

**BROWNFIELDS STUDY GROUP
MEETING
December 3, 2008**

I. Attendees

Eric Ballas, DNR	Jessica Milz, DNR
Erika Biemann, Giles Engineering	Dave Misky, City of Milwaukee
Margaret Brunette, DNR	Henry Nehls-Lowe, Dept. of Health Services (DHS)
Kevin Bugel, Giles Engineering	Terry Nolan, DNR
Janet DiMaggio, DNR	Mike Palm, MSA
Laura Egge, DNR	Michael Prager, DNR
Darsi Foss, DNR	Al Rabin, Commerce
Mark Giesfeldt, DNR	Andrew Savagian, DNR
Dan Graff, DNR	Kathleen Strasbaugh, DNR
Linda Hanefeld, DNR	Rob Thiboldeaux, DHS
Al Hulick, City of Janesville	Sam Tobias, Fond du Lac County
Bruce Keyes, Foley & Lardner	Mark Thimke, Foley & Lardner
Dan Kolberg, DNR	Scott Wilson, Ayres Associates
Kristin Kurzka, Sigma Env. Services	
Nicole Loop, City of Racine	
Richard Lyster, MSA	
Scott Manley, WI Mfrs. & Commerce	
Pat McCutcheon, DNR	

II. Welcome, Introductions, Agenda Repair

Mark Giesfeldt: Pat McCutcheon is retiring; Pat has done a great job for the DNR and the RR Program over the course of his career, and we thank him for all he's done. **Thanks Pat – we'll miss you!**

III. Brownfields Budget Issues – Update

Mark Giesfeldt gave an overview of the continuing budget situation for the Remediation and Redevelopment Program; state budget problems are fairly well known, the state is facing a potential \$5.4 billion deficit that will have an effect on the DNR and RR program; we came up with an initial 10% cut requested by the Doyle Administration and DOA for this biennium, we also had the lapse for this biennium, which wasn't a permanent cut, and we addressed that request; however, with the budget problem for the next biennium we had to come up with another 10% cut; from a staff standpoint, all of the program vacancies have been frozen, although an exception request can be granted; we have several vacancies still in the brownfields section and in other program areas, like our office manager and grants specialist; there are also vacancies within the division

Mark Thimke: Is there an effort by the regions to prioritize what they want to work on first, given the staff limitations?

Giesfeldt: We're working on that; the managers met a couple weeks ago to identify what we should and shouldn't be doing and we'll be meeting again soon to go over more details; we're obviously going to keep all the federal stuff; the 128(a) funding is a good resources and Darsi has applied for additional EPA funding

Thimke: It's not just the state who's hit a budget crunch, a lot of manufacturers have hit the skids; if the company has several issues with the department, would it be possible for them to come in and talk to the agency about what makes sense to do?

Giesfeldt: Yes, particularly for this program; through Al [Shea's] leadership, we are looking for different ways of doing things, so if you have any ideas we'd be interested in hearing them

Bruce Keyes: My suspicion is we'll see a slow down in the amount of issues/matters that are coming before the DNR; we're seeing that in the private sector

Darsi Foss: I think the central office hasn't seen a slow down but it may be different in the regions?

Pat McCutcheon: Closures have slowed down significantly; however there are fewer cases out there anyway, and most of them are the more complex ones that take more time, plus this time of the year is always slower

Keyes: Do you have any sense on what will be on the horizon for federal dollars, with the new administration?

Giesfeldt: It could be better, but the current administration has been fairly receptive to what we're trying to do as a program also; land use controls and greener cleanups have been pretty big deals already, but it's unknown how those issues will fair with the incoming administration

Keyes: But you don't see anything we need to do from the federal side at this point?

Giesfeldt: I don't think so

Giesfeldt: Governor will probably come out with a budget late January/February

Please contact Mark Giesfeldt at mark.giesfeldt@wisconsin.gov or 608-267-7562 in the next month if you have any suggestions and/or recommendations

IV. Brownfields Study Group – Subgroup Updates & Feedback

Financial/Big Picture Subgroup

Darsi Foss gave a brief overview on lessons learned and ways to improve; the SUDZ program was a good idea but the implementation needed improvement; EPA has set it up their grants the way we were hoping to, using a broader pool of money for lots of brownfield work, versus doing a whole host of mini-grants like the SAG and Green Space; the group looked at a rolling application process, because when we have an annual application we lose some projects, we're not as timely as we could be and it cost money to write all those grants; the other thing I heard

was, for some of these sites where the local government is the lead and there's a known causer, could folks still get them some money;

Foss: For the most part the group was positive about these ideas; however they also didn't want to lose the good things about the SAGs and Green Space grants

Andrew Savagian: So is this all dependent on budget dollars or can some of this be implemented outside of that process?

