

**BROWNFIELDS STUDY GROUP
MEETING
March 26, 2008**

I. Attendees

John Angeli, City of Fond du Lac	Scott Manley, WI Manufacturers & Commerce
John Antaramian, City of Kenosha	Carol McCartney, Ayres Associates
Tom Bergamini, BT2	Pat McCutcheon, DNR
Margaret Brunette, DNR	Jessica Milz, DNR
Kevin Bugel, Giles Engineering Assoc.	Dave Misky, City of Milwaukee
D.J. Burns, Drake Environmental	Tom Mueller, Jr., TEMCO
Chelsea Corson, Drake Environmental	Kevin Olson, MSA
Denise Danielski, DNR	Boyd Possin
Karen Dettmer, City of Milwaukee	Michael Prager, DNR
Fintan Dooley	Al Rabin, Commerce
Darsi Foss, DNR	Andrew Savagian, DNR
Shelley Fox, DNR	Christopher Schanz, Racine County EDC
Mark Giesfeldt, DNR	Jim Schmidt, DNR
Art Harrington, Godfrey & Kahn	John Stibal, City of West Allis
Kate Juno, Natural Resources Tech.	Bob Strous, Jr., DNR
Larry Kirch, City of La Crosse	Mark Thimke, Foley & Lardner
Dan Kolberg, DNR	Annette Weissbach, DNR
Richard Lyster, MSA Professional Services	
Ken Maly, Vierbicher Associates	

II. Welcome, Introductions, Agenda Repair

PLEASE NOTE! Our next meeting will be on Thursday, June 12; possible locations include the new Aldo Leopold Center in Baraboo and/or facilities in Fond du Lac, Oshkosh or Wausau

III. State Budget – Update

Mark Giesfeldt: The biennial budget was resolved, and the RR Program received funding to convert 10 federal positions to state positions; we're still working on converting the nine positions from project to permanent; our deadline is the end of this month (March), at that time the funding ends; late last week the request went to DOA for converting to permanent; this was a leftover from the last biennial budget process, and is solely a DOA decision **[PLEASE NOTE: since this meeting was held, these positions have been converted from project to permanent]**

Giesfeldt: As far as the current deficit, the state is dealing with a revenue shortfall of about \$550-600 million; state agencies will pick up about half of that, \$300 million or so; and each agency and each program within each agency has to come up with their share; we view this as very manageable, with minor impacts on the staff; we're only "holding" (not filling) at least 1.5 vacant positions for the next year, and we're maintaining most of the LTE employees; when it comes down to our program, we are managing it effectively and from a service standpoint it's a minimal impact

Andrew Savagian: If they take longer to resolve the shortfall, could that shortfall get worse, i.e. we could have a larger deficit than we currently have?

Scott Manley: Whenever they passed the budget, it was balanced at that point; then DOA/DOR came out with new revenue projections which indicated the shortfall; so yes, those could change and make it worse

Giesfeldt: We've also already begun planning for the 2009-11 biennial budget; we started earlier this year, but haven't added anything new, we're just trying to maintain the program, and fix the budget situation with the dry cleaner fund; we'll again propose to eliminate the sunset date for the vehicle impact fee; at this point we had to submit the initial proposals to DNR administration; so this is the time you should have the discussion about what you want to do for recommendations related to cleaning up and redeveloping brownfields

John Stibal: We'd be remiss if we didn't put out package together soon – the sooner the better

Tom Mueller, Jr.: We're losing one of our champions (Carol Roessler); that's another piece as well

Art Harrington: I listened to ABA proposal on climate change and other state programs that are far reaching, such as Washington, Illinois and Massachusetts, all of those programs have a component on vehicle miles traveled and land use; if we could connect to the governor's effort on this, on their recommendations; if we could be strategically aligned with brownfields and reuse of properties in urban areas, that could be an excellent opportunity for us related to funding, that has an ultimate impact on the budget

Manley: It's pretty fair to say that the discussions on these types of land use proposals they're looking at are highly controversial; for example, the reforms to the TIF law that were made awhile ago, these changes might roll back some of those reforms; my only word of caution would be that the vehicle miles traveled issue and others didn't make it in there were because they were highly controversial

Harrington: If we're looking at funding sources, a big debate on that task force are auctions for allowances; if you have a cap and trade program, you do it by auction, and what do you do with that money; I think it would helpful for the Study Group to hear from someone with that group Invite someone to the meeting to talk about climate change; governor's greenhouse gas task force; this study group can make recommendations to other task forces, by doing 'this' we can achieve goals of other areas

