



August 10, 2021

Susan Doolin
5601 S Pennsylvania Ave
Cudahy, WI 53110

SUBJECT: Approval of *Work Scope and Request for DERF Change Order*
Former Packard Way Cleaners
BRRTS# 02-41-515150; FID# 241490920

Dear Ms. Doolin:

The Wisconsin Department of Natural Resources (DNR) received the *Work Scope and Request for DERF Change Order* (the Report) on February 19, 2021, prepared by EnviroForensics, LLC, (EnviroForensics) on your behalf. The DNR requested additional information on April 23, 2021 which was received on July 6, 2021. The proposed Work Scope and DERF Change Order is approved and you may proceed according to the proposed work.

The work, as proposed in the Report, includes: Gain access and conduct a vapor intrusion assessment and sampling of 3677 E Squire Ave; conduct groundwater gauging and determine flow direction for the installation of a proposed groundwater monitoring well; conduct 2 rounds of groundwater sampling from selected wells from the existing groundwater monitoring well network; and develop an emerging contaminants scoping statement.

Costs approved for this change order are \$35,270.00 for consulting and \$8,970.00 for sub-contractor work for a total of \$44,240.00.

In addition to the DERF Change Order approval, the DNR provides the following comments:

DNR Comments

Groundwater

- Include a flow direction map from the most recent groundwater gauging event. Continue to gauge groundwater levels during each sampling event and provide updated flow maps as applicable.

Vapor

- The Report states that access has been requested for 3677 E Squire Ave. and that a vapor intrusion assessment and 3 vapor sampling events will be completed at this location. The DNR concurs with this approach.
- As requested in the DNR's April 23, 2021 letter, vapor screening assessments should be conducted on the remaining nearby residential properties to determine if sampling is necessary.

Other

- Provide a utilities assessment to determine if utilities are acting as a preferential pathway for contaminant migration. Use data from the proposed new well to complete the assessment.

- Provide an emerging contaminants scoping statement.
- Continue to check if properties that have previously denied access have changed ownership. Document any changes or additional outreach efforts in case the DNR is requested to assist in granting access.

Next Steps

Provide to the DNR an updated Site Investigation Report within 60 days of the completion of the site investigation field work per Wis. Admin. Code NR 716.15(1)(a).

Please be aware that you are required to comply with all applicable statutes and administrative rules including the NR 700 series and Wisconsin Administrative Code pertaining to hazardous waste management and wastewater discharges.

This approval does not guarantee reimbursement of costs under the Dry Cleaner Environmental Response Program (DERP). Final determination regarding eligibility of costs for reimbursement will be made at the time of claim review. Additionally, as stated in the DNR's October 27, 2020 *Status of Dry Cleaner Environmental Response Fund (DERF)* letter sent to all responsible parties enrolled in DERP, the financial viability of DERF is in critical condition and cannot guarantee payment of previously and future submitted claims. Additional updated information regarding the financial viability of the DERF can be found at the following link:
<https://dnr.wisconsin.gov/aid/DERF.html>.

The DNR appreciates your efforts to restore the environment. If you have any questions or concerns regarding this letter, please contact me at (414) 750-7140 or at issac.ross@wisconsin.gov

Sincerely,



Issac Ross
Project Manager – Hydrogeologist
Remediation and Redevelopment Program

Attachments: *Status of Dry Cleaner Environmental Response Fund Letter*

cc: Rob Hoverman – EnviroForensics, LLC (electronic)
Sandy Chancellor – DNR (electronic)



October 27, 2020 - resent August 10, 2021

BRRTS # 02-41-515150
FID # 241490920
Site Status: Open

Ms. Susan Doolin
5601 S Pennsylvania Ave
Cudahy, WI 53110

Subject: Status of Dry Cleaner Environmental Response Fund (DERF),
Environmental Responsibility and DERF Eligibility for Emerging Contaminants
Packard Way Cleaners - Former
5601 S Pennsylvania Ave Cudahy, WI 53110

Greetings:

This letter is being sent to all Responsible Parties (RPs) and applicants, agents and payees for the Dry Cleaner Environmental Response Program/Fund (DERF) that currently have an open contamination site and select closed contamination sites on the Department of Natural Resources (DNR) Bureau for Remediation and Redevelopment Tracking System (BRRTS).

The purpose of this letter is to provide you with four pieces of information:

1. DNR recently recalculated projected dates for payment of claims previously submitted for reimbursement from DERF. A spreadsheet of claims in queue for reimbursement and projected payment dates is available at dnr.wi.gov/aid/DERF.html under the "Fund stats" tab in the document titled "Reimbursement Requests Pending";
2. There is currently a **projected wait time of more than 10 years** after receipt of new claims prior to payment and there is no guarantee funds will be available to pay new claims prior to the sunset date of June 30, 2032;
3. Responsibility for investigation and cleanup of environmental contamination is independent from the status of claims for reimbursement from DERF; and
4. Costs associated with emerging contaminants, such as perfluoroalkyl and polyfluoroalkyl substances (PFAS), are not eligible expenses for reimbursement of claims under DERF.

