

**Wisconsin Department of Natural Resources – Remediation and Redevelopment Program  
Brownfields Study Group-Plant Closings  
Friday, April 3, 2009**

**State Remediation and Waste Managers Survey Report on Plant Closings**

***Survey Description***

In March the WI DNR's Remediation and Redevelopment (RR) Program sent a survey to The Association of State and Territorial Solid Waste Management Officials (ASTSWMO) state members. The survey consisted of the following three questions:

Question #1: Has your state taken any *specific* actions - administrative or legislative – over the last 5 years to address the known or unknown environmental conditions at closed industrial or commercial facilities? How effective have those efforts been?

Question #2: Does your state have any sort of real estate disclosure requirements that require disclosure of environmental impairments or require environmental assessments be conducted when commercial or industrial real estate is bought or sold, or if a plant closes its operations? If so, please describe.

Question #3: Does your state have any statute or administrative rules which would allow local governments or state environmental agencies access to a closed or closing industrial facility to conduct environmental testing? If so, please describe?

***Survey Response***

Fourteen states responded to the survey: Arizona, Colorado, Idaho, Illinois, Indiana, Iowa, Michigan, Mississippi, Montana, New Hampshire, New Jersey, North Dakota, Pennsylvania and Rhode Island.

***Survey Results***

All the states that responded can legally gain access to closing or closed industrial facilities if there is a known or perceived environmental condition, but most do not have the authority for the state or local governments to enter a site to do environmental testing solely because a facility is closing. Real-estate disclosure requirements were limited or non-existent for most states.

The surveys responses from Indiana, Michigan, Mississippi and New Jersey provided information that may be used to address certain issues facing Wisconsin. Their responses are summarized below with links for more information. The other respondents had taken little or no action to address plant closings.

***Michigan***

Michigan has been working on new legislation to redesign their cleanup program. The state is planning to modify their requirements for new purchasers to obtain liability protection. They are proposing to change to requirements for new owners to conduct a Baseline Environmental Assessment to require an All Appropriate Inquiry type assessment with sampling and require that the results be reported to the state. The program would require the Inquiry to occur prior to a property transfer and

for it to occur on a phased in schedule (4-8 yrs) for existing owners and operators. Michigan faces a problem with many owners stating they have no data that shows they need to remediate a site. The state has a specific requirement in the statute for notice that a property is a “facility”. This is an area the state is proposing to clarify further and expand with the redesign. They are proposing that a party who has on-going remedial obligations to acquire access to continue to perform those obligations as part of any transfer of interests in the property.

<http://www.michigan.gov/deqrrd>

### *Mississippi*

Mississippi recently instituted a new program in conjunction with their state labor department. The labor department receives notices from plants at least 90 days before they close. The MS Department of Environment Quality (MDEQ) is now monitoring these notices and sending letters to the companies about permitting and brownfield issues and potential assistance from MDEQ. It also provides a copy of this letter to the permitting department within MDEQ. The state also began sending letters to the city and county economic development organizations where the property closed down regarding its brownfields program and Phase I assessments. A copy of the letter is attached.

[http://www.deq.state.ms.us/MDEQ.nsf/page/GARD\\_brownfields?OpenDocument](http://www.deq.state.ms.us/MDEQ.nsf/page/GARD_brownfields?OpenDocument)

### *New Jersey*

Since 1983, NJ has had statutory requirements for industrial facilities to initiate and complete a cleanup when a facility was closing, substantially reducing its operations, or being sold. This law has helped significantly in preventing contaminated properties from being abandoned. In terms of access to closing or closed facilities, municipal governments and redevelopment entities can gain access to a site for the purposes of redevelopment.

The NJ Department of Environmental Protection used to provide determinations for property owners as to whether the Industrial Site Recovery Act (ISRA) applied to their facility but due to excessive state workload and budgetary constraints, the state’s Site Remediation Program discontinued the issuance of applicability determinations in 2008.

<http://www.state.nj.us/dep/srp/brownfields/>  
[http://www.nj.gov/dep/srp/isra/isra\\_applicability.htm](http://www.nj.gov/dep/srp/isra/isra_applicability.htm)

### *Indiana*

Indiana has a Responsible Property Transfer Law. Certain transfers of real property in Indiana require a transferor to complete a disclosure document that provides information concerning environmental conditions on the property.

<http://www.in.gov/ifa/brownfields/>  
<http://www.in.gov/idem/4691.htm>  
<http://www.in.gov/ifa/brownfields/files/2007LegislationSummaryBF.pdf>  
<http://www.ai.org/legislative/ic/code/title13/ar25/ch3.html#IC13-25-3-1>

## MISSISSIPPI PLANT CLOSING LETTER

Dear CONTACT:

It has come to the attention of the Mississippi Department of Environmental Quality (MDEQ) that there are plans to close the [FACILITY NAME] facility in CITY, Mississippi. As you may know, recent changes in accounting and disclosure standards, such as accounting rules for “conditional asset retirement obligations,” may affect your company’s bottom line should the facility remain idle and unsold. Also, a brownfield is defined as real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. While we have little reason to believe that the facility is contaminated, it may be in your best interest to take advantage of some of the benefits of the Mississippi Brownfields Program, such as an income tax credit. Enclosed you will find an application along with some additional information about the benefits of the program. I encourage you to look over the information and call me at (601) 961-5654 should you have any brownfield questions.

In addition, most environmental permits issued by MDEQ contain certain closure requirements, including notification of closure to MDEQ. You should carefully review any environmental permit(s) that your company may hold and become familiar with these closure conditions. It is imperative that you comply with these closure conditions to avoid non-compliance and subsequent enforcement actions. If you have any questions about the closure conditions of your permit(s) or need to speak with someone about permit termination, please contact MDEQ’s Environmental Permits Division or Environmental Compliance and Enforcement Division at (601) 961-5171.

Sincerely,

Jere “Trey” Hess  
Brownfields Program Coordinator

cc: EPD CONTACT NAME – MDEQ-EPD  
ECED CONTACT NAME – MDEQ-ECED