



PUBLICATIONS

State Approaches for Drycleaner Remediation Programs

This paper, developed by the State Coalition for Remediation of Drycleaners' (SCRD) Program Development/Administration Subgroup, identifies and discusses five primary components of state drycleaner cleanup programs. These components include:

- ❖ Funding Mechanisms,
- ❖ Eligibility,
- ❖ Prioritization,
- ❖ Implementation, and
- ❖ Benefits.

Although states programs may vary greatly they all contain aspects of these five components. This document explores the various approaches/options states have incorporated into their cleanup programs. For each of the components discussed in the paper, there is a section on "considerations", which offers more insights into these various approaches. This document can be used as a resource for states in the development stage or for states that are considering restructuring their programs.

This paper supports the SCR D's primary objectives to:

1. Provide a forum for the exchange of information and the discussion of implementation issues related to established state drycleaner programs;
2. Share information and lessons learned with states without drycleaner-specific programs; and
3. Encourage the use of innovative technologies in drycleaner remediation.

Funding Mechanisms

There are a number of different ways states pay for their drycleaner remediation programs. There is no one structure that has been found to be the best – each has positive and negative aspects to be considered, as identified in the discussions below. Some states assess annual fees based on full time employees at active facilities, some assess a flat annual operating or registration fee, and yet others base their fees on gross receipts from drycleaning operations. In addition to these fees, many states assess a fee based on the type and amount of solvent used. Specific state fee structures are as follows:

A. Fees/Taxes

Most states have some type of annual license or registration fee, as well as an annual solvent fee, as identified below. North Carolina is the only state to establish a specific sales tax on drycleaners. These fees/taxes can be based on number of employees, amount of solvent used, a flat operating or registration fee, or a fee based on the amount of gross receipts or revenue generated by a particular facility.

1. Annual Registration/Licenses Fees

a. Annual Fee - Active Drycleaners - Based on Full-Time Equivalent Employees (FTEs)

MN	Less than 5 FTEs	\$1,250 fee
	5 to 10 FTEs	\$2,750 fee
	More than 10 FTEs	\$4,250 fee
SC	Up to 4 FTEs	\$750 fee
	5 to 10 FTEs	\$1,500 fee
	More than 10 FTEs	\$2,250 fee

b. Annual Fee/License Active Drycleaners – Based on Solvent Usage

IL	License Fee	Chlorine Based Solvents	Green Solvents	Petroleum w/reclaiming	Petroleum w/o reclaiming
	\$1,500	0 - 50 gallons	0- 50 gallons	0 - 250 gallons	0 - 500 gallons
	\$2,250	> 50-100 gallons	> 50-100 gallons	>250 - 500 gallons	>500-1000
	\$3,000	>100-150 gallons	>100-150 gallons	>500 - 750 gallons	>1000-1500
	\$3,750	>150-200 gallons	>150-200 gallons	>750-1000 gallons	>1500-2000
	\$4,500	>200-250 gallons	>200-250 gallons	>1000-1250 gallons	>2000-2500
	\$5,000	>250-300 gallons	>250-300 gallons	>1250-1500 gallons	>2500-3000
	\$5,000	>300-350 gallons	>300-350 gallons	>1500-1750 gallons	>3000-3500
	\$5,000	>350-400 gallons	>350-400 gallons	>1750-2000 gallons	>3500-4000
	\$5,000	>400-450 gallons	>400-450 gallons	>2000-2250 gallons	>4000-4500
	\$5,000	>450-500 gallons	>450-500 gallons	>2250-2500 gallons	>4500-5000
	\$5,500	>500-550 gallons	>500-550 gallons	>2500-2750 gallons	>5000-5500
	\$5,000	>550-600 gallons	>550-600 gallons	>2750-3000 gallons	>5500-6000
	\$5,000	More than 600 gal	More than 600 gal	>3000-3250 gallons	More than 6000 gal
	\$5,000			>3250-3500 gallons	
	\$5,000			>3500-3750 gallons	
	\$5,000			>3750-4000 gallons	
	\$5,000			More than 4000 gal	
MO		Less than 141 gal PCE			\$500
		141-360 gal PCE			\$1,000
		More than 360 gal PCE			\$1,500
TN		Less than 75 gal PCE/750 gal Stoddard			\$500
		75-150 gal PCE/750-1500 gal Stoddard			\$1,000
		More than 150 gal PCE/1500 gal Stoddard			\$1,500

c. Annual Operating/Registration Fee

AL	Wholesale distributors	\$5,500
FL	Active drycleaning facilities	\$100
	Wholesale distributors	\$100
KS	Active drycleaning facilities	\$100
OR	Active drycleaning facilities	\$500
	Dry Stores/Inactive	\$250
	Revenue fee (based on sales)	\$250-\$1,250
OR	Any facility using any solvent prior to 1/1/98	\$500
	Any facility using perc during the previous year	\$500
SC	Wholesale distributors	\$30
TN	Abandoned/Inactive drycleaning facilities	\$1,500
	Wholesale distributors	\$5,500
	Contractors	\$200-\$750
TX	Active drycleaning facilities (based on sales)	\$250-\$2,500
	CO2 drycleaning facilities	\$0
	Dry Stores (based on ownership)	\$125 - \$750

Gross Receipts/Sales Tax

AL	2.0 percent of gross receipts, on all services, up to \$25,000
FL	2.0 percent of gross receipts for drycleaning and laundering services at drycleaning facilities
KS	2.5 percent surcharge on gross receipts (all services)
NC	4.0 percent sales tax for drycleaning services
OR	1 percent gross receipts on drycleaning only
SC	1 percent surcharge on drycleaning gross receipts.
WI	1.8 percent of gross receipts on drycleaning only (license fee)

Considerations:

The states have identified a number of items to consider when establishing a fee system for implementing a drycleaner cleanup program. These include:

- ❖ Having an annual registration/license requirement identifies the universe of active facilities and possibly former locations of concern
- ❖ Depending on the number of facilities or the amount of the fee, the income may not justify the cost for tracking registration or to pursue smaller fees
- ❖ Whether the facility pays a fee based on FTE's or gross receipts, for many states, there is no system to audit the accuracy of the FTE's or gross receipts reported on which the fees are based. There is a suspicion that underreporting may be occurring to minimize the fee.
- ❖ Late Fees/Penalties may not be significant enough to encourage compliance
- ❖ Compliance tracking is difficult if a non-program agency collects the fees/taxes. In addition, if a non-program agency collects the fees/taxes, they will not disclose information about the facilities that have paid and those that have not. Tax collection agencies consider the information confidential.
- ❖ Fees on solvent usage are not as stable and can be somewhat counterproductive. Decreases in solvent usage (i.e. switching to less toxic chemicals or increasing the mileage of solvents by using more efficient processes/equipment) while promoted by the state agencies, leads to decreased revenue.
- ❖ Verifying or reporting solvent sales by suppliers is necessary to ensure compliance for solvent fees or other fees based on solvent usage.
- ❖ Compliance tracking of solvent sales is difficult with out-of-state suppliers. Solvent fees or fees based on solvent usage may create an incentive for facilities to purchase solvent out-of-state, if out of state sales are not being assessed the solvent fees. Generally PCE usage is easier to track than petroleum or alternative solvents because fewer suppliers handle PCE.
- ❖ The definition of "solvents" determines the application of fees and revenues. Some definitions may unintentionally exclude alternative solvents new to the industry.
- ❖ If a non-program agency collects the fees/taxes, the issue of who initiates enforcement/collection activities needs to be established. Greater communication is usually necessary for success.
- ❖ Partial payment/Under-reporting of applicable gross receipts
- ❖ States need to consider what services will be taxed or included in determining gross receipts - all services (including tailoring, etc.) or just drycleaning related services. Is the service limited to personal clothing or all items drycleaned – including formal wear, draperies, linens, etc.