Financial Viability of DERF in Critical Condition

In late 2019, DNR projected an annual 9% to 12% decline in DERF revenue through the sunset date of June 30, 2032, based on a reducing trend of active dry cleaners in the industry. This steady decline in part explains the funding shortfall and anticipated 10 year wait to receive payment on submitted claims as calculated in 2019. The history of DERF and explanation of the funding source is explained in an Attachment to this letter for your reference.

Actual revenue for DERF in fiscal year 2020 (which ended June 30, 2020) is less than what was projected in 2019. Recent calculations showed an actual 17.26% decline in revenue this fiscal year compared to last fiscal year. DNR will

not know the long-term effect of the COVID-19 pandemic on the dry cleaner industry for some time and if there will be additional businesses closing, which may affect the already limited revenue for DERF even further. DNR will monitor actual revenue and re-evaluate the projected revenue decline in 2021. DNR will continue to update the estimated payment date for claims waiting to be paid as information on revenue is received.

DNR's authority to implement DERF is limited by statute, and DNR does not have authority to make statutory changes. The DNR will have no statutory authority to make payments when the funding source is exhausted, regardless of eligibility or whether a claim was received prior to the 2032 sunset date. Thus, it is impossible to guarantee that previously submitted claims or future submitted claims will be reimbursed.

Additional information on pending reimbursement requests, payments by site, program revenue, projected revenue decline and more can be found at dnr.wi.gov/aid/DERF.html under the "Fund stats" tab.

Legal Responsibilities for Investigation and Cleanup of Environmental Contamination

RPs are reminded that the responsibility to investigate and clean up environmental contamination is independent of the status of DERF or claims already submitted that are in line for reimbursement. A person who possesses or controls a hazardous substance which is discharged or who causes the discharge of a hazardous substance shall take the actions necessary to restore the environment to the extent practicable and minimize the harmful effects from the discharge to the air, lands or waters of this state, Wis. Stat. § 292.11(3). If DERF is not available to reimburse claims, RPs are still responsible to take the actions necessary.

Emerging Contaminant Investigation and Cleanup Activities Not Eligible for Reimbursement under DERF

Wisconsin Administrative Code ("Wis. Admin. Code") § NR 169.03 clarifies DERF applies to contamination of a discharge of a "dry cleaning product". Wisconsin Statute ("Wis. Stats.") §292.65 (1) (e) defines a dry-cleaning product as a "hazardous substance used to clean apparel or household fabrics..." Eligibility for expenses hinges on this definition.

On August 17, 2020, the DNR issued a state-wide letter to RPs for all open sites regarding emerging contaminants in general. Specifically, perfluoroalkyl and polyfluoroalkyl substances (PFAS) may be of concern at sites resulting from contamination from dry cleaners. As RPs work with their consultants on site investigation scoping at open sites to determine if their site needs to perform an investigation for PFAS or other emerging contaminants, it is important to clarify that PFAS is not a product used to clean. Therefore, costs incurred relating to the investigation or cleanup of this hazardous substance are not eligible expenses under Wis. Admin. Code ch. NR 169 (DERF).

The DNR appreciates the efforts to restore the environment at this site. If you have any questions regarding this site, please contact the assigned DNR Project Manager or DNR Site contact:

Issac Ross
414-750-7140
Issac.Ross@Wisconsin.gov

Sincerely,



Christine Haag
Program Director
Remediation & Redevelopment Program

Attachment

ATTACHMENT

The Dry Cleaner Environmental Response Program (DERP) and Fund (DERF) was created in 1997 Wisconsin Act 27 to provide financial assistance awards for reimbursement of certain eligible costs of investigation and cleanup of contamination from dry cleaning solvents at certain dry-cleaning facilities. Eligible claimants to the program had to have submitted a Potential Claim Notification by the deadline of August 30, 2008. There were applications to enter DERP from 230 locations. There are currently 107 open contamination sites and 114 closed contamination sites with the remaining locations not tied to an identified release to the environment. The program and fees have a statutory sunset of June 30, 2032, (35 years after creation) per Wis. Stats. § 292.65 (14) and Wis. Admin. Code § NR 169.31 (2).

DERP is funded by license fees paid quarterly by every operator of an active dry-cleaning facility that include:

- 2.8% of the gross receipts from the previous three months for dry cleaning;
- solvent product fee of \$5 per gallon of perchloroethylene (“perc”); and
- solvent product fee of \$0.75 per gallon of non-perc products.

These fees are collected quarterly by the Department of Revenue (DOR) and transferred to the DNR to administer the program. At the start of this program, there were 350 licensed dry cleaners in the state. That number dropped to 135 in 2020.

Initially, claims for reimbursement were paid immediately after being audited by DNR. Due to the significant levels of contamination from the historical dry-cleaning industry, complexity in investigating and cleaning up chlorinated solvents and a decline in the revenue funding source, a waiting period to pay claims developed in 2006. The following changes took place to repair the fund:

- In 2008, the license fee increased from 1.8% to 2.8% of gross receipts.
- In 2009, a loan of \$6.2 million from the Environmental Fund was obtained.

No other legislative changes have occurred. Compounding the issue is the general decline in demand for dry cleaners resulting in a decline in the revenue that funds the grant program, as discussed in the letter above.

Additional information on pending reimbursement requests, payments by site, program revenue, projected revenue decline and more can be found at dnr.wi.gov/aid/DERF.html under the “Fund stats” tab. This website is updated periodically.