DNR will work to get someone to talk to the Study Group on climate/energy issues related to the governor's task force

Darsi Foss: One of the things we've talked about is the renewal of this group; it seems to me that some of the things we've talked about are related to this issue; we can think about developing a proposal to continue, but right now we don't have a strategy about what do we want to do next

John Antaramian: I think the biggest problem we have with the Legislatures is finding champions; we've lost a few; our own success created problems; we've made major changes, which have allowed us to get things done; but we need to get a handful of legislators involved,

and the way you do that is to work with legislators that already have projects on the ground in their districts; in the Assembly, that would be Hanadel and in the Senate that could be Plale

Mark Thimke: I suggest we don't just become a budget group; we don't want to become just another group that wants money; what are some bigger picture program needs that aren't just asking for money or other items?

Savagian: So what I'm hearing is you're also talking about a non-budgetary track? So one for the budget and one for policy?

Foss: One thing we want to get in front of them is that we still have problems out there; for example, we just visited a West Allis plating facility; EPA spent \$600,000 on triage, you have these 20 foot deep electroplating vats; we continue to find these nasty sites that are still out there, the number of chlorinated sites out there are increasing

Larry Kirch: Maybe we need a report, a letter or something that talks about what we've achieved after 10 years

Manley: Echo Mayor Antaramian's comments on cultivating leaders on both sides; for advancing budget or policy, you're going to have a split in the houses; it's flipped 5-6 times already in a short time span; and frankly I don't think these positions are partisan anyway; you may also want to look at finance committee members, though that's always changing

Come back to the June meeting with results on budget and policy, as well as climate change

Mark will distribute a draft of RR budget proposals to Study Group members

The group agreed that, between now and the next Study Group meeting in June, a subgroup of interested members will focus in the budget and policy items and come back to the June meeting with recommendations

Drew will also send out, with the notes, the various tasks meeting participants agreed to

IV. State Brownfields Legislation – Update

Foss: The legislation that Carol Roessler helped us put together passed; the bill will make it easier to use EPA revolving loan funding; in a nutshell, the bill states that if a local government wants a loan for 15 years or less, it will not count against their municipal debt; they can also partner with private developments and city can borrow money from DNR and have an agreement with the private developer; Fond du Lac is a good example of this idea working well; if the loan is for 15 years or more, the local government can do it via a promissory note

Foss: As was stated earlier, we are losing Senator Roessler, who's not running for re-election; Carol's been a brownfield champion since the beginning; we also had support for this bill from Kreuser; Gunderson, Sheryl Albers and Senator Miller

Antaramian: What we need to do is, as we pick people, we need to find people who want to lead, who can force something to the fore

Michael Prager: There were some changes to the TIF law that recently passed; a small change for all communities is they can transfer project funds for one TIF that's doing well to another TIF – within a half mile away at the most – that is not doing well

Harrington: Perhaps a placeholder to put on the policy side of our proposals is a similar policy change for the ERTIFs

Stibal: One of the governor's groups we should look at, at the Secretary's level is dealing with green development; it seems to me we should be looking at feeding these groups materials on what we want to occur and/or putting together a committee similar to this one and someone from the Study Group should sit on that committee as well

Harrington: If green energies is what we're looking at, one of the things they're looking at is who gets the value of the credit; it has to do with the governor's task force on green energy; we should bring someone in from that task force and hear what they have to say

John: We're going to see a committee created to talk about these things, be aware of them, and put together legislation that may be able to deal with these issues; have a few people from this group that possibly could get involved with that other committee

V. Federal Brownfields Funding/Legislation -- Update

Darsi Foss gave a summary of federal brownfields legislation, including the recommendations sent by Brownfields Study Group members to the National Brownfields Coalition: We did get \$100,000 to look at how the state does land use controls and the GIS Registry; even though we did not receive innovations funding, we did get this money to talk to our customers and ask them how are they looking at land use controls, i.e. are they using our system or still looking at deed restrictions?

VI. NR 750 Voluntary Party Liability Exemption (VPLE) Authority – Discussion

Michael Prager gave a brief update on three areas of the VPLE and NR 750 that the DNR is proposing to change

1. Increase to Advance Deposit Amount

Prager: The hourly rate wouldn't change, but the amount of the deposit would; the deposit goes to pay for hourly oversight fees; the deposit amount has not changed since the rule went into affect several years ago; however, due to the rise in the hourly fee (which is required to be recalculated based on a formula in NR 750), the deposit covers less oversight charges than before

Art: How many programs in the DNR charge fees by the hour like this for work that is requested by an applicant? To me this information is something that is very valuable around budget time; where does this funding go to?

