

**BROWNFIELDS STUDY GROUP
PLANT CLOSINGS SUBCOMMITTEE
November 17, 2008**

I. Attendees

Eric Ballas, DNR	Dave Leibl, UW-Extension (phone)
Tom Berganmini, BT2	Carol McCartney, Ayres Associates
Margaret Brunette, DNR (via telephone)	Michael Prager, DNR
Dave Cleary, Northern Env. (phone)	Andrew Savagian, DNR
Karen Dettmer, City of Milwaukee (phone)	John Stibal, City of West Allis (phone)
Nancy Frank, UW-Milwaukee (phone)	Mark Thimke, Foley & Lardner
Dan Kolberg, DNR	Paul Killian, STS (phone)

II. Welcome, Introductions, Agenda Repair

III. Issue Summary

Michael Prager gave a brief background summary of the issue: at the July 18, 2008, Brownfields Study Group meeting, the group discussed the plant closing issue and talked about one option that would tie a due diligence requirement to the current plant closing requirements, where the company would need to do an environmental assessment or allow the city to do one if they can't

Prager: Wisconsin law requires that businesses employing 50 or more persons in the state must provide written notice 60 days before implementing "business closings" or "mass layoffs" in this state; a business closing is a permanent or temporary shutdown of an employment site that affects 25 or more employees; what often happens after a plant closes includes the company trying to sell the plant, mothballing the plant, selling it to someone who then mothballs it, or the company addresses the environmental concerns as part of the negotiations and eventual sale of the property

IV. Discussion

John Stibal: I like that NJ legislation that was sent out; usually for the city to take action to address closed plants, that involves a nuisance issue and a lot of court action; in one case we had to go to the Supreme Court, so there can be a lot of work involved

Michael Prager: So you're saying this can be a cumbersome process

Stibal: It takes years; and this is a good way to do it, and we're going to see a lot more of this; home foreclosures are a problem now, manufacturing is not far behind, so we may want to wrap the word foreclosure in this

Nancy Frank: I absolutely agree with John, I'm concerned about limiting the policy

Stibal: I agree; I'm just saying everyone understands the word foreclosure, so it needs to be a part of this, because people understand that word and will help them realize this is a problem

Prager: Another piece of that law is the mass layoff requirement; many of these facilities lay off a bunch of people, then scale down their production, then they close, so these don't happen overnight, they slowly close down; Tower Automotive in Milwaukee is a good example

Karen Dettmer: That's correct, it's kind of an increasing problem, the slow shutting down of plants that are over the 50 employee threshold;

Prager: I know Pressed Steel was one of those plants that took a long time

Stibal: There was a slightly different issue with that one, because we started building code condemnation of the property; but even with that we don't have any rights to test the soil

Tom Bergamini: We're talking about a whole range of companies; some are single location manufacturers where market conditions change and they can't go forward, and basically close the doors; the other end of the spectrum is when companies are scaling back, where they're reducing their locations/plants and mothballing the rest and presumably they have dollars to do the investigations at the mothballed site, but obviously they're conserving cash and don't want to do that; we've bought properties from both of those types, and if you're going to go forward with a rule here that says you have to begin investigation, it's hard to imagine you're going to be able to do that with a scalpel; if you pass any legislation that says you have to start investigations toward closure, you'll get some that will just hand the keys over to the community, where others may have enough resources; so this discussion is a good exercise to talk about how far do you want to take this – is the desire here to have a plan/policy to encompass ALL of those operations going out of business, or are we trying to get at the companies that have some capacity to carry forward?

Carol McArtney: Or are we going after the most egregious environmental problems? That's another way of looking at it

Bergamini: That's a whole different level of criteria you'd have to apply; I think the question you'd need to start with here is: What are you trying to accomplish?

