

**BROWNFIELDS STUDY GROUP  
PLANT CLOSINGS SUBCOMMITTEE  
April 3, 2009**

**I. Attendees**

Eric Ballas, DNR	Henry Nehls Lowe, Dept. of Health Services (phone)
Joanie Burns, DNR	Michael Prager, DNR
Jami Crespo, DNR	Andrew Savagian, DNR
Karen Dettmer, City of Milwaukee (telephone)	Bill Scott, Gonzalez, Saggio & Harlan (phone)
Melissa Enoch, DNR	Deb Smith, DNR
Darsi Foss, DNR	John Stibal, City of West Allis (phone)
Kurt Kapfammer, Endpoint Solutions (phone)	Mark Thimke, Foley & Lardner
Bruce Keyes, Foley & Lardner	Gary Fahl, Endpoint Solutions (phone)
Dan Kolberg, DNR	Bill Zillmer, WI Dept. of Workforce Development
Bill Looney, AECOM (phone)	Paul Zovic, Shaw Environmental (phone)

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

**III. Plant Closing Laws & Procedures**

Michael Prager gave a brief background summary and goals of the meeting; at the July 18 Brownfields Study Group meeting last year, the group discussed the plant closing issue and established a plant closings subgroup; subgroup met once in November, reviewed information, talked about options and scenarios

Bill Zillmer: Wisconsin mass layoff and business closing law is patterned after the federal law; only difference is size, federal law is 100 employees or more, Wisconsin is 50 or more, which is reflective of the state's smaller business size; basically the law is designed to give people 60 days of paid notice; there's a second program, a dislocated worker program, that uses the notice as a trigger to for DWD staff to meet with employees, let them know the resources available to relocate, answer any questions, etc.

Zillmer: So far this year we've received 105 layoff/closing notices; 2/3's deal with layoffs; on average, over the last 10 years, we'd get about 100/year, covering about 12-15,000 workers; last year we had 15,000 laid off, this year so far we've had 25-30,000 employees; we haven't had too many problems with proper notification; where we've run into problems is when closures happened quickly due to a number of factors, like when the bank moves on the company due to failures to make payments

Joanie Burns: Is that the case for most of these? I'm more worried about the smaller ones, under 50, that are off the radar screen

Zillmer: Yes, there are some that are under the radar screen that do layoffs that we don't hear about

Prager: As far as the dislocated worker program, you and your counterparts around the state go in with the employees to talk to them

Zillmer: Yes, they can access re-training help/funding for up to two years; started in 1982-3 during the last bad recession

Darsi Foss: When you get a notice from folks, what kind of information do you get? The kind of information we'd like to get from businesses that are shut down/are shutting down is: do they give you contact information? Who's in charge of the plant closure, or whether or not it's a temporary closure?

Zillmer: If it's a temporary, or what they term an "inventory adjustment," we don't even ask them for a written notice

Foss: So what are the ones on your web page considered?

Zillmer: Those are just the ones that sent us a notice for permanent layoffs or closing; they have to give us a name and phone number, inform the city/village/county/etc. and labor union(s)

Bruce Keyes: Any bankruptcy or receivership involved?

Zillmer: Usually if that's the case it's the receiver, bank or law firm, and their letter indicated they are the receiver

Foss: Any public info?

Zillmer: The letters are public information, we make all of that available; the letters themselves are sent out to news media

Foss: So how are you set up statewide?

Zillmer: We get federal funding to set up 11 workforce development boards, which are made up of civic business and educational members; they decide how they're going to use it; usually they develop a rapid response coordinator, which is an employee of the board; so I work with the rapid response staffer in each region; most of the contact work is being done in the region right now because of the high work load

Prager: With the mass layoffs, do companies give you the percentage of layoffs to total employment?

Zillmer: Yes, they'll state if it's a closing or a layoff and what percentage; also plant closings take longer than most companies think; so they'll keep around a few to do the work and then send updates to me on any changes

Savagian: Are they required to send those updates?

Zillmer: We ask for them, most do, but it's open to interpretation

Burns: If a company has 100 employees, and they're laying off 90, you may not hear from them again, even if they close

Zillmer: I think if they bothered to send us a layoff notice they'll send us a closing notice; the way this law is enforced is, if an employee feels he/she should get a 60 day notice and did not receive one, they can file a complaint with DWD; if DWD feels they should've received a 60 day notice, then the employer is liable for the pay plus benefits, and possibly a fine

Foss: Would your regional staff might good sources for which ones are laying off under 50? And can the smaller ones still come in and get help?

Zillmer: A lot of times they will let us know – the regional staff know many of the local businesses, and the employers have helped the regional staff before

Dan Kolberg: Does your program service apply to all employers? We've been talking about industrial plants, but do you also work with commercial employers, state governments and the like?

Zillmer: Well, just private entities

Keyes: Has DNR ever methodically cross-checked plant closing notice with BRRTS?

Foss: We only went through the list closings in the last two years from DWD's web site and found 150 companies with possible environmental issues, many but not all of them were sites we knew about

Zillmer: One thought I had, if you ever thought of the age of building? The older buildings are where you're going to find most of the problems

Prager: Do you have any of that information? How long they buildings have been there?

