

Governor's Dry Cleaner Council
Meeting Notes
DNR Waukesha Service Center
April 28, 2006
9:30 a.m. – 2:30 p.m.

Attending:

Governor's Council

Steve Plater, Chair
Rich Klinke
Jeanne Tarvin
Jim Fitzgerald
Jill Fitzgerald
Kevin Braden

DNR

Mark Giesfeldt
Terry Evanson
Jeff Soellner
Edwina Kavanaugh
Pat McCutcheon

WI Fabricare Institute

Brian Swingle

Reinhart-Boerner

Don Gallo

Welcome Kevin Braden – Kevin has recently been appointed to the Council and represents the wholesale distributors of dry cleaning solvent.

Review of funding status for DERF: Jeff Soellner

Jeff has a record number of DERF claim requests this year, with 58 to date. There are almost 130 dry cleaner sites in the program. This fiscal year (FY06), the DNR has \$2.6 million in spending authority for DERF. Total claims in the year (July 1 – April, 2006) are \$2,156,298, leaving a fund balance of \$443,702 currently, but he knows of at least an additional \$200K still coming soon. There is still 1 quarter left for this year, so the carryover to next year is not known. We expect that demand will continue at the pace we've seen. We currently estimate that the spending authority for FY07 (\$1,050,000) will be expended by January 2007. The Excel spreadsheets with these projections are attached to these notes.

Future Funding of DERF: Mark Giesfeldt

We project a significant budget shortfall about halfway through FY07, 6 months before the biennial budget is expected to be passed by the legislature. The question is what can be done to address the budget crisis in the long and short term.

The universe of dry cleaning sites was discussed – there are historic dry cleaner sites that are currently ineligible for DERF (due to no eligible applicant) and those sites that will become ineligible because the owners miss the August 2008 deadline for application. Dry cleaners would like to see the program expanded. Fee collection is authorized until 2032. Without DERF, ineligible sites must go through the NR 700 process. When DERF was authorized, it was projected that 300 sites would enter the program.

The Council believes that if it is important to the State to cleanup up dry cleaner sites that the State should contribute to the cleanup costs. If the State won't help fund the cleanups, the program is likely to die. Issues brought up included:

- If the universe of dry cleaning sites needing cleanup is acknowledged, the legislature may have more information for funding additional cleanup.
- Health risk issues and importance of addressing PCE
- The impact ending DERF would have on other State cleanup programs
- License fee collection and a continued, reliable revenue source

- Cost controls, including consistency between DNR regions and DNR flexibility in monitoring and site investigation requirements. Mark Giesfeldt said he would follow up on specific site concerns. DNR tries to be flexible and cost effective in managing site cleanups. The DNR closure process was discussed, including the opportunity to appeal decisions.

DC Fees and additional State Funding

The consensus of the Council was:

1. Dry cleaners will support a fee increase to 2.3% (an increase of 0.5% from the current 1.8%) **IF** the State will commit to provide matching funds equal to the 2.3%. Jeff estimates that 2.3% fee on gross dry cleaning receipts will generate approximately \$1.34 million in reimbursement funds. A State match would provide a total of \$2.68 million/year.
2. Dry cleaners want the deadline for entering the program extended until 2032 and
3. Dry cleaners want an increase in spending authority for to the \$2.68 million/year.
4. Dry cleaners would support enlarging the program to include currently ineligible, historical dry cleaners if the program deadline is extended and the additional funding can be secured.

Source of State DERF matching funds

Discussion focused on proposing a transfer of funds or a loan of funds from PECFA. We discussed options of annual State funding of \$1.34 million versus a one-time funding of \$8.5 million into a revolving loan fund to support DERF reimbursements (where DERF fees would repay the revolving fund). Council members want to know what support DNR needs for proposing a loan or fund transfer of \$1.34 million. The Council will work with their legislators and DNR will work through the budget process currently underway.

DNR will revise the briefing paper by May 12 to include the recommendations of the Council.