2. Solvent Fees

Almost all states have established some type of fee based on solvent usage. Typically, PCE solvent is assessed a higher fee because of the risks posed by the chemical, the costs for remediation of the chemical, and the greater likelihood that contamination will or has occurred. Typically, the seller of the solvent is responsible for paying the fees to the state, however some states require the facility to report the amount of solvent used.

State specific information on solvent fees follows:

AL	No solvent fees	
FL	PCE	\$5.00 per gallon
IL	PCE	\$10.00 per gallon
	Petroleum	\$2.00 per gallon
KS	PCE	\$5.50 per gallon
	Petroleum	\$0.55 per gallon
MN	PCE	\$10.00 per gallon
	Hydrocarbon-based solvents	\$5.00 per gallon
	Non-Aqueous solvents	\$1.00 per gallon
MO	Chlorinated Solvents	\$8.00 per gallon
NC	Chlorine-Based Solvent	\$10.00 per gallon
	Hydrocarbon-based solvents	\$1.35 per gallon
OR	PCE	\$10.00 per gallon
	Non-PCE solvents	\$2.00 per gallon
SC	Halogenated Solvents	\$10.00 per gallon
	Non-Halogenated Solvents	\$2.00 per gallon
	Solvents in non-liquid form	\$0.20 per pound
TN	Dense Non-Aqueous solvents	\$10.00 per gallon
	Light Non-Aqueous solvents	\$1.00 per gallon
TX	PCE	\$15.00 per gallon
	All other solvents except CO ₂	\$5.00 per gallon
	CO ₂	\$0.00 per gallon
WI	PCE	\$5.00 per gallon
	Non-PCE solvents	\$0.75 per gallon

Considerations:

- ❖ This is a decreasing revenue source for most states. Most states promote the use of more efficient machines, resulting in decreased solvent usage and thus decreased revenues.
- ❖ States need to consider how they define "solvents". As new products come into the market, states may want flexibility in assessing fees on those new products.
- ❖ There is a reverse incentive for increasing fees for particular solvents (i.e. PCE). Fee increases may lead to a decrease in the use of a particular solvent, or conversion to alternate technologies, which will result in decreased revenues for the program.
- ❖ Fee structures based on per gallon basis may not include alternate solvents that are not in a liquid form, i.e. CO₂, which is distributed by pound unit in pressurized cylinders. (However, South Carolina's fee structure does include a 20 cent per pound surcharge on non-liquid solvents.)
- ❖ License requirement for distribution of solvents and non-compliance penalties for delivery of solvent to unregistered/unlicensed drycleaning facilities will encourage compliance and discourage solvent fee avoidance
- ❖ Tracking compliance is difficult with out-of-state suppliers. Drycleaners may purchase solvent out-of-state to avoid fees.
- ❖ Many states include penalties for non payment of solvent fees

B. Insurance Premiums

Only one state drycleaner remediation program is based on an insurance premium basis. In Illinois, facilities can pay a voluntary annual insurance premium of \$1,400. The premium is deposited into the fund and provides \$500,000 coverage with a \$10,000 deductible.

C. Deductibles

Most states include some type of deductible payment when claims are made or cleanups conducted. These deductibles can be based on a sliding scale based on the cost of the cleanup; a sliding scale based on FTEs of the facility, or can be a fixed deductible. The variety of deductibles is described below.

1. Sliding Scale

TN Facilities that purchase less than 75 gallons of dense non-aqueous solvent or less than 750 gallons of light non-aqueous solvent must pay 5 percent of the response costs up to a maximum of \$5,000. Facilities that purchase from 75 to 150 gallons of dense non-aqueous solvent or 750 to 1500 gallons of light non-aqueous solvent must pay 10 percent of the response costs up to a maximum of \$10,000.

Facilities that purchase at least 150 gallons of dense non-aqueous solvent or 1500 gallons of light non-aqueous solvent must pay 15 percent of the response costs up to a maximum of \$15,000

Abandoned drycleaning facilities and Wholesale distribution facilities must pay 25 percent of the response costs up to a maximum of \$25,000

WI The deductible is based on the cost of the response actions

Costs less than \$200,000 = \$10,000 deductible

Costs between \$200,000 & \$400,000 = \$10,000 + 8 percent of amount over \$200,000

Costs greater than \$400,000 = \$26,000 + 10 percent of the amount over \$400,000

There is a \$500,000 limit for reimbursements

2. FTE Sliding Scale

NC Facilities who employ fewer than five full-time employees; first \$5,000 of the costs of assessment or remediation plus 1 percent of the costs of assessment or remediation from \$200,000 to \$1,000,000.

Facilities who employ at least five but fewer than 10 full-time employees; first \$10,000 of the costs of assessment or remediation plus 2 percent of the costs of assessment or remediation from \$200,000 to \$500,000, and 1 percent of the costs of assessment or remediation from \$500,000 to \$1,000,000.

Facilities who employ 10 or more full-time employees, first \$15,000 of the costs of assessment or remediation, 3 percent of the costs of assessment or remediation from \$200,000 to \$500,000, and (1 percent) of the costs of assessment or remediation from \$500,000 to \$1,000,000.

Wholesale Distribution Facility and Abandoned Dry-Cleaning Facility; first \$25,000 of the costs of assessment or remediation, 3 percent of the costs of assessment or remediation from \$200,000 to \$500,000, and 1 percent of the costs of assessment or remediation from \$500,000 to \$1,000,000.

OR Facilities with 5 or fewer employees - \$5,000

Facilities with over 5 employees - \$5,000 plus \$1,000 per additional employee up to \$10,000

Inactive facilities - \$10,000

3. Fixed

IL Active facilities: \$5,000 site investigation and \$10,000 remediation that began prior to 1/1/08; \$15,000 after 1/1/08

Inactive facilities: \$10,000 site investigation and \$10,000 remediation that began prior to 1/1/08; \$15,000 after 1/1/08

FL Based upon date of application as an incentive for early application \$1,000, \$5,000, or \$10,000; payment requested at commencement of site work

KS \$5,000 per site

MN \$10,000 per site

MO \$25,000 for active and abandoned facilities that use or have used chlorinated solvents. Eligible expenses include site investigation, assessment and remedial actions at the site.

