

BROWNFIELDS STUDY GROUP

2015 REPORT

INVESTING IN WISCONSIN

Reducing Risk, Maximizing Return



*“Wisconsin’s brownfields program is the envy of the nation.
This is owing to over 20 years of deliberate work by the Legislature,
the Wisconsin DNR and the Brownfields Study Group.”*

**– Larry Kirch, City of La Crosse
(Past Director of Planning and Development)**

Disclaimer: The Brownfields Study Group is an independent external advisory group and is solely responsible for the proposals included in this report. These proposals do not necessarily represent the views and opinions of the Wisconsin Department of Natural Resources or any other state agency. Department staff provided members of the Brownfields Study Group with technical and logistical assistance only, in furtherance of their obligations to assist external advisory groups. Nothing in this document should be interpreted as policy advice or recommendations from the Department of Natural Resources.

All photos in this report are of current and former brownfields from communities throughout Wisconsin, courtesy of DNR.



Welcome:

Thank you for your interest in the 2015 Brownfields Study Group Report.

Twenty years have passed since the Land Recycling Act of 1994 was enacted. This legislation helped usher in the modern era of contaminated land cleanup and redevelopment in Wisconsin and across the country. Wisconsin is a nationally recognized leader in this field, and ongoing efforts to enhance the state's brownfield revitalization program play an important role in its success.

Over 60 people outside of the Department of Natural Resources were actively engaged in the creation of this Report. More than 30 open meetings and conference calls were conducted over a nine month period, and a hundred-plus draft documents were reviewed and revised in pursuit of high-quality proposals. The process used to create this Report was thorough and collaborative.

The proposals in this Report will make a strong program even better and help spur additional economic growth in Wisconsin. Many modern brownfields were once vibrant and beneficial properties. They can be brought back to life with policies and practices that minimize risk and maximize returns related to environmental protection, public health and economic development.

We commend the efforts of everyone involved in creating this Report, and are grateful for your consideration.

Sincerely,

The Brownfields Study Group

Overview of Brownfields in Wisconsin

Wisconsin is made up of 72 counties that include 1,851 municipalities (cities, villages and towns). The Department of Natural Resources has overseen or conducted some type of environmental cleanup-related activity in 1,774 municipalities. All areas of the state have a stake in this issue.

The Wisconsin brownfields program provides a strong and diverse array of regulatory and financial incentives that encourage the cleanup and redevelopment of environmentally impaired property. Early innovation and continuous improvement make the state a national leader in this field.

Successful brownfield revitalization provides both economic and environmental gains. These projects are often a catalyst for new investment, growth and community enrichment.

Over the past twenty years, the practice of remediation and reuse has matured and been normalized in many ways. Brownfield projects may start at a real or perceived disadvantage, but in any given market contaminated properties can offer a wider range of sizes, better locations, more existing infrastructure, and possibly lower acquisition costs.

While still not routine, brownfield redevelopment is, more and more, a standard real estate investment deal that simply hinges on adequate project finances. Wisconsin has helped reinvent the business model for these sites.

It's not time to rest on our laurels, though. Many of the most challenging brownfield properties remain, and new ones are identified daily. Public sector support and assistance is often needed to overcome remaining obstacles and make such sites attractive. A little public push can position these properties for private investment.

The following proposals are respectfully offered for your consideration. They represent the best next steps that can be taken to further strengthen the state's brownfields program and amplify the hugely beneficial impacts of remediation and redevelopment activity.

The remediation and redevelopment of brownfield properties is an important and proven economic development strategy. Efforts to grow the state's economy are, in part, dependent on the strength of the brownfield revitalization effort.

Table of Contents

Benefits of Brownfield Investment.....	2
Brownfields Study Group - Accomplishments.....	3
PROPOSALS	
Summary of Proposals.....	6
Priority Legislative Proposals.....	8
Priority Administrative Proposals.....	9
Section 1: Liability Relief and Property Access.....	11
Section 2: Brownfield Tools for Local Government.....	21
Section 3: Emerging Technical Issues.....	31
Section 4: Financing Renewal.....	45
Section 5: Waterfront Brownfield Revitalization.....	55
Issues for Further Study.....	68
APPENDICES	
Appendix A: Acronym Definitions	
Appendix B: Proposal Matrix	
Appendix C: Brownfields Study Group Members and Meetings	
Appendix D: Brownfields Web Links	



Benefits of Brownfield Investment

The remediation and redevelopment of brownfields generates an impressive range of public and private benefits, including increased property values, economic growth, leveraged private capital, jobs retained, new jobs created, community amenities, environmental restoration, public health protection and more.

In a recent research paper, “Benefits of Public Investment in Brownfield Cleanup and Redevelopment,” by Nancy Frank, PhD, AICP, University of Wisconsin – Milwaukee, August 2014, the following benefits were identified:

- Public investment in brownfield cleanup and redevelopment leverages private investment, typically in a range from \$7 to \$19 of private funds per public dollar invested.
- Property values increase as a result of public investment in brownfields. On site, a dollar of public investment yields a \$5 to \$20 increase in property value. In the surrounding neighborhood, property values typically increase in the range of 5-15 percent, solely from the appreciation of the property due to the redevelopment of the brownfield.
- Public health and environmental protection are key drivers of brownfield policy.
- Brownfield redevelopment removes or greatly reduces public exposure to harmful contaminants in the soil and groundwater.
- A new job is created for every \$10,000 to \$13,000 spent on remediation.

Health and environmental benefits are achieved at a much reduced public cost thanks to the leveraging of private investment. The benefits are also achieved more quickly than if the public sector took no role in supporting cleanup and redevelopment. The cost of doing nothing, in terms of lost growth, public exposure to harmful contaminants, and environmental degradation far outweigh the cost of action.

Public funding for brownfield remediation is repaid many times over.



Brownfields Study Group - Accomplishments

The Brownfields Study Group was created in 1997 to examine how Wisconsin can increase the number of contaminated properties that are cleaned up and returned to productive use. The group meets regularly and members include representatives of local governments, environmental consulting companies, industry associations, nonprofit organizations, law firms, state agencies, universities and more. Other stakeholders become involved and contribute based on their interest in specific topics and availability.

Now in its 17th year, the Brownfields Study Group remains a valuable and effective advisory body. Its recommendations and involvement have been instrumental in the creation and refinement of numerous state policies and procedures related to contaminated land remediation and redevelopment. The Study Group issued full reports in 1999 and 2000, along with stand-alone proposals in 2006, and has been actively working with the Department of Natural Resources every year to develop and improve the state's brownfields programs. A few accomplishments include:

- Helped expand and improve state environmental liability protections, including the Voluntary Party Liability Exemption and the Local Government Liability Exemption. These changes have significantly increased cleanup and redevelopment activities.
- Helped create DNR's Brownfield Site Assessment Grant Program, which awarded \$18 million to more than 200 communities for investigation and cleanup on more than 1,600 acres.
- Helped create the DNR Brownfields Green Space and Public Facilities Grant Program, which helped communities clean up contaminated properties for public use. The Green Space Program awarded more than \$2 million to 18 communities.
- Helped establish the One Cleanup Program Agreement between US EPA Region 5 and the DNR. The OCP is the most comprehensive agreement of its kind in the country and helps expedite cleanups of contaminated properties across Wisconsin.
- Recommended passage of s. 292.12. Wis. Stats., which: a) addressed continuing obligations on closed sites; b) created a GIS registry of closed sites with public information about residual contamination and continuing obligations; and c) eliminated the use of cumbersome deed restrictions.
- Helped DNR create the Wisconsin Plant Recovery Initiative to help communities expedite the cleanup and revitalization of industrial and commercial facilities that have recently closed.

Brownfields are properties that sit idle, abandoned or underused because people know or believe they are contaminated. They are also potentially powerful social and economic resources.



“Revitalizing brownfield sites creates benefits at the site and throughout the community... Projects leveraged 90,363 jobs nationwide, and \$17.79 per EPA dollar expended. Residential property values can increase 5.1% to 12.8% near brownfield sites when cleanup is completed.”

Source: United States Environmental Protection Agency, 2013

BROWNFIELDS STUDY GROUP

PROPOSALS

Introduction

Summary of Proposals

Priority Proposals

Section 1

Liability Relief and Property Access

Section 2

Brownfield Tools for Local Government

Section 3

Emerging Technical Issues

Section 4

Financing Renewal

Section 5

Waterfront Brownfield Revitalization



Summary of Proposals

Liability Relief & Property Access

- **Off-Site Liability Exemption for Vapor Intrusion:** Clarifies that off-site property owners who are impacted by chemical vapors coming from a source on another property are not liable. (Legislative)
- **Define “VPLE Property”:** Modifies definition of “property” for purposes of the Voluntary Party Liability Exemption to address land changes common in redevelopment projects. (Legislative and Administrative)
- **Update VPLE Guidance:** Identifies how DNR can provide more certainty to VPLE program participants with respect to time, cost and common cleanup process issues. (Administrative)
- **Private Property Access for Investigation/Remediation:** Options to help responsible parties obtain property access for environmental investigation and remediation. (Legislative and Administrative)
- **Air Permit Certainty for Brownfield Developments:** Provides air permit certainty for manufacturers that locate new facilities on revitalized brownfields. (Legislative)
- **Lender Liability – Further study:** Recommends evaluation of current lending practices to determine if updates are needed to the lender liability exemption law. (Administrative)

Brownfield Tools for Local Government

- **Encourage Cooperation between Counties and Cities:** Clarifies applicability of statute authorizing the cancellation of delinquent property taxes on contaminated property. (Administrative)
- **Reassignment of Tax Delinquent Property Deeds:** Allows counties that take tax deeds through an administrative process to assign their interest in a brownfield property to a third party before the deed is executed. (Legislative)
- **Brownfield Investigation by Exempt LGUs:** Suggests more outreach to local governments about public health duties when acquiring, holding and developing contaminated land. (Administrative)
- **Special Inspection Warrants:** Allows local governments to control, contain, stabilize and remove more types of hazards before they affect the environment and public health. (Legislative)
- **Promote Use of Model Salvage Ordinance:** Requests increased outreach to local governments to promote a model ordinance regarding the salvaging of non-structural materials outside the demolition process. (Administrative)

Emerging Technical Issues

- **Alternative to EPA Deed Restriction Requirement:** DNR to negotiate with US EPA to allow Wisconsin to use its online registry of contaminated sites to enforce continuing obligations. (Administrative)
- **Soil, Sediment and Waste Management:** DNR should clearly define how contaminated soil and other waste materials should be managed. (Administrative)
- **Contaminated Sediments External Advisory Group:** Directs DNR to work with external stakeholders on a timeline to improve project-based communications and procedures related to contaminated sediment assessment and remediation. (Administrative)
- **Management of PCB-Contaminated Building Materials:** DNR should provide a single point of contact, clear guidance, improved communication and expanded technical assistance with respect to the management of PCB-contaminated building materials. (Legislative and Administrative)
- **Urban Agriculture Best Practices & Standards:** DNR should continue and expand ongoing efforts to ensure safe gardening in urban areas, and address the issue of soil testing. (Administrative)
- **Procedures & Policies for Addressing Vapor Intrusion:** DNR should continue to update and enhance procedures and policies related to assessing and mitigating chemical vapor intrusion of houses and business buildings. (Administrative)
- **Background Concentrations of Common Soil Contaminants:** DNR should establish statewide background concentration levels, that are protective of human health and the environment, for several ubiquitous chemicals. (Legislative and Administrative)

Summary of Proposals - Continued

Financing Renewal

- **Cleanup Catalyst Grants for Local Governments:** Recommends a new DNR grant program to specifically address persistently derelict brownfield sites with no immediately known end user, to improve redevelopment prospects and protect public health and the environment. (Legislative)
- **Strengthen Environmental Management Account:** Expresses support for efforts to strengthen and stabilize the environmental management account of the environmental fund. (Legislative)
- **Improve Environmental Remediation TIDs:** Recommends merging the environmental remediation tax incremental financing district option into the regular TID law. (Legislative)
- **Property Assessed Remediation:** Suggests adding brownfield revitalization as an activity that is eligible for local government loans that can be repaid over time via a special property tax assessment, similar to how energy efficiency improvements can currently be financed. (Legislative)
- **State Trust Fund Loans for Brownfield Projects:** Proposes that State Trust Fund loans for brownfields projects issued by the Board of Commissioners of Public Lands not count toward a municipality's debt ceiling if full repayment is made within 15 years. (Legislative)
- **Amend Business Improvement District Statute:** Recommends changes to help improve administration of business and neighborhood improvement districts. (Legislative)

Waterfront Brownfields Revitalization

- **Internal DNR Coordination for Waterfront Projects:** DNR should continue efforts to develop a systematic, transparent and big picture process for regulating and assisting waterfront projects, with set timelines and intra/interagency coordination. (Administrative)
- **Creation of a Waterfront Program:** Suggests creating a comprehensive waterfront revitalization program similar to the one in New York. (Legislative)
- **Waterfront External Advisory Group:** State should continue interagency efforts to facilitate collaboration on waterfront development issues, and establish an external advisory group. (Administrative)
- **Outreach to Assist Waterfront Project Sponsors:** DNR should develop an outreach program to assist waterfront project sponsors and inform other interested parties. (Administrative)
- **Clarify Cross-Program Issues on Dams:** DNR should provide clarity on cross-program issues related to dams, including guidance on management of dams that may no longer be functioning for the original purpose but are now operating as containment structures for contaminated sediment. (Administrative)
- **Geographic Information System Resources:** In collaboration with external stakeholders and state agencies, DNR should analyze the need for GIS applications and, if warranted, recommend a strategy to expand GIS capabilities, along with data collection and submittal methods for brownfield, remediation and waterfront projects. (Legislative and Administrative)
- **Coordination with Army Corps of Engineers:** DNR should explore ways to better coordinate with the Army Corps of Engineers on waterfront projects. (Administrative)
- **Consistent Direction on Seawalls and Structures:** DNR should provide clear, consistent direction on issues regarding removal and replacement of seawalls and other structures. (Administrative)
- **Public Trust Doctrine:** DNR should follow a transparent, consistent and documented process when evaluating applicability of the public trust doctrine to waterfront projects. (Legislative and Administrative)
- **Protecting Public Investment & Natural Coasts:** DNR should examine how to accommodate natural coastal processes while protecting the public capital investment in breakwaters and wave attenuation structures. (Administrative)

Priority Legislative Proposals

Members of the Brownfields Study Group, along with everyone involved in topic-specific subcommittees, investigated and analyzed numerous legislative issues before selecting the ones included in this report. Every proposal included in the report has been vetted and identified as important to the continued success of the state's brownfields program. Brownfields Study Group members further identified several legislative proposals of highest immediate importance. The following lists include the Group's top legislative priorities.

Legislative Priorities

1. Off-Site Liability Exemption for Vapor Intrusion (page 10)
2. State Trust Fund Loans for Brownfield Projects (page 49)
3. Improve Environmental Remediation TIDs (page 47)

Legislative-Budgetary Priorities

Brownfields Study Group members identified several legislative-budgetary proposals of highest immediate importance. The following list includes the Group's top legislative-budgetary priorities.

1. Strengthen Environmental Management Account (page 46)
2. Cleanup Catalyst Grant Program for Local Governments (page 44)
3. Creation of a Waterfront Program (page 55)
4. Background Concentrations of Common Soil Contaminants (page 40)
5. Geographic Information System Resources (page 59)

Additional Legislative Priorities

- Property Assessed Remediation (page 48)
- Private Property Access for Investigation/Remediation (page 14)
- Special Inspection Warrants (page 24)
- Encourage Cooperation between Counties and Cities (page 20)
- Reassignment of Tax Delinquent Property Deeds (page 21)
- Amend Business Improvement District Statute (page 50)
- Air Permit Certainty for Brownfield Developments (page 15)

Priority Administrative Proposals

The Brownfields Study Group encourages DNR to move forward with all of the administrative proposals included in this report, but recognizes that resources are limited and not everything can be done at once. The following administrative proposals are identified by Brownfields Study Group members as top priorities for DNR's Remediation and Redevelopment Program.

Administrative Priorities for the RR Program

1. Procedures and Policies for Addressing Vapor Intrusion (page 38)
2. Brownfield Investigation by Exempt LGUs (page 22)
3. Define VPLE "Property" (page 11)
4. Lender Liability – Further Study (page 16)
5. Update VPLE Guidance (page 12)

Additional Administrative Priorities for the RR Program

- Alternative to EPA Deed Restriction Requirement (page 30)
- Urban Agriculture: Best Practices & Standards (page 36)
- Promote Use of Model Salvage Ordinance (page 26)

Administrative Priorities for Multiple DNR Programs

The following administrative proposals are identified as high priorities for DNR as a whole, to help facilitate brownfield redevelopment and enhance customer service.