Giesfeldt: It goes to the RR Program revenue account

Prager: Less than 10% of total program revenue fees are VPLE

Harrington: My prospective is it's never been a bar

Bergamini: I don't really know if it's never been a bar, and cash is king with developers; you might need to talk to the realtors to drum up support for it

2. Proposal To Address Inactive Sites

Prager: We have 123 sites currently in program; 62 have had no activities in the past year, and 47 have had no activity in at least two years; we're trying to figure out what's realistic for criteria to get these inactive properties through the program

Thimke: Don't you have something in the existing code requiring voluntary parties to show progress?

Prager: We do make requests to find out what kind of progress is made, and we track it through our normal pipeline

Bergamini: Why is this seen as a significant benefit, if they're sitting on their haunches and they've given you cash? The answer might help direct how vigorous the response would be

Foss: In this situation, if they're using this as a marketing tool, saying 'we're going to get all these benefits', but haven't done anything, we as a program are trying to help get them moving so we can make sure we get through all these old dog sites

Kate Juno: One of my clients is on that list, and it looks like he hasn't done anything in years, but he is actively doing stuff; my guess is he probably doesn't know they're in VPLE

3. Clarify How A Property Is Defined For VPLE

Prager: In essence, we're trying to put into rule what we've already been doing administratively; for example, someone enters a large 20+ acre parcel into 2008, by the time it gets through the VPLE process in 2010, they've legally subdivided it into three properties; all we've wanted were three applications with three legal descriptions, and in the end they would get three certificates

Bergamini: How would the fee structure be changed?

Foss: If you have three properties, then you have to do three applications at three times the \$250 charge/submittal

Prager: Also, this is part of the overall package of NR 700 rule changes; and people still have a chance to comment

Savagian: And where are we in the NR 700 rule-making process?

Giesfeldt: We don't have hearings authorization yet, so there's plenty of time for input

The group generally supported the proposed changes; however, if participants would still like to add to the discussion, please send any NR 750 comments to Michael Prager at 608-261-4927, or michael.prager@wisconsin.gov; Michael will update the Study Group on new

mechanisms, criteria and other changes and send it to the Study Group for further comment

VII. WISC

Mark Giesfeldt gave some background on subgroup that was created after the last Study Group meeting in November; first meeting was March 11; RR will hire a consultant to give a list of sustainable activities and performance measures, will start applying it to some of our state-funded cleanups; we need do a better job optimizing our operation and maintenance (O&M) costs

Giesfeldt: The next steps include: we need to finalize a clear definition of what it is and what isn't sustainable; initialize contracts and get the program going; identify process to implement incentives for cleanup programs at DNR, Commerce and DATCP; modify NR 700 to promote the concept; also need to look at LEEDS-like recognition program and separate funding initiatives; we also need to expand outreach to other organizations/agencies like Commerce; at next meeting we'd like to invite Green Tier folks to speak; we want to identify eco-municipalities and get a better handle on what EPA is doing for sustainability; we're also looking at some of the governor's initiatives; how can this Study Group communicate and link up with that group?

Giesfeldt: We're setting up another meeting soon; once the work is finished, we hope to see some report about what we focused on, recommendations, follow up items, etc.

Anyone else still interested contact Mark Giesfeldt at mark.giesfeldt@wisconsin.gov; 608-267-7562

VIII. Brownfields Study Group 10 Year Anniversary – Update

Andrew Savagian gave a brief overview; event will be September 9 from 4-7 p.m. at the law offices of Foley & Lardner in the U.S. Bank Building in Milwaukee

Harrington: Any value to think of speakers to highlight? Also, any thought about using proceeds to fund a modest scholarship to present it on Study Group's behalf to a land use university?

Lunch

IX. PCB Guidance – Update

Ed Lynch briefed the Study Group on the Program's PCB guidance; Ed first talked to members back in 2007 on this issue

Lynch: The guidance will be finalized in next week or so and will be out on the web; under the Memorandum of Agreement with EPA, PCB sites followed a coordinated approval process led by DNR and allowed by federal regulations; how it would normally work is someone would submit their findings to EPA, DNR looks at it and takes lead and works with EPA toward joint approval, though a party might possibly receive two letters for the one approval

Antaramian: For dealing with PCBs in lakes and rivers, how does it deal with guidance for that?