- SC \$1,000 if application filed before 11/24/05. \$25,000 if filed after 11/24/05. (Cannot file or be eligible for the fund after 11/24/06.)
- TX \$5,000 per site

Considerations:

Depending on the type of program (reimbursement vs. state-lead programs), the deductible can be a payment to the fund (state lead programs) or a deduction from a reimbursement (reimbursement programs)

- ❖ In establishing a deductible, one must consider whether the deductible is pro-rated or required to be paid at the beginning of site activities (there may be significant delays between payment and commencement of work)
- ❖ Some states have mechanisms for waiving the deductibles if a facility is incapable of paying. The states are then able to recover some costs by putting liens on property in the amount of the waived deductible.

D. Penalties

Many states assess penalties for facilities failing to comply with reporting and/or fee payment deadlines. These fees are often assessed by the agency to which collection responsibility lies. That agency also has the ability to negotiate on these fees based on specific circumstances.

1. Late Fees

- FL \$75 for failure to pay annual registration fees within 30 days of receipt of billing
- IL \$5 per day for late license fee payment
- KS 10 percent penalty plus 1 percent interest per month (KS – Revenue)
- MN 6 percent of the fee
- OR 10 percent if the fee is late and 10 percent for each 30-day period the fee is unpaid up to 90 days. After 90 days the uncollected fees are turned over to the Department of Revenue for collection.
- SC 5 percent per month up to a maximum of 25% of fee due for failure to register.
- TN Penalty of up to \$50 per day for late payment of the annual registration fee or solvent surcharge fee. Abandoned facilities are assessed a late registration penalty of \$50 per month.
- TX Penalty of up to \$50 per day for late payment of the annual registration fee.
- WI License revocation. Back license fees can be paid, but standard interest and penalties are assessed.

2. Interest on assessed fees

- MO Failure to pay annual registration and solvent surcharge fees result in a 15% penalty on the unpaid balance and interest on the unpaid amount at the rate of 10% per annum from the date prescribed for payment. Other violations are assessed in an amount not to exceed \$500 for each violation and are in addition to any other penalty assessed by law.
- SC One-half percent per month up to 25% of fee due for failure to pay.

Considerations:

- ❖ Are penalties assessed as a one time late fee or can penalties and/or interest be compounded for continued non-payment. Sometimes the penalties and/or interest can be beyond the means of marginal businesses and they are unable to come into compliance and remain in business.
- ❖ The program may have very little control over collections if the program agency is not the agency assessing and collecting fees. Cooperation between the program and non-program collection agency is critical.

- ❖ Another agency may have the ability to reduce or waive a penalty amount without input from the program agency. Can penalties be waived to encourage compliance?
- ❖ A penalty amount that is too low may be a disincentive for collection efforts (cost/benefit).

E. Interest

For most states, any interest earned on fund balances is returned directly to the drycleaning fund. Florida does not have this provision in their law.

F. Other Funding Mechanism Issues

In addition to the discussion above relating to the generation of revenue, the states have identified other fund-related aspects of their programs that are important to implementing a successful program. These include a discussion of which state agency collects the revenues for the program, if state statute requires fund minimums or maximum balances, whether there are automatic revenue/fee adjustments if revenues are less than a statutorily required minimum, and whether there are expenditure caps on how much money can be paid out to any one facility/site.

1. Collection Agency

Most states report that different agencies other than the environmental agency are responsible for collecting the fees paid for this program. Often it is the State revenue agency that collects the fees. Reporting between agencies can be less efficient and result in communications breakdowns. Having good communications between these agencies is critical for ensuring fund balances are maintained.

a. Department of Revenue

- AL All drycleaner fund revenue
- MN All drycleaner fund revenue
- NC The solvent tax is collected by distributors and transferred quarterly from revenue to the Dry-Cleaning Fund.
- SC All drycleaner fund revenue
- WI All drycleaner fund revenue

b. Program Agency

- MO The Missouri Department of Natural Resources collects all fees and penalties
- OR Oregon Department of Environmental Quality collects all fees and penalties
- TN The Tennessee Department of Environment and Conservation collects all fees and penalties
- TX The Texas Commission on Environmental Quality collects all fees and penalties

c. Combination

- FL Department of Revenue collects gross receipt and solvent taxes; Department of Environmental Protection collects annual registration fees, late fees, and deductible payments
- IL Department of Revenue collects the solvent taxes, license fees and assesses any compliance penalties for delivery of solvent to an unlicensed drycleaning facility. The DOR charges 4 percent of the gross amount collected to cover administrative costs. The program collects the insurance premiums and \$5 per penalty for late license fee payments
- KS KS Revenue Dept collects Environmental Surcharge, Solvent Fees, Late Fees, or Non-Payment Fees. The KS Dept of Health and Environment collects registration and Compliance Penalties

Considerations:

For most of the drycleaner programs, it is the revenue agency that collects the fees/revenues for the program. This is typically because that agency already has the authority to collect fees and the internal mechanisms already established for implementing a revenue collection program. However, it is critical for

the program agency and the revenue agency to have good communications for a program to be successful. In addition, the following specific considerations have been identified by various states.

- ❖ Program agency may not have access to fund revenues or indicators of loss of revenues.
- ❖ Program agency may not have enforcement authority for non-payment of taxes/fees.
- ❖ Because some fees are considered “taxes” by statute, information about who is paying and who is not paying may be considered confidential by tax law. When this is an issue, the collection agency may not be able to disclose this information to the enforcement agency resulting in diminished funding for the program.
- ❖ Other agencies may impose a charge to collect revenue

2. Fund Tracking (Minimum/Maximum Fund Balances)

Many states have established mechanisms that suspend the collection of fees if the fund exceeds a specific balance, or limits the minimum amount, which must be maintained in the fund for management of the program, if there is a great demand on the fund.

KS	If the fund balance exceeds \$6,000,000 the fees/taxes are suspended until the fund balance goes below \$4,000,000
MO	If the unobligated principal fund balance equals or exceeds \$5,000,000 the fees are suspended until the unobligated principal fund balance equals or is less than \$2,000,000.
NC	Fund balance cannot be reduced below \$100,000 unless a site poses an imminent hazard
SC	If balance exceeds 5 million, then the 1% surcharge turns off. If it falls below 1 million, then it starts up again
TN	The statute requires a minimum fund balance of \$100,000. If the fund balance exceeds \$10,000,000 the solvent (per gallon) fees are waived for one year

3. Annual Revenue/Fund Balance Fee Adjustments

Several states recognized when they first initiated these programs, it was difficult to determine in advance how much revenue would be generated - in many states, the actual number of drycleaners was not known when the laws were established. In addition, it was difficult for states to assess the needs until the program was available to drycleaners. Therefore, several states established an automated fee increase mechanism when the needs exceeded the fund collections.