Potential NR 749 Fees: Mark Giesfeldt

This discussion centered on charging NR 749 fees to dry cleaners who request additional DNR services beyond those routinely provided in an NR 700 cleanup. These additional services include such things as hazardous waste determinations and face-to-face technical meetings. DERF provides 2 FTE to the DNR for technical oversight of cleanups and DNR is currently providing 2.5 FTE of service. The Council recognizes that this proposal is in lieu of the DNR seeking additional FTE support from DERF. The Council agreed to the additional charges, but don't want these interpreted as increased fees to the dry cleaners. The DNR will make it clear when such services are requested that an additional, non-reimbursable cost will be incurred.

DNR does not know if this approach will reduce the FTE demand by DERF. This will be monitored. However, it is clear that as more sites enter the program, more staff time is needed to support review & oversight of cleanups.

Proposed Rule Language Changes: Terry Evanson

We reviewed the proposed rule changes to NR 169.13(2)(f) and the additions of subdiv. 3. Wording changes agreed to are reflected in the attachment to these notes.

Statutory Changes to DERP (ch. 292.65): Edwina Kavanaugh

Agent Agreements and Death of Dry Cleaners (ch 265.65(4)(k):

Issues surrounding agent agreements and their applicability beyond the death of the principal (the dry cleaner) have been discussed in the DNR. We discussed a document written by Edwina giving her interpretation of the law surrounding agents and agent agreements. It was agreed by the Council that statutory language should be proposed stating that agent agreements continue to be effective after the death of an applicant. Edwina will draft statutory language to this effect.

Payment of Fees by Dry Cleaners (ch. 292.65(8)(d)7

Several dry cleaners have applied for reimbursement of cleanup costs only to find that the dry cleaning fees due on the dry cleaner business are not up-to-date. The statute requires that the DNR shall deny application for reimbursement if “all fees . . . due . . . have not been paid”. These situations often involve an applicant who has sold his/her business to another dry cleaner operator. The concern by the Council is that the applicant can’t force the current owner pay the fees. We discussed the implications of changing this statute on overall fee payment by dry cleaners. It was the consensus of the Council to leave the wording as it stands.

5 year Program Report to the Legislature: Terry Evanson

The 5-year program report to the legislature is due the end of 2006. It was recommended that the following issues be included in the report:

- a list of Dept. of Revenue (DOR) issues that need follow-up to improve fee collection
- the need for DOR to make the list of dry cleaners in the State available to the Council. The Council can identify those dry cleaners not paying fees.
- Physical location of the dry cleaner should be on the license (it currently is not)
- The license number and physical location of all dry cleaners should be publicly available.

Next Meeting: July 27 (Thursday) at Lapham Peak State Park

Issues to discuss:

- updated DERF Sustainability Issue Paper
- DNR’s budget recommendations

Attachments:

Agenda

Dry Cleaner Fund Update for 4/28/2006

Draft Issue Paper: Sustainability of the Dry Cleaner Environmental Response Fund, including 4 table attachments

Issue paper on Dry Cleaner Fee Issue

Draft language changes to NR 169.05 and NR 169.13

Summary of DERF cleanups by an Agent

Governor's Dry Cleaning Council

Meeting Agenda

April 28, 2006
DNR Waukesha Service Center
9:30 a.m. – 2:30 p.m.

1. Welcome - Steve Plater & Mark Giesfeldt
2. Introduce new Council member – Kevin Braden
3. Review of fiscal status of the Dry Cleaning Fund – Jeff Soellner
4. Future funding for DERF – Mark Giesfeldt (draft attached)
5. Potential NR 749 fees – Mark Giesfeldt (draft attached)
6. Proposed Rule language changes – Terry Evanson (draft attached)
7. Proposed Statutory changes – Open discussion
8. 5 yr Program Report due Fall 2006 – Terry Evanson



Dry Cleaner Fund Update for 4-28-2006

Payments to date

Actually paid so far 35 payments totaling \$1,373,920.12

Payment requests on my desk 23 totaling \$782,377.64

Total demands for FY '06 - 58 payments - \$2,156,297.76

Number of site

We have close to 130 sites in the program

68 sites so far have made at least one payment request.