1. Internal DNR Coordination of Waterfront Projects (page 54)
2. Soil, Sediment and Waste Management (page 31)
3. Management of PCB-Contaminated Building Materials (page 34)
4. Contaminated Sediments External Advisory Group (page 32)

Additional Multiple DNR Programs Administrative Priorities

- Coordination with Army Corps of Engineers (page 60)
- Public Trust Doctrine (page 62)
- Waterfront External Advisory Group (page 56)
- Outreach to Assist Waterfront Project Sponsors (page 57)
- Clarify Cross-Program Issues on Dams (page 58)
- Consistent Direction on Seawalls and Structures (page 61)
- Protecting Public Investment & Natural Coasts (page 64)



“Large economic benefits have been generated in the state from brownfield development... The growth of brownfield property values has been substantially better than non-brownfield properties.”

Source: Economic Impact on Delaware's Economy: The Brownfield Program, Center for Applied Demography & Survey Research at the University of Delaware, 2010



Liability Relief and Property Access

Along with public funding, strategic liability exemptions have played a big role in the success of brownfield remediation and redevelopment. Wisconsin is a pioneer in this area, as it is on a number of brownfield revitalization issues.

Wisconsin statutes establish liability exemptions for various parties involved in brownfields projects. Local governments, voluntary participants, lenders, off-site property owners and more are eligible for liability relief when applicable conditions are satisfied. The ultimate goal is cleanup and beneficial reuse.

There is always risk involved in development projects. However, due diligence, environmental insurance and the state's liability exemptions dramatically improve the situation for brownfield properties. DNR's fairness, flexibility, knowledge and willingness to negotiate also help make cleanup and reuse eminently possible.

Redevelopment of brownfields works best when both the public and private sectors are actively involved. Working collaboratively helps minimize risk and maximize benefits.

Since 1994, DNR has helped complete cleanups at more than 15,400 properties. In addition, parties that go the extra mile to assess and remediate an entire property can receive extensive liability relief for themselves and future owners.

The recommendations in this section seek to update and enhance liability relief laws, add clarity to voluntary party cleanup provisions, and prevent significant public health and safety hazards.

Off-Site Liability Exemption for Vapor Intrusion

Type of Proposal: Legislative

BACKGROUND

Chemical contamination can move underground from one property to another (“off-site”) property through groundwater and soil pathways. When this happens, an affected off-site property owner is not liable for remediation as long he or she can show that his or her property is not the source of the contamination.

The off-site liability exemption law currently identifies situations in which there is contamination in soil, sediment or groundwater that migrates from one property to another. Although it is presumably included, current law does not specifically identify migrating underground chemical vapors/gases that can enter homes and buildings (i.e. “vapor intrusion”) as being a type of contamination that affected off-site owners are exempt from.

The vapor intrusion pathway is now being evaluated at all potentially affected off-site properties. In practice, DNR works with responsible parties to remediate off-site vapor intrusion issues. It would be useful to clarify that the off-site liability exemption definitively applies to chemical vapor intrusion coming from a different property. In addition, the responsibilities of the impacted off-site property owner are not clearly identified in current law and this can present challenging issues for some vapor intrusion assessment and mitigation situations.

PROPOSAL

Modify s. 292.13, Wis. Stats., to clarify that the exemption applies to off-site property owners whose properties are impacted by chemical vapor/gas contamination coming from a source on another property, as long as conditions similar to those for the soil and groundwater off-site exemption are met.

COMMENTS

No comments received.

Define “VPLE Property”

Type of Proposal: Legislative and Administrative

BACKGROUND

The general Voluntary Party Liability Exemption (VPLE) concept is that a voluntary party can assess, investigate and remediate all hazardous substance discharges on a property to obtain a broad liability exemption, which provides the property owner and future owners with assurance that the property has met DNR’s remediation requirements and no further environmental work is needed.

The VPLE statute uses the word “property” several times, but does not define it. A definition of “property” was added to NR 700.03(45e) in 2013, based on the definition used by DNR attorneys in past VPLE work. NR 700.03(45e) reads as follows: “Property” means a contiguous area of land the entire legal description of which is found in one deed.” Issues arise from time to time regarding how to most effectively define a “property” for purposes of the VPLE program, and how to address situations where a “VPLE property” is altered or transformed in some way. This is especially important for brownfield redevelopment projects that may involve large amounts of real estate and for projects that require a significant amount of time and money be spent on remediation prior to development.

For example: Section NR 750.05(5), Wis. Admin. Code., currently requires submittal of an amended VPLE application if, prior to issuance of a Certificate of Completion, the boundaries of a “property” change. This provision, however, does not address the consequences, for VPLE eligibility, of subdividing, reconfiguring or transferring the real estate or portions of the real estate covered under the existing VPLE application. If a new VPLE application results in a new eligibility determination, then portions of the “property” enrolled in the VPLE program could potentially be deemed no longer eligible for the VPLE program. Requiring a re-eligibility determination for VPLE Property after the DNR approves an investigation of the existing VPLE Property does not appear warranted by the statute and will likely result in increased administrative, technical and legal costs.

PROPOSAL

The term “VPLE Property” (i.e. the boundaries of the real estate enrolled in the VPLE program, consisting of a single, legally-defined parcel, or multiple, contiguous legally-defined parcels subject to a combined investigation and remediation action) should be considered distinct and separate from the word “property” as defined in s. NR 700.03(45e), Wis. Admin. Code.

When evaluating the term VPLE Property, the use of the word “property” within s. 292.15(2)(ag), Wis. Stats. (off-site VPLE) should be evaluated, as well as whether s. 292.15(2)(ag), Wis. Stats., or other regulatory or statutory provisions would benefit from a statutory change to define the term VPLE Property.

DNR should clarify that once DNR approves the environmental investigation of a VPLE Property, the VPLE Property, or portions thereof, can be subdivided, reconfigured or transferred prior to issuance of a Certificate of Completion (“COC”) without consequence to VPLE eligibility, provided the Voluntary Party continues to meet all applicable requirements.

Once clarified, DNR should amend the VPLE application form (required by s. NR 750.05(5), Wis. Admin. Code). The revised application should include the current legal descriptions of the various real estate parcels that comprise the VPLE Property for purposes of issuing the COC(s). Any subdivision, reconfiguration and/or transfer involving VPLE Property after the date DNR approves the investigation should not result in a new applicability determination.

COMMENTS

DNR: The DNR agrees that there should be clear guidance about how changes to a property boundary impact the status of a VPLE site. The RR program is preparing guidance that would clarify these issues and address concerns of developers. DNR does not think that statutory or rule changes would be needed to address these concerns. DNR will seek input on draft guidance from the Study Group to ensure that it adequately addresses the concerns raised in this paper.

Update VPLE Guidance

Type of Proposal: Administrative

BACKGROUND

The Voluntary Party Liability Exemption (VPLE) is an elective environmental cleanup program. Any individual, business or unit of government that meets the definition of “voluntary party” and conducts a property-wide environmental investigation and cleanup, to appropriate state standards, can receive a transferable exemption from state environmental liability at that property.

In order to optimize use of the VPLE program, a greater understanding of how the VPLE process applies to the development of any specific site should be the goal of the kickoff of any VPLE project. Developers – upfront – should be provided with information regarding the time, costs and administrative processes applicable to a VPLE redevelopment project.

Uncertainty surrounding the timing of development and issuance of a Certificate of Completion (COC) potentially prevents some parties from participating in the VPLE program. These factors may also result in increased time and expense for the overall development.

PROPOSAL

DNR should create customer-friendly outreach materials to provide for a better understanding of how the VPLE/NR 700 process and the redevelopment process align. In addition, a kickoff meeting where these VPLE materials are shared should be a component of every VPLE-redevelopment project.

The VPLE participant should provide the DNR with draft development schedules to comment on, so that the developer can factor the NR 700/VPLE milestones into that comprehensive schedule. This will likely result in more efficient and timely processing of VPLE projects, to align milestones of a development project with ch. NR 700, Wis. Admin. Code milestones and to address certain technical and administrative issues associated with development projects entered into the VPLE program.

This process would result in a timetable with anticipated dates for deliverables and actions by both DNR and the voluntary party (“VPLE Timetable”) with both parties making a good faith effort to achieve all milestones. The goal would be for the DNR and the project applicant to develop a realistic, comprehensive, estimated timetable that integrates the key milestones associated with a particular brownfields development project (e.g., approvals needed for financing or zoning to support final end uses, remediation needed for infrastructure development, potential geographic phases to development, etc. with the ch. NR 700 remedial process (e.g., completed investigation or remedial action plan approved) and issuance of the COC.

Furthermore, clarification is needed from DNR on technical requirements concerning development activities for sites within the VPLE program prior to issuance of a COC. For example, DNR should clarify in guidance the procedures by which a VPLE applicant can ensure that the fill material that is placed onto a VPLE site prior to issuance of a COC does not result in a new recognized environmental condition for which DNR may believe additional investigation, or an update to the DNR-approved investigation, is necessary. Guidance should also discuss what type of information is needed to update VPLE application materials to address subdivision, reconfigurations or transfers associated with VPLE Property.

COMMENTS

DNR: The DNR recognizes the importance of the Brownfields Study Group proposals regarding the Voluntary Party Liability Exemption. To assist in clarifying some of the recommendations above, the DNR would like to submit the following comments.

Update VPLE Guidance - Continued

Type of Proposal: Administrative

Imported Soil:

The DNR recently conducted outreach efforts on this issue and is sending a letter to all VPLE participants about this topic. In addition, the DNR is currently preparing guidance for property owners who import soil and fill to a VPLE property in the cleanup process. The guidance will help voluntary parties and their consultants know how to provide documentation and conduct appropriate sampling to be sure that soil being brought to a site doesn't contain unknown contamination.

VPLE Timetable:

The Brownfields Study Group indicated that uncertainty surrounding the timing of development and issuance of a Certificate of Completion provides a challenge for parties who are interested in pursuing VPLE and may result in increased time and expense for the overall development. To address this concern, the DNR can do more outreach to educate brownfield developers about the time frames they should expect when undertaking a VPLE cleanup. As recommended, the Remediation and Redevelopment (RR) staff often has a kick-off meeting when a new site enters the VPLE program and staff strives to be clear throughout the process about how long a review should be expected to take. While the DNR recognizes that it is important that parties obtain a timely regulatory review, the RR program has limited number of project managers and receives nearly 1000 requests to review reports for a fee each year.

Private Property Access for Investigation/Remediation

Type of Proposal: Legislative and Administrative

BACKGROUND

Responsible parties consistently encounter third parties who are unwilling to grant access to their property for investigation or remediation activities or who attempt to extract significant concessions in exchange for access. This recalcitrance may be the result of a desire to protect an off-site exemption, fear of discovery of known or unknown environmental issues, or various other reasons.

While an off-site (non-source) property owner is required to provide access to maintain the off-site liability exemption (s. 292.13, Wis. Stats.) and the DNR can try to facilitate access by explaining to impacted owner that they could be a responsible party if they deny access, there are often lengthy disputes and this is a time consuming effort for all parties. In the end, access is still often denied.

Currently, under Wisconsin law, a responsible party has no legal recourse against these property owners in the event negotiation fails. The responsible party is left to work with DNR to either have DNR declare the party not providing access in “possession and control” of the contamination and therefore the responsible party for their site, or attempt to obtain a judicial warrant granting access. The judicial warrant process is time and resource intensive.

It may be difficult to limit and define the scope of the access granted by an administrative warrant, template access agreement, or private right of action. For example, the scope may need to expand from investigation to remediation if contamination is identified. Each access scenario is unique, making it potentially difficult to draft a template access agreement that will be acceptable to and usable by both a responsible party and a recalcitrant landowner, but it is worth the effort to try.

PROPOSAL

Three separate approaches to address this issue are listed below. Each of them could be implemented alone or in combination with the other recommendations:

1. **Create Template Access Agreement:** Create a template agreement that contains the minimum provisions responsible parties must provide for purposes of obtaining access for investigation and/or remediation, with the burden on the property owner to either accept those terms or petition for a variance;
2. **Allow Private Access:** Create a private right of action allowing a responsible party to petition a court or otherwise sue for access for investigation/remediation under certain circumstances, similar to current Michigan law (Mich. Stat. s. 324.20135a). The group does not expect legal action would need to be taken in most cases, the option of the private right of action would encourage property owners to provide access.
3. **Create Administrative Warrant Process:** Create an administrative warrant process giving DNR independent authority to either access the relevant property for investigation/remediation purposes, or grant a responsible party the right to such access.

COMMENTS

DNR: The DNR would be supportive of an approach that leads to these issues being resolved in a timely way with minimal DNR staff involvement. Proposal #3, to create an administrative warrant process, may be a significant workload for both the technical and legal staff at the DNR. Further, it may be a burden on the Environmental Management Account if it is assumed that the state, rather than the responsible party, would be taking the needed samples at the property. Presently, DNR has the authority to ask someone to take action, especially if it is known that a hazardous substance is present at their property. The refusing party may in fact be jeopardizing their off-site exemption status if they do not provide reasonable access. DNR could provide guidance on the reasonable steps and tools available to resolve issues such as this when they arise.

Air Permit Certainty for Brownfield Developments

Type of Proposal: Legislative

BACKGROUND

DNR's brownfields program is designed to promote both the cleanup and redevelopment of contaminated property. Responsible parties have real options to evaluate and a good amount of flexibility when planning a cleanup. DNR provides resources and assistance. It's a great example of how environmental protection and economic growth can complement one another.

Other environmental regulatory barriers still exist, however, to the redevelopment of brownfield properties as new manufacturing sites. Air emissions permitting is one example. Manufacturers are wary of the risks they face from the costs and uncertainties associated with changing standards and other related requirements.

PROPOSAL

Building on US EPA's former clean unit approach and DNR's current registration permit program, this proposal seeks to reduce cost and process risks regarding air permitting for environmentally responsible manufacturers that redevelop and operate on brownfield properties. It should also enhance the effectiveness of the brownfields program.

Eligibility – Manufacturing operations are eligible if they: 1) are enrolled in DNR's Green Tier program; and 2) have entered the VPLE program for the operation's property; and 3) have completed the active remedial work (with groundwater monitoring to be continued if necessary) or obtained a VPLE Certificate of Completion.

Program – If the eligible operation is a minor source and properly permitted, no change would be required to the pollution controls for a 10-year period. If the source expands during the 10-year period or a change of law or regulation occurs and the facility becomes a major source, it could qualify under the major source program for financial assistance for the remaining 10-year term. The registration permit program approach would be used for all of the sources qualifying under this program.

For eligible major sources that either install best available pollution controls or are able to demonstrate that no controls are required, financial assistance (loans/grants) would be available in the event that revised standards or other requirements are imposed unrelated to a planned expansion of the facility that requires new or enhanced controls. Financial assistance may also be extended to qualifying facilities that are required to undertake modeling or other air analysis due to a change in standards during the ten year period.

A pilot program should be developed to test and evaluate this concept. If proven successful, the program could be expanded statewide and, ultimately, include water regulation as well.

COMMENTS

DNR: Any proposal developed would be coordinated with US EPA to ensure that the state's authorization to implement the federal Clean Air Act under the state Air Program's state implementation plan is not impacted.

Lender Liability - Further Study

Type of Proposal: Administrative

BACKGROUND

Section 292.21, Wis. Stats., creating a lender liability exemption for standard lending activities associated with contaminated land, was enacted in 1995. Since then many changes have occurred in the lending industry. Regulatory requirements are different, more entities now engage in lending activities, lending practices are increasingly complex and can vary from state to state.

Wisconsin's liability provisions for lenders are different from those found under federal law in CERCLA, and it is likely that many current lenders do not know about or follow procedures required to obtain state liability protection.

Some issues in need of evaluation include:

1. Section 292.21(1)(b), Wis. Stats., related to pre-acquisition inspections, may not be practical to enable a lender to obtain the liability exemption due to timing and access issues associated with the ability of a lender to access real estate under many existing lender/borrower relationships.
2. Lenders seek guidance on activities that can be undertaken in situations where a lender is engaging in what the lender believes to be lending activities under current standard lending practices, but such lending activity may not fall under the definition of "lending activity" in s. 292.01(9), Wis. Stats.
3. Can a "safe harbor" provision be developed to address activities that can occur while a lender is enforcing its security interest in personal property under s. 292.21(1)(d), Wis. Stats., or with respect to its status as a representative under s. 292.21(2), Wis. Stats., to ensure that the lender knows what activities it can engage in and still remain protected by s. 292.21, Wis. Stats.?
4. Due to the increased types of entities that currently engage in lending activities, along with the current regulatory requirements for lenders with respect to lending activities, should the statutory definition of "lender" be expanded to allow other entities to be deemed a "lender" for purposes of s. 292.21, Wis. Stat. (e.g., an LLC that is a wholly-owned subsidiary of a lender regulated by the state Dept. of Financial Institutions or the Federal Deposit Insurance Corporation).

PROPOSAL

1. Create a small policy group, as a subset of the Brownfields Study Group, comprised of relevant state agency personnel, lenders, attorneys practicing in lending and environmental law, government regulatory agencies regulating lending, and trade organizations such as the Community Bankers of Wisconsin and the Wisconsin Banker's Association. This group would evaluate current lending practices, how regulatory lending requirements impact lending practices and the assessment of environmental risk in the context of lending and whether changes need to be made to s. 292.21, Wis. Stats., in light of current practices and regulations.
2. Renewed DNR outreach to regulatory bodies governing lending and to lenders to ensure lenders are aware of the state lender liability provisions and to obtain input on s. 292.21, Wis. Stat. issues.