Prager: I also talked to staff from the Wisconsin Department for Workforce Development (DWD) and they do get some information from the plant closing law, but it only applies to businesses with more than 50 employees, and many with less than 50 close and leave environmental issues; also, many are stores or have other non-manufacturing business where the law wouldn't apply to them

David Leibel: Yes, it's very difficult to look back on the site and determine what's been happening with the site that's currently operation; you could have questionnaire that would require the current owner to provide information on past uses

V. Examples, Experiences

Paul Killian: Another example is the former Mirro plant in Manitowoc; a landmark facility, a their former headquarters in the downtown area; had a layoff in 2003, about 2004-05 they vacated that facility and there are environmental issues related to the property; but those environmental issues are kind of masked by the scope of the demolition – it's an entire city block and is seven stories high

Bergamini; One of the things you're speaking to is the investment; it's certainly going to be the case that with current and future closings there are going to be demolition issues, technical issues,

etc., where you don't have dollars to take care of that; the presumption is if you at least complete the investigation there's less chance because the fear is less so; so you can't solve all the problems in one felled swoop, you want to at least do a Phase I and Phase II so there's a database there for the other parties that come along

Killian: Also, keep in mind for those sites that are mothballed, these larger operations may not have much for re-use, and that the demolition and asbestos issues, in many cases, regardless of the known/unknown environmental issues, is more of an issue

Prager: And if we were in a different area of the country, the market would probably take care of these issues (e.g. San Francisco, New York, etc.); the Rayovac facility in Madison is another example where the company did a large cleanup and the property value was high

Bergamini: If we're opening that door, where the owner does a Phase I and Phase II, there could become significant investigation and cleanup costs; but those sets of costs could be overwhelming to some businesses, which is frankly why you see these properties mothballed

Karen Dettmer: Milwaukee's concern is protecting the community; I'm not looking to protect the current businesses but the future redevelopment of the property and the future businesses that are coming in; if they do a Phase II and are subject to an RP letter being issued, but maybe they don't have the resources, in this letter there could be something on their eligibility for state resources, to help communities determine eligibility for these grants to help get these investigated and redeveloped

Stibal: On the other hand, it'll also help other companies get these properties back on the market; maybe a company mothballs because they fear the risk, but a lot of these companies doing the investigations find out the cleanup was not a huge price tag; Wehr Steel is an example, they thought there was a costly cleanup there, but there really wasn't

Dan Kolberg: Looking at it for the SAG grant applications; we've seen loads of large sites that end up in the hands of small communities, where there's 100 years of industrial history; and the communities are looking for \$30,000 to do something; look at how small and insignificant that can be, when you're looking at 10's of acres and dozens of properties that are all obsolete and in need of demolition; you'd need to chip away for years at \$30,000 a crack to find everything out; so from a SAG perspective those are the types of cases and problems we're finding

Bergamini: From the type of environmental issues you face and will be facing, when you look at big sites like Wehr Steel vs. smaller operations that may go into storage business or non-economic impactful next use; when thinking about this, John, are you hungry for an approach that addresses both types of properties? The starting point for this is plant closing law, which is key to the layoffs, and a lot of these businesses don't have 50 employees

Stibal: The key is to get the property back into re-use, nowadays the environmental nightmares aren't really there anymore; it's not that costly anymore, some are bad but the rest are pretty manageable; you'd be hard pressed to spend \$1 million on a site anymore because they fear it could be a Kerr-McGee type of site

Mark Thimke: Some of my thoughts are that we're experiencing a large number of closures of facilities due to the economic downturn; if you wait too long, more questions and more cost come up five years after the fact when you have no resources or less resources and no one around, so you have the fear of what was there and how to pay for the testing, etc., so it seems productive to do that more on the front end of what might be required, we start from the base that there's an

ongoing statutory obligation – and the Chrysler case confirmed it – that if there are spills or releases, it doesn't take a letter from the DNR to trigger that, that onus is on you once that release occurs to notify and go through steps and procedures; for the [Brownfields Study Group] committee and this subgroup, given that framework and with plant closings happening, what can be out there can assure ourselves that these obligations are being met and followed; the plant closing law is a trigger, but it doesn't catch everyone; also, this proposal needs to be considered in relationship with the existing LGU cost recovery law

Prager: That's something the Study Group helped create, the local government unit (LGU) cost recovery provision; a local government could, if acquiring a property under the LGU exemption provisions, could pursue cost recover from the responsible party; that's been used as a handy stick for communities in the past few years to bring parties to the table

Thimke: One advantage of doing assessment before a plant closes is you have more information when people are around – workers, managers – will be able to answer some questions, address issues, etc.

