

**BROWNFIELDS STUDY GROUP
MEETING
March 28, 2007**

I. Attendees

John Angeli, City of Fond du Lac
John Antaramian, City of Kenosha
Tom Bergamini, BT2
Erika Biemann, Giles Engineering
Kevin Brehm, STS Consultants
Scott Brockway, Consultant
Margaret Brunette, DNR
Kevin Bugel, Giles Engineering
D.J. Burns, Drake Environmental
Frank Dombrowski, WE Energies
Darsi Foss, DNR
Shelley Fox, DNR
Nancy Frank, UW-Milwaukee
Jennifer Gonda, City of Milwaukee
Mark Giesfeldt, DNR
Maureen Hubeler, DNR
Tom Jansen, WE Energies
Deb Johnson, DNR
Kate Juno, Natural Resources Tech.
Bruce Keyes, Foley & Lardner
Dan Kolberg, DNR
Ken Konicek, Konicek Environmental
Jane Lemcke, DNR

Tracy Lubber, City of Milwaukee
Ed Lynch, DNR
Carol McCartney, Ayres Associates
Pat McCutcheon, DNR
Louis Maier, Factotum
Roger Miller, STS Consultants
Andrew Miner, DOA
Dave Misky, City of Milwaukee
Tom Mueller, TEMCO
Tom Mueller, Jr., TEMCO
Henry Nehls-Lowe, DHFS
Nick Nigro, ECCS Mobile Labs
Judy Ohm, DNR
Lance Potter, DNR
Al Rabin, Commerce
John Robinson, DNR
Andrew Savagian, DNR
Jim Schmidt, DNR
Robert Strous, Jr., DNR
Mark Thimke, Foley & Lardner
Scott Wilson, Ayres Associates
Brad Wolbert, DNR

II. Welcome, Introductions, Agenda Repair

NEXT MEETING – June at the Eaton Corporation in Milwaukee (30th Street Industrial Corridor)

Mark Thimke: Now that we're coming up on ten years, maybe it's time to discuss new initiatives; perhaps put together a subgroup to discuss this

Bruce Keyes: Initially we were a legislative mandate, now more of a DNR advisory group, maybe it should once again be mandated by the Legislature

Group agreed it needed to pursue another legislative charge, as was given to the Brownfields Study Group in the non-fiscal section of the 1997-1999 State Biennial Budget, to redefine the group's role in developing public policy and advising both the Legislature and governor on brownfields

III. State Legislation Update

Draft Legislative Proposal on DNR's \$4 million Revolving Loan Fund (RLF) – Clarifying Type(s) of Municipal Obligations

Darsi Foss: Per the Study Group's request and approval from the November, 2006 meeting, we've gone ahead and worked on a draft proposal to modify the state's municipal borrowing and bonds law; in 2003, the State Legislature created the Brownfields Revolving Loan Program, s. 292.72, Wis. Stats.; which gave the DNR authority to accept EPA brownfields funding; DNR and its partners received \$4 million in EPA brownfields funding in 2004; however, the statute did not specify types of "municipal obligation," a community should use, so the draft proposal would amend ch. 67, Wis. Stats., to clarify what types of municipal obligation would be appropriate for this unique RLF program

Foss: In addition to that \$4 million, we've applied for an additional \$3 million in EPA brownfield funds for this round; also, we're close to securing \$1.5 million of funds Wisconsin communities have returned to EPA, so if we're lucky by September we could have \$8.5 million to use; Scott Manley is fine with the temporary borrowing situation and doesn't think it will count against the municipal debt (please see his handout/email)

Darsi will send out the legislation to the Study Group as soon Carol Roessler introduces it

SB 29 and AB 76 – Increase In Tipping Fees: Impact on Brownfields Cleanups

Darsi Foss went over recent legislation that was introduced to increase the recycling (tipping) fee on solid waste disposal in Wisconsin; this stems from legislation that Rep. Spencer Black has introduced in a number of previous legislative sessions; would increase the fee from \$3/ton to \$10/ton

Foss: DNR has already made comments; the agency is not against the tipping fee going up, but we made the comment that we don't want to increase the cost of brownfields remediation; bill has generated significant interest in the past

Tom Mueller: This isn't just a tax increase on brownfields; it raises all boats, this is a revenue grab

Kate Juneau: Does this also affect disposal for asbestos from demolition?