COMMENTS

No comments received.

“The Brownfields Study Group and DNR should be commended for their roles in facilitating the beneficial transformation of many acres of brownfields in Wisconsin, and for working to identify the impediments to further transformation of brownfields in Wisconsin.”

– Bill Scott, Gonzalez Saggio Harlan





“Redeveloping brownfields brings benefits to the community and environment, eliminates health and safety hazards, increases the productivity of the land, and increases property values and tax receipts for the local government.”

Source: National Caucus of Environmental Legislators web site, 2014



Brownfield Tools for Local Government

Unused and underutilized brownfield properties are both a direct and indirect drain on a local treasury. The site itself is unproductive and provides no tax revenue. Brownfields also drag down adjacent property values and dissuade new investment. Further, public health may be compromised if contamination is not cleaned up.

Almost every Wisconsin community is home to at least one brownfield site. Re-purposing these properties creates business opportunities, increases economic activity, manages environmental risk, improves public health and revitalizes neighborhoods.

Local government leadership is often the key to a successful project. Communities are well served when local officials view brownfields as an opportunity to transform liabilities into assets that create value, reuse existing infrastructure, increase tax revenue and more.

Putting these sites back into productive use often acts as a catalyst for other growth and is one of the best ways to improve public health and the local environment. Local governments need effective tools to embolden private sector partners and facilitate cooperation among other public entities.

The cost of doing nothing is far greater than taking charge and moving forward. When local governments lead, good things happen.

Encourage Cooperation between Counties and Cities

Type of Proposal: Legislative and Administrative

BACKGROUND

Some Wisconsin counties have historically been reluctant to take title to tax delinquent brownfield properties under s. 75.17, Wis. Stats. for a variety of reasons. In August of each year, counties pay all taxing jurisdictions tax revenue due to them, thereby making them whole regardless of whether the taxes were collected for that tax year. This shifts the responsibility of recovering unpaid real estate property taxes to the county. Without a guarantee that the municipality will subsequently remediate and develop the property they acquire, the county may be reluctant to waive interest and penalty due to insufficient cooperation between Cities and Counties. Moreover, counties are often leery to enter the property's chain of title due to perceived liability issues, despite the protections provided in s. 292.11(9)(e), Wis. Stats.

In an effort to continue moving tax delinquent brownfield projects forward, some municipalities are forgoing the use of s. 75.17, Wis. Stats., and entering into s. 75.105 or s. 75.106, Wis. Stats., tax agreements with counties. In these agreements, the county negotiates the cancellation of some or all back taxes, contingent upon the municipality agreeing to perform any necessary site assessment and cleanup work.

When counties require tax cancellation agreements (per s. 75.105/106, Wis. Stats.) to cancel back taxes, it is: a) contrary to s. 75.17, Wis. Stats., which says tax delinquent properties should be transferred "for no consideration"; b) using statutes that were intended to apply solely to private parties; and c) effectively eliminating the local government liability exemption under s. 292.11(9)(e), Wis. Stats., by requiring a municipality to enter into a legally binding agreement with the DNR to conduct activities that are specifically not required of those with a local government liability exemption. As an alternative to the use of s. 75.105/75.106, Wis. Stats., agreements, some counties and municipalities use an intergovernmental agreement under ch. 66, Wis. Stats.

It is in the interest of all parties (counties, municipalities and the general public) to expedite the assessment, cleanup and reuse of brownfield properties. Good local governmental cooperation is essential for remediation and redevelopment. Getting contaminated properties into the possession of local governments interested in pursuing their redevelopment and reuse is crucial to the success of the state's brownfields initiative. The proposal below creates a process that is potentially agreeable to counties and municipalities. It offers options for the transfer of tax delinquent properties from counties to municipalities in an effort to keep redevelopment projects moving forward more effectively.

PROPOSAL

1. Changes to s. 75.17, Wis. Stats., are not being recommended at this time based on strong support by the Brownfields Study Group.
2. Sections 75.105 and 75.106, Wis. Stats., should be clarified to:
 - a. Limit the use of these tools for private party use only and clarify that these tools should not be used by LGUs; or
 - b. Either modify ss. 75.105 and 75.106, Wis. Stats., to clarify the administrative process for title transfer between municipalities; or
 - c. Clarify that instead of using ss. 75.105/106, transfers of contaminated, tax delinquent properties from counties to municipalities can be accomplished through the use of s. 75.17, Stats., or a negotiated intergovernmental agreement under ch. 66, Stats. A model Intergovernmental Agreement could be prepared by the DNR to aid such negotiations.
3. No changes are recommended at this time to s. 75.14, Wis. Stats., to allow assignment of a deed directly to a municipality.
4. Further study is recommended on all the issues discussed above.

COMMENTS

No comments received.

Reassignment of Tax Delinquent Property Deeds

Type of Proposal: Legislative

BACKGROUND

Counties and the City of Milwaukee have two options under state law to acquire tax delinquent properties. They may foreclose on a tax deed by an action in rem under s. 75.521, Wis. Stats., or take a tax deed under s. 75.14, Wis. Stats.

The in rem process is a judicial procedure that enforces tax liens through a court judgment against the property. Title is assigned to the taxing authority, and the previous tax delinquent owners are barred from asserting any further interest in the property. Taking a tax deed under s. 75.14, Wis. Stats., is a county administrative process in which the county board orders issuance of a tax deed, the county clerk redeems the tax certificate and executes the deed, and the register records the deed.

Per s. 75.106, Wis. Stats, a taxing authority that uses the in rem process may assign to a person, before a judgment is issued, the county's right to take judgment with respect to any brownfields parcel that is subject to the county's foreclosure action, if the assignee agrees to remediate the property and certain other conditions are met.

There is no similar mechanism for counties that take tax deeds under s. 75.14, Wis. Stats., to assign their rights to a third party. As a result, counties that do not utilize the in rem process under s. 75.521, Wis. Stats., are unable to convey delinquent brownfield property without entering into the chain of title. Even with the statutory local government liability exemption in place, many counties find the perceived liability issues associated with entering into the chain of title too difficult to overcome, and therefore don't foreclose on tax delinquent brownfield properties (which may or may not be contaminated in fact). This puts many properties in legal limbo and significantly hinders redevelopment progress on these properties.

Counties, municipalities and other local governmental units benefit when tax delinquent properties are cleaned up, reused and returned to economically productive, tax-paying status. Properties that remain tax-delinquent, unused and potentially contaminated benefit no one.

PROPOSAL

Allow counties that take tax deeds under s. 75.14, Wis. Stats., to assign their interest in a brownfield property, before a deed is executed, to a person under the same or similar conditions prescribed in s. 75.106, Wis. Stats.

This will allow a person to acquire a deed that vests fee simple ownership of a brownfield property, as long as a Phase I and II environmental assessment has been conducted and the person enters into a written agreement with DNR to further investigate and remediate the property.

COMMENTS

No comments received.

Brownfield Investigation by Exempt LGUs

Type of Proposal: Administrative

BACKGROUND

Local Governmental Units (LGUs) that are exempt under s. 292.11(9)(e), Wis. Stats., are not required to conduct any environmental sampling or assessment work if they intend to reuse the property for municipal purposes (e.g. public buildings, parks, etc.), as long as they do not cause a new discharge of a hazardous substance or make a previous discharge worse. The statute does advise LGUs to work with DNR to ensure there are no substantial public health threats associated with putting the property back into use, and requires that a LGU take action if directed by the DNR. However, some LGUs do not consult with DNR prior to redevelopment, nor do all local governments take environmental samples at properties they intend to reuse.

The failure to consult with DNR before redevelopment for public use can be problematic for the LGU. Hazards posing a public health threat may exist on the site. The LGU may end up spending extra money and time to fix problems that could have been prevented, and the liability exemption may be jeopardized. Many contamination issues that arise during redevelopment for public use can be avoided if the LGU consults with DNR upfront.

Requiring or encouraging reasonable, focused assessment activities prior to reuse is highly cost-effective compared with retroactively addressing contamination after development. Further, the effectiveness of the LGU liability exemption must be retained. LGUs are key players in brownfield projects and need this important risk-management tool. The Brownfields Study Group evaluated the following two options for addressing this problem:

1. Amend 292.11(9)(e), Wis. Stats., to require LGUs to consult with DNR and complete reasonable, focused environmental sampling (e.g., soil sampling) to identify any substantial threats to public health at sites that meet the definition of a brownfield in s. 238.13(1)(a), Wis. Stats., given the intended reuse of the property.

The type of due diligence sampling appropriate at an individual site should be based on site history, observation and proposed reuse. Typically, this would include soil sampling only if the local government intended to create a public park. LGUs should have duties similar to those of lenders and representatives, as identified in s. 292.21, Wis. Stats. Planned or intended public reuse is key to this proposed requirement. Properties that are simply part of the LGU's property inventory, or slated for private redevelopment, are not included in the proposal.

The types of sampling, analysis and action that may be needed include, but are not limited to: a) the collection and analysis of representative samples of soil or other materials in the ground that are suspected of being contaminated; b) the collection and analysis of representative samples of waste materials or potentially hazardous substances found on the surface of the property; c) assessment of methane and vapor intrusion pathways, if buildings are planned for the site (e.g. public library, school, etc.); and d) presumptive remedies such as the removal of wastes, caps, using clean soil and clay to cover soil contamination, etc.

2. DNR should increase outreach and education efforts to LGUs seeking the local government liability exemption, informing them that due diligence is always encouraged and required in some instances. DNR should stress the importance of environmental investigation and cleanup based on proposed use at these sites. Recommendation for pre-development due diligence and sampling should be included in LGU exemption forms, clarification letters and guidance. New guidance and fact sheets should be developed, as appropriate. In addition, DNR should continue to emphasize that actions taken on a property by an exempt LGU, prior to receiving DNR approval, may negate portions of the LGU's liability exemption and create new financial liabilities if a new discharge is caused, or a previous discharge is exacerbated.

PROPOSAL

After the BSG evaluated the two alternatives, option number 2 was selected to emphasize expanded outreach and education efforts by the DNR. There was concern that by adding requirements to the LGU exemption for investigation before development (option 1), that some LGUs would be less inclined to pursue obtaining the exemption because of potentially greater risks. The group did not want to take any actions that would diminish the effectiveness of the current LGU exemption.

If an LGU takes action on a property and does not follow the statute or advice and education provided by DNR, the BSG recommends that DNR take necessary enforcement actions against those violators.

Brownfield Investigation by Exempt LGUs - Continued

Type of Proposal: Administrative

Based on the BSG's recommendation to address the issue of site investigation before redevelopment by expanded outreach and education efforts by the DNR, the property acquisition and redevelopment process for an exempt LGU would be as follows. Administrative time and resources by the DNR will be required to implement this proposed remedy. For a brownfield property acquired or owned by a local governmental unit that is asserting the local governmental liability exemption, and intended to be used for a public purpose:

1. LGUs should provide information to DNR identifying the property location, intended reuse and any sampling or presumptive remedy already completed. The DNR may review the information and provide direction to the LGU regarding sampling or appropriateness of a proposed remedial or interim action. If the DNR reviews the information and provides direction, the agency will respond to the information submitted by the LGU within approximately 60 days. Understanding that many public projects are under timing constraints for funding, DNR is encouraged to respond to the LGU faster than 60 days, if reasonable. The LGU is encouraged to discuss issues and options with DNR for completing remedial actions. If DNR determines that no additional action is needed, the LGU may proceed as planned and/or may request a liability clarification letter from DNR, for a fee.
2. If DNR provides direction, the DNR expects the LGU to complete necessary actions before commencing redevelopment. If the LGU proceeds with development without performing the necessary action, the LGU may lose its exemption, as currently spelled out in s. 292.11(9)(e)4. The LGU may also incur additional remediation expenses.
3. If continuing obligations are required by DNR or residual contamination will be left on site, the DNR expects the LGU to submit a GIS Registry Packet and appropriate reports, as specified in 292.12(3)(a) and NR 708.17.
4. DNR should increase outreach efforts to LGUs seeking the local government liability exemption, informing them that due diligence is always encouraged and required in some instances. DNR should stress the importance of environmental investigation and cleanup based on proposed use at these sites. Requirements and recommendation of pre-development due diligence and sampling should be included in LGU exemption forms, clarification letters and guidance. New guidance and fact sheets should be developed, as appropriate.
5. In addition, DNR should continue to emphasize that actions taken on a property by an exempt LGU, prior to receiving DNR approval, may negate portions of the LGU's liability exemption and create new financial liabilities if a new discharge is caused, or a previous discharge is exacerbated.

COMMENTS

Karen Dettmer- City of Milwaukee: *DNR should consider waiving fees for LGUs, as an incentive for them to take interim action for temporary uses of brownfield properties. In cases where the LGU does not have enough funding to get closure on a property, but is interested in taking some action to ensure public health and safety measures are in place while providing a public use on the property until a full remedy and redevelopment can be incorporated, DNR should waive fees and submittal requirements to incentivize interim use of the property and associated blight removal.*

DNR: *In 1994, the local government exemption was created as part of the 1994 Land Recycling Law. Clearly, the intent of this provision was to provide municipalities with a safe harbor from the Spill law in order to hold title to the property, to clean up the property if they elected or pass the property on to a private party for cleanup. However, the Legislature did not anticipate another natural outcome of the LGU exemption – which some of these blighted or tax delinquent properties would be held indefinitely by a municipality for their own use. As local governments started to take title to these brownfields properties in 1994, concerns were raised that the Department had no authority to ask local governments to evaluate the public health implications of reusing these brownfields sites. Thus in 1995 as part of the biennial budget process, the following language was added to the statute – s. 292.11(9)(e) 4, Stats., that gave the Department some authority in this situation: 4. Subdivisions 1m. and 1s. do not apply if, after considering the intended development and use of the property, the department determines that action is necessary to reduce to acceptable levels any substantial threat to public health or safety when the property is developed or put to that intended use, the department directs the local governmental unit or corporation to take that necessary action and the local governmental unit or corporation does not take that action as directed. However, this provision does not require a local government reusing a contaminated property for use as a park, a school, a community center, or an urban garden to take any environmental samples to ensure that the public is protected from environmental contaminants in the soil. And while most local governments conduct some type of sampling at these types of sites, there is no legal obligation to do so. With funding available now at the federal and state level to assist in paying for sampling at these types of sites, ensuring that the public is not exposed to unacceptable levels of contamination should be a collective interest for us all. The Department recognizes the challenges of this situation, and the Brownfields Study Group's attempt to find a mutually acceptable solution to this issue. However, it is still not clear as to whether these recommendations for greater outreach and voluntary actions by local governments will sufficiently address the issue of some communities taking title to these brownfields properties and reusing them without taking environmental samples to ensure the intended use is protective.*

Special Inspection Warrants

Type of Proposal: Legislative

BACKGROUND

Tax delinquent buildings on brownfields sometimes harbor hazardous substances that eventually contaminate the buildings, rendering them unsafe and requiring expensive cleanup to make them usable. If not discovered and addressed in a timely manner, the hazardous substances may contaminate the environment, compounding the public safety hazard, the cost of cleanup, and causing blight if not appropriately controlled. To prevent or reduce the harms arising from unmanaged hazards in a vacant or tax delinquent building, an LGU sometimes needs to enter the building and assess the situation.

Entering a property or building not owned by the LGU generally requires owner permission or a warrant. Apparent exceptions to the warrant requirement appear to be limited to cases of emergency, when no special inspection warrant is required (s. 66.0119(2), Wis. Stat.) and when a county or city of the first class or their authorized designee may enter a property for which a tax certificate has been issued to determine the nature and extent of environmental pollution (s. 75.377, Wis. Stat.). City attorneys and corporation counsel may be reluctant to advise entry without a warrant, because emergency is undefined in s. 66.0119, Wis. Stat., and s. 75.377, Wis. Stat. does not expressly provide that a warrant is not required. These matters should be clarified.

To obtain a special inspection warrant in cases where the property owner is not responsive or does not sign an access agreement, the LGUs must comply with s. 66.0119, Wis. Stat., which provides that valid “inspection purposes” include “environmental pollution.” Although both ss. 66.0119 and 75.377, Wis. Stats., include environmental pollution among the purposes for inspection, the statutory definition of “environmental pollution” pertains only to contamination outside a building and therefore does not help authorities gain access to look inside a building for wastes or hazardous substances before they leak, reduce the value of the building, create human health hazards and eventually exit the building and produce environmental pollution.

The focus on environmental pollution as the sole environmental grounds for obtaining a warrant or entering a property constrains inspection authority for purposes of preventing environmental pollution, preventing the creation of new brownfields, preventing blight and preserving the value of tax delinquent properties. If the allowable purposes for inspecting lands and buildings were broadened, preventive actions could be taken to control, contain, stabilize and remove hazards before they affect the environment and public health and lead to blight. “Inspection purposes” should be broadened to include the conditions that are known to cause environmental pollution if not actively managed. Such additional conditions, beyond those currently listed in the statute, include the presence of asbestos, PCBs, hazardous substances, hazardous waste, industrial waste and solid waste, many of which are defined in Ch. 299, Wis. Stats. The same terms used to broaden s. 66.0119, Wis. Stat. should also be used to broaden s. 75.377, Wis. Stat.

