

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

**I. Attendees**

Deshea Agee, City of Milwaukee	Ken Konicek, Konicek Environmental
John Antaramian, City of Kenosha	Tory Kress, City of Milwaukee
Tom Bergamini, BT2	Kristin Kurzka, Sigma Env. Services
Kevin Brehm, STS Consultants	Dennis Lawton, STS Consultants
Margaret Brunette, DNR	Jessie Lerner, DNR
Kevin Bugel, Giles Engineering	Tracy Lubber, City of Milwaukee
Erin Burke, Sigma Env. Services	Louis Maier, Factotum
D.J. Burns, Drake Environmental	Kelly McDermott, Foley & Lardner
Chelsea Corson, Drake Environmental	Dave Misky, City of Milwaukee
Patrick Crotty, AIG Environmental	Tom Mueller, Jr., TEMCO
Frank Dombrowski, WE Energies	Henry Nehls-Lowe, DHFS
Tara Duggan, Giles Engineering	Mindy Nolan, DNR
David Dybdahl, ARMR Network	Michael Prager, DNR
Erin Dybdahl, ARMR Network	Al Rabin, Commerce
Linda Egge, DNR	Andrew Savagian, DNR
Al Erickson, CH2MHill	Jim Schmidt, DNR
Darsi Foss, DNR	Sarah Slacker, Foley & Lardner
Nancy Frank, UW-Milwaukee	John Stibal, City of West Allis
Mark Giesfeldt, DNR	Joy Stieglitz, Vandewalle & Associates
Steve Henkel, MSA	Terry Strawn, ARMR Network
Bob Hersch, UMASS	Joey Thom, City of Milwaukee
Gary Homonai, CH2MHill	Benji Timm, City of Milwaukee
Maureen Hubeler, DNR	Jessica Turner, DNR
Kate Juno, Natural Resources Tech.	Kris Wernstedt, Virginia Tech
Bruce Keyes, Foley & Lardner	Paul Zovic, Shaw Environmental
Dan Kolberg, DNR	Sandra Zupan, UW-Milwaukee

**II. Welcome, Introductions, Agenda Repair**

**NEXT MEETING – West Allis?**

**III. State Biennial Budget Update**

Mark Giesfeldt gave an overview of the current/continuing budget situation for the Remediation and Redevelopment Program; as previously discussed with the Study Group, the RR program has a salary shortfall at the beginning and during the next biennium; in summary, there is a shortage of federal salary funds for 10 permanent staff and two state-funded staff; the RR program hopes to address the two state staff by raising the fees in ch. NR 749, that was last updated in 1999

Study Group members and other attendees raised a number of questions and concerns about the possible reduction in staff for assisting with these critical clean ups and redevelopment projects;

the Study Group, after much discussion, elected to put together a letter to the executive branch and legislative leaders asking that the following three brownfields items be addressed in this biennial budget:

1. Converting 10 federal SEG positions to state SEG, and providing the appropriate state revenues to fund those positions (six in the first year of the biennium, and an additional four in the second year)
2. Supporting the inclusion of SB 202 in the state budget, dealing with the municipal obligation for securing a brownfields land recycling loan from DNR
3. Amending the type of appropriation for the DNR's Brownfields Site Assessment Grant from "biennial" to "continuing"

**The Study Group is working on a letter, which will be shared with the Study Group members before being submitted**

#### **IV. Options for Updating ch. NR 749 Fee Rule**

Mark Giesfeldt provided a brief update on the idea to increase fees to help pay for two positions that are in trouble of getting cut

Giesfeldt: The basic strategy is to raise fees initially 35% via a rule making process, then to increase the fees incrementally to keep up with economics; the administrative rule, ch. NR 749, has not been updated since it went into effect in 1999

Giesfeldt: Our goal is to get this done a year from now

Stibal: I like this idea, we've long advocated this, and we need it; but is it enough? 35% is a good way to sell it and I know you want to take what you can get; but this should be even higher

Keyes: Or a ramp up of fees

Giesfeldt: You have to keep in mind the authority we were given to in the statutory language to charge fees; we didn't want to create an unbelievably burdensome system to charge fees, so we thought this was a good, middle of the road average; we do get other feedback from our customers that our prices are already too high

Stibal: Have you tracked the cost of these sites? Let's take a look at the historical averages and see if it's close

Foss: One step is to get to the new level; on July 1 in 2009 we start, then we could look at these options

