

# ***DRY-CLEANING SOLVENT CLEANUP ACT ANNUAL REPORT***

*January 1, 2002*

## *Introduction*

This annual report is required by the Dry-Cleaning Solvent Cleanup Act (DSCA) of 1997 and amendments (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. It covers activities in the calendar year 2001.

## **Summary**

The Department of Environment and Natural Resources (DENR) has continued to work toward the implementation of the DSCA program with significant input and cooperation from the DSCA Stakeholder Group. 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; faculty from the North Carolina State University's School of Textiles; and private attorneys representing drycleaners and shopping centers.

A summary of significant progress regarding the DSCA Program in the areas of Rules, Program Development, and Outreach follows.

## **Rules**

DENR has continued laying the framework for implementation with the development of the Title 15A NCAC Subchapter 2S Rules for the DSCA Program. Last year DENR developed rules regarding minimum management practices that are mandatory for all 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 needed correcting.

This year, the program turned primarily toward operational implementation and developed rules regarding the petition and certification process. Like the previous rules, DENR developed these rules through the Stakeholder Group in order to facilitate consensus through the rulemaking process. The Environmental Management Commission adopted temporary rules to permit drycleaners and other responsible parties to petition the program for certification of sites. These rules took effect in July 2001, allowing the formal implementation of the program. After adoption of these temporary Rules, DENR

continues to work toward their permanent status as required by the Administrative Procedures Act. The permanent rules are on schedule to become effective August 1, 2002.

### Program Development

The DSCA Program has begun its implementation by developing forms for drycleaners and other responsible parties to use in petitioning the Program for certification of their sites. DSCA staff worked with DSCA stakeholders to develop forms that were as simple to fill out as possible but still contain the necessary information to certify sites as per the DSCA statute. The goal was to have forms that spoke in plain language that drycleaners, as small businesspersons, could fill out without necessarily requiring the services of an attorney or an environmental consultant. The petition forms were also made available on the DSCA website. Petitions for certification are now being accepted by the Program, and several sites have been certified as discussed in more detail below.

The Program has defined its operational process for addressing sites. Figure 1 below shows the typical process for sites that enter the program.

### **Figure 1 . North Carolina DSCA Program Process Flow**

#### **Step 1. The Drycleaner Petitions DENR for Certification**

The statute requires that the applicant (petitioner) request DSCA to certify the site. To do this the petitioner will send a certification petition package to DENR. This package must establish the following:

- A. Document that the site is an operating or an abandoned drycleaner or wholesale distributor facility
- B. Document that there is a solvent release at the site
- C. Provide all existing site environmental information
- D. Demonstrate an ability to pay the statutory deductible
- E. Demonstrate an intent to sign an assessment agreement with DENR
- F. Demonstrate that no delinquent solvent taxes are owed
- G. Demonstrate compliance with state and federal laws and rules regarding the environment, including the recently adopted Minimum Management Practices Rules.

#### **Step 2. DENR Certifies Site and Checks for Imminent Threats**

DENR will use the information provided in the petition package to certify the site into the program and notify the petitioner of this fact in writing. If, at any time in the process outlined below, DENR finds that the site poses an imminent risk to public health or the environment, the DSCA prioritization system would automatically place that site into the Priority 1 category. Should the threat warrant immediate action, DENR may contract for a response action to abate the imminent threat. If there is no imminent threat, the below process will continue.

### **Step 3. The Drycleaner Signs an Assessment Agreement with DENR**

After certification the Drycleaner signs an assessment agreement with DENR in order to begin work under the program. An assessment agreement is a legally binding agreement that commits the owner/drycleaner to assess the site. Signing the assessment agreement also provides the applicant the statutory liability protection from enforcement by other programs for cleanup and allows DENR to spend fund monies for the assessment of the site.