Foss: This affects anything that goes to a landfill; my understanding is we have to create another category if we want to carve out waste coming from remediation sites

Mueller: You'll have just as much problem from developments, whether it's clean soil or contaminated soil; if they have another place to go with clean soil, they'll do it

Foss: There is already a carve out for petroleum contaminated soil used as daily cover, so they do have precedents for different types of waste

Mueller: Where does the revenue go?

Lance Potter: It goes to the recycling fund

Foss: There was some discussion about some of the funds going to other areas in the budget

Mueller: How does this interact with the budget proposal?

Potter: The budget proposal was for raising the tipping fee to \$6; Black's bill is separate and proposes raising it to \$10; it doesn't mean if both measure's are approved the fee will go to \$23 – the DNR Waste Program is looking at what all of this means together

Keyes: Do we have any sense of the volume or impact of remediation waste deposited in landfills on an annual basis

Foss: Since remediation/brownfields waste sent to landfills is not a separate category tracked at the landfills gates, it's very hard to tell

DNR will continue to keep Study Group informed on these bills – there may be a need for a quick response from members

IV. Budget Discussion

Mark Giesfeldt, upon requests from several Brownfields Study Group members, provided a brief overview of the RR Program budget situation; there is a salary shortfall in the 2007-09 biennium and, if it is not corrected, would mean the loss of up to 12 full-time, permanent employees (FTE) and up to 26 part-time, temporary (LTE) staff; this is due to several factors, including reduced federal funding and lack of adequate state funding

Keyes: Can you talk just a little bit about the federal fix; are we satisfied there's no more federal money out there?

Geisfeldt: We will continue to exhaust any and all opportunities to get whatever federal money we can get; for example, in 2003 we would have lost 15-16 positions but we saved nine of those positions via the federal brownfields funding

Based on the group's discussion, the Study Group will draft a letter about this issue to send to the State Legislature, governor and various state agencies; will set up meetings with Joint Finance Committee members and will also work with a wide variety of other public interest groups and Wisconsin communities to sign on with support and work with the Study Group on any legislative visits

As a second, longer-term step, the Study Group will also work on ways to ensure the long-term financial and staffing stability of the state's brownfields programs

Finally, the Study Group may create a subgroup to review the past 9-10 years of brownfields activity and create new policy/funding recommendations for the future, with the potential to educate on brownfields issues and "re-charter" with the Legislature

V. June 2006 BF Legislation -- Implementation

202.12, Wis. Statutes – New Land Use Controls” Where are we?

Jane Lemcke briefly talked about implementing the new land use controls; we've been applying for grants to help implement these issues as well as working on rule revisions to NR 726 to incorporate the land use controls (see page five for more information about these changes), and those changes are still in progress

Lemcke: Some of the work we're doing includes adding language that will require property owners to notify the agency if they are changing the end land use, e.g. from commercial/industrial to residential; we'll

also need to identify landowners responsibility for 292.12 and 292.13 as it relates to the offsite exemption, being responsible for maintaining certain types of cleanup; working on revising guidance, including institutional control (IC) guidance, and that's going through internal review; we'll also need to clarify the process for amending the deed restrictions because we've spent more than 10 years using them and we need to clarify the process for the body of sites where people might want to amend the deed restriction

Lemcke: We're also doing an IC audit on 50 sites/year, and we might be amending that study to maybe increase the number, or look at the body of sites and see if there's something else we should focus on; also looking at changes to GIS applications to make these sites easier to find, as well as a number of outreach efforts to inform the public about all of this

Juno: Have requests come from people who want their deed restriction extinguished?

Foss: We have a couple where they've asked that; the answer is unfortunately no

Roger Miller: Do expanded Land Use Controls tie into environmental liens? Liens are connected to the deed, but how often does the state put liens on?

