

**BROWNFIELDS STUDY GROUP
MEETING
April 15, 2009**

I. Attendees

John, Antaramian, ECC	Dan Kolberg, DNR
Eric Ballas, DNR	Richard Lyster, MSA
Tom Bergamini, BT2	Jessica Milz, DNR
Leslie Blaze, MSA	Dave Misky, City of Milwaukee
Scott Brockway, Wildan Res. Solutions	Tom Mueller, Jr., TEMCO
DJ Burns, Drake Environmental	Tom Mueller, Sr., TEMCO
Matt Dahlem, PSI	Mike Palm, MSA
Jay Diebold, Shaw Environmental	Eileen Pierce, DNR
Frank Dombrowski, We Energies	Michael Prager, DNR
Laura Egge, DNR	Andrew Savagian, DNR
Melissa Enoch, DNR	John Stibal, City of West Allis
Linda Fellenz, LF Green Development	Mark Thimke, Foley & Lardner
Darsi Foss, DNR	Benji Timm, City of Milwaukee
Shelley Fox, DNR	Sam Tobias, Fond du Lac County
Dan Graff, DNR	Dino Tsoris, DNR
Linda Hanefeld, DNR	Scott Wilson, Ayres Associates
Art Harrington, Godfrey & Kahn	
Brian Hegge, MSA	
Kate Juno, Nat. Res. Tech.	
Kirk Kapfhammer, Endpiont Solutions	
Paul Killian, STS/AECOM	
Larry Kirch, City of La Crosse	

II. Welcome, Introductions, Agenda Repair

III. Federal Brownfields Stimulus Funds & State Budget – Update

LUST Stimulus Funding

Darsi Foss gave a brief summary on federal stimulus money and the RR Program; there is \$6.3 million in LUST stimulus funding coming to the state, however how that will be allocated among the state agencies is still being discussed; we do not anticipate any Superfund stimulus funding coming to the state

Tom Mueller, Sr.: For the LUST grants, does it have to be hydrocarbon based?

Foss: It has to come from a petroleum/LUST site, and the funds can't be used larger, bulk terminal facilities

Mueller: Trying to get job creation out of LUST funds is tough to do

John Antaramian: Can it be job retention?

Foss: Yes, and can also include the people working on the cleanup and the end project

Mark Thimke: Can you use the funds at sites with mixed contamination?

Foss: If they're the same plume my understanding is yes, but if it's two separate plumes, with non-petroleum and petroleum plumes, then no

Antaramian: Can the auto industry qualify?

Foss: Those will be probably be looked at on a case-by-case basis

Superfund Stimulus Funding

Foss: Wisconsin did not receive any Superfund monies; we did propose the Amcast site to the NPL; most of the state's sites are in the operation and maintenance (O&M) stages, so not a lot of active sites; since we haven't heard from EPA about any stimulus funding, that's probably a hint we won't be getting any; there is a cost share, somewhere around 10-20%; EPA is probably looking more at the mega sites for this funding

Brownfields Stimulus Funding

Jessica Milz gave a brief overview on brownfields stimulus funding: Of the \$100 million in brownfields stimulus funding, EPA will be using \$50 million towards the "traditional" RLF funding cycle; the \$50 million adds to the \$83 million in traditional funds the agency had already slated for distribution; DNR applied for \$6 million back in November of 2008 – \$5 million in clean up funds and \$1 million in assessment funds

Milz: Of the remaining \$50 million left in stimulus funds, EPA will use \$40 million for supplemental funding for the RLF, via a competitive grant process; applications are due May 1, and only entities that currently have "high performing" RLFs can apply; in Wisconsin, only DNR and city of Milwaukee are eligible and we will be applying for those funds; the remaining few millions in stimulus funds will be used by EPA for job training, etc.

Art Harrington: These numbers are peanuts compared to other areas; lots of money in renewable energy projects, like biomass facilities; if you can offer a site that has a good location; the Charter Street project is a good example; Judy Ziewacz, executive director for the governor's Office of Energy Independence is a good person to contact

Antaramian: We should get her at meeting and see what they're doing and how it ties into what we're doing

Thimke: The energy projects carry their own issues; so to the extent which we can connect to what's being done is going to depend on that

Harrington: I'm not talking just about tapping into those funds, but being able to help move difficult sites where the environmental issues are connected to us, yet we could bring renewable energy issues into it that could help bring that funding to bear

Milz: Any funding we get, both from the traditional and from the supplemental, will be managed through the Ready For Reuse grants and loans; some of the rules have changed; for example, there are no cost matches; we can use 100% for loans and subgrants, so no 60-40 split

Scott Wilson: What happens to EPA money that goes unused, or grants that are acquired and turned back in?

