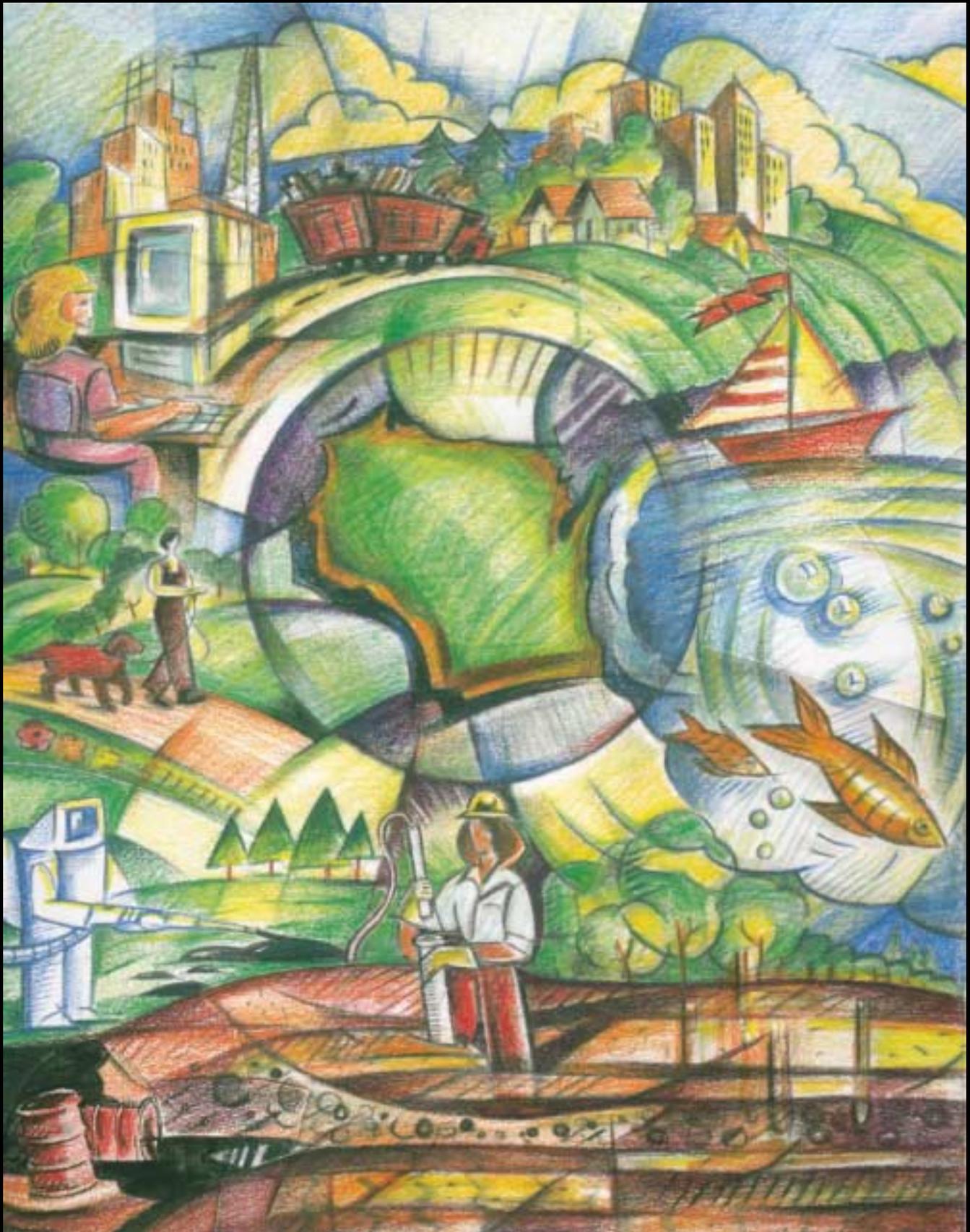


# BROWNFIELDS STUDY GROUP FINAL REPORT



**The Brownfields Study Group Final Report was produced through a joint effort by representatives from state agencies, local governments, businesses and other public and private entities. The report was compiled by staff from the Department of Natural Resources (DNR).**

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## Brownfields In Wisconsin

“Brownfields” are a category of properties which are abandoned, idle or underused industrial or commercial facilities or sites, where the expansion or redevelopment is adversely affected by actual or perceived environmental contamination. There are an estimated 8,000 brownfields in the state, scattered throughout all 72 counties, from major urban centers to less-populated rural areas. These properties present public health, economic, environmental and social challenges to the communities in which they are located.

Since the early 1990s, Wisconsin has made significant progress in creating incentives to clean up and redevelop these brownfields properties. However, while many brownfields sites have been reclaimed, thousands more remain.

Several state agencies have responsibility for implementing various components of the brownfields initiative in Wisconsin. The following table shows the state agencies’ areas of expertise and the initiatives they administer.