Foss: It's budget dependent, i.e. it does depend on whether or not we have a brand new tool vs. retooling the vehicle we already have

Foss: another issue we talked about was a green tax credit to get the private sectors and local governments involved, similar to what Oregon is doing; if a party is doing something green to remediate a site or redevelop it, they would be able to get a state income tax credits; the nice part about this was someone would have to show that they did this, i.e put in the solar panels or built a the stormwater park, etc., before they could get the credit; some states like Ohio are struggling with this idea, where they give extra points to get a grant and then the applicant doesn't do the green project; we'd also talked about allowing tax credit to transfer from whomever did the green work to the developer or the next party involved; a lot of states transfer those credits, even if our state has been reluctant to do so

Al Rabin: As far as the current tax credit program, I concur with Darsi that it's not been heavily used, but it is a nice tool to have; secondly, developers are working on several projects that are coming to fruition and I think we'll again be oversubscribed for the Commerce brownfields program, despite what's been going on with the economy; finally, in the past with the tax credit, if you had an applicant looking at a redevelopment, and they had a choice of tax credits or grant dollars, I can guarantee you in every situation they're going to go for grant dollars versus tax credits

Keyes: It's been several years since we tested the waters with Revenue on whether tax credits could be transferred; maybe we could broach that subject with them again

Foss: The last thing we were talking about with the group was the virtual library, i.e. getting a lot of our documents out on the web, so people could look at every closure letter, download the site investigation report at all sites, look at any monitoring results, etc.; truly that's a place where we'd like to go as a program

Next Steps: The subgroup will continue to meet and discuss some of the issues mentioned above; chances are these issues will be budget dependent, however

Plant Closings Subgroup

Michael Prager: We had a good meeting to further discuss a proposal that was made at the July 18 full Study Group meeting, where if a plant was closing they would at least due some due diligence at the property or allow a local government to do some of that work; the subgroup talked about the Wisconsin Department of Workforce Development's (DWD) requirement to notify the state if a plant with 50 or more employees is closing; they talked about some of the problems associated with this idea, including local governments trying to get access, mothballing

instead of assessing, etc.; also, the Mirro site in Manitowoc was one example where the demo was a greater problem than the environmental issues; also talked about other states' laws, specifically New Jersey and Connecticut, which have a requirement that if the title of the property transfers, they have to notify the new owner and have a cleanup agreement with the new owner; however, most people thought that was overkill

Thimke: Another idea was some sort of carrot, or pre-closing incentive, to allow companies to come in and get some type of pre-VPLE approvals; on the stick approach, given our budget crisis, we're not interested in people who don't comply and leave the state, which makes it much harder and costlier to track all that down and clean that up; we lose a lot of institutional knowledge as well, and we need to find some ways to at least get that information out and make it available

Prager: We also talked a little bit about property transactions; city of Milwaukee pointed out that banks require Phase I and IIs before they were looking to lend; health folks also pointed out that there are key health issues involved here

Henry Nehls-Lowe: The health issues are often more related to what we've seen with the older facilities versus those newer ones; we may need to restrict access inside the building and/or maintain the fencing that's in place

Prager: We also noted that some companies don't realize, as responsible parties, they can use the VPLE process and that existing tool can be used to clean up their own sites

Foss: For those folks in the room who represent the private sector, how do you think those folks who are closing would react to a letter inviting them in to talk about these issues?