Milz: They normally have a supplemental RLF application period from January-February, and DNR applied for \$5 million in supplemental funding at that time; however, that funding was never awarded, but instead it's now all wrapped into the application process for the stimulus supplemental funding due May 1; we will again apply for this funding, but we're not sure yet how much we'll be asking for

Dave Misky: How much will your application be?

Milz: Not sure yet, we'd like to know how much we're getting from the November application

Tom Mueller, Jr.: If you get more money, are you going to increase more funding for staffing, since you have more reporting requirements?

Milz: We try not to use for staffing, we want the majority for grants and loans

Muller, Jr.: Would the rules differ for stimulus cost share vs. traditional?

Foss: The cost share would only apply to the traditional funding

Misky: I've heard the announcement for supplemental stimulus funding is June 15

Foss: For the list that will appear with the application, we tried to take out the projects that weren't quite ready, and list the ones that have a "green twist" to them; however, please note that the projects on that list does not mean those projects will get all the money, everyone is going to have to go through a competitive application process; we'll also be doing some outreach and some training, possibly via "Live Meeting" because we want to make sure we get good applications and good sites

DNR will work to get Judy Ziewacz from the governor's Office of Energy Independence to come talk to the group; will also try to gather more information on other sources of stimulus funding, including any additional information Study Group members might have

State Budget

Darsi Foss went over the governor's proposed state budget and how it relates to the RR Program and brownfields; the situation is not good across the country; only 3-4 states have balanced budgets this year

Foss: Items of interest to this group include: the raise of \$4.40 in tipping fees, to \$10.99/ton; this increase will raise an additional \$33 million to help balance two accounts, the environmental management fund and the recycling fund; the transfer of four federally-funded positions to state funding – there is no longer any federal money available in this area; the DERF fund is getting the remaining \$6.2 million in the Land Recycling Loan Program (LRLP) in the form of a loan to help pay down the backlog of claims

Mueller: The asset increase/job creation of DERF is zero

Foss: There also was a cut to the DNR's Brownfields Site Assessment Grant (SAG) and Green Space programs, 1% to the base funding for both; these may be a permanent decrease

Foss: Also, dollars for state-funded response is down to \$1.2 million; a few years ago it was \$4.2 million; this is a temporary cut, after this budget it'll go back up to \$2.8 million

Antaramian: Does that include bonding?

Foss: There are two sources, what we're talking about is the cash portion; the bonding is longer-term

Harrington: So we can't tap into the \$600 million in Superfund stimulus for this?

Foss: None of that comes to us in a general expenditure

Foss: For budget and position reductions, the Air & Waste Division has to get rid of 3.5 positions, 3 of which are management

Thimke: How much in tipping fee revenue is remediation related?

Foss: Unfortunately, DNR doesn't track that

Frank Dombrowski: Is there a way to exempt contaminated soils?

Foss: Soil used for capping is already exempt, so yes

Muller, Sr.: Couldn't we make some type of comment that we're not opposed to tipping fees, but we're in favor of the additional waste category?

Antaramian: This issue will get the cities involved, because it doubles their tipping fees; this may be one of the times where we might just need to stay out of the discussion

Mueller, Sr.: That was the same situation last time, that's what helped defeat it; the cities didn't want it

DJ Burns: That's why I thought it should be up for discussion; the first time around, it was just going to the general fund

Thimke: I agree with John, we might want to stay out of this one

Linda Fellenz: Is there a time line on that?

Foss: Usually relates to the budget signing, then there's a delay in the collecting of the fees; Joint Finance meetings are happening right now

IV. Plant Closing Subgroup

Michael Prager gave a brief overview of the plant closing subgroup activities; the group met in November and then on April 3; during the April 3 meeting, went over a chart/matrix of possible outcomes and recommendations; some items the subgroup supported, others they wanted to continue to discuss, others they and no action

Prager: The goal is to go over the recommendations and get the Study Group's feeling about these; how many should we pursue?

Antaramian: In that letter, are you going to also let them know about condemnation? If we're going to tell them their options, that's one of the possibilities if they don't do anything

Prager: That's a good point, they need to be aware of it

Foss: Bill Zillmer with Workforce Development also said they let the local governments know; so maybe that's another tool to use

Wilson: Could we also send one pager on the Voluntary Party Liability Exemption (VPLE); we can use this as a carrot to tell them their options, and let them know we have a tool to help them

Tom Bergamini: Why don't we want to follow in New Jersey's footsteps?