Stibal: If you aren't already, you might want to start tracking these

Mueller, Jr.: I echo John's comment, none of these are deal breakers, you should go for more; I've worked with lots of smaller communities, moving it up a little bit is not that bad

Joy Stieglitz: I would agree; it's been 10 years, , the easy sites are for the most part done, the hard ones now we're working on, looking at the time involved, the wage increase, etc., none of that's been factored in for 10 years; if we're trying to get ahead of the problem, maybe we support a bigger push up front

Frank: It's good to hear raising the fees would not feel like a burden to folks; it seems to me the kinds of cuts and services we're talking about are sort of the brownfields redevelopment shared benefits that go across all the different kinds of cases that these fees are applied; that kind of staff time could be covered as well

Harrington: I'm all in favor of John's idea that these fees could be increased even more; I'm concerned that the small businesses have an out

Kate Juno: Do some agencies charge an hourly rate?

Foss: Minnesota does that; we looked at it, but you have to go and collect, and they've had to use collection agencies; in a way you're right, that might be the most equitable, but the administrative part of it has always been problematic; Ken Habermann helped explain it to us several years ago; at that point most of their customers were big city and not widespread as the customer base we have

Dave Dybdahl: A concept to think of: in your list of services, if you value price these things; a recent insurance conference I attended, I noted that lease letters saved a company \$300,000 on their insurance; for the no further action (NFA) letters, for simple little sites, environmental insurance is at least \$10,000

DJ Burns: I echo what Art said, I'm for fee increases, but you should make allowances for certain local communities and some consideration for that; on the compliance end, we're trying to encourage people to report spills, if we start hitting them up for more money they may be unwilling to report and be compliant

Dan Kolberg: Another option might be to take a look at the list and deal with it in a segregated way; for example, we've never written a general liability clarification (GLC) letter that cost \$500 or \$600; we may want to single that one out that the initial fee is way off the mark

Foss: We've issued many kinds of GLC letters, maybe it's better to break that out

Paul Zovic: Is there any idea of how much fees have been generated annually? What's our context?

Giesfeldt: That could be a solution, but it's not preferred; in 2008 we're looking at \$660,000; if we just added the 35% we're projecting about \$800,000 and the same in 2009, but then it goes down in 2010 and 2011; the 35% increase would probably buy us time for 3-4 years

Foss: At a minimum, if we are asked to fund 12 additional staff with PR funds (in addition to the existing nine staff), we will have to at least double the fees; so if we're going to have to fund 21 people on this fee rule, then we're going to have to assume there's no drop in demand on the services that generate these fees

Giesfeldt: Doubling would be on the low end, triple would give us more comfort

Giesfeldt: We will formulate this issue over the summer, then go to the Natural Resources Board (NRB), then go to public hearings, finalize and go back to the NRB for adoption, then the Legislature gets a crack at it

**Darsi Foss will work with John Stibal and Tom Jr.; Tom Jr. put together information on the percent of total costs of a brownfields site these fees are**

**Andrew Savagian will send out the notes from 2006's subgroup to the full list for folks to review and look at, and will also attach the statute language for NR 749**

## **V. Update on *Draft Vapor Intrusion and Closure Guidance***

Mark Giesfeldt gave a brief update on the draft vapor intrusion and closure guidance; Henry Nehls-Lowe from the Dept. of Health and Family Services (DHFS) and DNR working together, meeting so that they are in agreement before we go to externals; the other thing we want input on is notification after closure

Harrington: You're going to do that by guidance and not by rule making; I think this is a huge issue; if we're going to talk about the risk factors, it's going to incredibly drive this; there is great value to go to rulemaking

Dybdahl: I attended a meeting of environmental bankers in March; 80% of the commercial lenders were in the room, and they don't do screens based on types of occupancy, and they sure don't do it for homes

Foss: One of those concerns, you have a strip mall, you have a dry cleaner, they meet all the groundwater and soil standards, they meet air OSHA standards for that operating dry cleaner; they want closure and we give them a closure; 10 years later they leave as tenants, someone new moves in, and you may have saturated wall boards and cement and other issues – is there notification, does DNR have jurisdiction? Because they still might meet standards and DNR still doesn't do indoor air standards

**DNR will get out draft guidance soon to everyone for comment; also going to the Technical Focus Group; if you have more comments on notification and other issues, please contact Andrew Savagian at [andrew.savagian@wisconsin.gov](mailto:andrew.savagian@wisconsin.gov)**