Section 75.37, Wis. Stat., allows entry on tax delinquent properties to prevent the owner from reducing the value of the property by converting assets to cash, which is unlawful under s. 75.37(1), Wis. Stat., and allows the sheriff to seize and liquidate valuable components of the property sufficient to pay the back taxes under s. 75.37(2), Wis. Stat. Section 75.375, Wis. Stat., makes it unlawful to willfully, maliciously or wantonly injure, destroy or “commit waste” upon any lands for which a tax certificate has been issued, including all appurtenances.

Sections 75.37, 75.375 and 75.377, Wis. Stats., apparently intend to prevent the devaluation of property in which the county has a future interest as the result of tax certificates, known in the common law as “waste.” Allowing a building to become contaminated with asbestos, PCBs or any other hazardous substance, actively or through neglect, would arguably constitute “waste” under s. 75.375, Wis. Stats., but this should be clarified.

The mechanisms for preventing “waste” include only after-the-fact search warrants issued by the county treasurer under s. 75.37(1), Wis. Stats. to look for and seize valuables before they are converted by the owner to cash, and

Special Inspection Warrants - Continued

Type of Proposal: Legislative

after-the-fact inspections under s. 75.377, Wis. Stats. to look for environmental pollution, and nominal fines and imprisonment under s. 75.375, Wis. Stats. It would better help prevent waste, blight and public health threats, and better protect the value of tax delinquent properties, if inspectors could receive warrants to prevent environmental pollution and “waste by contamination” by entering lands and structures to inspect for hazardous substances and hazardous conditions before they contaminate building interiors and before they escape to the environment and become environmental pollution.

Changing the language of key statutory provisions would broaden the allowable justification for requesting a special inspection warrant or warrant on land subject to tax certificate to include entering onto land and into buildings to look for conditions indicative of actual or imminent contamination and to prevent environmental pollution, and in the case of tax delinquent properties, to prevent “waste” in the s. 75.375, Wis. Stat. meaning of that term.

PROPOSAL

1. Amend the definition of “Inspection Purposes” in s. 66.0119(1)(a), Wis. Stat., to include:
 - hazardous substance, as defined in s. 299.01(6), Wis. Stat.
 - industrial waste, as defined in s. 299.01(7), Wis. Stat.
 - other wastes, as defined in s. 299.01(9), Wis. Stat.
 - solid waste, as defined in s. 289.01(33), Wis. Stat.
 - PCBs, as defined in s. 157.02(4), Wis. Stat.
 - asbestos, as defined in s. NR 447.02(4), Wis. Admin. Code
2. Clarify that contamination of building components or real property is unlawful waste under s. 75.37, Wis. Stats. Change the allowed purposes of inspection under s. 75.377, Wis. Stats., to include “prevent” environmental pollution and “ascertain the presence of any hazardous substance, industrial waste, other wastes, solid waste, PCBs, or asbestos.”
3. Change the notice of issuance of tax certificate under s. 74.59, Wis. Stats., to include a warning that failure to pay the taxes will authorize the inspection of the property for hazardous substance, industrial waste, other wastes, solid waste, PCBs, or asbestos.

COMMENTS

DNR: *The DNR understands that the purpose of this recommendation is to assist local governments in obtaining access to tax delinquent brownfields to conduct assessments and inspections, the changes to the Special Inspection Warrant law should be further examined to make sure they do not adversely affect the DNR’s ability to obtain a warrant to enforce environmental regulations.*

Promote Use of Model Salvage Ordinance

Type of Proposal: Administrative

BACKGROUND

The closing of manufacturing plants has attracted salvage operators to communities across Wisconsin. Because state law does not address salvage of non-structural materials, local laws are the only means of preventing salvage operators from removing all items of value and leaving behind a dangerous and contaminated property.

These properties are often tax delinquent, owned by an insolvent company in bankruptcy or receivership, under bank foreclosure or in other distressed circumstances. Many localities have inadequate regulations to control unscrupulous salvage activities. To help communities control the situation, the Brownfields Study Group worked with stakeholders to prepare a model salvage ordinance which is posted on DNR's web site as RR-988.

The model ordinance creates a permit process to ensure that salvage activities are approved in advance. Specifically, the purpose of the ordinance is to:

- Regulate the removal of salvageable materials from vacated buildings (e.g. copper piping, wiring, etc.) for which there are no immediate functional replacements in order to ensure that a usable site remains;
- Prevent health and safety hazards and blight caused by materials removal;
- Ensure that the operation of the non-structural demolition is completed in a timely manner and in such a fashion that prevents health and safety hazards, nuisances, and environmental pollution;
- Provide clear and immediate access to the property for inspections.

Permitting requires contractors to submit plans for non-structural salvaging operations, establishes timelines and reporting requirements, and provides proof that all necessary insurances and applicable permits have been obtained (including pollution liability insurance, umbrella liability insurance, and stormwater or erosion control permits).

This tool is only useful if local governments adopt and enforce it. Also, while this ordinance deals with situations that occur when a building is not slated for demolition, communities can face similar challenges when demolition projects are conducted. While most communities have demolition ordinances, they may not adequately address all the concerns identified in the salvage ordinance.

PROPOSAL

DNR should work with the Brownfields Study Group and other appropriate groups (League of Municipalities, municipal attorneys, etc.) to conduct outreach to help communities understand the value of the model salvage ordinance. Also, DNR staff and the Brownfields Study Group should evaluate whether changes to existing demolition ordinances could be promoted to address similar concerns. After a few years, DNR staff should assess how effective the model ordinance is and determine if updates are needed.

COMMENTS

No comments received.

“Many hours and considerable effort has gone into developing these recommendations. This report continues Wisconsin’s long tradition as an innovative leader in addressing brownfield issues and concerns.”

– Mark Thimke, Foley & Lardner





*“Brownfield redevelopment is a smart, sensible and sustainable way...
to make economic and social progress.”*

Source: The Benefits of Brownfield Redevelopment in Minnesota: Fueling Economic Growth and Revitalizing Communities
Minnesota Brownfields, a 501(c)3 nonprofit organization, 2011



3

Emerging Technical Issues

The remediation and redevelopment of contaminated land involves specialized scientific knowledge, procedures and tools. These technical elements are critical to the attainment of environmental and public health protection. They must also be sensible, coherent and sound.

Scientific research and understanding is continuously evolving. More and more tests and studies are done, previous conclusions and theories are modified, and front-line practices are updated. Change is ever-present.

Crafting concise policies to implement change, and clearly communicating them, is a challenge that must be met. DNR provides oversight and approval for all brownfield cleanup projects in the state, and works with external stakeholders to regularly update and improve the program.

DNR is generally viewed as a helpful partner in moving projects through necessary brownfields cleanup approval processes in a collaborative and timely fashion. The positive impact of the DNR's flexibility, cooperation, and willingness to negotiate has been identified as a key component of Wisconsin's successful brownfields redevelopment efforts.

More can still be done, though. Emerging brownfield-related issues like chemical vapor intrusion, urban agriculture, geographic information system technology, contaminated soil management and more need to be addressed in a smart and cost-effective manner.

Alternative to EPA Deed Restriction Requirement

Type of Proposal: Administrative

BACKGROUND

Under s. 292.12, Stats., DNR may require that a closed site or a site seeking approval of a remedial action be placed in a public registry of state cleanup actions. This database, along with an associated Geographical Information System (GIS) map, are found online and provide easily accessible public access to environmental information about individual sites and properties.

The status of cleanup actions is tracked in the Bureau for Remediation and Redevelopment Tracking System (BRRTS) database. The RR Sites Map is a spatial view of sites and actions linked to BRRTS. The RR Sites Map includes, but is not limited to, the following environmental data: a) completed and ongoing investigations and cleanups of contaminated soil and/or groundwater; b) a public registry of sites with residual soil or groundwater contamination; c) sites where continuing obligations have been put in place; d) information about the cleanup of sites under the federal Superfund (CERCLA) statute; e) liability exemptions and clarifications; and f) DNR funding assistance provided.

Deed restrictions add cost to brownfield redevelopment and land sales due to difficulty in getting deed restrictions revised when conditions change. Deed restrictions are not as easily accessible or widely known as an online registry, and they do not provide as much information to a potential buyer. The drafting, reviewing and filing of deed restrictions around the state is time and resource intensive, and not nearly as efficient or effective as an online registry. Deed restrictions can never be removed from the deed; they may only be amended.

PROPOSAL

DNR and US EPA should negotiate a waiver to the federal deed restriction requirement based on the fact that Wisconsin maintains a robust and easily accessible online registry of contaminated sites. DNR's online registry should be recognized by US EPA as an acceptable means to impose continuing obligations on closed sites and to identify sites where DNR has approved the remedial action. The waiver should apply to sites subject to federal enforcement actions under Consent Decrees as well as Records of Decision. In addition to establishing the waiver program, DNR and US EPA should develop a form for submittal of applicable cases.

COMMENTS

DNR: The DNR and EPA are working to develop a methodology to jointly use s. 292.12, Wis. Stats., as an option for enforcing a continuing obligation, to the extent allowed under the Superfund program. The DNR and EPA are evaluating the list of remaining Superfund sites and sites cleaning up under CERCLA authority. Where there is already a Superfund Record of Decision (ROD) that requires a deed restriction, DNR and EPA will move ahead with recording the deed affidavit. Where a site does not yet have a ROD, or the ROD does not specifically mention the use of a deed restriction, those sites will move forward using s. 292.12, Stats., as the method of enforcing and recording any needed continuing obligations. This methodology should be finalized by the end of 2014.

Soil, Sediment and Waste Management

Type of Proposal: Administrative

BACKGROUND

The management of soil from cleanup sites, road projects and other construction projects is an important issue and regulatory clarity is needed.

Currently, the DNR Waste and Materials Management (WMM) Program, operating under ch. NR 500, Wis. Admin. Code, has authority over the off-site movement of waste materials. Under ch. NR 700, Wis. Admin. Code, the DNR Remediation and Redevelopment (RR) Program has authority over the movement of contaminated soil and other waste materials on-site when part of a Chapter NR 700 response action. Further, the RR program has jurisdiction over the management of contaminated soil that is proposed to be managed off-site at a location other than a licensed solid waste site or facility (e.g., quarry, other cleanup site, etc.).

As an example, approval to manage crushed concrete coated with lead-based paint at an off-site location (not the RR program site from which it was generated), other than a licensed landfill, comes from the WMM program through a low-hazard exemption, while approval for re-use or replacement of contaminated soil on- or off-site must be sought from the RR program. The RR program would have jurisdiction over the placement of the waste materials back onto the original property if it is an NR 700 project.

Uncertainty exists in the regulated community if the material proposed for re-use contains historic fill or historic fill co-mingled with contaminated soil. Can the owner of a historic fill site or a contaminated site accept similar historic fill material or contaminated material as part of planned redevelopment for their site? What is the process for applying for DNR approval? Clarity is needed. The Michigan Department of Environmental Quality provides a comprehensive listing of “low-hazard industrial wastes,” materials considered “solid waste,” “inert construction debris and wastes,” and “mildly contaminated soil and fill.”

A streamlined regulatory process or pathway is needed for the management of fill materials and contaminated soil under chs. NR 700 and 500, Wis. Admin. Code. This is needed to let landowners and developers know if they can manage materials at a location other than a licensed landfill.

PROPOSAL

RR and WMM collaborative efforts on this issue should continue. DNR should work with the Brownfields Study Group to provide guidance that more clearly defines the management of contaminated soil and other waste materials under ch. NR 718, Wis. Admin. Code, and the low-hazard exemption processes in ch. NR 500, Wis. Admin. Code, for fill materials and contaminated soils. Financial assurance requirements, including documentation and tracking at receiving sites, should be further explored.

DNR should clarify whether or not contaminated sediment is considered “certain other solid waste” and can be managed on-site under ch. NR 718, Wis. Admin. Code. If not, DNR should amend ch. NR 718, Wis. Admin. Code, to include contaminated sediment in the definition and implementation of the requirements.

COMMENTS

DNR: The DNR understands that this is a priority issue, and is working to further clarify the issues identified by the Brownfields Study Group.

Contaminated Sediments External Advisory Group

Type of Proposal: Administrative

BACKGROUND

Assessment, risk management, and remedial decisions for cleaning up contaminated sediment involve more complex scientific and policy concerns than traditional brownfield cleanups, particularly where large coastal water bodies are impacted. Multiple government entities and overlapping programs are involved in data gathering, risk assessment, risk management, and remedial decisions at sediment sites. This results in delays and inefficiencies. Project-based communication and coordination is critical for effective and efficient remediation.

Contaminated sediment is cleaned up to protect human health and the environment. Wisconsin's rivers and lakes are of high economic, ecological and aesthetic importance to our state. The economic success of upland waterfront redevelopment, many of which may involve brownfields, is correlated to the environmental quality of the adjacent aquatic resource. Clean sediment contributes to a healthy ecosystem and a healthy economy.

Waterfront developers require and deserve certainty concerning cleanup objectives, standards and schedules, so their financial risk can be quantified and assessed. Regulatory uncertainty deters private involvement in sediment cleanups. This prevents improvements and reduces private investment in both aquatic and upland environments.

Successful cleanup of contaminated sediment does occur in Wisconsin. However, each cleanup is designed on a site by site basis. Clearly, each sediment project has unique attributes that must be addressed, but there are similarities that could be systematized. Voluntary sediment cleanups will become more frequent if responsible parties better understand the cleanup objectives, standards and schedules from the outset of the project.

PROPOSAL

The Brownfields Study Group supports further collaborative discussion on these issues prior to the development of solutions, and suggests the following steps forward.

DNR should establish an external advisory group to assist the Water, Remediation and Redevelopment, and Waste programs with their ongoing evaluation of contaminated sediment issues. The DNR Secretary should designate a senior manager to lead the contaminated sediment advisory group as it develops solutions to the issues identified below, in accordance with the proposed timeline. The BSG suggests the following steps forward:

- January 2015 - Form a team of diverse stakeholders and experienced professionals, including: Members suggested by BSG subgroup chairs; External members identified by DNR; DNR staff and managers.
- February 2015 - DNR hosts a team meeting to discuss the issues identified by the BSG and set priorities. The team also establishes how the external advisory group can help DNR solve the issues.
- March to June 2015 - DNR develops priority work products. Additional meetings are held as necessary to provide input on DNR work products.
- July 2015 - DNR completes work on several priority issues.
- August 2015 - With advisory group input, DNR develops work plans and timeline for remaining issues.

1. Three different DNR bureaus have jurisdiction on contaminated sediment cleanups. The BSG supports DNR efforts to clarify the roles and responsibilities of the RR, Water and Waste programs.

- Provide a determination on whether ch. NR 700, Wis. Admin. Code, applies to sediment cleanups.
- Provide guidance on the interface between chs. NR 700, NR 347, NR 500 and NR 105, Wis. Admin. Code.
- Provide guidance and a process for constructively resolving resource management conflicts (e.g. when is a soft edge to be used vs. a hard containment structure).

2. Request that DNR clarify definitions of sediment and soil, and resolve any discrepancies between definitions to provide certainty and consistency in demarcation of sediment and soil.

Contaminated Sediments Advisory Group - Continued

Type of Proposal: Administrative

- Provide guidance on sediment definition among the three bureaus.
 - Provide guidance on how soil is different from sediment.
 - Provide guidance on whether sediment can become soil and soil can become sediment.
 - Clarify the applicability of ch. NR 720, Wis. Admin. Code, to sediments.
3. Develop a clear process for upland redevelopment to occur before sediment remediation is completed.
 - Clarify whether DNR can/should approve the upland cleanup before the sediment is cleaned up. In the case where sediment contamination can't be clearly attributable to an upland source, should upland closures be delayed if DNR will not separate the upland from the sediment?
 4. Support DNR efforts to develop sediment cleanup standards to provide certainty and consistency.
 - The BSG recognizes that this is a very challenging effort.
 - Support DNR efforts to develop PAH standards for sediment cleanups.
 5. Support DNR efforts to develop a clear, streamlined process for management of sediment spoils in locations other than a licensed landfill.
 6. Request that DNR address the issues associated with RR GIS Registry and case closure at sediment sites.
 - Provide guidance on recognized issues such as limitations of GIS (e.g. no exact line of demarcation).
 - What is the definition of a "site" when DNR approves soft boundaries and containment with continuing obligations? Provide guidance on including the edge to the extent there is ongoing maintenance and reference this in GIS case closure submittals. Edge treatment should be recognized as part of the remedy.
 - Include sediment cleanups in the GIS registry.
 7. Support DNR efforts to modify s. 292.12, Stats. to address sediment cleanups with continuing obligations. Changes should include:
 - Financial security for engineered remedies in water.
 - Transparency in long-term care obligations, both as to agreements to perform and financial responsibilities.
 - Notice to property owners of any residual sediment contamination and engineered controls.
 - Clarify responsibilities of RPs, off-site owners, further owners of the source property, etc.
 - Should a cap maintenance plan incorporate provisions from other statutes or laws (e.g. Chapter 30, Stats.?)
 8. Request that DNR and BCPL clarify limitations on leasing authority for submerged lands in public trust waters. (i.e. Can BCPL issue a lease for a contaminated sediment cap?)
 9. Clarify how Wisconsin property laws regarding riparian ownership and control impact sediment investigations, cleanups and continuing obligations.
 10. Request that DNR provide guidance to address soil/groundwater vs. sediment sampling in wetlands and smaller aquatic environments.
 11. Modify VPLE law (s. 292.15, Stats.) to provide a clear path for sediment cleanups to qualify for VPLE to encourage a better and faster sediment cleanup.
 - Should upland sites be eligible for VPLE through a partial exemption if fully remediated while sediment cleanup is still in progress?
 - Is a financial assurance mechanism (insurance) necessary and how could this be accomplished?
 - Expand the type of liability protections provided through this process.

