

State Funded Dry Cleaner Remediation Program

Title: State Funded Dry Cleaner Remediation Program

Description of the Issue:

Since it was first introduced in 1934, perchloroethylene (PCE) has been used as a cleaning solvent by the dry cleaning industry. By 1962, PCE was the solvent of choice and today approximately 90% of dry cleaners in the U.S. still use PCE. PCE is considered a potential carcinogen and is regulated as a hazardous substance. Because of its toxicity, the USEPA has established a maximum contaminant level for drinking water at 5 parts per billion (ppb) while New Jersey has established a ground water standard of 3 ppb. PCE is currently found as a contaminant in ground water aquifers in the State and has impacted drinking water supplies and created vapor intrusion hazards in structures in the vicinity of the discharge. The State Coalition for the Remediation of Dry Cleaners (SCRD) has estimated that 75% of dry cleaners have discharged contaminants to the environment. It is expected that this contamination will predominantly be the result of past operations since the dry cleaning industry has vastly improved its equipment and practices over the last 10 to 20 years. Currently, there are approximately 2000 dry cleaners currently operating in New Jersey and an unknown number of closed facilities. If SCRD's statistic of 75% is used to estimate the number of dry cleaners that have had a discharge, then more than 1500 dry cleaners currently operating in New Jersey have discharged to the environment. However, the NJDEP's Site Remediation Program has only about 300 dry cleaner sites within its universe of known contaminated sites. Based on SCRD's estimate, this leaves the majority of operating and former dry cleaner facilities unaddressed and potentially impacting groundwater and indoor air quality. The owners of these facilities are often small businesses and tend not to have the financial resources to properly address this contamination. How do we as a State appropriately address this problem without overly burdening these small businesses or substantially adding to the number of sites that the NJDEP is currently handling? Other states have addressed this issue through the development of a state-funded dry cleaner remediation program where user fees are assessed on the dry cleaner industry and its patrons and are dedicated to funding remediation of the contamination created by this industry.

DEP's Current Authority:

The current authority for the remediation of contaminated sites, which includes dry cleaners, is encompassed by N.J.S.A. 13:1D et seq., 13:1E et seq., 58:10-23.11a et seq., 58:10A-1 et seq., 58:10A-21 et seq., and 58:10B-1 et seq., which allows for the investigation and cleanup of environmental contamination. There is no specific authority for the implementation of a state-funded dry cleaner remediation program.

Background:

About 300 of Site Remediation Program's 18,000 contaminated sites are current or former dry cleaner operations. However, there are nearly 2000 operating dry cleaners throughout the State. Using the SCRD's estimation, potentially 1200 sites could be added to the 18,000 cases currently handled by Site Remediation. In addition, there are an unknown number of closed dry cleaner operations throughout the State that have not been included in this estimate of potentially impacted sites.

State Funded Dry Cleaner Remediation Program

The vast majority of these small businesses use or have used the chemical tetrachloroethylene, also known as perchloroethylene, perc or PCE. If exposed to this chemical or its breakdown products (trichloroethylene, di-chloroethylene, and vinyl chloride) there is an increased risk of kidney and liver problems and various types of cancer. In addition, PCE and its breakdown products do not readily degrade in the environment. The historical practices by the dry cleaner industry have allowed for the discharge of this chemical into the environment. Not only have these discharges impacted the ground water, but they have also created vapor intrusion issues throughout the State. Due to the high vapor pressures, the presence of these chemicals in soils or ground water creates the potential for chemical vapors to migrate through subsurface soils and/or preferential pathways thereby impacting the air quality of area buildings. These vapor intrusion pathways may pose an unacceptable risk to human health. Finally, a large number of dry cleaning facilities throughout the State are typically found intermixed in residential settings. This further increases the potential exposure through vapor intrusion.

Due to these characteristics of PCE, a small and simple remediation of contamination from a dry cleaner operation can cost as much as \$100,000; and more complex remediations can reach beyond \$5,000,000. Dry cleaners are mostly small businesses without the monetary resources to pay for the remediation of a chlorinated solvent plume.

It was presented by the Department that a state-funded dry cleaner remediation program could alleviate most of the monetary burden associated with remediating the contamination that currently falls upon the small business owner and/or the property owner (many dry cleaner operations lease space). A state-funded program could (through the use of dedicated funds) provide funding for additional FTEs dedicated to the remediation of dry cleaners. It could reduce much of the litigation costs involved in remediation and provide for expedited remediation through streamlined processes to investigate and remediate sites. In addition, upgrades of older systems could be a requirement to participate in the program, creating an incentive for these businesses to install machines and upgrade their systems so that future discharges are less likely. A state-funded remediation program could create an incentive for dry cleaners to volunteer information regarding contamination at their site rather than waiting for the State to find the problem.

Stakeholder Comments

Unlike most of the other issues raised within the stakeholder meetings, the issue of a state-funded dry cleaner program was initiated by the DEP. This issue was presented to the Stakeholders at the June 29, 2007, meeting; and after the discussion was completed, there were no objections indicated from any of the attendees with regard to moving forward with such a program. There were, however at the meeting, numerous questions, a few concerns raised, and several comments from stakeholders in response to the draft white papers.