Thimke: I think it would be better received than the traditional NOV, if you're asking to work with them and provide them incentives

Keyes: I think we're talking about a broad universe of sites; you have the bigger plants, many of which are aware of the issues and will do something, and you have those who are in dire straights and if you could get at least one to come to the table, I think that would be a positive step; and just the idea of outreach is helpful, if you have the resources to have someone meet with them and give them their options; then you have their middle market, which will be the most receptive

Scott Manley: I think Mark hit it correctly, it sort of depends on the tone; people get a little nervous when DNR gets involved; it'd be a better approach than the heavy handed "You may be liable and we want to find out if you are;" I think what might make sense would be to talk about what type of triggers would be appropriate; for example, if you've got properties that are shutting down because they're not financially viable, or whether they have a parent company or not, and you have an agency like Commerce trying to come in and put a new user in there, like at GM; there's a lot of interest for everyone involved that that site remain in some type of productive use, and I wonder if what's being discussed here would hurt or hinder that process

Keyes: One of the issues that companies will face is cash flow; they want to do the right thing, but they're saving their cash; if they knew ahead of time about some of the dollars that are available through the state, that might help

Dave Misky: For the city, we act like a secondary mortgage lender, we're second tier; the risk we have is, if they default, we're behind the primary lender

Thimke: I would suggest that, since legislative changes take awhile, you do have the opportunity to prepare and work with us on the idea of a letter

Foss: My recommendation is to categorize these sites in a gross sort of way; what could we do without any change in the law, what would those changes be?

Next Steps: The subgroup will continue to meet, flesh the ideas out more; items to discuss include: what can be done with the existing laws (e.g. Spill Law and Chrysler decision) versus statutory changes; getting more information from DWD about how the plant closing law works; having further discussion with DNR attorneys and others about the law; the possibility of sending out a letter once we learn about the closing, and what could the letter contain besides asking for information; finally, asking someone in real estate from the city of Milwaukee to talk about the issue

Grants & Reimbursements

Darsi Foss gave a brief overview on changes, which include working on consistent rates for food, mileage and other enhancement/consistency issues for DNR SAG and Green Space grants and Ready For Reuse dollars

DNR will continue to work on improving the proposals on improvements in grants and reimbursements and will eventually forward something to the Study Group

V. Brownfields Legislative Open House – Discussion & Decision

Darsi Foss talked about the Study Group hosting a brownfields open house for the State Legislature; there would be posters available, people there for legislators to talk to; the Study Group had talked about having a theme, perhaps trying to tie into the climate change/sustainability idea

Manley: I think it's a good idea, there's been so much turnover and it's been awhile since we've had a major policy discussion on brownfields, so it's a small group who probably even know about this issue

Keys: Does it make sense to try and cover as much geographic areas to try and schedule a sit down with legislators?

Manley: That would be helpful, depending on the session schedule; not sure how feasible this would be, but with the Commerce CDBG's, for example, they've sent a brief note to legislative offices announcing the grants, send a letter of congratulations

Keys: I know you talked about sustainability and the role of brownfields as a theme, with the current economic times and the closings, I think we should also think about the economy being front and center

Sam Tobias: I agree, and I think a major point is we can still do brownfield work even in these harder economic times; there's a fear that it would become a real secondary issue

Scott Wilson: So if February is busy, is this a good time?

Manley: I think it's a good time because the governor is giving his budget address and the legislators will be in the building

Brownfields Study Group will continue to organize the event, DNR will help with some logistical organizing

VI. State Agency Records Retention -- Discussion

Giesfeldt: Commerce, DNR and DATCP all have a large database of information and records, so there's a lot of information available; after certain periods of time, those records can be destroyed; from our perspective that would be a shame; we talked to Commerce and DATCP and we need to update our policies regarding records at the DNR remaining permanent in some fashion, and also that we're consistent among the three agencies with our policies, so we're all in the process of working together to update these policies; there's no disagreement among the three agencies

Foss: Can we talk to the Waste Program about their record retention; not sure what their policy is

Giesfeldt: We'll talk to them

Tobias: What about somebody out there who doesn't want them to exist? Can somebody come in and ask that?

Dan Graff: They're state property and state records so no one on the outside has the authority to do that

VII. Tax Cancellation Agreements: 75.105 & 75.106 – Issue Paper

Dan Kolberg gave a brief overview of the issue paper; these have been in place for about 10 years so it's a good time to evaluate, identify problems and talk about possible improvements, so we're seeking comments; we've had 14 75.106 and 11 75.105 agreements so far, for a total of 25; the most glaring problem identified – via a review of BRRTS – is that there's no reported progress toward closure for up to 5-9 years on most of the sites; also, the information exchange has not been very good

Erika Beimann: I know that a site may not be eligible for closure, or the remedy might involve the redevelopment, like the placement of a cap; a redevelopment might fall through and it could take years for the redevelopment to be completed, and the DNR might not be aware or hasn't followed up; so the DNR could put a schedule in place but it might not make sense for a site

Keyes: How many tax cancellation agreements do you have?