COMMENTS

No comments received.

Management of PCB-Contaminated Building Materials

Type of Proposal: Legislative and Administrative

BACKGROUND

DNR has a Memorandum of Agreement (MOA) with the US Environmental Protection Agency (US EPA) that clarifies the roles and responsibilities of DNR and EPA in brownfields, hazardous waste, Superfund, NR 700 and PCB cleanups. This document is called the One Cleanup Program (OCP) MOA. DNR's current guidance for PCB remediation under the OCP MOA acknowledges that PCB contamination associated with building materials may be identified at a site, but those materials generally do not fall under the applicable requirements of ch. NR 700, Wis. Admin. Code. Nevertheless, this contamination (e.g., building materials) are a likely environmental pathway subject to the federal Toxic Substance Control Act (TSCA) cleanup regulations if they meet the federal regulatory criteria. The guidance further indicates that for these types of materials the responsible party is responsible for coordinating directly with the US EPA and meeting requirements of both TSCA disposal and ch. NR 500 Wis. Admin. Code.

Accordingly, the disposal and management of PCB contaminated building materials are under the jurisdiction of ch. NR 500 Wis. Admin. Code, for off-site disposal, and are not part of the EPA/DNR coordinated approval process, under the OCP MOA. However, brownfield sites with multiple contaminant sources would benefit from formal, integrated communication between the US EPA and DNR's Waste and Materials Management (WMM) program. For example, approvals may be obtained through the US EPA for delineation of PCB-contaminated building materials, but these plans may not be reviewed by DNR's WMM staff given that: 1) the current MOA does not provide a clear administrative protocol for such review; and 2) the resource limitations of the WMM program to provide such reviews when requested. Questions raised by these considerations include the following:

- Are there circumstances where building materials contaminated with PCBs should be included with the ch. NR 700 Wis. Admin. Code process? For example, weathered or damaged PCB-containing paint and caulk on a building exterior can readily migrate to surrounding soils.
- Under what circumstances would contaminated building materials meet the requirements for a Type A site? For example, a PCB-contaminated building is severely deteriorated and has commingled with surrounding soil.
- Would sampling strategies approved by the US EPA (e.g., discrete vs. composite) pose possible future concerns for site closure under ch. NR 726 Wis. Admin. Code because the approach might be questioned at a later point in time as part of the closure approval process? For example, a TSCA-approved sampling plan shows that several hundred cubic yards of concrete can be reused on site without restrictions, yet future discrete sampling of the reused media shows PCBs exceeding 1 ppm.
- Are there circumstances where EPA-approved management strategies under TSCA rules would not be consistent with the DNR regulations? For example, a responsible party elects to leave in place a PCB-impacted concrete slab, meeting all signage, capping and deed restriction requirements in accordance with TSCA regulations, but the cap and deed restriction do not conform to ch. NR 700 Wis. Admin. Code regulations. For example, EPA considers a school parking lot as a low-occupancy area, but DNR applies residential clean-up standards to the parking lot.
- Would TSCA approved sampling and delineation strategies pose potential long-term liability concerns for responsible parties following off-site disposal?

Management of PCB Building Materials - Continued

Type of Proposal: Administrative

PROPOSAL

DNR has recently updated its guidance on the One Cleanup Program to address many of the issues discussed above. Options to address remaining issues could include:

1. Single point of contact: Identify a regional point of contact or resource at DNR to address questions that arise when managing PCB-contaminated building materials within the context of EPA and DNR requirements.
2. Clear guidance: Working with EPA, provide clear guidance to DNR staff and the public on the technical and administrative requirements of properly and safely handling these materials on and off-site, including how to ask for and receive written approval of waste characterization and handling plans.
3. Improved communication: Provide a more integrated communication process with the EPA where DNR has visibility on proposed activities such as the type of sampling and segregation strategies to be used for delineation and on-site/off-site management of building materials impacted with PCBs. For large former industrial facilities this can be a complex task due to the types of materials where PCBs may have been used and how the demolition will be planned and sequenced to minimize the potential for cross contamination and/or misidentification of TSCA versus non-TSCA waste streams.
4. Program revenue authority: Off-site management of materials is under the jurisdiction of the waste program, while ch. NR 718, Wis. Admin. Code, gives the remediation and redevelopment (RR) program jurisdiction over movement of waste material within a property or site. Under s. 292.55, Wis. Stats., and ch. NR 749, Wis. Admin. Code, the RR program has a procedure for individuals to pay a fee and receive a technical assistance letter on the actions taken; a similar provision under the ch. NR 500, Wis. Admin. Code, series would be helpful to clarify that a responsible party is properly handling waste off-site.

COMMENTS

Brownfields Study Group: *The DNR staff may not be in a position to update the OCP MOA, however, further guidance and discussion would be helpful to improve the cross-program system under the current MOA.*

DNR: *The DNR understands that the handling of PCB-contaminated building materials is a growing concern, especially as we address the universe of closed manufacturing properties across the state. The proposal by the Brownfields Study Group would require staff resources in the WMM and RR programs to be available to develop both technical and administrative guidance; to work with US EPA to receive approval on it (the OCP MOA took several years of negotiation with EPA); to provide that technical assistance; and to write administrative rules to collect fees for technical assistance. Presently, the programs may not have existing resources to address this need.*

Urban Agriculture: Best Practices and Standards

Type of Proposal: Administrative

BACKGROUND

Urban gardening has increased in popularity. Urban residential and industrial land can have residual environmental contamination from lead paint, atmospheric deposition, etc., that exceeds state soil standards. Property owners and community groups that are interested in gardening in urban areas may be subject to reporting requirements, assessment and possibly remediation responsibility when testing their soil for agricultural purposes. Property owners need to understand their responsibility and potential liability associated with sampling for impacts that may result in regulatory oversight.

A significant amount of research has been completed and is under way to determine contaminant uptake levels in different types of edible plants. Additionally, research on best practices is being conducted to protect individuals from direct contact exposure to contaminants during gardening. More research is needed, however, to understand the health risks of gardening in urban environments where significant levels of contaminants can exist.

Some people are concerned that agriculture in urban environments, especially for consumption, creates a risk that outweighs the benefits. Others believe outreach and implementation of best management practices would satisfactorily mitigate health risks.

The Wisconsin Safe Garden Soils Workgroup has been established to improve public health in Wisconsin relative to gardening by reducing or eliminating gardening-related exposure to contamination, and by increasing or promoting access to fresh vegetables, outdoor exercise and community interaction. The Workgroup is comprised of interested parties from the Wis. Dept. of Natural Resources, Wis. Dept. of Health, University of Wisconsin, City of Milwaukee and the 16th Street Community Health Center. The Workgroup meets to develop resources and best management practices to promote safe gardening.

The issue of urban gardening can be divided into three different subsets:

1. Larger community gardens. Local governmental units (LGUs) are often willing to lease or sell residential and industrial vacant properties for use by the community as urban gardens, but some LGUs are deterred from allowing gardeners to sample soil for fear of identifying impacts that would necessitate additional environmental assessment and eventual cleanup. To be protective of human health, communities may require that gardens be constructed with raised beds as a safety measure against residual impacts that may be present in the soil without opening up the LGU to the liability of identifying contamination (even though the LGU may have an exemption from liability under state and federal law and not be required to take anything but limited actions based on proposed use). Soil samples could confirm the existence and define the extent of impacts, if present, and reduce the cost of garden construction if no impacts are found. However, LGUs may be reluctant to conduct or allow the sampling of soil.
2. Properties previously closed by DNR with known residual soil impacts. Continuing obligations contained in closure letters for properties with residual impacts may restrict the use of the property for agricultural purposes, without asking DNR for permission to allow such use. This poses a potential regulatory roadblock for reusing closed brownfield properties for urban agricultural purposes if the types and levels of contaminants and the type of urban gardening proposed would render the existing conditions at the closed site no longer protective based on the proposed use.
3. While not typically considered Brownfield properties, single family residential gardens may also present issues when conducting soil sampling for the purpose of identifying health concerns. Chapter 292.11, Wis. Stats., and ch. NR 700, Wis. Admin. Code, reporting requirements can be difficult for the average urban gardener to comply with due to a lack of understanding of state regulations, fear of perceived enforcement action, and/or a potential decrease in property value if environmental impacts are identified and would need to be reported as part of the state's real estate disclosure law.

Urban Agriculture: Best Practices - Continued

Type of Proposal: Administrative

PROPOSAL

1. Continue the Wisconsin Safe Garden Soils Workgroup's efforts to identify and expand areas of outreach and education for gardeners, resources for soil sampling, research on safe gardening practices, and development of best management practices.
2. DNR should continue its work with the state Department of Health Services to provide clear guidance to property owners and gardeners on current ch. NR 700 Wis. Admin. Code, regulations pertaining to reporting, assessing and remediating properties with proposed agricultural uses. The guidance should identify best management practices, potential health risks and potential liabilities for property owners.
3. DNR should review the ch. NR 700 Wis. Admin. Code series to determine if there is any flexibility appropriate for "backyard" urban agriculture settings on one and two family residential properties, and to address the issue of reporting, assessment and remediation requirements for backyard gardeners.

COMMENTS

DNR: *The DNR welcomes partnership with Wisconsin Safe Garden Soils Workgroup and the Department of Health Services. DNR recognizes a strong desire to provide gardening opportunities in urban areas where fresh and affordable produce options have not always been an option for many central-city residents. DNR will continue to provide resources to this partnership, with the goals of ensuring that the food grown on these urban garden properties is safe to eat and there are no unacceptable exposures to contaminated soils and other materials at those locations.*

Procedures and Policies for Addressing Vapor Intrusion

Type of Proposal: Administrative

BACKGROUND

Wisconsin has long required that the cleanup of contaminated sites address all potential human exposure pathways. However, recognition and evaluation of the chemical vapor intrusion pathway is relatively new. DNR developed a vapor intrusion policy and established a guidance document in December 2010 (PUB-RR-800). This guidance is intended for use at all contaminated sites where volatilization of contaminants has the potential to migrate underground as a gas/vapor and make its way into occupied buildings.

DNR's guidance identifies the conditions in which a pathway assessment is necessary, establishes criteria for determining health risk, identifies potential responses to vapor intrusion, and delineates when sites with a complete or potential pathway may achieve closure. Approximately 30 other states have also adopted vapor intrusion guidance, largely based on US EPA's draft guidance on this issue. The DNR and US EPA vapor intrusion guidance documents are very similar and complement each other. DNR's guidance is slightly more conservative in some areas (e.g., life-time cancer risk) and slightly less conservative in others (e.g., less post-mitigation sampling required).

The American Society for Testing and Materials (ASTM) has also issued a standard for assessing vapor encroachment during real estate transactions. Further, US EPA and ASTM have incorporated the idea of vapor encroachment being required to be evaluated during Phase 1 environmental site assessments. While vapor encroachment is different than vapor intrusion, it raises awareness of the importance of vapor intrusion at properties.

Evaluating vapor intrusion risk at specific sites raises a number of issues that should be addressed, including:

1. It is unclear whether vapor sampling and analytical methods are reportable as a discharge under state law.
2. Sites closed previously may not have been evaluated for vapor intrusion and there may be a regulatory need to review closed sites. DNR's plan to evaluate closed sites and potentially reopen these sites based on vapor issues needs to be clarified. Currently reopening closed sites appears to be driven by property transactions; however, other states (e.g., New York and Minnesota) are actively reopening sites that may have vapor intrusion issues and requiring responsible parties to perform additional investigation, remediation or mitigation.
3. Sites closed previously may have ownership changes. The responsibility of the previous and current owners has not been clearly defined. Additionally, the previous owner that conducted the cleanup may no longer be viable.
4. Properties may have undergone a land use change from industrial to commercial/residential (non- industrial) during redevelopment with consideration only given to soil and groundwater contamination. It may be necessary to evaluate and reopen these sites based on potential vapor intrusion risk. Land use changes can present challenges for retrofitting mitigation systems and identifying previous and current owner responsibilities.
5. It is understood that a mitigation system will be required at sites where vapor intrusion risks are present. However, it is unclear whether a passive system will be acceptable or whether an active system will be required. New construction can more easily and cost-effectively include infrastructure to support both passive and/or active mitigation systems, compared with sites being renovated or retrofitted.
6. Closed sites with a vapor intrusion risk may not be known to DNR or nearby property owners. A database of potential sources (e.g., historic dry cleaners, etc.) of vapor intrusion risk is not available to the public.
7. Local governmental units are in need of best management practices that can be incorporated into building codes or local ordinances to assist with identifying and mitigating vapor intrusion issues.

Procedures and Policies for Vapor Intrusion - Continued

Type of Proposal: Administrative

PROPOSAL

DNR should continue working with the Wisconsin Department of Health Services staff to establish the Vapor Intrusion Prevention Partnership Initiative (VIPPI). To date, most sites with a vapor issue have been discovered during property transactions. The VIPPI intends to create a tool box of best management practices to help communities tackle this issue more systematically. DNR and DHS should create tools that would assist with: 1) the creation of a database of sites that could be a source for vapor intrusion; 2) site screening to estimate risk based on the historic use and potential receptors; 3) sampling strategies to screen higher risk sites; 4) outreach and notification procedures if a vapor intrusion situation is found; and 5) model ordinances or other procedures to minimize vapor risks. VIPPI should address sites that are a potential health risk and not just brownfields.

DNR should implement the following to address specific issues as noted in the background section.

1. Clarify the reporting standard under the Spill Law for detectable concentrations of contaminants in various vapor sampling techniques.
2. Clarify DNR plans to review previously closed sites for vapor intrusion potential. This may include conducting an initial internal review with a checklist to look at BRRTS listings, prioritize the sites based on risk, and screen out those sites with no risk vs. potential risk (e.g., petroleum vs. chlorinated, residual contamination remaining vs. “clean” closures, etc.).
3. Create a procedure for contacting responsible parties that no longer own sites on which vapor intrusion potential exists and develop a method of requiring responsible parties to address vapor intrusion, if financially viable. Notify property owners of potential responsibility. Establish a grant/loan program to assist with evaluation of properties and/or mitigation of properties to ease the burden on property owners that acquired these sites as a bona fide prospective purchaser.
4. Clarify requirements for sites with land use changes and how DNR will address sites that may now warrant a vapor intrusion assessment. Vapor Intrusion was not identified in older closure letters. Still these sites may be appropriate for industrial uses, but not be appropriate for compliance with commercial or residential uses.
5. Revise vapor intrusion guidance document to include passive vs. active mitigation standards.
6. Provide research assistance to review high priority sites (e.g., dry cleaners, hazardous sites, large refined petroleum product facilities). Establish grant/loan program for local governments to perform historical property use research with the eventual intent to establish a database of sites with high risk of vapor intrusion issues.
7. Develop tools to help local governments establish codes and ordinances for renovations and new construction of buildings with higher vapor intrusion risk.

COMMENTS

DNR: *The DNR acknowledges the concerns raised by the Brownfields Study Group, and as resources are available, will work on addressing the items identified for vapor intrusion.*

Background Concentrations of Common Soil Contaminants

Type of Proposal: Legislative and Administrative

BACKGROUND

Many chemicals in soil are ubiquitous in the environment. Examples include lead and polycyclic aromatic hydrocarbons (PAHs) from historic ignitions of leaded gasoline and fossil fuels. Chemicals present naturally in the environment that are not clearly attributable to a specific source are generally associated with undetermined anthropogenic sources and can be considered “anthropogenic background.”

When defining the boundaries of contamination attributable to a discharge, anthropogenic background concentrations become important. Background conditions are often used to delineate the area where liability for cleanup begins and ends – that is, where the chemical concentrations from the discharge becomes indistinguishable from concentrations present from other, non-specific sources. In practice, anthropogenic background is similar to natural background levels in that cleanup below anthropogenic background is not required and often impractical.

The DNR provides responsible parties with a process to consider background levels for both anthropogenic and naturally occurring contaminants. However, calculating background levels for individual sites can be onerous and inefficient during the cleanup process.