Foss: Well, the program is actually no longer valid because they lost their funding, but when New Jersey passed their law, they put 300 state employees on staff to review and approve all of those transactions, so it became a big real estate bottleneck; we do have it for residential property, where you have to disclose any of that information

Thimke: This is a significant problem; with the old model allowed for economic development to pick up and reuse the site, and it's not happening, and we have to inventory bad sites for 5-10 years from now and try to deal with them; the tools are now there and we don't have to create new legislature; the Spill Law is a powerful yet simple tool; if you have companies that don't have the money, that are closing or laying off, they still have resources and their history is a tremendous resource, whereas years down the road if you don't have anyone to ask you have to do more work

Prager: We didn't talk much about the bankruptcy issue; and also we didn't talk much about municipal ordinances

John Stibal: You need to get them early in the bankruptcy process

Harrington: The big issue there and where we need some action, if there's a file, they can discharge that if there's nothing going on; if there's an active cleanup, it becomes a liability

Prager: So if there's a cleanup and the RP goes bankrupt, and if the state hasn't incurred any costs yet

Harrington: That can't be discharged if it's an operational cleanup; different if there's nothing going on and an unknown RP; the key issue is if you have a site that's going bankrupt, very critical to decide if you can get it into the regulatory program, it'll make a significant difference

Dan Graff: Art makes a very good point; not all that close are bankrupt

Harrington: Fines and penalties cannot be discharged in that situation

Stibal: There's a difference between a spill vs. tanks full of stuff; with bankruptcies you aren't not going to look at that

Antaramian: So are we saying in the law we require the companies to sign off on what's occurred on the site?

Thimke: I think that would take too long, we're looking at existing authority

John Ant: I don't have a problem with doing that, my concern was we don't have staffing to do it; if you're asking for a letter giving them a chance to come clean, or not, and then we have a record to pierce the corporate veil and possibly catch them, I don't have a problem with that

Foss: There may be other iterations of this letter down the road, but we need to get something out there sooner; and don't forget we have other sites that have closed we still need to address

Burns: If someone signs something, and they had insurance for the release, does that negate the insurance? If they hadn't acted responsibly?

Bergamini: We're talking mainly about known releases regarding the Spill Law; under bankruptcy laws, are there proactive requirements to appraise the property that would require due diligence on the part of the property owner to establish value of the assets?

Graff: I think the bankruptcy is for the benefit of the creditors; its really a question of dividing the assets

Harrington: I agree with Dan; Tower is a good example, it was just transferred as is, the judge even ruled there was no liability

Foss: It might help to have DOJ come talk to us; if there's something we can do better we certainly should do it better

Graff: Bankruptcy is a very cumbersome process for the state; we have to get DOJ in to help us

Harrington: Don't forget the League of Municipalities also

Prager: As for the insurance aspect, that's more informational, let them know they could have it available as a tool

Study Group approved DNR putting together two draft letters, one to the closing entity and one to the local government; DNR would also put together a draft implementation plan,

which includes the items on the matrix/chart, to share with the Study Group and include a possible model ordinance for local governments; in the mean time the Study Group can continue to make comments on the matrix/chart; DNR will also seek out DOJ staff to provide Study Group members with additional information

V. ER TIF Legislative Changes – Discussion

John Antaramian gave a brief overview: basically current law allows a municipality to transfer tax increments from one TIF to another, excluding ERTIFs; this will allow muni's to transfer tax increments from one ERTIF to the another

Prager: There's only 10-15 ERTIFS in the state to date; the statute is pretty straightforward, the municipality that that sets it up has to go to the joint review board

Fellenz: What about overlaps between traditional and ERTIFs?

Antaramian: My understanding is if you have an overlap, ERTIF cleanup funds can be used

Prager: Right now the bill is in the Assembly and it went through its Assembly committee with no objections; the full Assembly could take a vote on it by the end of the month

Antaramian: Another bill out there is proposing to extend the life of non-performing TIFs to 40 years (from 23); my concern is when you do something like that, this law then says every TIF could have an extension to 40 years

Stibal: I'm not sure I'm against the 40 year TIF, though we probably would never use it; the net value after that long f time is not much, so I'm ambivalent one way or the other

VI. Land Use Grant Outreach Efforts

Laurie Egre gave a brief outline on land use control – DNR calls these “continuing obligations” – outreach efforts; RR Program has a small EPA grant (\$100,000) to evaluate our institutional controls (ICs) and to see if it's a routine part of real estate transaction

Egre: What we're doing to earn this grant is to meet with key associations, realtors, developers, lenders, local planners, etc., and tell them we have all this data on-line, are you aware of it, what can we do to help you understand it and how can we improve it?

Egre: We're also working on an internal component and DNR's internal procedures, including IC audits, ways to improve; we're also making some internal changes to our on-line system, putting the documents directly into BOTW; if all goes well, hopefully some time down the road we'll add more documents; one thing we're hearing more consistently is that these groups are not looking on-line, they simply trust their consultants;

Kate Juno: I know the city of Milwaukee has a link to our stuff, do others have links to you as well?