Lynch: It'll tell you a) whether TSCA is applicable and b) what type of site it would be; chances are it would be a Type A site, more complex and not dealt with under guidance, so that would require more EPA oversight; EPA would do their own separate review, and we'd be doing a review as well

Lynch: MOA does define the types of sites: Type A) More complex, sites that are in Wisconsin under this type are more likely to be sediment remediation sites, and those require separate DNR and EPA approval; Type B) probably have some PCB contamination but TSCA probably not applicable, EPA doesn't want to address it, has low PCB levels; for these sites NR 720 would take care of it with no federal involvement; Type C) has some PCB contamination and TSCA does apply, but a joint approval would be ok

Lynch: There is an alternative approach in the guidance that is not part of the MOA; EPA's self-implementing cleanup for "simple sites"; these tend to be upland sites, with only soil and no groundwater contamination, where you can do quick action

Juno: Are there other states agencies that have followed our lead?

Lynch: Other MOA's have been signed by EPA and some states, but none of them cover what we have in our MOA

Giesfeldt: Wisconsin has the most comprehensive MOA in the nation; Ohio has one, but that focuses only on hazardous wastes issues

Bergamini: Does "active project management" mean anything other than someone is assigned to a site?

Lynch: It means they'll actively review SI work plans and the SI, the remedial alternative report, prepare a draft approval letter, oversee implementation, etc.

Kevin Bugel: For sites with contamination prior to April of 1978, they could have PCBs of 50 ppm, and anything past that date is 1 ppm – has the state gone in and said it's just 1 ppm for non-residential?

Lynch: For non-industrial/residential, if you look at EPA's guidance, you'll see terms like "low occupancy" and "high occupancy," and it gets confusing; we may have to look at some of these with industrial RCLs on a case by case basis

Drew will post Ed's handout on the Brownfields Study Group web site and will send out the guidance once it becomes available; please contact Ed Lynch at 608-266-3084, or edward.lynch@wisconsin.gov with phone and email if you have any additional questions/comments

X. PAH Guidance – Discussion

Jim Schmidt gave a brief overview of the issue: This comes from concerns from the Study Group and in the DNR; there has been interim guidance on PAHs for a long time, but we've wanted to move this forward; RR managers went through the guidance and looked at some areas that required resolution and follow up; basically there are four items: 1) for PAHs in soil, what criteria determines if the RP is sent; if compound is there do we send an RP letter?; 2) how should we account for the presence of asphalt in samples if there's a discharge to the environment; 3) some folks are unaware of guidance available to them for dealing with benzo-a-pyrene; and 4) how to make these changes work with the NR 700 rule package

Schmidt: The managers decided 1) if PAHs are found in soil, if there are elevated concentrations of PAHs that are note background, we assume a discharge has occurred and an RP letter must be sent; however, if you have an area with PAHs throughout property, and you move off site and do a background investigation and the tests show that PAHs are an issue off site as well, then we would not send an RP letter; 2) if asphalt is present in the soil matrix, then PAHs should not be compared to the direct contact RCLs; you may need to do additional samples, if you could physically pull the asphalt out go ahead, but if you can't then you couldn't compare

Schmidt: We're working on the rest of the items as well as briefing staff on these changes; it will all be tied into the entire NR 700 rule package

Thimke: Any consideration about places such as West Allis, Milwaukee, etc., where there's so much PAH contamination?

Schmidt: We'll go by what the guidance says

Bergamini: What's the timing on NR 720 on these changes?

Giesfeldt: NR 720 is part of a separate track; we can get back to you on more specifics with the time line

XI. National Brownfields Association & Brownfields 2008 – Check In

Savagian: This is just a review/check in to see who's staying involved with the NBA and who's going to Brownfields 2008?

General comments from the group: unless there's more involvement from developers, I don't see the benefit; in other states the NBA is like a Brownfields Study Group; the fundamental question we continue to ask and don't get an answer is: What does it do?

XII. State Agencies – Update

Commerce Brownfield Grants

Al Rabin gave a brief update on the Wisconsin Waterfront Initiative (WWI); three workshops on April 8, 9 and 10 in Rhinelander, Chippewa Falls and Waupaca; sessions will talk about how to apply for a planning grant; communities can get up to \$20,000; need to send in the application by May 15; two contacts are Jim Frymark, 608-266-2742, and Jason Scott, 608-261-7714

Foss: For non-entitlement only?

Rabin: Yes, because it's block grant money

Foss: But they don't need a planning grant to be in the WWI

Rabin: Correct

Rabin: As far as the Commerce brownfield grants, we current have \$2.6 million of the \$6 million left for this fiscal year; however, we have applications requesting \$1.7 million, and getting applications for another \$1million more, so the application process is very competitive

Mueller: With less money being available this fiscal year, would waterfront projects possibly score higher?