IL	The Council has the authority to adjust solvent taxes, license fees and remedial program deductibles annually to keep the Fund viable. Adjustments are subject to oral and written public comment
MN	Total annual revenue of \$650,000 must be generated or fees subject to increase.
MO	Annual drycleaner registration and solvent surcharge rates are set in the Missouri Drycleaner Statute. A statutory amendment would be necessary for a fee increase or to extend the Funds sunset date.
TN	If total revenue from fees and solvent surcharges is less than \$1,250,000 the board can increase the annual registration fee by a minimum of 10 percent.

4. Expenditure Limits

Some state programs have set limits on the amount of money any one site can receive for cleanup related expenses. States must consider what happens to the site once the maximum amount is reached. States must also balance the needs at a site with the overall viability of the fund. The following states have caps on the amount of money spent at any one site:

AL	\$200,000 - \$250,000 per year
FL	No cap
IL	Remedial Program – Active facility limit \$300,000 Inactive facilities limit \$50,000 Insurance Program limit \$500,000 per claim

KS	\$5,000,000 per site
MN	No more than 20 percent of the Fund balance to any one site during a fiscal year.
MO	The statute places a cap of \$1,000,000 of fund payments at any one contaminated drycleaning site, and limits the amount of payments for any one site to 25 percent of the total moneys in the fund in any fiscal year.
NC	\$200,000 per certified site per year. \$400,000 per certified site per year if the site poses an imminent hazard.
OR	No cap
SC	\$250,000 per site per year – no maximum
TN	\$200,000 maximum reimbursement per site, per year
TX	\$5,000,000 per site
WI	\$500,000 per facility

5. Alternative Funding

Some states' programs Funds can receive funding or pay other programs for conducting environmental response activities. Some states can authorize willing and able parties to proceed with environmental response activities for low priority sites or when insufficient funds are available. Some states include a requirement for research into comprehensive general liability policies that pre-dated environmental clauses.

MO	Missouri has an Environmental Services Program and a Division of Geology and Land Survey that may respond to environmental emergencies. The DERT Fund will reimburse these programs for the emergency activities if an eligible dry cleaning facility is determined to be a responsible party.
OR	Requires drycleaner owner and operators to pursue general liability insurance policies for environmental cleanup coverage.
WI	State statute requires reimbursement from the DERP Fund to state environmental repair fund if state monies are used to address contamination from an eligible drycleaning facility. A lien must then be placed on the drycleaner property until the fund is made whole.
TN	Program rules allow the Drycleaner Fund to reimburse the State Superfund if the Commissioner has determined that an immediate response was necessary at an eligible drycleaner site as a result of an imminent and substantial danger and the State Superfund funded the response.

Eligibility

Most states have very specific language either in program rules or in the enabling statute, which defines the types of facilities or parties than can become eligible for remediation funding. The keys to eligibility lay in the definitions for facility, solvent, eligible parties, etc.

1. Eligible Facilities

In many states, the statute and/or rules include the definition for types of "Eligible Facilities" which may include the following:

- ❖ Active Drycleaning Facilities
- ❖ Inactive Drycleaning Facilities
- ❖ Coin-operated Drycleaning Facilities
- ❖ Active Wholesale Supply Facilities
- ❖ Inactive Wholesale Supply Facilities
- ❖ Adjacent/Contiguous Properties (AL)
- ❖ Extent of contamination (TN, OR)
- ❖ Affected nearby properties (FL)

The statute or rules generally define drycleaning operations to include "the cleaning of apparel and household fabrics for the general public, using one or more drycleaning solvents". Additionally the statute or rules will define the terms facility and site.

Exceptions:

Most states identify certain types of facilities that are not eligible for remediation funding. The exceptions include the following:

- ❖ Linen & Uniform Supply- (AL, FL, IL, KS, MN, MO, NC, OR, SC, TN, TX, WI)
- ❖ Coin-operated drycleaners- (MN, SC, TN, TX, WI)
- ❖ Prison/Penal Institution, Industrial/Commercial Facilities, Non-Profit Hospital/Health Care Facility, Formal Wear Rental Business – (WI)
- ❖ Federal/Military/State Property (AL, FL, IL, KS, MN, MO, OR, SC, TN)
- ❖ NPL sites (AL, FL, KS, MN, MO, OR, SC, TN)
- ❖ Sites under administrative orders (AL, IL, MN, SC)
- ❖ Wholesale solvent suppliers (IL, KS, MN, OR, WI)
- ❖ RCRA permitted facilities (FL, SC)

2. Eligible Applicants

Many state statutes and/or rules will also identify the types of eligible applicants to include the following:

- ❖ Current Facility Owner/Operator
 - FL- joint with real property owner
 - AL, IL, KS, MN, MO, NC, OR, SC, TN, TX, WI,
- ❖ Former Facility Owner/Operator
 - FL- joint with real property owner
 - AL, IL, KS, MN, MO, NC, OR, TN, TX, WI
 - SC – if associated with a registered drycleaning facility
- ❖ Real Property Owner
 - FL- joint with owner/operator
 - AL, KS, MN, MO, NC, OR, TN, TX, WI
 - SC – if they register the site themselves or if the site is transferred to them by the drycleaner
- ❖ Affected Property Owners (AL, KS, TN,)
- ❖ Former Real Property Owner
 - TX – if former owner is responsible for cleanup costs as per agreement with current owner
- ❖ Municipalities (KS)

3. Solvent Definition

Different states use different definitions for the types of solvents that are covered and defined in their statutes or rules. The following types of solvents and various definitions of solvents are specified below.

- ❖ Chlorinated Solvent/Dense Non-Aqueous Solvent (All States)
- ❖ Petroleum Solvent/Light Non-Aqueous Solvent (All States)
- ❖ Other Solvents to consider include:
 - Green Earth
 - CO₂
 - Rynex
 - Glutone (AL)
 - Propylene Glycol Ether DPnB
- ❖ Solvent Definitions:
 - FL- "Drycleaning Solvents" means any and all nonaqueous solvents used in the cleaning of clothing and other fabrics and includes perchloroethylene (also known as tetrachloroethylene) and petroleum-based solvents and their breakdown products. For purposes of this definition, "drycleaning solvents" only includes those drycleaning solvents originating from use at a drycleaning facility or by a wholesale supply facility.
 - IL – "Drycleaning solvent" means any and all nonaqueous solvents, including but not limited to a chlorine-based or petroleum based formulation or product, including green solvents that are used as a primary cleaning agent in drycleaning operations.