## **VI. Supreme Court Decision: Atlantic Research Corporation vs. U.S.**

Darsi Foss gave a brief overview of the Atlantic Research Corp. vs. U.S. Supreme Court decision

Foss: This is a big victory for Wisconsin, as it still preserves people's ability to recover costs using s. 107 of CERCLA, while conducting a voluntary cleanup using ch. NR 700, and so long as the cleanup is not inconsistent with EPA's National Contingency Plan

## VII. State Agencies – Update

### Commerce Brownfields Grants

Al Rabin: Funds coming in are more realistic amounts vs. asking for the most possible; this was a very competitive round; couple other things that should be noted – come July 1 we're starting to take applications, even though budget still under negotiations, business is still as usual and we're going to fund competitive applications but we can honor requests for funds even though budget hasn't been approved so get in an application as quickly as possible

Rabin: Some trends based on past years 1) tried to pro-rate funds to last through both years, I sense a trend in Commerce that if we get strong applications up front we'll try to fund those early vs. waiting for last second applications; 2) a trend I've noticed is when Commerce re-organized it incorporated affordable housing into the departments, so we're looking more favorably on affordable housing

Frank: I'm glad to see more importance put on affordable housing because I think there is a strong economic impact, albeit indirect, for that element so that's good to see

### DNR Site Assessment Grants

Michael Prager: SAG, we've had a pretty high dispersion, 60 counties have received projects, from very small towns, rural areas; one issue is access, some have said they had access but it was clear from inquiring further that they didn't, so that needs to be clear with the community and the consultant that they're working with the property owner; if we can't make that determination, applicants could lose the money, especially if time becomes an issue when we're near the end of the biennium

Stieglitz: Any sense of how much money has been lost?

Prager: It has been substantial, in one instance \$200,00 in one round

Stieglitz: Is there any way to capture that lost funding?

Foss: We've tried to address this issue but it hasn't made it into the biennial budgets

Stieglitz: Is this a dead issue or should we make that a recommendation?

John Antramian: If you're getting it implemented, the time is now, you probably have an opportunity for someone to take this up as an issue; this could be a messy budget, Assembly may put together their own budget or just go to conference; I can help if you can tell me the language you want

Prager: Next year we'll continue the same schedule, get applications in by early November of 2007 and give out the money in early 2008; we have another \$1.7 million

**Study Group will request this via an assigned emissary to the Assembly; Darsi Foss will provide language**

DNR Green Space and Public Facilities Grants

Prager: We awarded \$1 million to 8 projects; it pays for cleanup of sites that goes for greenspace, recreation and public facilities; one of the things we're thinking about is to shift toward a more open/rolling enrollment similar to commerce; opening time would be January

Prager: We wouldn't accept applications immediately, but could extend it to February of the next year for the latest

**Group agreed rolling application is a good idea; get any feedback to Michael Prager at [michael.prager@wisconsin.gov](mailto:michael.prager@wisconsin.gov)**

DNR's Ready For Reuse Brownfields Grants and Loans

Foss: We've given out three grants and one loan; we also applied for an additional \$3 million from EPA but didn't get it; however, Richland Center and Delevan did not use their 2003 and 2004 funding, so EPA is giving \$1.5 of that funding back to DNR, so we'll have a total of \$5.5 million; so far about \$1 million is spoken for

State and Federal Brownfields Legislation

Foss: Nothing introduced yet for brownfields on the state side, folks still working on the budget; on the federal side they're still reauthorizing the brownfields bill

**Andrew Savagian will send PCB Portion of the OCP MOA out to folks**

Municipal Involuntary Acquisitions and CERCLA Liability Defense Update

Darsi gave a brief update on some of the trouble with this issue via EPA: gave example of a property that transferred a property from county to the city; DNR is trying hard to get this issue resolved with EPA, national workgroup of regional EPA attorneys is weighing in

**Call Darsi Foss at 608-267-6713 if you are a municipality and you think you're going to acquire a property, so we can make sure we don't have this problem occur again**

Feedback on RR Sites Map

Laurie Egge gave an update; RR Program created a survey that you can take on-line

Harrington: The newsletter is great, it's a great source of information

**Andrew will re-send the link with the notes**

WBIP

Prager: AIG will be hosting seminars, one in July and two in September; DNR will be sending information out soon; here's the web site link: <http://dnr.wi.gov/org/aw/rr/rbrownfields/wbip.htm>

**If you have questions please contact Michael Prager at [michael.prager@wisconsin.gov](mailto:michael.prager@wisconsin.gov)**

**LUNCH**

**Adjourn**