Rabin: If there were a competitive application process, it would probably get additional consideration; we will be actively seeking those types of projects

DNR Brownfield Site Assessment Grants

Shelley Fox: We're at the tail end of the Round 9 grants; of the people who got awards that did not have to get legal access, we have one outstanding grant agreement; nine need to get legal access to the site; we gave out 37 small grants and nine large grants; we received 80 application and could only fund 46, so we continue to be oversubscribed and underfunded; there was a proposition via the RR managers for a continuing appropriation, i.e. right no anybody that turns back money after the FY closes, it goes back to the general fund and we don't get to use it;

Fox: The 80 applicants were asking for more than \$3.5 million, we have only \$1.7 to award; there were 58 small grants totaling more than \$1.66 million, and 22 large grants totaling more than \$1.89; we're also now requiring progress reports, which will help reduce the amount of money that's not used; and we're working with our forms people to create an on-line, fill-in application

DNR Green Space and Public Facilities Grants

Prager: We have \$1 million for two years to award; it pays for cleanup of sites that goes for greenspace, recreation and public facilities; we now have an open/rolling enrollment similar to the Commerce brownfield grants; began accepting applications January 25 of this year; the latest we can aware funds would be February of 2009; right now we have a requests totaling \$113,000 from Beloit and Chippewa Falls; in addition to being ready to go for cleanup and redevelopment, it's important that all the costs of the project are well understood, in addition to the cleanup, there's costs for transportation, infrastructure, renovation, building of the park and the applicants needs to understand all of this; also need to make sure you integrate the remedial action plan with the funding proposal, in some cases there's a little disconnect

DNR's Ready For Reuse Brownfields Grants and Loans

Jessica Milz: We've finally received the extra \$1.5 million from EPA that Delavan and Richland Center could not use; EPA took \$500,000 from the original \$2 million; we only have \$150,000 left in our hazardous substances grants and \$2.2 million in hazardous loans remaining, and we'll probably get 2-3 more applications for the loans; we've have finalized four more grants for hazardous substances – Milwaukee Redevelopment Authority (RACM), Merrill, Sheboygan and Mauston; we also applied for \$3 million more in hazardous substance funding; finally, we still have \$937,000 left in petroleum grants and loans

Please contact Jessica Milz at 608-267-6743, or jessica.milz@wisconsin.gov, for more information

Land Recycling Loan

Savagian (for Maureen Hubeler): The loan for New Richmond closed on Feb. 27, 2008 for \$803,462; there were 12 potentially responsible parties (PRPs) involved, so an agreement had to

be set up to detail the allocation of preliminary and remediation costs; New Richmond's share was 17 percent

Savagian: Two other projects are on the funding list for fiscal year 2007-08: Prairie du Chien for \$820,000 and West Allis for \$1 million; both loans must close by December 23, 2008, or funding will be allocated to other projects; if both Prairie du Chien and West Allis close on a loan, there will be approximately \$4.4 million left for future projects; applications are due August 1 and October 1, 2008

Dry Cleaner Environmental Response Fund (DERF)

Giesfeldt: out of money, need a fix, if don't get anything, it's done, demand is 7-11 years; August 1 is last date to get into the program; if you have ideas, please share those with Terry Evanson and I'll pass them on to Brian Swingle of the Fabricare Institute

For more information please contact Terry Evanson, at 608-266-0941 or theresa.evanson@wisconsin.gov

30th Street Industrial Corridor Project

Savagian: The DNR, city and the 30th Street Industrial Corridor Coalition (ICC) applied for and received an additional \$400,000 in EPA brownfield site assessment funds; the partnership has received \$800,000 to assess brownfields in the corridor since 2005; the work plan and cooperative agreement with EPA have been approved and signed and we've extended the intergovernmental agreement between DNR and the city to reflect the new grant; this April 22 we're hosting an open house to talk about the grants and assessment work being done

Wisconsin Brownfields Insurance Program (WBIP)

Prager: Program's up and running; we've had some inquiries and AIG has had some also; however AIG has not written any policies yet; AIG has updated their web site

If you want more information about this type of insurance, please contact Michael Prager at 608-261-4927, or michael.prager@wisconsin.gov

Federation Brownfields Tax Deductions

Savagian: Wisconsin continues to lead the nation, with 50 parties using it to date; a congressional report looked at two year (2003/2007) and confirmed Wisconsin's top use of this federal tool

Adjourn