Foss: In the future, that info will be put on the web for state funds where a lien may be appropriate, but not for funds spent by the EPA

292.12 and 292.13 Overlap

Foss: The new legislation did not nullify the off-site exemption, it simply clarified responsibility; you can still get the off-site exemption but the off-site property owner would be responsible for the land use control

Update on Implementation of VPLE/LGU Exemptions For Unlicensed Landfills

Dan Kolberg: A third piece of this effort is two-fold: to include unlicensed solid waste facilities for voluntary parties, and a new solid waste exemption for LGU, which is similar to the Spill Law exemption; we're still working with the Waste Program on putting together a comprehensive list on the licensed solid waste facilities from 1969 to the current time; we're meeting with them tomorrow, and once we have the list, we'll put together additional changes to the web page for the new procedure for getting the exemptions, put out revised guidance and publications, and also, once that's all together, we'll have training with DNR Waste and RR staff, and there'll be one procedure that everyone uses

Keyes: What about historic fill sites?

Dan: Historic fill sites and unlicensed landfills are virtually synonymous

VI. NR 700 Rule Changes

Lemcke: Nothing has changed since last time; we're still working on the rule changes and hope to be done with those soon; changes include (but are not limited to) getting rid of the GRO/DRO table values; incorporating language to deal with the new land use control legislation; eliminating the GRO and DRO standards; revising NR 706 to take out petroleum requirements, since these are fairly redundant with COMM 10, and Commerce is Ok with that; NR 716 is getting a pretty significant upgrade and NR 726 will get a major facelift; we'll repeal and re-write the entire chapter to make it more usable, easier to read, and have more sections on specifics, like fees and the GIS Registry

Erika Beimann: When will these changes become permanent?

Lemcke: We hope to get approval by the Natural Resources Board (NRB) by the fall of this year for public hearings

Miller: How will these changes affect the rules for dealing with liens?

Jane: I haven't looked at that; it would probably go into the separate NR 720 changes that are being made

VII. Vapor Intrusion – Update

Terry Evanson gave a brief update of what was happening with the vapor intrusion issue; we will have a training for staff and consultants on May 10 in Milwaukee; we're also working on a paper to outline the actions necessary given the risk levels related to indoor air and sub-slab samples

Evanson: Last thing I wanted to mention was, with how much soil gas sampling is happening at redevelopment sites, which is probably of most interest to you, when you have redevelopment and you have volatile contaminants, like VOCs or volatile metals, some sort of soil and/or gas testing would help and it'll also be beneficial when you are designing your building

Thimke: Whole variety of standards on vapor issues across the state; how is the department looking at that?

Evanson: What we're trying to do is make those standards as consistent as possible across different media with our methodology

Thimke: What's the timing?

Evanson: Hope to have draft steps to deal with this later in the year

DNR will come back to Study Group in June with an update

LUNCH

VIII. Federal Brownfields

Reauthorizing Federal Brownfields Legislation

Charlie Bartsch with ICF in Washington, D.C., gave an update on federal brownfields funding and legislation (via conference phone) for 2007; **to view his presentation, please go to: <http://dnr.wi.gov/org/aw/rr/rbrownfields/bsg/index.htm>**

Keyes: Anything on New Market tax credits?

Bartsch: Just talk, nothing else yet

Keyes: anything on UECA?

Bartsch: I'm not really tied in to it completely, but mostly what I've heard is that they're just trying to help states pass UECA provisions

Foss: In regards to involuntary acquisition issue with EPA on the grants, was that addressed in the legislation?

Bartsch: That's what the coalition has suggested they do; but nothing has happened yet

Foss: One of the things that would help us is to make the provisions in the new legislation retroactive to the existing grants that were already given out

Bartsch: That gives EPA some heartburn, but it is an issue to raise with them

Federal Brownfields Tax Deduction Extension

Foss: Wisconsin is up to 44, which leads the nation; in December Congress and President Bush extended and expanded the deduction; the expansion adds petroleum to the list of activity costs that a party can deduct

Juno: My client has used it and it was a great relief

Frank: Hearing all this information and from what Charlie said, Wisconsin is a national leader and a model for the nation, and we need to point that out to people here

IX. IT Update – RR Sites Map, Strategic Plan and Financial Module

John Robinson gave a summary of the RR Program's strategic plan for IT issues, including looking at upgrades to the, improve quality and completeness of site cleanups via better submittals (i.e. electronic); aid public and private economic development; provide timely and accurate responses to inquiries from the public, governor, Legislature, etc.