- MN – "Dry cleaning solvent" means any nonaqueous solvent for use in the cleaning of garments or other fabrics at a drycleaning facility, including but not limited to: (1) perchloroethylene and its degradation products; and (2) petroleum-based solvents and their degradation products.
- OR – "Dry Cleaning Solvent" means any nonaqueous solvent for use in the cleaning of garments or other fabrics at a dry cleaning facility, including but not limited to perchloroethylene and petroleum based solvents and the products into which dry cleaning solvents degrade.
- SC – "Drycleaning solvents" means nonaqueous solvents used in the cleaning of clothing and other fabrics and includes halogenated drycleaning fluids and nonhalogenated cleaners, and their breakdown products. "Drycleaning solvents" includes only solvents originating from use at a drycleaning facility or by a wholesale supply facility.
- TX – "Dry Cleaner Solvent" includes": (A) perchloroethylene, also known as tetrachloroethylene, petroleum-based solvents, hydrocarbons, silicone-based solvents, and other nonaqueous solvents used in the cleaning of garments or other fabrics at a dry cleaning facility; and (B) the chemicals and compounds into which the solvents degrade.

4. Application Deadlines

Many states have deadlines to apply for investigation/remediation funding which include the following:

- ❖ WI – Application to enter the program must be filed by August 30, 2008.
- ❖ Application Date
 - FL - 12/31/98
 - SC – November 24, 2006 for drycleaners in existence before November 24, 2004
- ❖ Claim Filing (IL) must be filed by June 30, 2006 with documented contamination
- ❖ No application deadline – (KS, MN, MO, OR, TN, TX)

5. Application Process

Most states have an application process with the following requirements:

- ❖ Fee Payment
 - AL- retroactive fees
 - TN- retroactive fees for inactive facilities
 - OR, WI – all fees must be paid
- ❖ Documentation of contamination
 - FL, TX - Site Screening Report sealed by a registered professional
 - KS, MO, NC, OR, WI
 - Exceptions- AL, TN
- ❖ Contaminant Level Thresholds
 - FL, KS- above detection limits for contaminants of concern at the site
 - IL- 50 ppb PCE for commercial, 5 ppb for residential
 - MO, NC- > standards
- ❖ Compliance
 - OR – in compliance with RCRA, air quality and drycleaner program requirements

6. Pollution Prevention Requirements

Many states require applicants to comply with certain pollution prevention or best management practices to receive and maintain eligibility. Compliance with these requirements should limit or prevent future releases of drycleaning solvent to the environment. These requirements include such things as direct-coupled delivery of PCE and diking and secondary containment devices. Specific examples include:

- ❖ Containment structures around drycleaning machines
- ❖ Drycleaning products or wastewater from drycleaning machines cannot be discharged to a sanitary sewer
- ❖ All perchloroethylene must be delivered in a direct-coupled closed loop system

7. Current in Fee Payments

Many states require as a condition of eligibility that applicants are current and stay current in the payment of all appropriate fees, taxes, deductibles, etc.

8. Revocation of Eligibility

Most states identify actions that may result in a facility's/site's eligibility being revoked. These actions include the following:

- ❖ Gross Negligence – as defined in rule or law
- ❖ Failure to maintain compliance (i.e. non-payment of fees, taxes, surcharges or failure to comply with Best Management Practices etc.)
- ❖ Failure to comply with hazardous waste regulations
- ❖ Violation of state or federal law, willfully concealed a release
- ❖ Failure to maintain required insurance
- ❖ Denial of site access or unreasonably hinder remedial action
- ❖ Misrepresentation

9. Penalties for Violations

In addition to denying or revoking eligibility some states may enforce monetary penalties for violations. These are termed Compliance Enforcement Penalties.

KS, MO	\$500 maximum per violation
NC	If not in compliance with minimum management practices a maximum penalty of \$25,000 can be assessed per occurrence.
OR	Penalties range up to \$10,000 depending on severity and number of violations.
SC	Up to \$25,000 per occurrence of gross negligence.

Considerations:

- ❖ Some states allow retroactive eligibility of sites/facilities while others do not. The stance taken by the state dramatically impacts the number of properties allowed to enter the state's drycleaner cleanup fund. Retroactive eligibility can cause an over commitment of funds.
- ❖ States must decide whether or not to establish application deadlines, how to establish the deadline (i.e. increasing deductible amounts or percentages), and the deadline timeframe.
- ❖ States must continually inform the drycleaning community that registration and/or licensing requirements do not mean a facility is automatically enrolled in the state's drycleaner cleanup fund.
- ❖ Transfer of eligibility must be considered. In some states the eligibility can be transferred to a new property owner. In other states the eligibility cannot be transferred.
- ❖ States must clearly define the consequences for facilities that are out of compliance with pollution prevention requirements. Will the facility be ineligible for funding? Will the facility be allowed to correct the deficiency? What are the consequences of a deficiency that results in a release of solvent to the environment?
- ❖ States should think carefully about the definitions used to define drycleaning solvents. Facilities using alternative cleaning agents may or may not be expected to pay solvent fees.

Prioritization

There are basically two types of state drycleaner remediation programs – those that provide reimbursement to parties who conduct cleanups at drycleaner facilities, and those in which the state agency directs the cleanup at drycleaning facilities. Both of these types of programs use priority systems for either determining the order in which cleanups occur and/or the order in which reimbursements occur.

For some states, (FL, MO, OR and WI) the priority rank assigned to a site relates to the order in which reimbursement occurs. Portions of the funds may be allocated to high, medium and low risk sites, assuming that there will be more money requested than available in the fund. Some reimbursement programs wait to prioritize the sites until the completion of the site investigation. As site reimbursement applications are received, the sites are categorized and funds reimbursed based on the available funds in those categories.

States that direct/conduct the remediation (i.e. FL, KS, OR) use a scoring system to determine which sites they will address first. Sites in Florida are scored and assigned a priority rank. As new information is collected, sites are not re-scored. Kansas prepares an initial "prescore" based on limited site data initially

collected, and then re-scores the site as the investigation is complete and more information is known about the site. Texas has a similar ranking system.

Regardless of the purpose of the prioritization system, most systems have common elements relating to the system itself. Most systems look at a combination of receptors (who is actually being impacted by a release), media in which contamination occurs (groundwater, surface water, air, vapors), geologic conditions (soil and bedrock), toxicity and concentration of the contaminants at a particular site/facility, and the likelihood of catastrophic consequences (fire and explosion, etc.). In addition, some scoring systems look at historical factors including the operating history of the facility. The system in Oregon also looks at cost effectiveness in determining the priority for a site/facility.

Most states do not re-score sites once they have been scored, however, in Florida, re-scoring is allowed to correct information for conditions at time of application, no re-scoring for new well installation after date of application.

The following is a brief summary of each state priority system and how it is used in the drycleaner remediation program.

