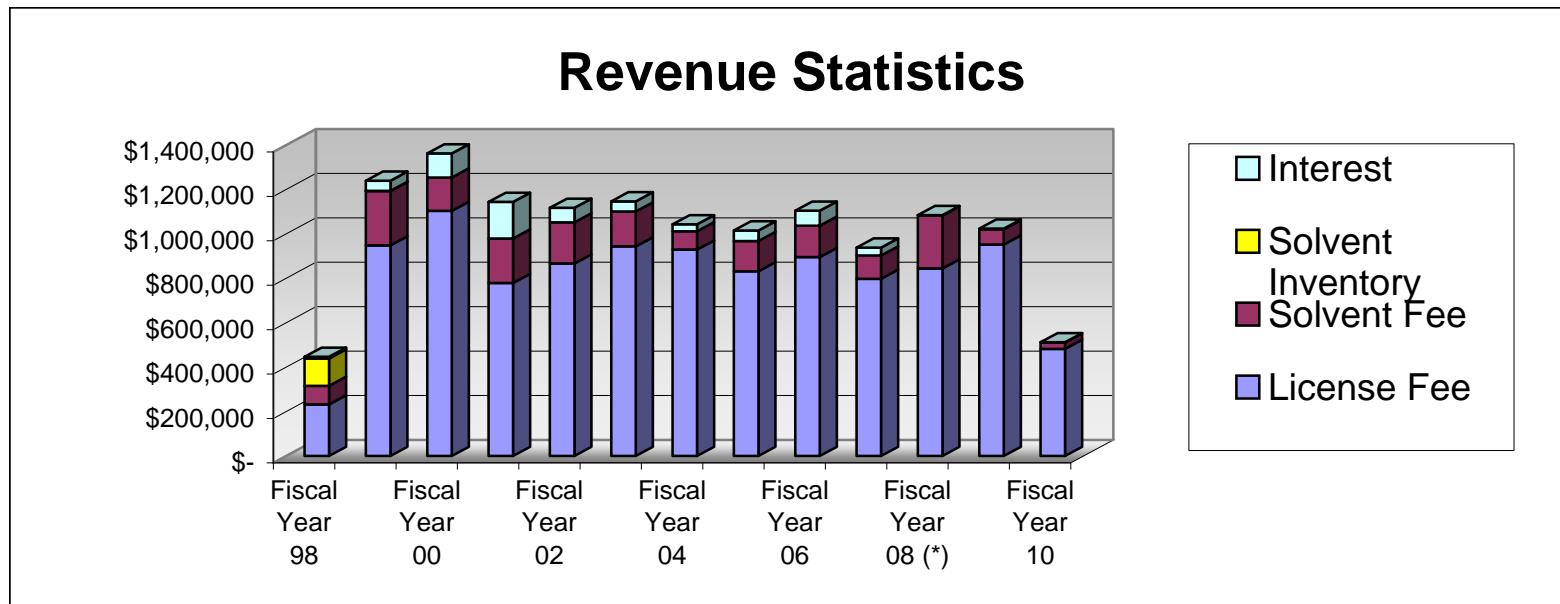


# Dry Cleaner Environmental Response Program

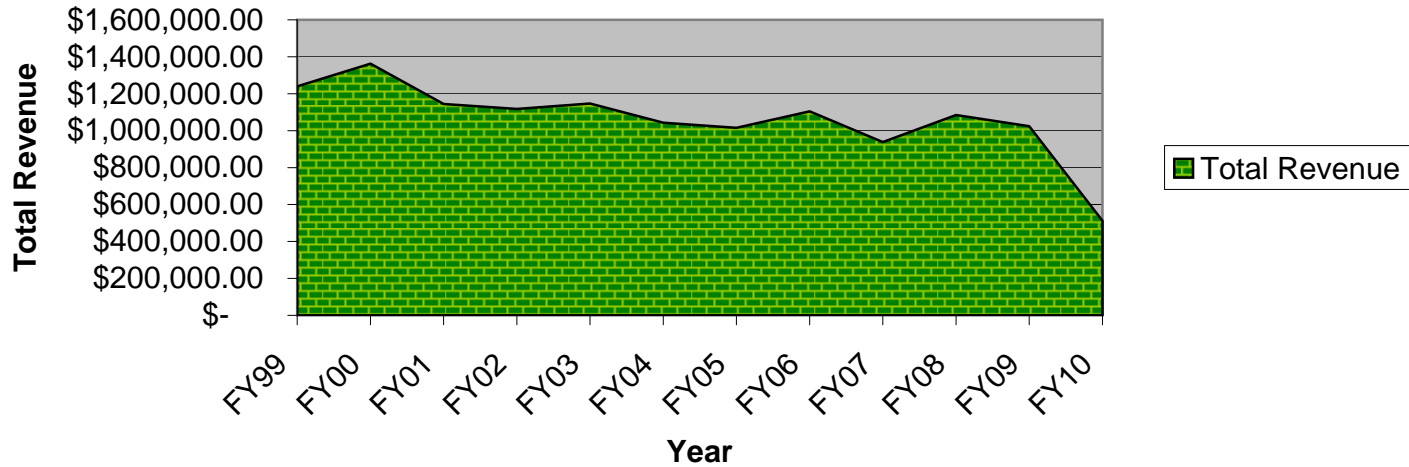
## Actual Revenues to date (Jan 31, 2010)