### **Step 4. The Drycleaner conducts the Prioritization Assessment (PA)**

The first step under the assessment agreement is for the drycleaner to conduct a Prioritization Assessment (PA) on the site through the services of a qualified environmental consultant. This will be a short investigation designed to give DENR enough information to rank a site with the DSCA prioritization system (a risk-based prioritization system that DENR has developed through a stakeholder process). The information will be provided to DENR in a Prioritization Assessment Report (PAR) and summarized on a Priority Ranking Form. It will involve some environmental sampling, and a fairly comprehensive inventory of the potential receptors (wells, streams, residents, etc.) that surround the site. The cost of this PA will be borne by the owner/drycleaner and will be credited toward the drycleaner's statutory deductible. The deductible amount ranges from \$5,000 to \$25,000 and is based on the number of full time equivalent employees the drycleaner employs. Abandoned drycleaners have the highest level of deductible. In some cases, the cost of the PA may completely satisfy a drycleaner's deductible, or may even require some reimbursement. In others, additional deductible may be owed by the owner/drycleaner during future activities.

### **Step 5. DENR Ranks the Site**

DENR will take the information from the PAR and rank the site using the DSCA prioritization system. Those sites that rank highest will go on for additional investigation and cleanup before those of lesser rank. It is anticipated that there will be a large number of sites that enter the program in the first year. The program will necessarily have to focus on prioritizing these sites before a significant number of cleanups occur, unless of course these sites pose an imminent threat as described above. Once several sites are ranked, DENR plans on having the site rankings available on its DSCA website, [www.ncdsca.org](http://www.ncdsca.org).

### **Step 6. DENR Contracts for Comprehensive Assessment and Cleanup**

After the PA stage is complete, the owner/drycleaner will no longer have to contract for any additional work. The Division of Waste Management will contract for the comprehensive site characterization that is needed to determine the best approach to cleanup. The Division will also contract directly for cleanups. It will contract for these

services on the basis of site rank under the DSCA Prioritization System to make sure that fund monies are spent on the worst sites first. Statutorily, the drycleaner may be required to pay certain copayments that are based on the total cost and the number of full-time equivalent employees.

After resolution of the state personnel hiring freeze, the program hired two additional staff members in November 2001 bringing the total number of staff to four. This has been a key to recent program progress in a number of areas including certification reviews.

The DSCA Program has initiated the contracting process through the Office of State Construction for the establishment of state lead contracts for the assessment and remediation of sites. This contract should be in place next year about the time that significant numbers of sites are sending the program their prioritization assessment reports. In addition, monies are being earmarked to address higher priority sites that may pose imminent threats to public health as soon as possible. The program is reviewing its first set of petitions to identify these sites for rapid action.

The DSCA Program has continued its association with drycleaning programs in other states through its participation in the State Coalition for the Remediation of Drycleaners (SCRD). The DSCA Program has used this organization to gather information in order to transfer the lessons learned from other states into program development decisions that will assist in making the program run efficiently.

### Outreach

DENR has continued its outreach efforts to educate drycleaners as to the Minimum Management Practices Rules (15A NCAC 2S) and how DENR plans to certify sites into the program. DSCA Program staff have spoken at NCALC and Korean drycleaners association meetings in an effort to provide the regulated community with information regarding the requirements of the 15A NCAC 2S Rules and the "how to" information regarding petitioning and certification process. Other outreach efforts have been made to shopping mall owners, environmental service providers, and the legal community.

The program also obtained a new streamlined web address, [www.ncdsca.org](http://www.ncdsca.org), and employs this website as a tool to provide programmatic guidance documents, rules, and downloadable forms to assist the public and the regulated community.

### **Annual Report Elements Required by G.S. 143-215.104U**

#### **1. DRY-CLEANING SOLVENT CONTAMINATION REPORTED TO THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES**

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 over 99 percent for all drycleaners. Information from a national environmental

consulting firm estimates that 95 percent of pre-1990 drycleaning facilities, and 60 percent of facilities established after 1990, may be contaminated to some degree.