23 sites have requested their first payment since the code was changed to allow Interim Site Investigation payments.

New sites

9 new sites started the potential claim process so far this fiscal year compared to what we have estimated in the projections to be 15 new sites each year.

Issue Title: Sustainability of the Dry Cleaner Environmental Remediation Fund (DERF)

Introduction: The purpose of this issue brief is to do the following:

1. Inform appropriate staff, managers, and administrators about the financial situation (current and projected) for the DERF program.
2. Use as a means to clearly articulate the issue with interested external parties such as the Governor's Dry Cleaner Council, Wisconsin Fabricare Institute, legislators, DOA, etc.
3. Seek input from those mentioned in 1. and 2. above to identify, evaluate and pursue viable solutions.

Background: The Dry Cleaner Environmental Remediation Fund (DERF) is projected to run deficits beginning this fiscal year. DERF receives approximately \$1 million per year from a 1.8% fee on gross dry cleaning receipts, paid by licensed dry cleaners in the state. DERF reimburses eligible persons up to \$500,000 for environmental remediation of dry cleaning solvent releases. The demand for reimbursement is currently outpacing cash flow into the fund. It is projected that nearly \$17 million will be needed over the next 8 years (2013) to meet cleanup demand. The statutorily imposed dry cleaning fee is authorized until 2032. The fee is projected to produce the needed revenues by approximately 2020. This projected 7 year difference in cash balance results in delayed reimbursement beyond what a small business can successfully carry in financing costs. The reality of this delay is already resulting in dry cleaners refusing to enter the DERF cleanup program for fear that they will not be reimbursed in a timely fashion. August 30, 2008 is the deadline for new applicants to enter the DERF program.

Current and Projected Fiscal Status

Attached is **Table 1** which summarizes the actual demand on the program since it began in 1997. **Table 2** outlines the projected demand on the program.

In the last two years several rule and administrative changes have been to better meet the needs of dry cleaners, but have also resulted in a greater demand on DERF. They are:

- Allowing interim reimbursement of site investigation costs.
- Redefining eligible costs. This is intended to better serve the business needs of dry cleaners along with the environmental needs.

Funding Options for Stabilizing DERF

Several options for stabilizing funding for DERF have been discussed.

1. Increase Dry Cleaner Licensing Fees. The affect of fee increases are summarized in **Table 3**. The Governor's Dry Cleaner Council recognizes that dry cleaning business is declining statewide and that some increase in fees will be necessary to maintain current revenues. To cover the entire shortfall faced by DERF, fees would need to be increased to 5%, a 270% increase over current fees. The dry cleaners do not want any increased fees, but may be willing to support a 0.5% increase to 2.3%.

2. State Revenue Bonds. The Governor's Dry Cleaner Council would like to draw on future revenue fees by bonding. The cost of revenue bonds is prohibitive to a program as small as DERF. In addition, the legislature is unlikely to support this alternative.
3. Sales tax based fee. Some states dedicate a portion of the sales tax collected from dry cleaners to cleanup of dry cleaner properties. It's unlikely that the Wisconsin legislature would support this alternative.
4. Use of PECFA money. The Governor's Dry Cleaner Council has discussed the possibility of working with the Petroleum Marketers and the State to borrow money from PECFA to cover the DERF shortfall. If a revolving loan could be made from PECFA, approximately \$6 to 8 million would be needed to cover the shortfall in DERF over the next 13 years. The DERF revenue stream would repay the PECFA loan within approximately 13 years. **Table 4** shows the effect of a revolving loan for addressing the DERF shortfall.