	License Fee	Solvent Fee	Solvent Inventory	Interest	Total	% Change from Prev Yr
Fiscal Year 98	\$ 232,604.00	\$ 83,439.00	\$ 123,022.00	\$ 7,820.00	\$ 446,885.00	
Fiscal Year 99	\$ 947,993.00	\$ 245,562.00	\$ 223.00	\$ 45,673.00	\$ 1,239,451.00	
Fiscal Year 00	\$ 1,103,692.92	\$ 150,367.91		\$ 108,474.35	\$ 1,362,535.18	10%
Fiscal Year 01	\$ 779,359.84	\$ 200,121.06		\$ 164,828.80	\$ 1,144,309.70	-16%
Fiscal Year 02	\$ 866,676.48	\$ 185,037.25		\$ 65,793.50	\$ 1,117,507.23	-2%
Fiscal Year 03	\$ 943,767.54	\$ 157,192.25		\$ 45,659.27	\$ 1,146,619.06	3%
Fiscal Year 04	\$ 929,318.15	\$ 82,604.42		\$ 31,220.80	\$ 1,043,143.37	-9%
Fiscal Year 05	\$ 831,851.01	\$ 135,993.87		\$ 47,608.33	\$ 1,015,453.21	-3%
Fiscal Year 06	\$ 895,732.97	\$ 141,549.78		\$ 67,153.02	\$ 1,104,435.77	9%
Fiscal Year 07	\$ 798,116.32	\$ 104,620.95		\$ 35,607.17	\$ 938,344.44	-15%
Fiscal Year 08 (*)	\$ 844,396.62	\$ 238,430.25		\$ 1,921.92	\$ 1,084,748.79	16%
Fiscal Year 09	\$ 952,200.11	\$ 68,836.70	\$ 1,677.25	\$ 1,239.82	\$ 1,023,953.88	-6%
Fiscal Year 10	\$ 482,582.33	\$ 29,207.56		\$ 454.96	\$ 512,244.85	
Total to date	\$ 10,608,291.29	\$ 1,822,963.00	\$ 124,922.25	\$ 623,454.94	\$ 13,179,631.48	

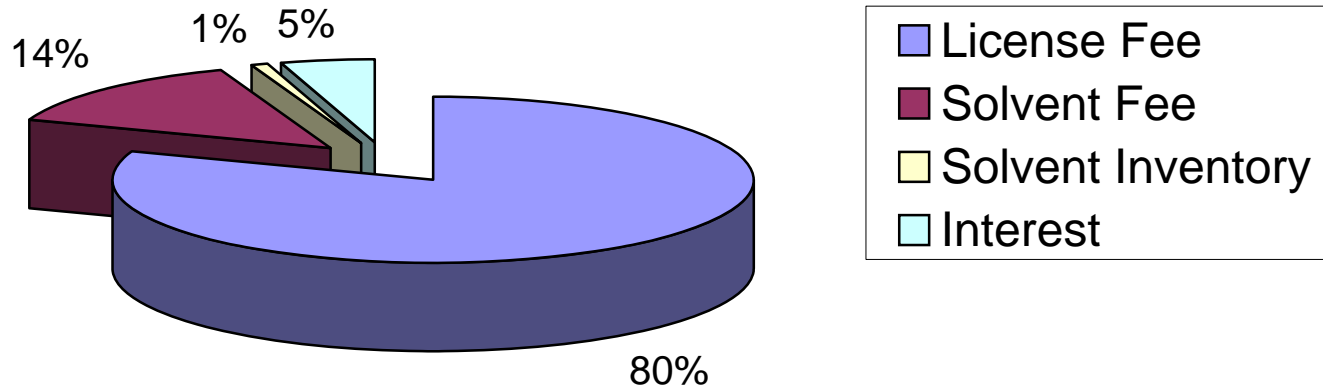
(\*) 4th quarter of FY08 included an increase in tax from 1.8% to 2.8%, thus raising revenue in comparison to past years.



### Total Program Revenue



### % DERF Revenue per Funding Source



**Proposed revision, NR 169.13(2)(f) Other reasonable and necessary costs**

3. Costs that the department determines are integral to the response action for dry cleaning solvent discharged from a dry cleaning facility and are incurred for any of the following purposes:

a. To remove existing structures, fixtures, and building components in order to access and investigate, treat, or remove contaminated soil or water.

b. To reinstall existing structures, fixtures, and building components.

c. To replace existing building components destroyed or damaged beyond reuse by removal.

Existing building components shall be salvaged and reused to the extent possible, but existing building components destroyed or damaged beyond reuse by removal may be replaced by building components of comparable or lesser value than the value of the destroyed or damaged components before removal.

NOTE: Building components include windows, siding, and interior and exterior concrete, asphalt, walls, and doorways.

NOTE: All other costs to construct, repair, replace, improve, relocate, or demolish a structure, fixture, or building component are ineligible costs under sub. (3).

**Proposed revision, NR 169.13(3)(a)6.**

Costs to construct, repair, replace, improve, relocate or demolish any structure, building component, or fixture except as allowed by sub. (2)(f) 3.