Ed Lynch also gave a presentation on the changes to the RR Sites Map, *BRRTS on the Web* and the incorporation of new pieces like the financial module and language related to the new land use control legislation

Miller: I didn't notice anything related to environmental liens, is that a work in progress?

Lynch: All we can do at this time would be liens in which we play a role, i.e. that we would place on a property

Stibal: How interactive will you make the database? For example, conducting a search on chlorinated solvents

Lynch: You can do that now, but the problem with the portion of the BRRTS database concerning the hazardous substance release is that we have not consistently populated that data field; gets back to QA/QC on the data; some fields are more complete than others

Robinson: We'll have a brief test period in the late spring and will welcome comments; we'll let you know it's coming, and it will probably be a two-week period

DNR will let Study Group know when the test period will occur; in the mean time, if you'd like to send comments on these changes to *BRRTS on the Web* and the RR Sites Map, please contact John Robinson at john.robinson@wisconsin.gov

X. One Cleanup Program MOA – PCBs Implementation Issues

Ed Lynch gave a brief overview: Covered Type A, B and C sites related to PCBs; Type A, involving large sediment projects; Type B, minimal authority, less than 50 ppm levels of PCB contamination, in those cases we can move ahead; Type C sites are the ones where EPA under TSCA may have the authority; those are the less diverse less complex sites that don't fall under either of the first two categories, and we agreed with EPA that DNR will oversee those sites

Lynch: We will work out the process in more detail and develop a form to combine the info and submit to EPA; once they approve, DNR will also approve at the same time, we hope to have draft guidance done for internal review by the end of April, by end of May get comments together and get it out public review and comment, and hopefully get it all done by end of June or July

For more information on this issue, please contact Ed Lynch at edward.lynch@wisconsin.gov

XI. Private Cost Recovery – Update

Avial Supreme Court Decision

Private Cause Of Action For Wisconsin

Darsi Foss gave a brief update on Avial and Private Cause of Action; how broad do you want it, how narrow, etc.

Mark Thimke: About a third of the states don't have a UECA law

Study Group can provide Darsi with comments in the next month or so, followed by a conference call beginning of June

XII. State Agencies– Update

Commerce Brownfield Grants

Rabin: All the funding needs to be contracted and encumbered by the third week in May, so in about a month a half; so if you want to submit something you'll need to get materials to us quickly

Mueller: What's the status on the budget for 07-09?

Rabin: My understanding is we're at status quo, the program is in tact, and we can start making awards after July 1

Land Recycling Loans

Maureen Hubeler: We still have about \$6.8M in the loan program; one project for \$1.7 million is going to New Richmond and they'll get their loan this year; received seven ITAs totaling almost \$12.5 million; applications due August 1 and October 1 and we'll have our Funding list out by then end of October/early November

Ready For Reuse

Foss: We still have money left, and have a lot more people interested than we have money; we're working hard with EPA on resolving CERCLA issues so we can get the money out

Green Space and Brownfield Site Assessment (SAG) Grants

Savagian: The Green Space grants were announced in January and all the money is now been awarded; next round will occur if/when the budget passes with another \$1 million for Green Space; SAG awards announced last week, again oversubscribed by more than 2 to 1, with a large number of grants going to rural communities

Keyes: As part of the data collection issue discussed this afternoon; all this information about unfunded applications provides a telling picture of where the needs lie

Kolberg: Yes, that funding list is on the Internet

Keyes: Yes but I hope it migrates over to RR Sites Map, and Ed and John's work effort

30th Street Industrial Corridor

Savagian: Went through some change since the Study Group last met; Percy Mather from DNR and Johanna Howard from the city of Milwaukee both left to take other jobs; I'm now the contact person for DNR for 30th Street and Tory Kress took Johanna's place; also, Benji Timm, project manager for 30th Street for the city, has now re-located his office to the corridor

Adjourn