Florida

Pursuant to Chapter 376.3078(7), Florida Statutes, the following criteria are considered in developing a priority ranking score for program eligible sites:

- Sites that exhibit a fire or explosion hazard shall be of highest priority;
- Potential threat to drinking water supply based on the permitted capacity of the largest uncontaminated public water supply or private drinking water well located within 1 mile of the site. If no uncontaminated well is present, the permitted capacity of the largest contaminated public water supply or private drinking water well is used;
- Proximity of the public water supply well or private well (i.e., within 500 feet, ¼-mile, ½-mile, or 1-mile);
- Potential groundwater vulnerability using the DRASTIC Index (**D**epth to water, net **R**echarge, **A**quifer media, **S**oil media, **T**opography, **I**mpact of vadose zone, hydraulic **C**onductivity);
- Aquifer classification (i.e., G-I or F-I, G-II, or USEPA-designated sole source aquifer);
- Potential for continual source (e.g., presumed DNAPL conditions);
- Sites within ½-mile of an uncontaminated surface water body used as a permitted public water system or a designated Outstanding Florida Water body, or within ¼-mile of a surface water body or an area of critical state concern.

The priority-ranking list of eligible sites is based on an ordering of scored sites, i.e. highest-scored sites are the highest priority for rehabilitation.

Illinois

State statute requires that prioritization consider risk to human health and safety, adverse affect on the environment, and the Fund's solvency.

The Council has approved a numeric ranking system focusing on the following priorities:

- | | |
|-------------------|--|
| First priority – | Abatement of emergency conditions that present an immediate threat to human health and safety. |
| Second priority – | Facilities with groundwater contamination located in a community with no groundwater ordinance restricting use of groundwater. |
| Third priority – | Facilities with soil and groundwater contamination where migration to neighboring properties appears eminent. |
| Fourth priority – | Facilities with soil contamination levels exceeding regulatory soil saturation limits (free product). |
| Fifth priority – | Facilities with soil and groundwater contamination that exceeds Tier II risk based levels but is less than soil saturation limits. |
| Sixth priority – | Facilities with soil and groundwater contamination that exceed Tier I risk levels but do not exceed Tier II risk levels. |

In addition, the claimant's ability to pay for contamination cleanup that may exceed the Fund's benefit cap for the facility is also considered in the prioritization process.

Kansas

The Kansas Drycleaning Program's Contaminated Sites Ranking System (CSRS) is used to set priorities for investigation and remediation of contaminated drycleaning sites. The ranking process addresses the type of waste and actual or potential impact to soil/bedrock, surface water, groundwater, and air. Receptors that are more sensitive to the public exposure are typically weighted heavier since the risk of exposure to human health & the environment is greater. Sites are typically funded based on the computed score. Emergency status may be established if drinking water supplies are impacted or potential direct contact to highly-contaminated soil or waste.

Oregon

The order in which funds are used from the Account are determined using standardized site assessment prioritization criteria. The assessments consider criterion includes any number of criteria that measure the amount and toxicity of contamination, pathways, and receptors. Each facility's risk relative to the risk posed by other facilities is then assessed against the need for removal or remedial action at the dry cleaning facility relative to Account availability.

The nature of the activities for which expenditures are necessary, in the following order of preference:

1. Direct cost of cleanup, provided that adequate technical investigation has been completed;
2. Direct cost of technical investigation and remedy evaluation;
3. Administrative and indirect costs; and
4. Enforcement, cost recovery and legal actions.

In instances when redevelopment or other activity at a contaminated dry cleaner site creates an opportunity to reduce the cost of remedial action, the Department may include the cost savings into the prioritization.

Minnesota

No priority ranking system. Most sites go through the VIC program and are worked on a first come first serve basis. Sites that go through the State Superfund program are remediated based on the availability of staff and other resources.

Missouri

In accordance with Section 260.905, RSMo., department has criteria to prioritize the expenditures of funds from the DERT Fund. These criteria include: consideration of the benefit to be derived from corrective action compared to the cost of conducting such corrective action; the degree to which human health and the environment are affected by exposure to the contamination; the present and future use of the affected aquifer or surface water; the effect that interim or immediate remedial measures (i.e., source removal) will have on future costs; and additional relevant factors.

The information listed by the participant on the prioritization ranking form will be evaluated by the department and will include a phase I environmental assessment (ASTM 1527-00 or subsequent updates) and any additional assessment and subsurface investigation reports conducted at the site.

DERT funds will be allocated to prioritized sites in the following proportions: High priority sites: 60 percent; Medium priority sites: 30 percent; Low priority sites: 10 percent. In any fiscal year, if the funding allocation in any priority category is not used, those funds may be reallocated to other priority categories, starting with any high priority sites and followed by medium and low priority sites. Funding priority shall be given to sites requiring emergency action, such as impact to public water supply wells, domestic wells, surface water, water supply intakes, or when a high probability exists for direct human exposure or contact to contaminated waste, soil, air, or water. Sites with an equivalent ranking score will be prioritized in a chronological order in which a completed DERT Fund application was received.

South Carolina

South Carolina uses a Human Health based prioritization system to determine the order that drycleaning sites are funded for further action. The prioritization system uses a complex mathematical algorithm that evaluates the potential human health impact via three exposure pathways: Groundwater, Surface water

and Direct Contact with contaminated soil. Factors that have a primary impact on the score include the age and initial operation date of the Drycleaning plant, proximity to human receptors that may ingest water or fishery organisms potentially contaminated by the site, and the chemical composition of the solvents historically used at the plant. Before being scored, drycleaning sites have had one soil sample collected for laboratory analysis. The results of the soil sample are used only in scoring the Direct Contact pathway site if contamination was detected; however, all drycleaning sites are assumed contaminated for evaluation of the Groundwater and Surface water pathway.

Tennessee

Tennessee uses a prioritization ranking process to set priorities for further investigation and remediation of contaminated drycleaning sites. The ranking process evaluates the following:

1. Operational history and disposal practices of the facility
2. Potential receptors including the proximity to drinking water sources
3. Geologic setting and the extent of horizontal and vertical impacts
4. Degree of contamination present.

Texas

Texas uses a ranking and prioritization system. Each submitted Application is reviewed and given a Ranking score based on risk factors including: types of solvents used; operational history of the facility; risk to drinking water supplies; impact to surface water; impact to groundwater; impact to soils; current and future land use; and vapor impacts. Ranked applications are then prioritized based on the ranking score (60%) as well as other non-risked based factors (40%) intended to promote efficient use of the dry cleaner fund. The prioritization factors include: benefit to be derived from corrective action compared to the cost of implementing the corrective action; the effect that interim or immediate remedial measures may have on future costs; the amount of money available in the Dry Cleaner fund; cost savings to the fund realized when corrective action is undertaken during redevelopment; necessity of emergency action. Sites are reprioritized at least semiannually.