Zillmer: We rely on the Harris database for any history; it's the old WMC blue book and is available as a book and as a database

**Andrew Savagian will make DWD's information available on the web site, under the Plant Closing Subgroup header**

#### **IV. Preliminary Findings From State Survey on Plant Closings**

Michael Prager and Jami Crespo from DNR gave a brief update on the survey

Jami Crespo: Working with ASTSWMO (Assoc. for State & Territorial Solid Waste Management Officials), sent out a survey to all 50 states, received 14 responses; we asked for any administrative or statute options, what authority they had, etc.; while most states had authority to gain access, it wasn't for plant closings specifically; for real estate they're either limited or non-existent; four of the states had some interesting information

Prager: Michigan has something similar to Bona Fide Prospective Purchaser; they're considering changing baseline environmental assessment to be more of an AAI, also including some sampling; so the new buyer would have to do some sampling, then the state would become aware of any contamination as part of the potential liability protection

Prager: In Mississippi, within the last couple of weeks, they've also been working with their Department of Workforce Development to attach a letter informing companies closing their plants about requirements, providing resources, etc.

Burns: We've been thinking about this in our program as well; thinking of sending them a one-page fact sheet about what they need to know

Mark Thimke: To reiterate what we said in the previous meeting, the goal is to do something about this on the front end, and not wait until it's too late and nobody knows, no money, what's the insurance, etc.

Bill Scott: In looking over this whole package, what made sense to me was to provide a company with information before they shut down, what their obligations are, what resources are available to them, getting an inspection, etc.; most of these companies are not in a position to have money to do the things you need, so you need to get the local government involved; you need a team to get the work done while there's still some good will in place, maybe there's a chance before something happens and it hits rock bottom

Zillmer: I think you'll find a very cooperative partner in the receivers, they're trying to sell these plants, they're aware of the laws and liabilities, and if they don't have a clean bill of health they're not going to sell the plants

Keyes: RR might want to do a set of "Do's and Don'ts" in a somewhat friendly but realistic fashion

Prager: Also, just because they're closing doesn't mean they're causing/have caused the problem in the first place; Bruce you've had examples dealing with those

Karen Dettmer: Regarding Recommendation #9 [require owners of plant closing to conduct environmental assessments or allow local government access], I think this also provides the city an opportunity to get in there to try and make sure this didn't end up becoming a brownfield; I really like this model

Scott: I think this type of letter with a site visit/inspection is good; if it went into bankruptcy, it would help for the trustee that has to get involved

Bill Looney: Did you guys have a chance to check with California? They have pretty stringent standards that are often regulated by local governments or local water boards.

Keyes: Is there a way to better educate and empower local fire officials, so they know about these closing facilities? Seems to me they'd want to inspect them, especially haz mat units

John Stibal: I think the fire departments know already; they go in twice a year; about the only time we can go in and inspect without probable cause is for a nuisance issue

Keyes: So can the fire departments go in when they know one is closing

Henry Nehls Lowe: I know that the emergency folks keep track of what's there in case of a fire, so they know what's stored there, the volumes of containers, etc.

Burns: That's through the EPCRA – Emergency Planning/Community Right-to-Know Act

Keyes: The letter could include that

**Andrew Savagian will post the survey data and report on the Study Group web page under the Plant Closing Subgroup header**

## V. Review of Categories of Closed Facilities

Michael Prager went through the first section regarding the chart describing various plant closing/mass layoff scenarios and potential options/recommendations

Scott: Again, the local officials usually know the most about the local businesses

Burns: I envision sending something out to all local governments

Zillmer: Emphasize you want to speed up possible remediation and re-sale

Thimke: This really needs to be coordinated between agencies, getting these letters out; need to set dates for responses, triage for inspections, build this tier of reaction/action within this short time of 60-day notices; have your teams ready to go; we don't want to wait on this, or still be talking about it next April

Foss: Plus there's a lot of "smoothing over the waters" to make sure everyone is in agreement on the strategy, as well as get PR out to communities about what we want to do; so there's a little bit of work, sending out the letter might be the easy part; but yes we should get going on this

Foss: Maybe we've got two letters; one for the most recent, and one that closed in 2007 and before, however we want to define it; also we'll want to send a copy of the letter to the local government, including the county (i.e. the taxing entity), the redevelopment entity, fire/haz mat folks, and maybe OSHA; also, we should bring in the DNR's Air Program, they may have information that we don't have

Prager: What do folks think about the insurance issue (item #7); should we factor that in and look at it more in depth?

Scott: As an element of the letter, I think you should include a statement that they've already paid for the protection and their policy should be preserved and made available

Prager: For item #6, we could use the \$1 million in assessment funding DNR is requesting from EPA, if we receive it, to implement some of this; it would be different than the DNR's site assessment grants, which don't allow the causer to apply; with this EPA money we could offer to do some assessment work and pay the contractor

Foss: While this won't help in the short term, we still don't have the tools in place to deal with mothballed properties, and we need a solution for these as well

Discussion by the subgroup also focused on whether the letters should require any affirmative action by the company to certify that they have reported all spills and how they have handled all wastes and materials

There was also support for using the \$1 million in EPA assessment funds (if awarded to DNR); discussion on how to implement included whether traditional Phase 1 and 2 assessments should be conducted, or whether a limited assessment be conducted with an interview with a plant manager and a facility walk-through

## **VI. Next Steps**

**Michael Prager will have a draft of the letter for the Brownfields Study Group April 15 meeting; and RR will need to brief the upper level managers at DNR about this effort; DNR will continue to take comments, due to Michael by Wednesday, April 8; subgroup will report to full Study Group at April 15 meeting**

**Adjourn**