

DSCA Program

DRY-CLEANING SOLVENT CLEANUP PROGRAM

October 2000

DRY-CLEANING SOLVENT CLEANUP ACT ANNUAL REPORT

This annual report is required by the Dry-Cleaning Solvent Cleanup Act (DSCA) of 1997 (G.S. 143-215.104A et seq.). The DSCA created a fund for cleanup of environmental contamination from the use of solvents at dry-cleaning facilities and wholesale distribution facilities.

The Department of Environment and Natural Resources (DENR) has been working with the DSCA Stakeholder Group toward both program implementation and statutory improvements necessary for program viability. Periodic meetings of the DSCA Stakeholder Group included representatives of DENR and its attorney from the Department of Justice (DOJ); interested drycleaners within leadership of the North Carolina Association of Launderers and Cleaners (NCALC); environmental consultants; representatives of environmental advocacy organizations; representatives of the halogenated solvent industry; representatives of an alternative drycleaning technology company; and faculty from the North Carolina State University's School of Textiles.

It was noted in last year's report that all stakeholders in these meetings agreed that the program authorized by the DSCA of 1997 was underfunded to the point that it was not viable in the long term. This was largely due to the fact that historic contamination insurance for drycleaners had disappeared from the marketplace, leaving the fund with the responsibility to address all drycleaner sites when it had been designed to handle only a small portion of them. Data obtained from other states with drycleaning funds confirmed that North Carolina's program had the lowest funding level per site of the 11 states with drycleaner cleanup fund programs.

In an effort to address this situation, the General Assembly passed amendments to the DSCA in the form of House Bill 1326, which was ratified in July 2000. The DSCA of 1997 has been amended in the following major ways:

1. The DSCA of 1997 required that drycleaners demonstrate financial assurance for cleanups, either through obtaining a \$1 million environmental insurance policy or an equivalent amount in bond. The DSCA amendments repealed this requirement, thereby making the fund responsible for all cleanups less drycleaner deductibles and copayments.
2. The DSCA of 1997 funded the Cleanup fund strictly from a tax on drycleaning solvent (\$5.85/gallon for perchloroethylene, \$.80/gallon for petroleum). The DSCA amendments raised this solvent tax (to \$10.00/gallon for perchloroethylene and \$1.35/gallon for petroleum) and, after July 2003, earmarked 60 percent of the state portion of sales tax on drycleaning and laundering to the drycleaning solvent cleanup fund. The result of this amendment will raise the fund's annual income from \$900,000 to an

estimated \$1.3 million until 2003.

The figure will then rise to an estimated \$10 million annually thereafter until the tax sunsets in 2010.

3. The DSCA Amendments instituted a cleanup copayment for drycleaners that is a small percentage of the cleanup costs that exceed \$200,000. The specific percentage is based on their number of full time employees.
4. The DSCA amendments limited the total amount available for the reimbursement of past eligible costs (reasonable and necessary costs incurred pursuant to a notice of violation or cleanup order issued by DENR between 1997 and July 2001) to 10 percent of the previous year's income to the fund.
5. The DSCA amendments increased the administrative allowance to DENR and DOJ in the years 2001 to 2003. This was done to compensate for the lack of fund income in these years until the sales tax earmarking takes effect.

During this past year, DENR continued to make programmatic progress despite an uncertain funding situation that that made program implementation difficult. Progress was reported last year in the areas of programmatic structure, rulemaking, and legislative input. Again, progress was made in these three areas as described below:

A. Programmatic Structure and Development

DENR has continued its association with drycleaning programs in other states through its participation in the State Coalition for the Remediation of Drycleaners (SCRD). DENR used this organization to gather information in order to transfer the lessons learned from other states into statutory provisions that could be included in the DSCA amendments. DENR used its DSCA Stakeholder Group as a forum to provide information on these needed changes and to develop consensus for them. The most important single change to DSCA that resulted is making the assessments and cleanups mostly state contracted. This will result in greater cost controls for the DSCA program. Rather than having a program where drycleaners contract for cleanups themselves and then apply for reimbursement, the state will control costs by directing its own set of contractors.