Wisconsin

Wisconsin requires their regional project managers to score sites using a pilot priority scoring system when a drycleaner submits their request for reimbursement at the time that they complete their site investigation. When the site investigation report is reviewed, project managers are able to use the information provided in the report to assess the risk posed by the site by using that information in a modified/simplified Hazard Ranking System. This system looks at receptors, environmental characteristics, as well as contaminant characteristics. While the scoring system also contains a way to evaluate socio-economic information for the brownfields redevelopment program that portion of the score is not generated for the drycleaner program.

The end score results in the site being placed into one of three risk categories: high, medium, or low risk category. These categories are used for the purpose of dispersing reimbursement funds. The rule specifies that at the beginning of each fiscal year, 25 percent of the funds must be earmarked for sites in the High Risk category, 60 percent of the funds for sites in the medium risk category, and 15 percent of the funds for sites in the low risk category. By statute, 9.7% of annual revenues (about \$100,000) must be set aside at the beginning of each fiscal year for immediate actions. These funds are released for reimbursing the high/medium/low risk categories in the 4th quarter of the year. Most drycleaners are anticipated to be medium risk sites due to the size of the sites and the knowledge of the contaminants used by drycleaners. Sites are not re-scored after the site investigation is complete.

The environmental risk priority consists of two parts: (1) environmental characteristics and receptors and (2) contaminant characteristics. Environmental characteristics evaluate potential threats to receptors as they relate to groundwater, surface water/sediments, air, and soil/direct contact pathways. Contaminant characteristics consider toxicity, mobility, waste quantity and containment.

Considerations:

Some of the questions states have considered in establishing these systems include the following:

- ❖ Do you allow sites to be re-scored when new information becomes available?
- ❖ Does the system take into account aquifers that are protected by lithology?

- ❖ At what point does the scoring occur? (Later scoring uses more accurate data)
- ❖ How does the ranking of a site/timing of activities relate to sites being redeveloped?
- ❖ Are funds set aside for sites needing immediate action (removals, etc.)?
- ❖ Is it better to promulgate the scoring system in statute or rule (what types of appeals will be allowed under the system)?
- ❖ Who conducts the prioritization – the state or the consultants?

Implementation

Probably the biggest difference in state drycleaner program is in the actual implementation or operation of the programs. Some states have reimbursement programs where they may provide oversight of the activities conducted by contractors on behalf of the applicant. Other states have state lead programs where the state contracts directly with environmental consulting firms and direct the contractor's activities. In addition some state programs report to independent boards or councils. One state has outsourced its program to a private firm.

1. Contracting

State programs manage contracts through direct contracting, private party oversight or a combination. The state lead programs enter into direct contracting relationships with consulting firms and therefore direct the activities/scope of work of the consultant. Reimbursement states may provide oversight of the contractor but the actual contractual relationship is between the owner or operator of the facility and the consulting firm.

States that use direct contracting for the investigation and remediation of their drycleaner sites include Florida, Kansas, South Carolina and Texas. Alabama, Missouri, Tennessee and Wisconsin implement reimbursement programs in which the responsible party contracts directly for that work. North Carolina and Oregon, allow for both contracting and reimbursement in their drycleaner remediation programs.

States that contract directly for this work establish multi-year contracts with one or several contractors. Contractors perform work based on bid prices they included in their bid proposals? The contractor is then awarded sites? Provides a workplan for state review?

Examples of Direct Contracting States:

Florida

Contractor Selection - The Florida Department of Environmental Protection (FDEP) Drycleaning Solvent Cleanup Program (DSCP) has established contracts with eleven (11) environmental and engineering consulting firms for the assessment and rehabilitation of eligible drycleaning and wholesale supply facilities. These contracts were selected through the FDEP contract procurement process. Under this process a Request for Statements of Qualifications for Hazardous Waste Site Cleanup Services is released from the FDEP Contract Office. The Statement of Qualifications are reviewed and scored by members on a technical committee. The top ranked firms are asked to complete oral discussions. Contracts are awarded to the top selected environmental contractors. Contracts are managed through the FDEP Bureau of Waste Cleanup. Contracts have been executed for five years with the possibility of renewal for a period no greater than the term of the original task assignment period (five years).

Task Assignment Process - FDEP Contract Managers administer task assignments for assessment/cleanup at eligible sites. To reduce costs, eligible sites are assigned to contractors for assessment/cleanup based on geographic areas. This affords the DSCP efficiencies in mobilization and equipment use. For a particular phase of work the contractor will submit a cost proposal and scope of work to the FDEP Contract Manager. The contractor and FDEP Contract Manager will negotiate the cost proposal and determine the final scope of work and cost. A Task Assignment is implemented once signed by both the Contractor and FDEP Contract Manager. The contractor is not authorized to perform any services that exceed the funding amount issued for each Task Assignment. Changes to the scope of work and task assignment funding are permitted through a Task Assignment Change Order.

Kansas

Contractor Selection Process - These services are established through the normal purchasing requirements of the State. A Request for Proposal (RFP) is released from the State Purchasing Office. Contractors are requested to bid for environmental assessment, remedial, and operation and maintenance work. The contractors submit both a technical and cost proposal. The purchasing team reviews the technical documents and the contractors are ranked based on the information provided. After the technical review is completed the purchasing team reviews the cost proposals. A select group of contractors are asked for a best and final offer based on the technical and cost proposals. Contracts are awarded to the selected environmental contractors after reviewing and negotiating the best and final offer proposals. The best and final offer proposal establishes the work products and costs for the contract.

Work Order Process - Work Orders are issued to environmental contractor based on their negotiated contracts. The contracts do not specify how much work, if any, will be issued to any one contractor. So, KDHE can award work orders to the environmental contractor based on their experience, cost, timeliness, or location. Work Orders consist of the tasks to be performed, the number of tasks needed and the quoted rates. KDHE project managers provide a Scope of Work and a Work Order for each site activity. The Project Manager selects the number of tasks to be completed and the associated equipment and labor rates. The contractor reviews the work order for completeness, and lets the Project Manager know if everything is acceptable. If acceptable, the contractor signs the Work Order and returns it. If not acceptable, adjustments are made to the original Work Order and a new Work Order is sent and signed by the contractor. Fieldwork can begin once the Work Order and Scope of Work are completed and agreed upon.

Texas

Contract procurement and work order process similar to Kansas. Current contracts are for a period of 4 years.

Examples of Private Party Oversight/Reimbursement States:

Missouri

Missouri has a reimbursement program in which owners/operator are responsible for hiring an environmental consultant to conduct investigative and remedial activities. All investigation and remedial work plans and cost estimates must be pre-approved by the department before the work is accomplished in order to be eligible for reimbursement.