DNR Revenues to Support DERF

In an effort to meet the needs of the dry cleaners, including the previously mentioned rule and administrative changes, the Department's Remediation & Redevelopment (RR) Program has also provided more services than is funded by the dry cleaner fees. The RR program has 2 FTEs funded by DERF and Community Financial Assistance (CFA) has 1 FTE totaling 3 FTEs in DNR. The CFA position is dedicated 100% to dry cleaner issues. The RR program currently dedicates approximately 2.5 FTEs to dry cleaner issues.

The DNR has agreed to not charge fees for a number of specific items related to a site cleanup in recognition of DERF funding 2 FTEs. As the program has grown, some dry cleaners have asked for additional resources, plus as stated before, the changes made in the program have resulted in more DNR RR time being taken. The program plans to discuss with the Governor's Dry Cleaner Council the industry's reaction to being charged for items beyond the agreed upon core elements.

Next steps:

1. Meet with internal staff managers to understand issues and agree upon next steps.
2. Share with Governor's Dry Cleaner Council and Wisconsin Fabricare Institute at April meeting.
3. Consider biennial budget alternative.
4. Establish schedule for all of the above.

Table #1

Dollars spent per Fiscal Year

FY '01	\$ 1,102,518.52
FY '02	\$ 592,530.03
FY '03	\$ 1,218,744.90
FY '04	\$ 507,982.67
FY '05	\$ 1,592,017.00
Total	\$ 5,013,793.12

standard spending authority each FY
\$1,050,000

standard spending authority	\$ 1,050,000
surplus Dry Cleaner funds made available	\$ 1,550,000
spending authority for FY '06 only	\$ 2,600,000
Demand for funds so far FY'06	\$ 1,986,612
dollars left for this FY	\$ 613,388.00

**We will be spending almost 2 years
of normal spending authority
in 3/4 of one Fiscal Year this year**

Table #2
Current and Projected Sites - Dollars Needed / Revenue Available

	D.C. license %		1.8	
	% increase			
	increase authority			
	projected authority		\$ 1,050,000	
	total projected payments	revenue available	\$ left	
	FY year'06	\$ 3,375,500	\$ 2,600,000	\$ (775,500) FY year'06
	FY year'07	\$ 2,916,000	\$ 274,500	\$ (2,641,500) FY year'07
	FY year'08	\$ 3,240,000	\$ (1,591,500)	\$ (4,831,500) FY year'08
	FY year'09	\$ 2,490,000	\$ (3,781,500)	\$ (6,271,500) FY year'09
	FY year'10	\$ 2,070,000	\$ (5,221,500)	\$ (7,291,500) FY year'10
	FY year'11	\$ 1,350,000	\$ (6,241,500)	\$ (7,591,500) FY year'11
	FY year'12	\$ 900,000	\$ (6,541,500)	\$ (7,441,500) FY year'12
	FY year'13	\$ 450,000	\$ (6,391,500)	\$ (6,841,500) FY year'13
	FY year'14	0	\$ (5,791,500)	\$ (5,791,500) FY year'14
	FY year'15	0	\$ (4,741,500)	\$ (4,741,500) FY year'15
	FY year'16	0	\$ (3,691,500)	\$ (3,691,500) FY year'16
	FY year'17	0	\$ (2,641,500)	\$ (2,641,500) FY year'17
	FY year'18	0	\$ (1,591,500)	\$ (1,591,500) FY year'18
	FY year'19	0	\$ (541,500)	\$ (541,500) FY year'19
	FY year'20	0	\$ 508,500	\$ 508,500 FY year'20
		\$ 16,791,500		

Assumptions:

- DERF Revenue will continue at \$1,050,000 / year
- Estimated costs for all projected new projects
- For current unpaid eligible projects (55) we used their estimate for Site Investigation costs if available (if not we used \$50K site investigation costs) and then projected out the same \$30,000 for three years after that for Remediation costs.
- For current paid projects(26) we estimated \$40,000 for the next year payment and \$36,000 for the next year payment. So we estimated \$76,000 payment for remaining remedial actions. A very conservative number.