Egre: We encourage them to link to our stuff, I agree it helps greatly; Wisconsin Realtors Association already link to our information

VII. Changes To DNR Site Assessment & Green Space Grants -- Update

Shelley Fox gave a brief update on the efforts to improve SAG and Green Space grants, including improvements on reimbursement requests, extension requests, etc.; main Greenspace problem is that some of these grants are not ready to go; we are also improving reimbursements and grant definitions

Mueller, Sr.: All good changes; will we be able to look at draft changes?

Foss: Yes

DNR will be sharing the draft changes with the Study Group when they are ready

LUNCH

VIII. State Updates

Closure Protocol Study – Mark Gordon, DNR

Mark Gordon: We looked at 130 sites, which represented about 10% of closures since 1999; they were selected randomly and we did a lot of file reviews; of those 130, we selected 10 to do some more qualitative research; when it came to selecting the field sites, we couldn't select on a random basis; we needed access and had to incorporate other issues; basically the results indicate that the plumes are stabilizing, however the source is still there, if not at higher levels

Gordon: We came up with solutions and a strategy; one of the items we're looking at is to give more consideration to source control, since from the results it appears that, post closure, there hasn't been much change to those, so maybe there needs to be more work up front

Gordon: We have also established an advisory group, the first meeting is next Tuesday, April 21; all this information is available on-line; some Study Group members are on the advisory group

Stibal: What's the group going to recommend/produce?

Thimke: The group will provide assistance on the implementation strategy and get some additional guidance to hopefully provide more direction on best way to go

Bergamini: For those 10 you looked at, was there anything to suggest that, during original closure, there were pathways that weren't fully considered/explored, or did you just see higher concentrations that would've happened whether all the pathways were explored or not

Gordon: In one case, we did end up finding another source; now this study isn't saying natural attenuation isn't working, we think it is, the plumes are fairly controlled; now having more wells and sampling post closure would've given us a better idea

Commerce Grant Status, Statutory Changes
Tabled

VPLE & WBIP Insurance Discussion – Michael Prager, DNR

Prager: For VPLE insurance for natural attenuation; any site with groundwater concentrations above state standards and a party wants a Certificate of Completion (COC) and closure, they have to pay for insurance in case anything happened at the end

Prager: We've been doing this since 2001, we have 18 sites that have closure with COCs and insurance; we've had a lot of folks in the VPLE who've already got COCs that haven't required insurance; the state's insurance broker is AEON, and they've placed the policy twice with AIG Environmental; we've been monitoring the situation with AIG and this particular line of their product is still pretty stable; these are 10 year policies

Prager: One of the requirements is that the Study group and DNR would report to the Legislature every two years; so far in our reports we've noted there have been no claims in eight years, so we have a good track record; we wanted to check in today with the Study Group – do you want to keep the status quo, make changes?

Dombrowski: Do the underwriters at AIG/whomever have any say on reviewing closure documentation of the site, any influence over the process?

Prager: No, they just underwrote the process; they reviewed it prior to that and they're comfortable with the state's process

Stibal: The sharper the attorney, the more you need the VPLE and the quicker the project will go; compared to the total project cost, this is a small item

Bergamini: With only 18 sites in eight years, any fear from a business standpoint AIG might look at this and say it isn't worth it?

Prager: I don't think so; it isn't much work for them to do anymore now that it's set up and running, so they feel pretty confident in it

Thimke: I support the program and think it's very valuable and we should continue it, so long as the carrier doesn't get into the details of the program

Prager: Our current policy is ending soon, 2010, so we'll need to revisit this issue anyway

Prager: For WBIP, this was another idea from Study Group, but it hasn't generated a lot of interest; also, AIG has gone through changes and some of AIG staff that are familiar with this program have left, so there isn't much feedback from them either; we're not sure how much of an environmental insurance need exists in the state; so were' trying to think of what to do with it, maybe more outreach, can the whole thing, etc.? We're also planning on setting up a meeting with AIG soon in the meantime

Stibal: If DNR is going to give VPLE without the insurance for groundwater monitoring, we'd be fine with that

Prager: That would require a statutory change

Stibal: Then keep it going; we have bigger fish to fry than to worry about that

Foss: As Rollie said, you can self insure, but with the current fiscal process that might not be the best way to go

Thimke: Not the time to rock the boat

Bergamini: I've tried to provide WBIP information to my clients, but they didn't seem interested, mainly because the state really doesn't reopen sites

Prager: If there is a WBIP site you think would help add value to a product, talk to me and your insurer; it'd be good to get a successful one up and running and see how it works

X. Review of Action Items

Adjourn