Wisconsin

Wisconsin has implemented a competitive bidding process in which the responsible party seeks a number of bids for investigation and remedial action activities at their sites. The regulatory agency must concur with the bid. Bid awards are based on a modified qualification based selection process, with the regulatory agency required to approve the selected bidder. The lowest cost bid is not always selected, if the responsible party can justify to the project manager why a higher cost bid is being selected

Tennessee

Tennessee has established a reasonable rate schedule and will not reimburse for expenses that exceed the rate schedule. Tennessee also requires pre-approval of all work plans and cost proposals prior to implementation by the contractor.

2. Controlling Costs

Since many state programs are under-funded the programs must look to methods, which will help control costs. These methods include establishing or negotiating professional rates, equipment rates, and detailed scopes of work, establishing the level of effort need for each phase of work, lump sum or time and material contracts. Many states only pay for direct expenses and therefore disallow subcontractor markup/overhead. Many states do not allow legal fees to be paid from their funds. Some states prohibit interest payments from their funds. Some programs are exempted from obtaining state or local permits related to site investigation/remediation. Some state programs limit the amount that can be spent on program administration.

a. No Markup/Overhead - IL, MN, MO, OR, TN, WI

FL - allows 10% up to \$1,000 for administrative expenses

SC - allows markup on a few items

TN – allows 5% markup on certain subcontracted expenses

b. No Legal Fees - MN, MO, OR, TN, WI

KS- allows a contract line item for off-site access

c. No Interest Payments - MN, TN, WI

d. Permit Exemptions - TN

e. Program Administration Limitations

FL - .7% of revenue to the agency

f. Bidding Requirements

WI - three consultants must competitively bid Site Investigation and Remedial Actions.

3. Cleanup Criteria

Most states have cleanup criteria for soil, groundwater, air, and surface water. Sites being addressed through the state's Drycleaner programs are required to meet the same standards as sites being addressed outside of the program. Most states have risk-based standards.

4. Boards/Councils

Many states have Boards or Councils with oversight or advisory roles. In many states the Governor appoints Board members. In Illinois the Council is responsible for the management of the program. The Boards or Councils may be responsible for program oversight, fund management, setting standards/promulgating regulations, hearing contested cases/appeals, providing feedback/program resources and evaluating program performance.

States with Boards (AL, SC, TN, TX)

States with Councils (IL, KS – Advisory Council, MO – Hazardous Waste Management Commission, OR – Advisory Committee, WI – Governors Council,)

States with no Board or Council – FL, MN, MO, NC

Considerations:

- ❖ For reimbursement programs what happens if a party fails to cooperate/complete the investigation and/or remediation (MO can levy penalties if a party fails to complete work - \$500 per violation)
- ❖ For state lead programs what happens to low priority sites which may not be addressed for many years
- ❖ Coordination with other regulatory agencies (Clean Air Act, RCRA, CERCLA and Pollution Prevention) multimedia approach
- ❖ Program Staffing - consider the type of positions to implement and manage the program (environmental science to administrative/accounting). Potential career path for program stability and maintaining institutional knowledge
- ❖ Where should the program be placed within state government
- ❖ Should the program be centralized or decentralized throughout the state
- ❖ Is it better to operate a program through statutory provision or is there also a need for rules and regulations
- ❖ Should a maximum amount or percentage be set for program management/administration
- ❖ How are pollution insurance or old comprehensive general liability insurance policies dealt with (MN - required to recover from insurance first)
- ❖ Maintaining sufficient fund revenue for remediation while encouraging the use of "green" solvents

Benefits (Who Benefits and How?)

Participation in a state dry cleaner program has numerous benefits. In general terms, the beneficiaries of the program include active dry cleaning facility owner/operators, inactive dry cleaning facility owner/operators, real property owners, nearby real property owners, the public and the environment. Some states provide liability protection to the person/facility participating in the state program. The protection does not include federal liability and may not include third party or personal injury liability. State programs provide funding for cleanups through industry fees, which limits state costs. Property transfers including refinancing and site redevelopment can occur without lending institutions preventing transactions from occurring due to real or perceived liability issues.

Without state dry cleaner programs, most dry cleaners would not be able to address contamination with or without enforcement action by other regulatory agencies. Most dry cleaners would not have the financial resources necessary to remediate the environmental contamination found at a dry cleaner site. Most dry cleaning sites are relatively small and would generally not be a high priority for existing remediation programs. Therefore these sites would not be addressed and the plumes would continue to migrate. Most state programs are not just reactive to past contamination but have instituted pollution prevention/best management practices to reduce or eliminate future releases of solvent to the environment.

- **Drycleaner Program Beneficiaries Include:**

- Active Drycleaning Owner/operators
- Inactive Drycleaning Facility Owner/operators
- Real Property Owners
- Nearby Real Property Owners
- Public
- Environment

The following outlines specific benefits that have been realized by either the drycleaners themselves or the states implementing drycleaner remediation programs.

- **Liability Protection**

Some states offer liability protection when a cleanup is conducted under their drycleaner remediation programs. These states include Alabama, Florida, Missouri, Oregon, South Carolina and Tennessee. Various state liability protections are outlined as follows:

Limited Liability Protection

- FL - cleanup only, conditionally extended to "nearby properties"

Complete Liability Protection

- OR, TN (No state can grant federal liability protection, e.g. RCRA, CERCLA)

Third Party Liability

- OR, TN, TX

Cleanup Liability Protection

- KS - First \$5 million, MO - sites with department approved corrective action plans, MN, NC

Fee/Industry Funded Cleanup Program – Certain fees encourage facility operators to operate more efficiently and/or switch to environmentally friendly solvents.

- Limits State Costs for Cleanup / CERCLA Cost Share
- Closure Letter after completion of site investigation/remediation
 - Issued through drycleaner program (AL, FL, MO, OR, SC, TN, TX, WI)
 - Issued through voluntary cleanup program (KS, MN, NC)

Cleanup costs would likely put a large number of drycleaners out of business without the state drycleaner program.

- Facilitate Property Transfers/Redevelopment
- Wellhead/Water Supply Protection – drinking water (surface and ground water)
- Environmental Protection
- Site Remediation – soil, vapors
- Pollution Protection – The P2 requirements will help reduce or eliminate the possibility of future contamination from drycleaning operations.

- Secondary Containment
- Sewer Discharge Protection
- Closed-loop Delivery Systems
- Hazardous Waste Management

Considerations:

- ❖ Will the liability protection afforded to owners/operators actually be a disincentive to remediate the site?
- ❖ Cleanup standard industrial/commercial vs. residential
- ❖ These programs provide a benefit to a specific industry type
- ❖ Do future property owners also receive liability protection?
- ❖ Owners and operators pass the program fees on to the consumers
- ❖ Long-term Liability Concerns
- ❖ Future use of dry cleaning facilities. Even if soil/groundwater has been remediated, dry cleaner facilities are closing and the buildings are being used for various commercial activities (including day care centers). The issues of vapor intrusion and/or vapor entrainment (in the building structure itself) need to be recognized and addressed in some way.