Table #3
Effect of License Fee Increases on DERF Revenue Shortfall

		2.3		2.8		5		
		27.7		55.5		177.7		
		\$ 290,850		\$ 582,750		\$ 1,865,850		
		\$ 1,340,850		\$ 1,632,750		\$ 2,915,850		
	total projected payments	revenue available	\$ left	revenue available	\$ left	revenue available	\$ left	
FY year'06	\$ 3,375,500	\$ 2,600,000	\$ (775,500)	\$ 2,600,000	\$ (775,500)	\$ 2,600,000	\$ (775,500)	FY year'06
FY year'07	\$ 2,916,000	\$ 565,350	\$ (2,350,650)	\$ 857,250	\$ (2,058,750)	\$ 2,140,350	\$ (775,650)	FY year'07
FY year'08	\$ 3,240,000	\$ (1,009,800)	\$ (4,249,800)	\$ (426,000)	\$ (3,666,000)	\$ 2,140,200	\$ (1,099,800)	FY year'08
FY year'09	\$ 2,490,000	\$ (2,908,950)	\$ (5,398,950)	\$ (2,033,250)	\$ (4,523,250)	\$ 1,816,050	\$ (673,950)	FY year'09
FY year'10	\$ 2,070,000	\$ (4,058,100)	\$ (6,128,100)	\$ (2,890,500)	\$ (4,960,500)	\$ 2,241,900	\$ 171,900	FY year'10
FY year'11	\$ 1,350,000	\$ (4,787,250)	\$ (6,137,250)	\$ (3,327,750)	\$ (4,677,750)			FY year'11
FY year'12	\$ 900,000	\$ (4,796,400)	\$ (5,696,400)	\$ (3,045,000)	\$ (3,945,000)			FY year'12
FY year'13	\$ 450,000	\$ (4,355,550)	\$ (4,805,550)	\$ (2,312,250)	\$ (2,762,250)			FY year'13
FY year'14	0	\$ (3,464,700)	\$ (3,464,700)	\$ (1,129,500)	\$ (1,129,500)			FY year'14
FY year'15	0	\$ (2,123,850)	\$ (2,123,850)	\$ 503,250	\$ 503,250			FY year'15
FY year'16	0	\$ (783,000)	\$ (783,000)	\$ 2,136,000	\$ 2,136,000			FY year'16
FY year'17	0	\$ 557,850	\$ 557,850					FY year'17
FY year'18	0							FY year'18
FY year'19	0							FY year'19
FY year'20	0							FY year'20
	\$ 16,791,500							

Assumptions:

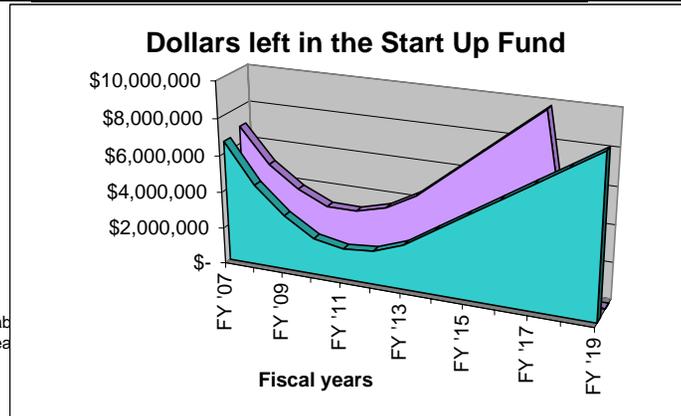
- DERF Revenue will continue at \$1,050,000 / year
- Estimated costs for all projected new projects
- For current unpaid eligible projects (55) we used their estimate for Site Investigation costs if available (if not we used \$50K site investigation costs) and then projected out the same \$30,000 for three years after that for Remediation costs.
- For current paid projects(26) we estimated \$40,000 for the next year payment and \$36,000 for the next year payment. So we estimated \$76,000 payment for remaining remedial actions. A very conservative number.