Bergamini: What are other potential triggers?

Prager: One that is significant is, in New Jersey, they tie it into property transfers; there are a lot more of those than plant closings; under Wisconsin law, residential property has to have disclosure, but for other non-residential properties there are no law for that type of disclosure; although that approach also has unintended consequences

Thimke: I think the New Jersey's approach is a little bit overkill, quite resource intensive and involves a new statutory process, and that could take 2-3 years before we have something, so this might not be the time to jump into that; I'd caution about that if we're looking to do something in the near term; Wisconsin's current language its fairly aggressive, so we should look within that system about what could be done to make it an easier transition for closure of these properties, so when the market is there to put properties back into use they're ready

Thimke: What I'd like to talk about is how can we create a program that has a carrot attached to it? And for those parties ignoring those obligations, there needs to be some type of stick

Dettmer: I don't see the property transaction being a real issue, I think most banks have a dollar threshold on how much they'd be willing to lend without a Phase I and Phase II; but with the current economic situation, lenders seem to be more interested and are requiring more Phase Is and Phase IIs; the carrot idea is good, some sort of incentive to get them to work with the state and local governments

Frank: I think the point about how to get the investigation done before everyone disappears from the plant is a very important point, which can serve to justify providing some of those carrots

Prager: Henry Nehls Lowe also submitted comments to Foley's notes regarding limiting access and making sure the site is secure and safe

Bergamini: Is there a way of incenting those owners who naturally want to mothball to get them to want to move forward?

Thimke: The best case situation is, if you're closing, to move it from closure into redevelopment as quickly as possible and avoid the lag from environmental/perceived environmental issues; a suggestion is, because companies don't close on a dime, it's usually a long process, so could they

enter into some sort of a pre-VPLE process, where you incent them to do the investigation because, based on that investigation here's what you'd have to do to get a VPLE COC

Bergamini: So the idea would be to sort of slow down the DNR 292.11(3) process? Could there be a tax incentive as well?

Frank: Is there a cooperative approach that could be taken? So if the DNR is monitoring the plant closure list, is there some way a carrot could be offered cooperatively by DNR that could say, "We understand you're closing, you're going to have a whole lot of issues, etc."; is there an opportunity there?

McArtney: That's a good time for DNR to notify the closer about the VPLE; I've seen a lot of facilities where the owner just didn't know about the VPLE

Thimke: I recently talked to folks of a very large company, though not headquartered here, that didn't know about this program

Prager: Other states don't offer that way out of liability; and part of our goal with limited resources is to make this sort of self operating

Frank: I'm glad you mentioned that, because coming up with something doable within your existing resources is important

VI. Next Steps, Future Actions

Prager: We can get people from DWD to come talk to us and provide their perspective, talk about the plant closing law, etc.; but as far as next steps, are we set yet for putting together a recommendation?

Thimke: I think we ought to know how it works; what do they (DWD) do when there is a filing?

Prager: Commerce is also involved in providing assistance when a plant closes, we could talk to them as well; also, the Association of State & Territorial Solid Waste Management Organizations (ASTSWMO) may be able to help do a survey of what other states are doing

Bergamini: Do we really understand the DNR's authority now under current law? That might be a question to the Legislative Reference Bureau and DNR attorneys: How far can the department go now for discovery/due diligence?

Group agreed that DNR will ask DWD folks to come talk to the subcommittee, gather additional information – including the ASTWMO survey – and talk to the DNR attorneys and Legislative Reference Bureau staff

Group also agreed to have someone come talk to the subcommittee who is familiar with Milwaukee's industrial real estate market to talk about what incentives would be effective

Adjourn