The DSCA Program is voluntary, in that a responsible party or owner must petition the program for entry. The Program developed temporary rules that provide a framework for the site certification process. These rules were adopted by the Environmental Management Commission in May 2001. As a result, the program started formal implementation and began accepting petitions from responsible parties in July 2001. DENR notified drycleaners and others of the commencement through a mass mailing. Petition forms, which were developed with stakeholder involvement, were made available to interested parties via mail and on the program's web site ([www.ncdsca.org](http://www.ncdsca.org)). Most petitioners are finding these forms easy to download and use.

In order for a site to be certified, a potentially responsible party must, in its petition, present evidence of drycleaning solvent contamination from a drycleaning facility. Twenty-five sites have petitioned for entry into the program. This number represents a significant fraction of the approximately 100 suspected drycleaning sites that currently reside in DENR's files. The motivating factor for some of these petitions apparently has been impending property transactions. Others are seeking the limited, defined, financial and regulatory liability that the program provides. The DSCA Program has continued coordination with drycleaning stakeholders, including the North Carolina Association of Launderers and Cleaners (NCALC). Articles in the NCALC's newsletter on the program that encourage drycleaners to petition, seems to have resulted in increasing the pace of petitions.

The program has developed an extensive database and continues data entry from the petitions that come in. The program plans for this database to be made available on the program's web site at some point in 2002.

**(2) SITES CERTIFIED BY THE COMMISSION**

The program must review a petition to determine if the site and the petitioner meet the criteria under the DSCA statute for certification into the program. Of the 25 sites that have petitioned for program entry, 18 have been certified into the program. Of the 7 petitions that are not yet certified, 4 of them did not contain complete information (the program has requested this information before certification can be completed), and the other 3 petitions on hand are currently under review by program staff. A list of the petitions received and the sites that are currently certified is shown in Table 1 below.

<b>Table 1. Drycleaning Petitions Received and Certified</b>			
<b>Site Name</b>	<b>Site ID</b>	<b>City</b>	<b>County</b>
<b>Petitions Certified</b>			
Towngate Cleaners	100001	Southport	Brunswick
Swannanoa Cleaners	110001	Asheville	Buncombe

Triangle Square Cleaners	320003	Durham	Durham
Pro-Cleaners, Towne North Shopping Center	920001	Raleigh	Wake
Former Newton's Cleaners – Cameron Village	920012	Raleigh	Wake
Medlin-Davis Cleaners – Cameron Village	920013	Raleigh	Wake
Prestown Cleaners	600023	Charlotte	Mecklenburg
60 Minute Cleaners	600024	Charlotte	Mecklenburg
Old Pinehurst Hotel	630001	Pinehurst	Moore
Everhart Dry Cleaners	410009	Greensboro	Guilford
Master Cleaners	410014	Greensboro	Guilford
Ho Cleaners	600025	Matthews	Mecklenburg
Williams Cleaners	650005	Wilmington	New Hanover
Shuping Cleaners	800002	Spencer	Rowan
W.P. Ballard & Co., Inc	320008	Durham	Durham
Brother's Cleaners	920007	Raleigh	Wake
Brock's Cleaners	750001	Tryon	Polk
Johnson's Cleaners	490002	Statesville	Iredell
<b>Petitions Pending Certification</b>			
Village One Hour Cleaners	450002	Hendersonville	Henderson
KSP Cleaners, Eastgate Shopping Center	680001	Chapel Hill	Orange
Medlin-Davis Cleaners, MacGregor Village	920011	Cary	Wake
Southern Uniform, Inc.	670002	Jacksonville	Onslow
Lincoln Cleaners	550001	Lincolnton	Lincoln
Folks Cleaners	230001	Shelby	Cleveland
Johnson's Dry Cleaners, Ridgewood	920008	Raleigh	Wake

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

The site certification process has just begun and the full assessment and remediation of these sites is still pending setting up contracts with state lead contractors. Therefore, it is difficult to estimate the cost for the sites in the program thus far. The actual costs from site to site are anticipated to vary widely, depending on site conditions and the chemical nature of the solvents released. There is an annual cap on spending of \$200,000 per site unless it is an imminent threat to public health, in which case the annual expenditures may be extended to \$400,000. Also, many more sites are anticipated to petition next year

such that estimating the cost for the first twenty five is not an accurate representation of costs which are certainly going to grow as the program gains further implementation experience. 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 no reason to revise the cost estimates from last year's annual report. However, revisions will be made for planning purposes once the program has more experience with specific sites entering the program. The program still anticipates an annual \$8 million to \$10 million effort. The Fiscal Note on the DSCA Amendments (S.L. 2000-19) anticipates that the funding mechanisms in the amendments should provide this amount to the fund.