**Table #4
Effect of Revolving Loan Fund on DERF Shortfall**

	total projected payments	total \$ borrowed	Current debt (with paid back 1.05M/ yr)	Dollars remaining in the Start Up Fund		
				remaining \$ in fund assuming a starting point of \$8.5M \$1.05M replaced every year	remaining \$ in fund assuming a starting point of \$8.5M est. \$1.34M replaced every year	
FY year'06	\$ 3,375,500	\$ (775,500.00)	\$ 775,500.00			FY '06
FY year'07	\$ 2,916,000	\$ 2,916,000.00	\$ 2,641,500.00	\$ 6,634,000.00	\$ 6,924,000.00	FY '07
FY year'08	\$ 3,240,000	\$ 3,240,000.00	\$ 4,831,500.00	\$ 4,444,000.00	\$ 5,024,000.00	FY '08
FY year'09	\$ 2,490,000	\$ 2,490,000.00	\$ 6,271,500.00	\$ 3,004,000.00	\$ 3,874,000.00	FY '09
FY year'10	\$ 2,070,000	\$ 2,070,000.00	\$ 7,291,500.00	\$ 1,984,000.00	\$ 3,144,000.00	FY '10
FY year'11	\$ 1,350,000	\$ 1,350,000.00	\$ 7,591,500.00	\$ 1,684,000.00	\$ 3,134,000.00	FY '11
FY year'12	\$ 900,000	\$ 900,000.00	\$ 7,441,500.00	\$ 1,834,000.00	\$ 3,574,000.00	FY '12
FY year'13	\$ 450,000	\$ 450,000.00	\$ 6,841,500.00	\$ 2,434,000.00	\$ 4,464,000.00	FY '13
FY year'14	\$ 0	\$ -	\$ 5,791,500.00	\$ 3,484,000.00	\$ 5,804,000.00	FY '14
FY year'15	\$ 0	\$ -	\$ 4,741,500.00	\$ 4,534,000.00	\$ 7,144,000.00	FY '15
FY year'16	\$ 0	\$ -	\$ 3,691,500.00	\$ 5,584,000.00	\$ 8,484,000.00	FY '16
FY year'17	\$ 0	\$ -	\$ 2,641,500.00	\$ 6,634,000.00	\$ 9,824,000.00	FY '17
FY year'18	\$ 0	\$ -	\$ 1,591,500.00	\$ 7,684,000.00		FY '18
FY year'19	\$ 0	\$ -	\$ 541,500.00	\$ 8,734,000.00		FY '19
FY year'20	\$ 0	\$ -				FY '20
	\$ 16,791,500					

Assumptions:

- Estimated costs for all projected new projects
- Estimated costs for all projected new projects
 - \$ 50,000 added 2 years after start-up
 - \$ 30,000 added 3 years after start-up
 - \$ 30,000 added 4 years after start-up
 - \$ 30,000 added 5 years after start-up
 - \$140,000 total increase per new site assumed
- For current unpaid eligible projects (55) we used their estimate for Site Investigation costs if available (if not we used \$50K site investigation costs) and then projected out the same \$30,000 for three years for Remediation costs.
- For current paid projects(26) we estimated \$40,000 for the next year payment and \$36,000 for the next year payment. So we estimated \$76,000 payment for remaining remedial actions. A very conservative number.



Dry Cleaner Fee Issue

Background

The Dry Cleaners Environmental Cleanup Program was created by the Legislature on October 14, 1997 in cooperation with the dry cleaning industry. The Wisconsin Department of Natural Resources was charged with overseeing the program. Chapter NR 169 was promulgated in February, 2000 and established the criteria for reimbursement of cleanup related costs from the Dry Cleaners Environmental Fund (DERF). Funding is provided by the dry cleaning industry to help pay for environmental cleanups associated with contamination at certain dry cleaning operations. As part of establishing the fund, the dry cleaners provided the RR Program with funding for 2 positions in order to provide technical reviews and program oversight.