With the input of the DSCA stakeholders, DENR has also developed its Site Prioritization System for Drycleaner Sites. This system has been beta tested on the 80 definitive drycleaner sites. The stakeholder committee finds it to be both a reasonable and effective prioritization tool.

The DSCA program has also continued its outreach efforts to educate drycleaners as to the Minimum Management Practices Rules and how DENR plans to certify sites into the program. This, and other program information, can be found at: <http://wastenot.enr.state.nc.us/sfhome/dryclean.htm>

B. Rules

As planned and on schedule, DENR finalized, and the Environmental Management Commission (EMC) adopted, the 15 NCAC Subchapter 2S Minimum Management Practices Rules for Drycleaners.

DENR regarded this effort as essential to minimize continued contamination problems at drycleaners in the future. Environmental problems at drycleaners are largely due to historical waste handling practices that

obviously need correcting. While many old or abandoned sites have problems because of these past waste management practices, newer sites that have followed current and more stringent disposal procedures have also been found to be contaminated. Other state environmental programs have found that some of today's newer dry-cleaning facilities still use practices that put soil and groundwater at risk. For example, disposal of solvent contact water through the sewer frequently results in soil and groundwater contamination when sewers leak or the solvent penetrates pipes and gaskets made from materials other than steel. The stakeholders concur that rules regarding solvent and waste handling practices are required to keep facilities from continuing to contaminate the environment. For example, one of the minimum management practices (MMPs) prohibits discharge of solvents to sewer systems. Another MMP requires spill containment for drycleaning machines and solvent storage areas. The MMP rules should prevent expensive future environmental problems at a reasonable cost to the drycleaner.

DENR began this rulemaking process in August 1999 with the 15 NCAC Subchapter 2S Minimum Management Practices Rules for Drycleaners. These rules were adopted by the EMC in April 2000 and took effect August 1, 2000. The rules require equipment changes and waste handling practices designed to prevent future contamination at sites. Compliance is mandatory and a drycleaner must comply in order to be eligible for certification into the DSCA program.

C. Legislative Amendments

DENR organized and ran the DSCA Stakeholder Group meetings as necessary (generally monthly) to give and obtain input on various programmatic and legislative aspects of the DSCA program. As discussed above, DENR's DSCA stakeholder group provided a forum for DENR and all stakeholders to comment on the DSCA amendments being proposed in the General Assembly by the NCALC. DENR also provided information at legislative meetings and presentations before the Environmental Review Commission regarding the program and the DSCA amendments.

Elements of the annual report as required by G.S. 143-215.104U:

(1) DRY-CLEANING SOLVENT CONTAMINATION REPORTED TO THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Last year's estimate of 108 sites suspected to be contaminated with dry-cleaning solvent has had no additions. The Division of Waste Management has obtained files on drycleaner sites from the Division of Water Quality in order to prepare the program for the inclusion of these sites. Examination of the information has led DWM to conclude that there are 80 sites (out of the 108 suspected sites) that have been definitively identified as being caused by drycleaners. Most of the remainder of sites obtained from the Division of Water Quality tested positive for chlorinated solvents from a yet undetermined source. Many of these may prove to be from drycleaners, but there are other potential sources as well.

The information from these 80 sites has been used to beta test the site prioritization system. A mailing list has been generated in order to inform parties about the program and how to petition for certification. This information was also used to develop a comprehensive structure for the DSCA program's GIS database. Rules on site certification have not been approved by the EMC, therefore, no sites have been certified into the program to date.

Estimates have not changed as to the total number of potential sites eligible for being addressed by the DSCA fund. There may be nearly 900 dry-cleaning facilities in the state. A survey from Florida shows a

contamination rate of 99% for drycleaners. Information from a national environmental consulting firm estimates that 95% of pre-1990 dry-cleaning facilities, and 60% of facilities established after 1990, may be contaminated to some degree.