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 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 focus on prioritizing, assessing and addressing imminent hazards at 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 Fund.

**(4) RECEIPTS AND DISBURSEMENTS FOR THE FUND**

The drycleaning solvent cleanup fund finances are as follows through the end of FY 01:

Collections FY 97-98	\$ 474,717.47
Collections FY 98-99	\$ 927,004.50
Collections FY 99-00	\$ 968,993.09
Collections FY 00/01	<u>\$ 740,426.90</u>
Total Collections to Date (as of 06-30-01)	\$3,111,141.96
Less Dept. of Revenue Expenses (all years)	<u>\$ 7,224.02*</u>
Fund Balance	\$3,103,917.94
DENR/DOJ Admin. Expenses (FY97-FY01)	<u>\$ 294,789.31</u>
<b>Balance for Assessment and Cleanup Sites</b>	<b>\$2,809,128.63</b>

\*This represents the actual amount charged by the Department of Revenue for its expenses.  
The Department of Revenue is authorized by the Act to charge no more than \$125,000 per year.

## (5) CLAIMS AGAINST THE FUND

Because the DSCA Amendments (S.L. 2000-19) made the program largely a state-lead program, there will be few claims from responsible parties. DENR will spend the bulk of the funds through direct state-lead contracts managed by DSCA Program staff to assess and remediate sites. Therefore, the Program will have few reimbursement activities to conduct. The exceptions are for situations where petitioners have incurred past costs, where petitioners incur expenses to conduct a prioritization assessment that exceed their deductible amount, and where special remediation agreements are executed with responsible parties to address imminent threat sites that are identified before state-lead contracts are in place.

No sites have yet conducted prioritization assessments and thus no claims exceeding deductibles have yet been made. One site has applied for past costs incurred prior to program implementation (this one site submitted a claim for \$393,000). Reasonable and documented past costs incurred in response to an order or notice of violation from DENR may be reimbursable subject to the following statutory limitations:

1. they were incurred during the period from October 1997 through June 2001;
2. they are submitted to DENR as a claim no later than June 30, 2002;
3. they are paid in order of site priority; and
4. payout of all past cost claims are limited by statute to 10 percent of the income of the fund in the previous year.

There have been no other claims against the fund; however, the program is aware of a few sites that plan to apply for past costs before the July 1, 2002 deadline. Given the statutory limitations placed on past cost reimbursement, it is clear that any significant past cost claims will be reimbursed over a period of several years.

## (6) RECOMMENDATIONS TO ASSURE THE SOLVENCY OF THE FUND

DENR has no recommendations regarding fund solvency at this time. However, it is clear that the present fund balance is inadequate to address all of the drycleaning sites in the state and is anticipated to be inadequate until the tax earmarking funding mechanism commences in July 2003. Prior to the passage of the DSCA Amendments in 2000, DENR indicated that there would be fund solvency questions until an adequate funding mechanism was established. With the passage of the DSCA Amendments (S.L. 2000-19) in July 2000, which established the sales tax earmarking funding mechanism, the General Assembly has taken the most important step necessary to assure fund solvency in the future. After tax earmarking commences in 2003, these sites will have significant resources applied to them. Until that time, program planning will be primarily focused on prioritization, assessment and abatement of imminent hazards at as many sites as possible.

It may be of some interest to note that other state drycleaning solvent cleanup programs are looking into the possibility of utilizing a sales tax earmarking funding mechanism similar to that employed by the North Carolina General Assembly in the DSCA Amendments (S.L. 2000-19).