The DNR has taken steps to address this situation for sites involving arsenic in soil. DNR and DHS, in partnership with the US Geological Survey and the US Department of Agriculture, undertook a study of arsenic levels in Wisconsin to develop a “statewide standard for background.” This study took 7 years, and the DNR and DHS provided several hundred thousand dollars in funding for the project. The USGS and USDA provided in-kind services as well. The resulting guidance for staff and responsible parties on establishing background cleanup levels for arsenic can be found at: <http://dnr.wi.gov/files/PDF/pubs/rr/RR940.pdf>

Further, regulatory agencies in neighboring States, such as the Illinois Environmental Protection Agency, have established default state-wide background soil concentrations for PAH compounds. In Illinois, background PAH soil concentrations are grouped into three classifications based on location: “City of Chicago”; “Metropolitan Statistical Areas” (outside of the City of Chicago associated with at least one urbanized area that has a population of at least 50,000); and “Non-Metropolitan Areas.”

Clearly identifying state-wide background soil concentrations for constituents commonly associated with historic anthropogenic sources and/or associated with geologic source materials will allow for additional clarity in determining target remediation goals as well as scientifically valid data as a basis for possible amendments to current remedial objectives.

PROPOSAL

DNR should establish statewide (including urban area) background concentrations for constituents commonly associated with historic, anthropogenic, ubiquitous sources and/or associated with regional geology. The background concentrations should continue to be protective of human health and the environment and can be used to establish risk-based remediation objectives. DNR should develop clearly defined protocols for the uniform sampling and evaluation of site-specific background soil concentrations that are representative of reasonable background conditions, while maintaining protection of human health and the environment.

COMMENTS

DNR: The DNR is considering a research project with the University of Wisconsin and others to look at statewide PAH levels. In addition, DNR is working with DHS to evaluate public health concerns of differing concentrations of PAHs. Any study will require staffing resources, IT resources, laboratory work, and funding for researchers to conduct such a study, based on DHS and DNR involvement the arsenic study. Further, this effort will take time to design, collect, validate and roll out such a study. In the interim, the DNR and DHS will continue to work with the Brownfields Study Group on addressing ways to deal with this issue.

“The Brownfields Study Group is an excellent example of how a highly diverse and disparate group of stakeholders can work cooperatively, learn from one another and collectively develop practical solutions to important, real-world issues. This group has been instrumental in developing innovative methods for improving and expediting the process of returning impacted, vacant and blighted properties throughout the state back into productive use and back into the local tax base.”

– Frank Dombrowski, We Energies





“The multiplier benefits of every \$1 of state cleanup grant are estimated to drive \$6 in local tax revenue, \$7 in payroll revenue, and \$32 in business revenue... The cleanup and redevelopment of brownfield properties is a critical strategy for economic development, growth management, and environmental protection.”

Source: Washington State Brownfield Policy Recommendations, University of Washington, 2011



Financing Renewal

Brownfield redevelopment has matured over the years and buying brownfield properties has become more normalized as a common real estate issue. However, it is not yet routine and significant challenges remain.

Considerably more public resources are needed for assessment, cleanup and development at thousands of brownfield properties around the state with economics that are too uncertain to attract private interest. Small tracts of land, in particular, can be especially unappealing without local government leadership and direction.

Derelict sites typically have low economic value, no identifiable or viable responsible party, and remain rundown and neglected for many years. These sites are extremely difficult to deal with, especially when no immediate end-user is identified. Too often, these properties remain safety and health hazards for a long time. They are also visible scars that impair a community's curb appeal and impede growth.

Since 1994, DNR has helped complete cleanups at more than 15,400 properties. There are over 3,500 brownfield sites, involving more than 11,000 acres, with open case files in DNR's database as of January 2015. In addition, 300-400 new sites are added each year. DNR estimates there may be as many as 20,000 additional sites in need of attention, in all types of communities around the state.

More state funding is needed to help communities clean up die-hard brownfields and put them back into good use. Without environmental progress, sections of communities become economically stagnant and decline. Public help leads to private investment.

DNR is on the front line of all cleanup and reuse projects. They are in a great position to assist communities with challenging sites.

Cleanup Catalyst Grants for Local Governments

Type of Proposal: Legislative

BACKGROUND

A new state grant program is needed to help local governments move persistently derelict brownfield properties forward towards cleanup and productive reuse. Public funding is often the only way to get pre-development work done at sites with insolvent owners, unknown or unreachable responsible parties and no immediate end-user in sight. Pre-development work includes acquisition, environmental assessment, demolition, disposal, and other critical site preparations. Studies show that relatively small amounts of state money leverage large amounts of private sector activity. State grants can be catalytic for local growth.

Wisconsin is a beautiful state with lots of lush greenery. However, abandoned gas stations, idle industrial properties and defunct dry cleaning businesses, among others, also dot the landscape. These sites hold immense potential for improving surrounding neighborhoods, by removing eyesores and injecting new life as residential, commercial, industrial and public developments. Unfortunately, these types of properties tend to remain contaminated and unused for many years – failing to achieve their potential. Local governments are key players in most successful cleanup and redevelopment projects, especially at sites that are too risky for the private sector. Without essential pre-development work to make these sites marketable, they will languish interminably and remain eyesores, health hazards, and wretchedly unproductive.

The need for more state brownfield funding is widely known in the field, and documented by experience. In 2014, fifteen state municipalities applied for twenty four US EPA brownfield grants, totaling \$11.1 million. Only six municipalities received funding, totaling \$3.5 million, leaving \$7.6 million worth of identified brownfield work unfunded. Further, most municipalities don't even attempt to apply for these ultra-competitive national grants. From 1998-2014, the former Dept. of Commerce, now WEDC, received 196 brownfield-related grant applications, totaling \$96.8 million, that they were unable to fund. The Site Assessment Grant program that DNR used to run was significantly oversubscribed every year.

DNR applies for US EPA funding each year to run a small environmental assessment assistance service and an undersized revolving loan fund (RLF) for cleanups. Part of the RLF funds must be issued as loans to local governments; loan funds are more appropriate where there is a prominent development available to repay the loans, rather than at a project where there is no anticipated end use. Federal funding is not guaranteed, and has been decreasing steadily. In federal fiscal year 2014, DNR and other FY 2013 grantees were not eligible to apply for EPA assessment funds. As a result, DNR will run out money to fund this important service in early 2015.

WEDC provides grants for brownfield site assessments and specified cleanup activities. The environmental management account contributes \$1 million annually for the assessment grants, and WEDC has some flexibility to increase funding if they wish to do so. In state fiscal year 2014, WEDC budgeted \$3.1 million for cleanup grants, and ultimately increased that amount by approximately \$2 million due to high demand. WEDC's grant programs are helpful and appreciated. They have accomplished good things and should continue. They are also, however, potentially subject to change as board priorities evolve. Further, persistently derelict brownfield properties, especially in small communities with no immediate end-user in sight, are generally not good candidates for WEDC grants.

A more permanent state grant program is needed to make progress at these economically and environmentally challenging sites. WEDC and DNR work well together on brownfield issues. A new grant program at DNR, directed at a different set of brownfields sites, would allow each agency to do what they do best and get more properties cleaned up and reused. Expanded inter-agency collaboration would be very beneficial to the state economy and community well-being. The distinction between this new program and the brownfields initiatives at WEDC is that this new program will fund brownfields projects that "if not for these new funds" no action would likely be taken on the site. The goal of this funding is to create a pipeline of development-ready projects to create private sector interest in their reuse where none exists at the present time.

PROPOSAL

Create a cleanup catalyst grant program, administered by DNR, to assist local governments to move persistently derelict brownfield properties, with no immediate end-user in sight, from eyesore to opportunity.

Eligible Applicants: Local governmental units that did not cause the contamination are eligible to apply. Applicants need not own the site, but written property access agreements are required to receive grant funds. A local governmental unit or nonprofit organization must be the applicant. When applying, counties must include a letter of support from the city, village or town in which the project property is located to demonstrate collaboration. "Local governmental unit" should be defined as a municipality, a redevelopment

Cleanup Catalyst Grants - Continued

Type of Proposal: Legislative

authority created under s. 66.1333, a public body designated by a municipality under s. 66.1337 (4), a community development authority, a housing authority or public school district.

Funding: \$4 million per biennium, as a continuous appropriation to give DNR the ability to reallocate funds when projects are completed under-budget or external circumstances affect the viability of projects or the number of applications received. Grants should be awarded on a biannual (twice per year) basis.

Funding Allocation: No more than \$400,000 should be awarded to any one project or community per year. Community is defined as the geographical municipal boundary in which the project is located. Small grants, up to \$40,000, require a 20% applicant match. Large grants, from \$40,000 to \$400,000, require a 30% applicant match. All grant awardees must enter into an agreement with DNR identifying terms and conditions of the award. Matching funds may be in the form of cash, in-kind contributions, or both. At least 15% of total grant fund monies must be distributed to communities with populations of 30,000 or less. At least 10% of total grant fund monies are to be distributed as “small” grants. No more than 50% of any one project grant can be spent on demolition, unless a variance is granted by DNR. Lead and asbestos abatement is included in the definition of “demolition.” Lead and asbestos abatement that is not funded by the grant and not required for demolition is eligible to be identified as a grant-matching expenditure.

Requirements: DNR may only award grants under this proposal if the person that caused the environmental contamination that is the basis for the grant request is unknown, cannot be located or is financially unable to pay the cost of the eligible activities, except if the sole basis of the grant is to conduct a Phase I environmental assessment, a Phase II environmental assessment, or demolition. Grant-funded site assessment work must begin within 6 months of the award date, or award can be rescinded. Grant-funded site demolition and/or remediation work must begin within 12 months of the award date, or award can be rescinded. Awardees may be given one three-month extension to begin work if good cause is shown. Projects funded by “small” grants must be completed within 18 months. Projects funded by “large” grants must be completed within 36 months. All projects are eligible for one, six-month extension of these deadlines if good cause is shown. DNR must be given access to the project property and DNR shall define what “begins” means.

Award Criteria: At a minimum, DNR should consider the following criteria when determining whether to award a grant or loan: a) whether or not the project would proceed without the funds; b) environmental, public health and local financial need for the project; c) environmental, public health and economic impact; d) evidence of commitment to the project by the applicant and any identified partners; e) amount of other public/private funding that can be leveraged by the project; f) applicant’s past performance with state brownfield grants; g) applicant’s ability to carry out the grant-funded activities; and h) other criteria that DNR deems necessary.

Eligible Activities: Phase I and II environmental assessments; NR 716 site investigations; remedial action option reports; remedial action plans; removal of above-ground and underground storage tanks; petroleum assessments and cleanup work that is not eligible for PECFA; vapor intrusion assessment and mitigation; soil and sediment management; environmental remediation; elimination of blight and hazardous conditions; removal of abandoned above-ground containers, as defined in s.292.41(1), Stats.; demolition activities (including asbestos and lead abatement); planning for waterfront brownfields; groundwater monitoring and well abandonment; cap construction to remediation standards; removal of surface-level solid waste for the purposes of accessing soil/groundwater for assessment or preventing further contamination (e.g. tires, equipment, scrap, etc.); building material sampling (e.g. wipe samples).

Ineligible Activities: Activities that can be paid for by an environmental insurance policy associated with the property; legal fees; activities where there is not a demonstrated need for public funding (i.e., if not for this funding, the proposed project would not move forward); activities reimbursed by PECFA, the Agricultural Chemical Cleanup Program (ACCP), or the Dry Cleaner Environmental Response fund (DERF); asbestos abatement and lead removal not associated with demolition; area-wide brownfield planning activities; brownfield inventories; brownfield-related public engagement activities; local government administration (however, these costs can be used for match requirements); the assessment and/or cleanup of licensed landfills; development and site preparation costs customary for non-brownfield projects.

Tracking: DNR should be given authority for emergency administrative rules to start the grant program. DNR should track the types and amounts of projects/activities seeking grant funding to evaluate needs, respond to emerging high-priority issues, and identify improvements for the program.

COMMENTS - No comments received.

Strengthen Environmental Management Account

Type of Proposal: Legislative

BACKGROUND

DNR's Remediation and Redevelopment Program receives appropriations from the state Environmental Management Account, which is a sub-account of the Environmental Fund. Money from this account is used for many activities at the DNR, the University of Wisconsin and other state agencies.

With respect to the DNR's Remediation and Redevelopment program, it provides funding for staff in the RR program and funding for emergency actions, investigations and cleanups at high priority contamination sites where the persons responsible are not able to pay for the necessary actions. In addition, the Environmental Management Account provides brownfield grant funding to local governments through a WEDC program.

Presently, this account has a structural deficit, as identified by the Legislative Fiscal Bureau, and currently allocated expenditures will likely exceed revenue in the FY15-17 biennium. The remediation and redevelopment of contaminated properties benefits local economies, public health and the environment. Stable funding from this account for brownfield revitalization is important.

PROPOSAL

The Brownfields Study Group supports the efforts of DNR and DOA to strengthen and stabilize the Environmental Management Account of the Environmental Fund.

COMMENTS

No comments received.

Improve Environmental Remediation TIDs

Type of Proposal: Legislative

BACKGROUND

Wisconsin's Tax Incremental Finance (TIF) program was approved by the legislature in 1975 and the first districts (TIDs) were created in 1976. Its purpose is to provide a way for a municipality to promote tax base expansion through its own initiative and effort. The legislature found municipalities were postponing or canceling public improvements that would allow new development because their taxpayers paid the price, while everyone that shared the expanded tax base profited. TIF works because it provides its own resources. It is a financing tool that municipalities can use to promote tax base expansion.

Environmental Remediation Tax Incremental Financing Districts (ER TIDs) were created in 1997. The purpose of ER TIDs is to provide political subdivisions (cities, villages, towns and counties) with an additional tool to finance the investigation and cleanup of environmentally contaminated properties (i.e. brownfields). The ER-TID law includes several features designed to make especially useful for brownfields.

Only 19 ER TIDs have been created since 1997, while 976 regular TIDs have been created since then. Restrictions on eligible costs and a prohibition on overlapping with regular TIDs limit the usefulness and desirability of an ER TID. The creation and administration of an ER TID is unfamiliar and confusing to most municipalities. Allowing ER TIDs to be created and administered like regular TIDs, which retaining their special features, will simplify the process and increase environmental cleanups and redevelopment around the state.

PROPOSAL

Delete s. 66.1106, Stats, relating to environmental remediation tax incremental financing, and amend s. 66.1105, Stats., relating to tax increment law, to identify a tax increment district with significant environmental pollution, as defined in s. 299.01(4), Stats., as an "environmental remediation TID" if the local government obtains a certificate from the Department of Natural Resources indicating approval of a site investigation report that relates to the affected parcels of property.

Environmental remediation TIDs shall be governed by the provisions of s. 66.1105, Stats., with the following exceptions: 1) ER TIDs are excluded from the 12% cap; 2) The base value of contaminated property owned by a local government when the TID is created is always \$0.00; 3) ER TIDs may be created by cities, villages, towns and counties; 4) environmental assessment, investigation and demolition costs that are incurred prior to creation of the TID to determine the full degree and extent of the contamination can be reimbursed through the TID; and 5) the maximum life of an ER TID is 27 years.

COMMENTS

Wisconsin Department of Revenue: *Regarding the exceptions: 1) Ok, with being excluded from the 12% cap; 2) To stay consistent with regular TIDs, all municipal property that is not used for municipal use should have a value that is included in the base; 3) Ok, with all entities having the ability to create an ER TID; 4) To stay consistent with regular TIDs, no expenses for demolition costs should be allowed before the TID is created; 5) Currently the life of an ER TID is 23 years. It would change to 27 years, which is ok to stay consistent with a regular TID.*

Property Assessed Remediation

Type of Proposal: Legislative

BACKGROUND

Section 66.0627, Stats., authorizes cities, villages, towns and counties to make a loan, or enter into an agreement regarding loan repayments to a third party, to an owner or lessee of a residential, commercial or industrial property located in the political subdivision for making or installing an energy efficiency improvement, a water efficiency improvement, or a renewable resource application on the premises.

If a political subdivision makes a loan or enters into an agreement under this statute, the political subdivision may collect the loan repayment as a special charge against the improved real property that may be collected in installments and may be included in the current or next tax roll.

Adding brownfield revitalization as eligible expense would give local governments another important financial tool to assist private parties interested in reclaiming and redeveloping brownfield properties.

PROPOSAL

1. Amend s. 66.0627, Stats., to include brownfield revitalization as an activity eligible for a loan, and define brownfield revitalization to include site assessment, remediation, lead and asbestos abatement, demolition and other standard site preparation.
2. Authorize loan repayment periods up to 20 years for brownfield revitalization.
3. Specify that property assessed loans for brownfield revitalization are only available to owners and lessees of commercial and industrial property. They are not available for work on residential property.

COMMENTS

No comments received.

State Trust Fund Loans for Brownfield Projects

Type of Proposal: Legislative

BACKGROUND

The Board of Commissioners of Public Lands administers the State Trust Fund Loan Program to help local governments fund public purpose projects, which may include environmental cleanup and brownfields redevelopment.

PROPOSAL

The Brownfields Study Group recommends that State Trust Fund loans issued by the Board of Commissioners of Public Lands for brownfield projects, as brownfield is defined in ch. 238, Wis. Stats., not count toward a municipality's debt ceiling if full repayment is made within 15 years. This proposal is consistent with the Legislature's adoption of the same proposal for loans issued under the Brownfields Revolving Loan Fund Program (aka Ready for Reuse program), in s. 292.72, Stats., which was supported by the Brownfields Study Group.