(2) SITES CERTIFIED BY THE COMMISSION

To date, no potentially responsible party has petitioned for certification into the Program. Temporary rules for certification are under development and are on schedule for adoption by the Environmental Management Commission as early as January 2001. In anticipation of this adoption, DENR is providing information through its website on how we anticipate the certification process is will work and what a drycleaner will likely need to submit as a petition. Direct mail information will follow soon.

(3) COST ESTIMATE FOR ASSESSMENT AND REMEDIATION OF CERTIFIED SITES

Since no sites have been certified to date, no data are available on the assessment and remediation costs of certified sites. The actual costs are anticipated to vary widely, depending on site conditions and the chemical nature of the solvents released.

The statute does not mandate that drycleaners perform assessments to discover problems. Instead, should a drycleaner discover a problem through an environmental assessment (typically conducted prior to the sale of property), they may petition for entry into the program. Thus, the statute is designed so that most drycleaners will not attempt to enter the program at inception. Indeed, many of the currently operating or abandoned sites will not petition to enter the program within the first ten years. As a result, the costs of assessment and remediation will be borne over many years.

There is currently little, if any, reason to revise the cost estimates from last year's annual report. However, revisions will be made for planning purposes once the program has specific numbers of sites entering the program after certification begins. The program still anticipates an annual \$8 million to \$10 million effort. The Fiscal Note on the DSCA amendments anticipates that the funding mechanisms in the amendments should provide a similar amount.

The timing of when these costs will be incurred, however, is an important point to bear in mind. The DSCA amendments provided a significant funding infusion into the DSCA Cleanup Fund, but it does not arrive until July 2003 with the earmarking of drycleaning sales tax into the fund. The point to emphasize is that most of the program costs will have to be borne after July 2003. Until then, the program will prioritize, assess, address imminent hazards, cleanup and close as many sites as possible. However, the cost estimates clearly show that the vast majority of cleanup actions, the most expensive activity for the program, will have to be accomplished after these earmarked taxes enter the DSCA Cleanup Fund.

(4) RECEIPTS AND DISBURSEMENTS FOR THE FUND

Collections FY 97-98	\$ 474,717.47
Total Collections FY 98-99	\$ 927,004.50
Total Collections FY 99-00	<u>\$ 968,993.09</u>
Total Collections to Date (06-30-99)	\$2,370,715.06
Less Dept. of Revenue Expenses (all years)	<u>\$ 7,224.02*</u>

Balance	\$2,363,491.04
DENR & DOJ Administrative Allowance (20%)	<u>\$ 472,698.21</u>
Balance for Assessment and Cleanup Sites	\$1,890,792.83

*This represents the actual amount charged by the Department of Revenue for its expenses. The Department of Revenue is authorized by the Act to spend up to \$125,000 per year.

(5) CLAIMS AGAINST THE FUND

To date, there have been no claims against the fund. Reimbursement is only available to eligible petitioners for reasonable and necessary costs expended pursuant to an agreement at certified facilities. Presently, no facilities have been certified into the Program.

(6) RECOMMENDATIONS TO ASSURE THE SOLVENCY OF THE FUND

DENR has no recommendations regarding fund solvency at this time. In last year's report, DENR indicated that there would be fund solvency questions until an adequate funding mechanism was established. With the passage of the DSCA Amendments in July 2000, the General Assembly has taken the most needed steps necessary to assure fund solvency. After tax earmarking in 2003, these sites will have adequate resources applied to them. Until that time, program planning will be focused on prioritization, assessment, abatement of imminent hazards, and finally, cleanup and closure of as many sites as possible.

Information recently obtained from the NCALC indicates that there appears to be a typographical error in the DSCA Amendments (House Bill 1326) which will affect the tax increase on solvents. The effective date of the \$10.00/\$1.35 tax on drycleaning solvent appears to be October 2001, whereas it apparently should read October 2000. Previous versions of the statute and the Fiscal Note indicate that this tax would be increased in 2000 instead of 2001. Technical correction of the amendments may be warranted to ensure that the DSCA Cleanup Fund does not lose revenue that had been projected in the Fiscal Note for this period.