Chapter NR 169 identifies a number of agency reviews that do not require a fee under NR 749. In addition, DNR has typically not charged fees for review of most documents because of the funding provided through dry cleaner fees. A brief summary of the specific references in NR 169 where dry cleaners are exempted from paying fees is listed below.

- NR 169.09(2)(f) Note: If departmental review of site investigation scoping or other equivalent pre-discovery activities is requested, the review will be subject to fees under ch. NR 749. If a release is documented, those fees are eligible expenses for the purpose of reimbursement.
- NR 169.11(1)(b)4. Note: NR 749 fees are not required for review of an interim action report.
- NR 169.11(1)(c)5 Note: NR 749 fees are not required for review of SI workplans.
- NR 169.11(1)(c)7 Note: NR 749 fees are not required for review of SI reports.

In addition to these references, there are 2 other situations where fees have not been charged and we do not intend to charge for these type of reviews in the future. This includes:

- Review of remedial action plans, and
- Review of DERF reimbursement applications.

The one type of submittal that DNR previously established do apply to DERF sites are closure fees (including review of the closure report and GIS registry fees).

Current Situation

Recently, we received a question from a Regional Project Manager about whether a dry cleaner should be charged a fee for a requested meeting to go over the results of several remedial actions that had been implemented at a site. In evaluating the request, the Department reviewed the number of hours being spent in implementing the dry cleaner program. For the first half of the current fiscal year, we have logged almost 300 hours more than we are provided funding for and the trend is upwards. We estimate that we will be approximately 0.5 FTE over the funded amount by the end of the fiscal year.

As a result of our increased level of effort and decreasing staff resources, we feel it is appropriate to charge fees under NR 749 **if DNR assistance is requested**. The types of fees that would apply to DERF sites would include such things as:

- site-specific soil cleanup standards (\$750),
- review of O&M reports (\$300),
- technical assistance with such things as waste determinations (\$500), and
- any of the brownfield assistance letters (i.e. off-site letters (\$500) and general liability clarification letters (\$500).

NR 169.05 Definitions. In this chapter:

~~(1) "Appurtenances" includes valves, pumps, fittings, pipes, hoses, metering devices, mixing containers and dispensing devices which are connected to dry cleaning or laundry equipment.~~

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NR 169.13 Awards (2)

(f) *Other reasonable and necessary costs.* Reasonable and necessary costs under s. 292.65(7)(a)14., Stats., include:

1. Actual costs for equipment, supplies or services that are used exclusively for the response action. The department may reimburse an owner or operator who buys equipment used exclusively for the response action the net cost (purchase cost less salvage value) of the equipment as determined by the department, but not to exceed the reasonable cost of renting the equipment.

2. Normal employee wages, salaries, expenses or fringe benefits allocated to hours that the employees of the owner or operator worked on a response action.

~~3. Costs of labor to remove and reinstall existing structures, fixtures, and building components in order to access and treat or remove contaminated soil or water, and costs of concrete or asphalt material that must be replaced as a result of such removal.~~

~~Note: Reimbursable costs include: labor and material costs to remove, dispose of, and replace interior and exterior concrete and asphalt; labor to temporarily remove and reinstall dry cleaning or laundry equipment, including boilers, hot water heaters, plumbing, appurtenances and electrical and mechanical work; labor to temporarily remove and reinstall doorways, door frames, windows, interior or exterior walls and building siding removed to gain access into the building for remedial activities; structural analysis and compaction proctor testing; labor and materials for temporary security costs directly related to opening the building to access the site for remediation.~~

~~Note: Non-reimbursable costs include: labor or material costs to improve the property or business, to obtain new or replacement equipment, to repair or install new floor coverings, cabinets or counters, or to repair or install new signs, painting, wall covering or decoration.~~

Deleted: Unreimbursable

Deleted: replace

Deleted: or business fixtures such as

Deleted: replace

Bill - the problem is that an agent-principal agreement is subject to existing statutory and case (common) law in Wisconsin, and that law appears to say that the death of a principal instantaneously and absolutely revokes the agent's authority unless the agency is coupled with an interest - see my earlier response to Terry on that same question that I cut and pasted below:

I did a quick look and in *West's Wis. Key Number Digest* they cite 2 cases called *Ashley v. Andrus*, 486 F. Supp. 1319, affirmed 655 F.2d 105 and another called *In re. Lease's Estate*, 214 N.W.2d 418, 62 Wis.2d 230 (1974) for the proposition that "under rules of agency, death of principal operates as instantaneous and absolute revocation of agent's authority or power, unless agency is one coupled with an interest." I haven't "Shepardized" those cases, i.e., looked to see if they are still good law, but when I searched for them as terms on the Court of Appeals and Supreme Court websites I didn't find any hits, so I'll bet they are still good law. I can have a law clerk Shepardize them if you have to know for sure.

If the dry cleaner had executed a valid agency agreement that was extinguished by his death, then I think we had concluded earlier that the dry cleaner's personal rep (PR) could "step into" the shoes of the original dry cleaner upon the dry cleaner's death as long as the original dry cleaner or his agent had submitted the notice of potential claim before the dry cleaner died, correct?? So if there was still work to be done on the site I think the PR would probably have to execute a new agency agreement with the person doing the work before they continued the work, else the agent wouldn't be able to get reimbursed for any additional work done after the dry cleaner died and thereby extinguished the agency agreement.

I think that even after the dry cleaner died the agent could still be reimbursed for work the agent had completed while the dry cleaner (and their agency agreement) was still alive. I'm not sure if we could issue the check to the agent in that situation or would have to issue it to the PR and then the agent would have to go to the PR for payment?? I think we should deal with each case on its facts, and keep a record of what we do in each case for consistency, rather than do too much legal research re. hypotheticals.

Once the principal dies any work the agent does after the principal's death is not done as an agent of the principal for the reasons just stated. Of course the agent can still apply for and obtain reimbursement for the work he did up to the date of the principal's death, since that work was done while in the status of an agent. But if he wants to do additional work after the principal's death he can only do so if: (1) he is an eligible owner/operator himself (which presumably he isn't or he wouldn't have needed to obtain the agent agreement that died with the principal); or (2) he enters into a new agency agreement with an eligible owner/operator. As noted above, we have agreed that the personal rep of the deceased principal now "stands in his shoes" and so the person doing the work could seek a new agency agreement with the deceased principal's personal rep and any work he performed after he obtained the new agency agreement with the personal rep would be eligible for reimbursement.

You are correct that we might never learn that the principal/owner-operator had died thus extinguishing the agency agreement, but if we do learn of this situation we have to apply the law of agency-principal as it exists in Wisconsin. A standard rule of statutory construction is that the legislature's use of a specific and particular term (like "agent" in s. 292.65(4)(k)) is presumably deliberate. Another standard rule of statutory construction is that one assumes the legislature creating the statute is cognizant of existing statutory and case (common) law in effect when they created the statute. If the legislature wanted this program to be able to operate under a type of agreement that survived the death of one of the parties they could have said so in the statute, but their use of the term "agent" seems to imply an intent that the law of agency would apply. Or - because a statute acts in derogation of the common law - they could have used the term "agent" as they did but expressly stated in the statute that the agency agreement thus created is not affected by death or disability of the principal but they did no. As noted above, if the agency agreement creates a power coupled with an interest it is not generally revoked by death, but a simple right to reimbursement or compensation for the work performed does not constitute a "power coupled with an interest." However, if the agent owns the property that is the subject matter of the power, i.e., the property that is being cleaned up, the agency agreement with the principal coupled with the agent's ownership interest in the property being cleaned up is likely to constitute an agency "power coupled with an interest" that would make the agency agreement survive the death of the principal. See "Agency" ss. 55-70, 3 Am. Jur. 2d.(2001).

I don't work in PECFA so I am not aware of how they deal with this issue - whether it has arisen or been considered or not.