Municipalities must provide verification from the Department of Natural Resources that the site is a brownfield before obtaining a State Trust Fund loan.

Projects that cover multiple properties would be required to have 50% of the project area verified as a brownfield.

COMMENTS

No comments received.

Amend Business Improvement District Statute

Type of Proposal: Legislative

BACKGROUND

Business Improvement Districts (BIDs) are an important economic development tool in many communities. These voluntary districts can address the cleanup and redevelopment of brownfields, among others things. The proposed changes will help improve and ease administration of some BIDs.

PROPOSAL

Amend the Business Improvement District and Neighborhood Improvement District (NID) statutes (s. 66.1109 and s. 66.1110, Stats.) to provide:

1. The inclusion or annexation of additional land areas into an existing BID or NID following the same procedures for creation of the BID/NID with respect to the new areas to be included.

- This is an issue in the Menomonee Valley, and may impact other redevelopment areas in the state. For example, work in the Valley now includes areas a few blocks south and north of the initial BID project area, and under existing law it appears the BID would have to dissolve itself and create a new BID to include these areas. Businesses in the outer areas would like to participate in the existing BID and dissolving and restarting the BID is not feasible. A more efficient way is needed to add new areas to an existing BID or NID statewide.

2. Allow a BID to petition to add or include residential properties and convert to a NID.

- A NID can consist of a mix of residential and commercial or industrial properties, but a BID excludes residential properties. The new land use plan for the Valley will contemplate converting some former industrial properties to residential areas and incorporates some existing residential development into the transition areas between the traditional neighborhoods and the industrial valley. If those landowners petition to be added to the existing BID, the BID would like to be able to convert to a NID (which functions the same) and service all of the landowners within the land use plan area. If the petition fails, BID status would be maintained.

COMMENTS

No comments received.

“The brownfields program in Wisconsin is highly evolved, due in a large part to the efforts of the Brownfield Study Group. The diverse group of participants brings together opinions from all sides of brownfield issues.”

– Lanette Altenbach, AECOM





“DNR staff members... are viewed as having helped to move Valley projects through necessary brownfields cleanup approval processes in a collaborative and timely fashion.”

Source: Redevelopment in Milwaukee's Menomonee Valley: What Worked and Why?, Public Policy Forum, 2014



Waterfront Brownfield Revitalization

DNR is leading an inter-agency effort to make waterfront development decisions predictable, fair and cost-effective through consistent policies and coordinated regulatory processes. Many brownfields are located at the water's edge.

Development has many costs. Most of them, such as land, materials, and labor can be identified and accounted for by a developer. However, the costs associated with permitting, zoning variances, site reviews, and compliance with applicable regulations are often less clear and can be compounded by the time each process takes. These challenges are typically magnified at waterfront properties, as planning and permitting agencies often have different roles and responsibilities that must be reconciled.

For private sector development projects to succeed, they must be built within a reasonable time frame, with a likely profit commensurate with the risk. The public sector can support environmentally responsible development by reducing unnecessary barriers and ensuring that development processes for all projects are efficient, fair, and transparent.

Waterfront communities should work with the development community and local citizens to identify barriers to better development and implement improvements. At the state level, DNR and other agencies should effectively coordinate across regulatory programs and make comprehensive waterfront development information easily accessible.

There are well regarded examples of brownfield redevelopment projects that overcame waterfront challenges. However, it is obviously better and more efficient if regulatory requirements are clearly known, predictable and addressed on a systemic, not a project-by-project, basis.

Internal DNR Coordination for Waterfront Projects

Type of Proposal: Administrative

BACKGROUND

Waterfront redevelopment projects are inherently complex. They also require assistance and approval from many different programs in DNR, which sometimes have overlapping and competing requirements. These projects often involve land that once served as part of the waterway ecology and may have geotechnical attributes that are not ideal for redevelopment. The property and the water it borders may be contaminated as a result of heavy use over the past century. There can be dockwall issues, questions about the ordinary high water mark, and more.

Many sizable and well regarded examples of waterfront redevelopment projects have overcome these challenges and flourished. However, as more waterfront projects begin to emerge, it would be very helpful if the basic regulatory steps and challenges were more widely understood and addressed systemically instead of project-by-project. Every waterfront project has its own unique attributes, but knowing the standard steps would greatly reduce project obstacles and costs.

Municipalities, community organizations and developers all benefit from regulatory clarity, efficiency and predictability. A more integrated approach to waterfront project oversight and management can identify problematic issues earlier in the process and provide a more streamlined means of responding.

PROPOSAL

DNR should continue its efforts to develop a systematic, transparent and big picture process for regulating and assisting waterfront projects, with set timelines and intra/interagency coordination.

Waterfront revitalization presents important policy issues which may lead to greater efficiencies in project administration, but which require focused attention and designated water program staff to implement.

A few issues, such as sediments and contaminated wetlands, overlap programs within DNR. This overlap has resulted in significant structural impediments to advancing internal efficiencies and policy. DNR should continue to develop and implement the Interagency Waterfront Revitalization Team's Waterfront Initiative. Key goals should include:

- A consistent regulatory pathway, with a clear process and decision benchmarks.
- More efficient plan and permit review.
- Follow an integrated waterfront project oversight approach that starts at intake of a project.
- Include screening questions on initial waterfront project intake documents (i.e. Is this project located on a waterfront or within a waterfront district? Do you own or have access to the property?).
- Create an all-purpose application to identify project readiness and legal limitations, including project checklists and flow charts to manage expectations.
- Provide customer service as a team rather than with a program-by-program approach. Assign a project liaison. Integrate other agencies (e.g. ACOE, DOA, DOT) into the process.
- Create an internal program/conflict resolution process that allows issues to be identified and resolved with timeliness and consistency.

For both Initiative and non-Initiative waterfront projects, DNR should: a) use standardized checklists and other project management tools to increase statewide consistency; b) offer pre-application meetings to project sponsors; c) avoid making incremental requests of project sponsors; and d) approach projects proactively rather than reactively.

COMMENTS

DNR: *The DNR is working to adopt many of these recommendations.*

Creation of a Waterfront Program

Type of Proposal: Legislative

BACKGROUND

Many communities around the state would benefit from the remediation and redevelopment of waterfront brownfields. The entire state benefits from clean water, vibrant local economies and good government service.

Waterfront redevelopment projects involve the standard economic and community acceptance issues that all redevelopment project face. In addition, waterfront projects must make their way through several different DNR programs. Currently, these different programs each have their own rules and requirements, and do not always collaborate with each other. It is inefficient and costly for a waterfront project sponsor to attempt to work through each individual DNR program on its own.

If waterfront redevelopment regulatory issues were administered by one program it would make the process more efficient, reduce development costs, ensure a complete examination of all natural resource issues, and increase opportunities for sustainable elements to be incorporated into the developments.

Strategic public support leveraged by private investment spurs environmental cleanup, generates employment, increases tax base, creates recreational amenities and supports tourism. While there have been outstanding waterfront projects completed in Wisconsin, the challenge is to make waterfront revitalization more common.

PROPOSAL

Create a comprehensive waterfront revitalization program similar to the one in New York, which was created by New York Executive Article 42: (910-923), Waterfront Revitalization of Coastal Areas and Inland Waterways.

Direct DNR to be proactive on waterfront revitalization projects. Create sustainable urban waterfront revitalization zones that are modeled on former statutorily-created sustainable urban development zones. Adapt the Fox River Remediation Authority legislation to apply statewide.

COMMENTS

No comments received.

Waterfront External Advisory Group

Type of Proposal: Administrative

BACKGROUND

The DNR's Remediation and Redevelopment program is currently leading an interagency effort to facilitate state agency collaboration for communities who are redeveloping and revitalizing their waterfronts. This interagency team, comprised of representatives from eight state agencies in addition to DNR, has been working since April 2013 to identify existing resources and construct an integrated waterfront customer service framework.

Concurrent with DNR's interagency effort, the Waterfront Revitalization Subgroup identified and discussed many issues that directly impact redevelopment of Wisconsin's often contaminated urban waterfronts from a practitioner standpoint. Very few of the issues identified are solely specific to brownfields, although many are within the jurisdiction of DNR. Other issues involve multiple DNR programs beyond brownfields, including wetlands and waterways, the office of the Great Lakes, and waste and materials management. In some cases, the issues identified involve multiple state and federal agencies. The subgroup recognizes that many issues and solutions have yet to be fully discussed and this will be an ongoing process.

Waterfront revitalization could be furthered by continuing the waterfront subgroup discussion with additional staff and external practitioners. In addition, some states have enacted legislation specific to waterfront redevelopment and that may help inform discussions. Creating an environment and expectation for dialogue between staff and practitioners will strengthen our collective ability to achieve the goal of successful waterfront revitalization.

PROPOSAL

1. Continue the interagency effort to facilitate state agency collaboration.
2. Establish an ongoing external advisory group specific to waterfront revitalization with broad state agency involvement.
3. Begin a process of liaison and education with key legislators interested or impacted by this initiative

COMMENTS

No comments received.

Outreach to Assist Waterfront Project Sponsors

Type of Proposal: Administrative

BACKGROUND

Municipalities, community groups and developers need clear, concise and useful information about the regulatory process for waterfront redevelopment projects. Once developed, outreach to convey this information is an essential element of success.

PROPOSAL

DNR should develop an outreach program to assist waterfront project sponsors and inform other interested parties. Key components of this outreach effort should include:

- A waterfront project web site that identifies technical and financial resources.
- A frequently asked questions document and a project sponsor checklist.
- A list of best practices for typical waterfront redevelopment projects.
- A waterfront project how-to guide.
- Information on how to determine the ordinary high water mark in the early stages of a project.
- Identification of local ordinance issues and concerns.

COMMENTS

No comments received.

Clarify Cross-Program Issues on Dams

Type of Proposal: Administrative

BACKGROUND

Many dams around the state have been in use for a century or more and are in need of repair or replacement. Dams can be an amenity or a costly burden to a community and the future of a dam can be complicated by past uses that may have led to contamination in the waterways and sediments. Maintenance, repair or removal of a dam may be made even more complicated by an overlap of regulatory programs.

As more, and smaller, dam projects begin to emerge, it would be best and most efficient if the challenges were understood and addressed on a systemic and not project-by-project basis. Every project has its own unique attributes but whenever possible, the reduction of project obstacles and costs is preferred. At the same time, it is important that all of the parties involved recognize and account for future and present costs associated with keeping or removing a dam, including contaminant related costs and concerns.

PROPOSAL

DNR should provide clarity on cross-program issues related to dams, including guidance on management of dams that may no longer be functioning for the original, intended purpose but are now operating as containment structures for contaminated sediment.

1. The guidance should clearly identify: a) which DNR program has jurisdiction over dam projects; b) how contaminated sediments should be managed if they are removed; c) what obligations responsible parties have if the dam is containing contaminated sediment; and d) whether a financial assurance mechanism should be used to ensure long term care.
2. The guidance should clarify dam safety issues early in a project, and identify all the challenges of maintaining a dam.
3. If a dam will be part of the waterfront redevelopment DNR should make the hazard clarification binding, because later changes cost money developers need clarity.

COMMENTS

No comments received.

Geographic Information System Resources

Type of Proposal: Legislative and Administrative

BACKGROUND

There is a wealth of valuable data gathered on a site-by-site basis, across multiple regulatory programs in DNR that could be used to inform community leaders, planners and developers interested in redevelopment projects. If compiled and made easily accessible, this data would help identify issues, reduce costs and improve planning decisions on an area-wide basis. This data includes remediation data, such as groundwater and soil quality data and sediment data, waterfront data, such as shoreline and public trust information, and much more, including data of general interest, such as infrastructure details, historic building/foundation information and geotechnical data.

Currently, valuable information such as boring logs or sampling data is submitted to DNR in a PDF format, which is not readily accessible or able to support spatial analysis using current Geographic Information System (GIS) technology. The cost to convert existing data to a useful GIS format is prohibitive, while there may be little or no cost to prepare and submit data to DNR in a GIS appropriate format. DNR is already collecting spatial data through several existing databases that could be used as a starting point to build a master database to host data. Related databases already hosted by DNR include:

Surface Water Integrated Monitoring System (SWIMS): Water and sediment monitoring data is collected through the SWIMS database. Data collected includes, but is not limited to, water and sediment chemistry, and physical and biological data. Data is added by DNR's Fisheries and Water Quality Specialists, in addition to citizen volunteers who collect water monitoring information. The SWIMS database is also the source for sharing data through the federal Water Quality Exchange Network.

Groundwater and Environmental Monitoring System (GEMS on the Web): The GEMS database is the main repository for environmental monitoring data (groundwater data, surface water, leachate, lysimeter and gas) collected at solid and hazardous waste facilities and some contaminated properties in Wisconsin. The data contained on GEMS is available to the public to view and download. This web-based database allows the public to access all monitoring data available for each facility in the system.

Laboratory Data Entry System (LDES): The LDES is a process that provides a consistent and streamlined way of reporting electronic monitoring data. The LDES is used to transmit environmental monitoring data from facilities and laboratories to DNR. The system then routes the data to the appropriate DNR database.

PROPOSAL

In collaboration with external stakeholders and state agencies, DNR should analyze the need for additional GIS applications and, if warranted, recommend a strategy to expand GIS capabilities, along with data collection and submittal methods for brownfield, remediation and waterfront projects. The intent of this effort is: a) to ensure that data is available through a single, accessible portal; b) that locational information is provided in accordance with uniform standards across all platforms; and c) that underlying metadata is provided in a format that can be used and analyzed with current and developing GIS tools.

Providing recommendations for data to meet minimum collection, format and submittal standards, then making information accessible in a GIS format for spatial analysis – perhaps through a user fee – will increase consistency of data submitted by different entities, as well as reduce transaction costs and better inform community leaders, planners and developers. This will facilitate better identification of issues on an area-wide basis and improve planning. A high return on investment is expected due to increased internal and external efficiencies. Delay will result in a substantial information opportunity cost, since a wealth of information is lost.

COMMENTS

DNR: *The DNR recognizes the importance and power of making data available to stakeholders in the form of a GIS application. DNR will work with the Brownfields Study Group on this topic, to determine the issue's priority and scope given the other GIS and IT projects that the DNR is currently undertaking with its finite resources.*

Coordination with Army Corps of Engineers

Type of Proposal: Administrative

BACKGROUND

The U.S. Army Corps of Engineers (ACOE) can be a resource in addressing aging infrastructure issues along waterfronts. Projects in the Wisconsin have benefited from the general permit process with the ACOE but other projects have not been able to work through the ACOE process for various reasons. The reasons may include, but are not limited to, not understanding the agency's function, coordinating the agency's timeline with the redevelopment, not having a single-point of contact, and the agency's requirement to perform their own studies.

There is potential value to state projects from ACOE's technical expertise and possible funding sources. However, it is generally unclear which agency within state government coordinates work with the ACOE. At various times, DOA, DOT, Sea Grant, and DNR all work with the ACOE. Developers would benefit from having one point of contact in state government, and for the state to speak with a single voice for infrastructure needs and permitting. This streamlined process may assist in identifying funding opportunities, coordinating timing challenges, resolving navigability issues, and working through the federal processes.

PROPOSAL

DNR should explore ways to better coordinate with ACOE, including:

1. Creating a clearinghouse of projects and meet annually to coordinate.
2. Working with ACOE to address timing delays and scheduling work to accommodate redevelopment.
Evaluating the need for federal legislative solutions to accommodate smaller scale projects.
3. Identifying a public liaison at ACOE and a state ombudsman at DNR for waterfront revitalization.
4. Providing outreach to municipalities on the function of ACOE and available resources to communities.
5. Exploring adaptive management solutions to address discrepancies in functional or capping depth versus navigability depth as lake levels and ice conditions change.

COMMENTS

No comments received.

Consistent Direction on Seawalls and Structures

Type of Proposal: Administrative

BACKGROUND

Some practitioners indicate that development projects occasionally receive a variety of opinions from the state on issues involving seawalls and structures. A more consistent approach is needed from the DNR across regions and within regions to ensure expectations by both the public and private sectors are met.

PROPOSAL

DNR should provide clear, consistent direction to the public on issues regarding removal and/or replacement of seawalls and other structures. This could include: a) guidance on seawall removal that clarifies how to address sediment testing and management of land-ward soil left in place; b) guidance on seawall replacement that addresses when a hard edge should be reinstalled versus installation of a soft edge; and c) guidance to municipalities on setting bulkhead lines with adequate leeway for wall replacement or reinforcement.

DNR should also serve as a clearinghouse of funding to encourage better and more proactive land and waterfront revitalization planning.

COMMENTS

No comments received.

Public Trust Doctrine

Type of Proposal: Legislative and Administrative

BACKGROUND

The Wisconsin Constitution declares that the state holds navigable waters in trust for public use. This constitutional clause is commonly referred to as the Public Trust Doctrine. Many principles of the Public Trust Doctrine are codified in Ch. 30, Wis. Stats. Application of the Public Trust Doctrine on land that has been previously developed or filled, or been the subject of legislative land grants, however, is sometimes unclear, and this is a significant deterrent to investment. Even more problematic are those instances where developers or municipalities sought to adapt waterfront properties to new uses, only to find out, late in the process, that title insurance was unavailable or their proposed use was incompatible because of the Public Trust doctrine.