Kolberg: About 25; they're scattered around the state

Keyes: I have a concern of not allowing these to occur until case closure; Solar Paint, for example, that property has had a huge amount of work done, but it's a continued groundwater monitoring site, and it's taken 10 years, which is as long as these have been around; so it's a dynamic thing with some of these sites, otherwise the market would've picked them up; you need to be flexible and not too harsh

Graf: Sounds like you get the whole tax benefit, but you have to complete the cleanup; maybe you have a stepped process, i.e. you complete the cleanup you get X percentage of the tax benefit

Prager: In some cases you can forgive a portion

Foss: The question I have is don't they have to clear title, i.e. have an unencumbered title? You can't kind of give them the property with those delinquent taxes

Mike Palm: I'm just thinking about how the property gets redeveloped, if you forgive the taxes on a rolling basis, how will lending institutions feel about that with back taxes on a property and no guarantee; you'll have to come up with a tool to make people accountable on the back end, but you don't want to put something in there that's going to hinder the redevelopment on the site

Prager: Some local governments were hesitant to take the title, then you had 75.106 and it's suppose to make them feel comfortable

Misky: Several reasons for that, obviously and in part due to the work of this group, the liability risks are more understood, there are more funding options available, the legislative tools like engineered barriers now exist, the atmosphere for brownfields redevelopment is better, and the city from a public policy standpoint is able to deal with these better

Tobias: Is this a good thing? Are we encouraging bad actors?

Misky: Most of these are viable businesses

Group agreed that administrative changes, like information sharing, routine communication and progress reporting, are good first steps to improving the process, along with better outreach

If you have suggestions/comments please contact Dan Kolberg at dan.kolberg@wisconsin.gov or 608-267-7500

VIII. NR 700 Rule Revisions – Update

Darsi Foss gave a brief overview; RR Program is updating the NR 700 rules; staff have briefed the Study Group and the technical focus group several times, seeking comments before it goes to formal public comment; Darsi and Dan Kolberg focused on NR 708, which relates to immediate and interim actions; 708.17 suggested procedures on how to get it listed on the GIS Registry and meet the LGU exemption requirements, which included steps needed, fees, etc.

Foss: The other rule discussed was NR 718, which deals with removal of solid waste during remediation activities, and the discussion has centered on how you move non-hazardous soil, i.e. “soil brokering”; right now the rule it is pretty narrow, so the discussion focused on broadening it

Prager: Also, updating NR 750 on VPLE procedures and fees was also discussed

Next set of rules and NR 700 discussion will be on January 13; formal comment period coming in 2009

IX. State Grants Update

DNR Site Assessment Grants

Michael Prager gave a brief overview on the SAG grants; received 78 grants from 35 communities, about \$3.4 million, again oversubscribed by two to one; RR Program staff are reviewing grants right now, awards hope to be given in February near the legislative open house date

DNR Green Space and Public Facilities Grants

Michael Prager gave a brief overview on Green Space; \$1 million available, however about one-third lost to budget cuts, so there is still \$600,000+ available; DNR gave out two awards, one to Shell Lake and one Chippewa Falls, each \$19,000; have five applications in house from Oshkosh, Appleton, Beloit and two from Milwaukee; total amount requested is \$560,000, so funds would still be left if all of those were funded

DNR’s Ready For Reuse (RFR) Brownfields Grants and Loans

Jessica Milz gave a brief overview on the RFR grants; DNR has no money left for hazardous cleanup grant funds; for hazardous substance loans, DNR has about \$352,000 left; for petroleum funds, \$200,000 left in petroleum grants and \$560,000 left in petroleum loans; the Wisconsin Brownfields Coalition is applying to EPA for \$5 million in RLF funds and \$1 million in assessment coalition funds

Commerce Brownfields Grants

Al Rabin gave a brief overview on Commerce grants; to date they’ve made three awards to Racine, Milwaukee and Appleton, average size is \$400,000+; have \$5 million+ leftover; again oversubscribed; also working on the seven communities under 30,000 requirement

Keyes: Can you readily figure out how many applications you’ve received from small communities vs. total amount of applications

Rabin: It’s obviously in the minority; traditionally the lion’s share of the projects are going to come from the larger communities in the southeastern portion of the state

X. Review of Action Items

Adjourn