The stakeholders questioned why dry cleaners in particular should be targeted. The DEP explained that dry cleaners use perchloroethylene (PCE), a contaminant that, along with its breakdown products, tend to persist in the environment. PCE and its breakdown products have been found as part of regional ground water contaminants throughout the State and have impacted potable water supplies. Because these compounds are denser than water, they tend to sink through the ground water making it difficult to remediate. In addition, these compounds have

State Funded Dry Cleaner Remediation Program

high vapor pressures and tend to volatilize; creating vapor hazards that effect indoor air quality. The dry cleaning industry is, and has been, the single largest user of PCE. Furthermore, these facilities are numerous and tend to be co-located in residential areas.

The stakeholders also expressed concern that a dry cleaner program could take resources away from other remediation projects. They asserted that determining the number of closed dry cleaner operations or assessing the real number of open dry cleaner facilities with contamination issues will take staff time and resources. These resources should not be siphoned away from existing projects but must be provided as new resources from some other funding source. Potentially adding 1500 cases represents more than an 8% increase in overall caseload and cannot be absorbed by existing staff levels and resources. If the program is structured to provide a funding source that is dedicated specifically to the remediation of these sites, over and above remediation funding that is already in place, it should be an additional resource and not one that takes away from other resources within the Department. The estimated 300 dry cleaner sites already in the system could be reassigned to new dedicated dry cleaner staff which would alleviate the burden on existing resources.

Some stakeholders stated that the issue of a state funded dry cleaner remediation program is as a specific area of concern discussed late in the stakeholder process and should be addressed as a separate issue. The Department considers the creation of a state funded drycleaner remediation program an important issue. It was for this reason that it was brought to the stakeholders for discussion. The Department believes that it would be a disservice to the citizens of the state of New Jersey to separate this issue from the rest of the environmental legislative initiatives at this time.

Some stakeholders indicated this program could be perceived as moving away from “polluter pays” and may be an issue with environmental groups. This issue could be addressed if the program requires the dry cleaner industry and its patrons to pay for the remediation through fees. It was suggested that a funding source could be maintained for the duration of remediation of these sites if the registration and user fees were paid continuously rather than a one time fee.

There was also discussion about how much of the remediation cost the dry cleaner operator could be liable for. The amount of the liability would depend on the structure of the legislation. All states that currently have a state-funded dry cleaner program have a deductible. Some of these are a flat fee and some are a percentage that is based on the remediation costs incurred.

The stakeholders asked whether financial resources could be made available to the small business owners so they could upgrade their systems to make them compliant with new environmental requirements. It was noted that some states have incorporated upgrade requirements as part of the eligibility requirement for these facilities. Loan programs for this purpose could be incorporated into legislation. Some stakeholders also questioned whether there should be insurance requirements for these businesses. It was noted that some of the other state-funded programs do require a minimum amount of insurance.

State Funded Dry Cleaner Remediation Program

Other States:

There are currently 13 states that have a state-funded dry cleaner program. These include Alabama, Connecticut, Florida, Illinois, Kansas, Minnesota, Missouri, North Carolina, Oregon, South Carolina, Tennessee, Texas, and Wisconsin. Florida was the first of 13 states to develop a state-funded dry cleaner program. Legislation in Florida, as in most of the other states, was initiated by the dry cleaners associations and was initially opposed by the state's environmental programs. The Texas legislation (the latest state to implement a program) was a joint initiation by both dry cleaners and government.

These programs are provided with dedicated funding obtained through a combination of user fees, registration fees, and/or taxes. The dry cleaners apply to what would be the equivalent of the Department of Environmental Protection and provide an initial environmental assessment along with the application. The state processes the application and ranks each site. The sites are addressed in order based on their ranking within the program.

There are a number of differences in the state programs; the main difference is who conducts the remediation. Some states, such as Tennessee and Wisconsin, use a reimbursement program and leave the hiring of consultants and engineers up to the dry cleaner. The costs for the cleanup are reimbursed to the dry cleaner once a milestone in the remediation has been completed. Other states, such as Florida, Kansas, and Texas, directly oversee the remediation of the sites. Still other states, such as Oregon, conduct state directed cleanups but allow for dry cleaners to conduct their own remediation and subsequently provide reimbursement.

As indicated above, various fees and user taxes cover costs for the programs. Most states have an annual registration fee along with a tax on the gross receipts from the businesses and/or a tax on the solvent purchased. Annual registration fees can be a flat fee, based on volume of business or number of FTEs, or based on estimate of cleanup costs. Most states collect a fee that is a percentage of gross receipt sales from the dry cleaners and one state (North Carolina) collects a straight sales tax of 4% on dry cleaning services. Some states have placed a tax on solvent (PCE) purchased. However, this has created an issue when purchasing the solvents from outside the state.

There is also a difference between the states regarding who is eligible for these funds. All states allow, at a minimum, current and former dry cleaner operations to be eligible for funding. In addition, some states have also included solvent suppliers, current and former property owners (where dry cleaners leased space), adjacent landowners and impacted third parties.