Most issues related to uses in conflict with the Public Trust doctrine are associated with lakes and lakebed fill. The doctrine also applies to rivers but these are regulated with greater clarity under ch. 30, Wis. Stats.

DNR is not solely responsible for determining the application of the Public Trust Doctrine. Courts have found that the public's constitutional interest in lakebed fill land gives rise to a private cause of action, regardless of any finding or determination by the DNR. In some instances, redevelopment projects have been sidetracked by public trust determinations after much work had already been completed. To avoid wasting time and resources it makes sense to identify waterfront sites that are potentially subject to the Public Trust Doctrine early in the process.

PROPOSAL

1. Evaluate applicability of the Public Trust Doctrine as early as possible for waterfront redevelopment projects.
 - DNR should develop and implement a waterfront project checklist for use statewide, by staff and project sponsors, to evaluate upfront whether a project may be affected by the Public Trust Doctrine. The checklist should include information about other state agencies with authority in Public Trust Doctrine matters (i.e. Public Lands Commission, DOA, etc.).
 - DNR should: a) provide Public Trust Doctrine training for state staff who work with waterfront projects; b) conduct outreach to waterfront communities about the Public Trust Doctrine and other waterfront redevelopment issues and resources; and c) identify GIS resources and references to historic maps available online that would help inform a determination as to whether a property is within an area of lakebed fill, a legislative land grant and potentially subject to the Public Trust doctrine.
2. Manage expectations for allowable future uses
 - DNR should: a) provide clear, timely input to waterfront project sponsors on allowable uses based on BCPL's limited leasing authority (where BCPL has jurisdiction), the Public Trust and ch. 30, Stats.; b) develop regulations or guidance establishing uses that the DNR will consider allowable and uses that the DNR will deem unacceptable, for which enforcement may be considered; and c) ensure that any regulation, guidance or staff response clearly acknowledges the independent rights of citizens under the Gillen court decision to assert their Public Trust rights. Under the Gillen case, citizens may directly sue a private party whom the citizen believes was inadequately regulated by DNR.
3. Provide documented assurance to waterfront project sponsors that DNR has made an evaluation of whether a public interest exists and whether DNR will take action to defend the public interest.
 - DNR should provide a "comfort" letter to project sponsors to: a) document DNR decision to take (or not take) action to defend the public interest, including conditions for preserving no action status; and b) make clear the limits of DNR's evaluation if no public interest is found.

Public Trust Doctrine - Continued

Type of Proposal: Legislative and Administrative

- A 30 day public comment period prior to issuing “comfort” letter would be beneficial. The conditions of DNR’s approval/clarification should be identified on a GIS registration for the site, so future purchasers conducting Phase I or other due diligence are aware of potential Public Trust restrictions.
 - Program revenue authority may be necessary to ensure that sufficient resources are available to provide and document these assurances.
4. Follow a consistent, transparent, documented process when considering a request to approve a bulkhead line or make a finding of public interest prior to the execution of a lease by the Board of Commissioners of Public Lands. DNR should:
- Inventory, digitize and make publicly available the information resources used to make the decision. (e.g. original federal meander surveys, other historic maps, current condition, existing public land leases, existing lakebed grants).
 - Digitize and make publicly available the location of all bulkhead lines and public land leases.
 - Make accessible, or more accessible, existing determinations of ordinary high water marks.
5. Increase understanding of the Public Trust Doctrine, its application and GIS resources. DNR should:
- Produce legal article on the current state of the law for practitioners.
 - Produce an updated public fact sheet for the general public.
 - Produce a guidance document on process, resources and legal framework for state staff and consider any updates needed to the existing legislative article: <http://legis.wisconsin.gov/lrb/pubs/consthi/04consthiIV4.htm>.
 - Work with title companies and DNR legal staff to frame issues and propose solutions related to obtaining title and title insurance (e.g. omitted lands; definition of lake vs. river; statewide registry of “filled” parcels; former railroad grant lands; legislative land grant lands, insurance and title limitations on lakebed lands; requirements and resources to confirm riparian ownership).

COMMENTS

No comments received.

Protecting Public Investment and Natural Coasts

Type of Proposal: Administrative

BACKGROUND

There are significant water-related infrastructure challenges around the state. Some of these challenges will require DNR's input. This will likely involve providing guidance on how DNR approaches breakwaters and other wave attenuation structures. An example of this may be structures that are really no longer safe enough to access, but are still used for secondary purposes, such as walking and fishing. Many similar structures now require rehabilitation or decommissioning. A consistent approach is needed across DNR and within DNR to work with other State agencies and handle these infrastructure projects.

PROPOSAL

DNR should examine how to accommodate natural coastal processes while protecting the public capital investment in breakwaters and wave attenuation structures.

Guidance documents and memorandums of understanding with governmental partners could be created to identify allowable secondary uses (e.g. fishing, sightseeing, etc.) on breakwaters. Procedures could be established to effectively communicate proposals for decommissioning or modification of structures to communities, where there may be interest in secondary uses.

DNR should work with other relevant agencies to inventory and triage the needs of aging infrastructure and maintenance backlog – specifically ACOE, DOA and DOT. Consideration of sufficiency and resilience in light of long term climate concerns should be part of the discussion, as should the identification of funding needs and dedicated funding sources for long term re-buttrressing and reinforcing of infrastructure.

COMMENTS

No comments received.

“DNR’s brownfield program has received national recognition, in part due to the collaborative efforts of the Brownfields Study Group. The 2015 Report is yet another example of the cooperative spirit the DNR utilizes to capitalize on brownfield redevelopment opportunities within Wisconsin, encouraging economic growth and revitalizing communities.”

– Chris Valcheff, True North Consultants, Inc.



Issues for Further Study

The science and policy of brownfields remediation and redevelopment is a complex and evolving field of study. Issues and ideas are regularly identified, examined and discussed. Continued collaborative work is needed to keep pace with change and implement high quality improvements. The list below includes a number of items for further study. More will be identified as time goes by, but this is a good starting point for continued progress.

- Local government coordination on tax delinquent properties
- Access issues for local governments
- Lender liability issues
- Statewide consistency on issue of contaminated soil management
- Requirements, liability clarification, and regulatory authority regarding brownfields with historic solid waste
- Evaluate whether a state private cost recovery statute (cause of action) would promote brownfields cleanup
- Analysis of tools used to shield parties from liability; underfunded or single-purpose LLCs, receivership and bankruptcy, abandonment & plant closures. Consequences and options to prevent properties from shifting into this status or to promote cleanup and redevelopment when this does occur.
- Exempt local government responsibilities
- Post closure obligations – clear process for buying and redeveloping closed sites



Cover Photos

Front Cover

Appleton. Phase one of a riverfront development on the site of an old paper mill and other industrial facilities.

Back Cover

Milwaukee. A commercial riverfront redevelopment project in progress.

Other Photos

All photos in this report are provided courtesy of DNR and picture current or former brownfield properties located in communities throughout Wisconsin.

APPENDICES

“Redeveloping brownfield sites plays an important role in stimulating the economic revitalization of communities by bringing vacant or underutilized properties into productive use. For over 20 years, Wisconsin has excelled at creating and implementing programs to meet the full range of cleanup and redevelopment needs.”

– John Antaramian, ECC Corp.



APPENDIX A — Acronym Definitions

ACOE	Army Corps of Engineers
ASTM.....	American Society for Testing and Materials
BCPL	Board of Commissioners of Public Lands
BRRTS.....	Bureau for Remediation and Redevelopment Tracking System
CERCLA.....	Comprehensive Environmental Response, Compensation, and Liability Act
COC.....	Certificate of Completion - VPLE Sites
DERF	Dry Cleaner Environmental Response Fund
DHS.....	Wisconsin Department of Health Services
DNR.....	Wisconsin Department of Natural Resources
DOA	Wisconsin Department of Administration
DOT.....	Wisconsin Department of Transportation
EPA	United States Environmental Protection Agency
ER TID.....	Environmental Remediation Tax Increment District
GEMS.....	Groundwater and Environmental Monitoring System
GIS.....	Geographic Information System
IGA	Intergovernmental Agreement
ITRC.....	Interstate Technology and Regulatory Council
LGU	Local Governmental Unit
MOA	Memorandum of Agreement
MOU	Memorandum of Understanding
NR.....	Natural Resources
PCB.....	Polychlorinated Biphenyl
PDF	Portable Document Format
PECFA.....	Petroleum Environmental Cleanup Fund Award
RCRA.....	Resource Conservation and Recovery Act
RP	Responsible Party
RR	Remediation and Redevelopment - DNR Bureau
RR Sites Map....	Remediation and Redevelopment Sites Map
Spill Law	Section 292.11, Wisconsin Statutes
SWIMS.....	Surface Water Integrated Monitoring System
TID.....	Tax Increment District
TIF.....	Tax Increment Financing
TSCA	Toxic Substances Control Act
VI.....	Vapor Intrusion
VPLE.....	Voluntary Party Liability Exemption
Wis. Admin. Code	Wisconsin Administrative Code
Wis. Stats.....	Wisconsin Statutes
WMM.....	Waste and Materials Management - DNR Bureau

APPENDIX B — Proposal Matrix

Proposal Title	Legislative	RR Program	Intra-agency
Liability Relief and Property Access			
Off-Site Liability Exemption for Vapor Intrusion	X		
Define “VPLE Property”	X	X	
Update VPLE Guidance		X	
Private Property Access for Investigation/Remediation	X	X	
Air Permit Certainty for Brownfield Developments	X		
Lender Liability - Further Study		X	
Brownfield Tools for Local Government			
Encourage Cooperation between Counties and Cities	X	X	
Reassignment of Tax Delinquent Property Deeds	X		
Brownfield Investigation by Exempt LGUs		X	
Special Inspection Warrants	X		
Promote Use of Model Salvage Ordinance		X	
Emerging Technical Issues			
Alternative to EPA Deed Restriction Requirement		X	
Soil, Sediment and Waste Management			X
Contaminated Sediments External Advisory Group			X
Management of PCB-Contaminated Building Materials	X		X
Urban Agriculture: Best Practices & Standards		X	
Procedures & Policies for Addressing Vapor Intrusion		X	
Background Concentrations of Common Soil Contaminants	X		X
Financing Renewal			
Cleanup Catalyst Grants for Local Governments	X		
Strengthen Environmental Management Account	X		
Improve Environmental Remediation TIDs	X		
Property Assessed Remediation	X		
State Trust Fund Loans for Brownfield Projects	X		
Amend Business Improvement District Statute	X		
Waterfront Brownfield Revitalization			
Internal DNR Coordination for Waterfront Projects			X
Creation of a Waterfront Program	X		
Waterfront External Advisory Group			X
Outreach to Assist Waterfront Project Sponsors			X
Clarify Cross-Program Issues on Dams			X
Geographic Information System Resources	X		X
Coordination with Army Corps of Engineers			X
Consistent Direction on Seawalls and Structures			X
Public Trust Doctrine	X		X
Protecting Public Investment and Natural Coasts			X

Bold titles identify most immediate priorities.

APPENDIX C — Members and Meetings

Brownfields Study Group Members

John Antaramian, ECC Corp | Eric Bott, Wisconsin Manufacturers and Commerce | Nancy Frank, UWM School of Architecture and Urban Planning | Adam Gallagher, Dane County Treasurer Benjamin Gramling, Sixteenth Street Community Health Center | Karen Harkness, City of Appleton | Art Harrington, Godfrey & Kahn | Steve Hiniker, 1,000 Friends of Wisconsin Bruce Keyes, Foley & Lardner | Larry Kirch, City of La Crosse | Dave Misky, City of Milwaukee Mary Panzer, Panzer Public Affairs Consulting | John Stibal, City of West Allis | Joy Stieglitz, Vandewalle & Associates | Mark Thimke, Foley & Lardner | Sam Tobias, Fond du Lac County Scott Wilson, Ayres Associates

BSG 2015 Report Contributors

Lanette Altenbach, AECOM | John Antaramian, ECC Corp | Brad Basten, Wis. Dept. of Transportation Kathryn Berger, Wis. Economic Development Corporation | Dan Buss, Environmental Engineer Harris Byers, Stantec | Alan Davis, City of Oshkosh | David de Courcy-Bower, Environmental Resources Management | Karen Dettmer, City of Milwaukee | Frank Dombrowski, We Energies | Jennifer Drury Buzacky, Whyte Hirschboeck Dudek | Kendrick Ebbott, Fehr Graham | Vicki Elkin, Fund for Lake Michigan | Al Erickson, CH2M Hill | Liz Evans, Wis. Dept. of Health Services | Rick Fox, Natural Resource Technology | Nancy Frank, University of Wisconsin – Milwaukee | Mike Friis, Wis. Dept. of Administration | Adam Gallagher, Dane County Treasurer | Tom German, Board of Commissioners of Public Lands | Tiffany Goebel, We Energies | Staci Goetz, AECOM | Ben Gramling, Sixteenth Street Community Health Center | Shelly Griswold, Fehr Graham | David Holmes, Stantec | Don Johnson, USVentures | Kate Juno, Natural Resource Technology | Bruce Keyes, Foley & Lardner | Larry Kirch, City of La Crosse | Tory Kress, City of Milwaukee | Ken Lassa, REI | Matt Leffler, Axley Brynerson | George J. Marek, Quarles & Brady | Peter McAvoy, UWM School of Freshwater Sciences | Stephen Meer, The Sigma Group | Mark Miller, Investors Community Bank | David Misky, City of Milwaukee | Lynn Morgan, Waste Management | Andrew Mott, AECOM | Josh Neudorfer, The Sigma Group | Mary Panzer, Panzer Public Affairs Consulting | Laurie Parsons, Natural Resource Technology | Jodie Peotter, Ramaker & Associates, Inc. | Ken Potrykus, Foth Infrastructure & Environment | Tina Reese, Avantti Environmental Group Mat Reimer, City of Milwaukee | Bill Scott, Gonzalez, Saggio & Harlan | Jason Scott, Wis. Economic Development Corporation | Andy Skwierawski, Friebert, Finerty, & St. John | John Stibal, City of West Allis | Charles Buck Sweeney, Axley Brynerson | Mark Thimke, Foley & Lardner | Louis Thorton, Foley & Lardner | Chris Valcheff, True North Consultants | Donna Volk, AECOM | Sheri Walz, Wis. Department of Transportation | Ted A. Warpinski, Friebert, Finerty, & St. John | Ann Werth, City of Wausau | Kathryn West, Whyte Hirschboeck Dudek | Scott Wilson, Ayres Associates | Roy Wittenberg, Natural Resource Technology | Corey Zetts, Menomonee Valley Partners *(Highlighted individuals chaired issue-based subcommittees.)*

BSG and Subgroup Meetings

Brownfields Study Group 2014 - Meetings: Feb. 27, May 23, July 24, Oct. 24 | Economic Impact Subgroup – Meetings: Mar. 27, Apr. 22, June 5, July 15; Conference Calls: May 20, July 21 | Financial Subgroup - Meetings: Apr. 2, Apr. 16, Apr. 30, May 14, July 2 | Liability Subgroup - Meetings: Mar. 25, Apr. 15, May 1, May 16, July 8 | Local Government Subgroup - Meetings: Apr. 17, May 7, June 23; Conference Calls: Mar. 26, July 7, Sept. 25 | Technical Subgroup - Meetings: Apr. 4, Apr. 25, May 9, June 12 | Waterfront Revitalization Subgroup - Meetings: Mar. 31, Apr. 14, Apr. 28, May 12.

APPENDIX D — Brownfields Web Links

Wisconsin Brownfields Study Group

<http://dnr.wi.gov/topic/Brownfields/bsg.html>

Wisconsin Department of Natural Resources – Brownfields

<http://dnr.wi.gov/topic/Brownfields/>

Wisconsin Economic Development Corporation – Brownfields

<http://inwisconsin.com/community-development/programs/brownfields-program/>

US EPA - Brownfields and Land Revitalization

<http://epa.gov/brownfields/>

US EPA Brownfields Grants and Funding

www.epa.gov/brownfields/grant_info/

US EPA Region 5 Brownfields

www.epa.gov/region5brownfields/

Brownfields and Land Revitalization Technology Support Center

www.brownfieldstsc.org

ATSDR Brownfields Health Initiative

www.atsdr.cdc.gov/sites/brownfields

“Cleanup leads to housing price increases between 4.9% and 32.2%. Taking the most conservative estimate of the value of an average site cleanup, we find that it indeed passes cost-benefit analysis by an order of magnitude.”

Source: The Value of Brownfield Remediation, National Bureau of Economic Research, Working Paper 20296, 2014



BROWNFIELDS STUDY GROUP 2015 REPORT

The remediation and redevelopment of brownfields generates an impressive range of public and private benefits, including increased property values, economic growth, leveraged private capital, jobs retained, new jobs created, community amenities, environmental restoration, public health protection and more.