State Agency	Natural Resources	Commerce	Transportation	Revenue
<b>Primary Area of Expertise relating to brownfields</b>	Financial, Cleanup, Redevelopment and Technical Assistance	Economic revitalization of brownfields	Cleanup of brownfields related to transportation projects and infrastructure planning	Tracking of tax credits and other tax incentives for brownfields
<b>Programs Administered</b>	Redevelopment and Technical Assistance -off-site letters -close out letters -lease letters -technical comments -certificates of completion  Site Assessment Grant (SAG) Program  Sustainable Urban Development Zones (SUDZ)  Land Recycling Loan Program  Stewardship Program	Brownfields Grants  Development Zone Remediation Tax Credits  CDBG Blight Elimination and Brownfields Redevelopment grants  Petroleum Environmental Cleanup Fund Award (PECFA)  Brownfields Internet GIS	Transportation Economic Assistance (TEA)  TEA 21 infrastructure assistance  State Infrastructure Bank (SIB)	Environmental Remediation Tax Incremental Financing (ER TIF)  Tax Incremental (TIF) Financing

### History Of The Brownfields Study Group

As part of the 1997-99 State Biennial Budget, the Legislature directed the Department of Natural Resources (DNR), in cooperation with other state agencies and external parties, to study seven issues related to the cleanup and reuse of brownfields:

- study the means by which this state can increase the number of brownfields that are cleaned up and returned to productive use;
- study the potential methods to provide long-term funding of brownfields financial assistance programs;
- study optional methods to clean up groundwater on a comprehensive, rather than property-by-property;
- study the effectiveness of existing laws concerning the redevelopment of brownfields;
- study the definition of “voluntary party” under section 292.15(1)(f) of the statutes;
- identify and evaluate additional legislative proposals to further the cleanup and redevelopment of brownfields; and
- identify potential sources of funding for brownfields cleanups for which this state becomes responsible because of the expansion of section 292.15 of the statutes, to cover persons who did not intentionally or recklessly cause the release of a hazardous substance discharge.

The 1998 Brownfields Study Group was created with the intent to study these issues and identify new or under-utilized resources, locate gaps in statutory language and state brownfields policy, and recommend changes to the State Legislature for the next budget cycle.

The culmination of this effort was the *1999 Brownfields Study Group Final Report*. The Report outlined 35 issues with more than 70 recommendations for enhancing financial, liability and local government brownfields incentives (to see a copy of this report, please see the following Internet site: [www.dnr.state.wi.us/org/aw/r/rbrownfields](http://www.dnr.state.wi.us/org/aw/r/rbrownfields)).

The Legislature and Governor Tommy Thompson incorporated many of the recommendations made by the Study Group into the 1999-2001 State Biennial Budget (1999 Wisconsin Act 9). Included in the state budget were a number of improvements, statutory changes and new programs related to brownfields investigation, cleanup and redevelopment (for more information, please see “Brownfields Initiatives in the 1999-2001 State Budget”, DNR publication #RR-623, or the “1999-01 Wisconsin State Budget – Comparative Summary of Budget Provisions Enacted as 1999 Acts 9 and 10”, Legislative Fiscal Bureau Report, January 2000).

Due to the success of the 1998 Study Group, state legislators again requested that the DNR help coordinate a 2000 Study Group with the following five state agencies:

- Department of Administration (DOA);
- Department of Commerce (Commerce);
- Department of Health and Family Services (DHFS);
- Department of Revenue (DOR); and
- Department of Transportation (DOT).

The DNR also extended Brownfields Study Group membership to other external parties, such as local governments, businesses, environmental attorneys and consultants, environmental groups and other persons with a historic interest in this topic. A listing of the Brownfields Study Group members can be found in Appendix C of this Report (please see page 78).

### Identifying Issues and Recommending Solutions

The Brownfields Study Group began meeting in January, 2000, and completed their meetings in September. To aid in the discussion of the many brownfields issues before the group, three subcommittees were formed:

- Liability Protections;
- Local Government Incentives; and
- Financial Incentives.

Three members of the Study Group were selected to chair each subcommittee, with a DNR staff person assigned to each subcommittee to provide support. The subcommittees met numerous times over the course of the spring and summer to identify and provide initial recommendations to the full Brownfields Study Group. The Study Group convened in July and September to discuss the subcommittees' proposals and provide supporting or dissenting comments.

Throughout this process, information was shared through the DNR's web page and electronic transfer mechanisms to all Study Group members and other interested parties. All meetings were open to the public. Many people participated in the meetings, even though they were not formal members of the Study Group. The listing of those individuals and the guidelines for the Study Group can be found in Appendices D and E, pages 80 and 86. You can also access the Brownfields Study Group web site at [www.dnr.state.wi.us/org/aw/rr/rbrownfields](http://www.dnr.state.wi.us/org/aw/rr/rbrownfields).

The culmination of the Brownfields Study Group's efforts in 2000 can be found in this Report. There are more than 30 issues that were identified by the Brownfields Study Group, as well as more than 70 proposals to resolve those issues. Many of these proposals involve making small changes to state laws while others represent significant policy changes to the state's brownfields initiative.

As Wisconsin continues to be a national leader in brownfields work, the Study Group hopes this Report will provide direction to the state's brownfields initiative as well as support solutions to the ongoing challenge of investigation, cleanup and redevelopment of brownfields properties.

# Issues Summary

## **Chapter 1 – Brownfields Liability Protections (page 14)**

### **Issue: Expand Liability Exemptions For Local Governments (page 15)**

The Study Group proposes changes in four areas:

- stewardship – amend the LGU exemption to eliminate reference to specific appropriations and add “the local governmental unit acquired the property using Stewardship funds”;
- solid waste liability – amend the law to extend the LGU exemption so the LGU is exempt from solid waste liability;
- hazardous waste liability – supports the efforts by the DNR to clarify hazardous waste liability issues; and
- interpretation of exemption – recommends DNR staff issue written clarification that an LGU who causes or exacerbates a hazardous substance discharge would only be responsible for that discharge and not all discharges on the property; also DNR staff should work with LGU’s and clarify which conditions might cause or exacerbate a discharge and work to ensure LGU actions on a site do not cause or exacerbate a discharge.

### **Issue: Expand Local Government Cause Of Action (page 18)**

The Study Group proposes that local governments be allowed to assign their rights of cost recovery under s.292.33, Wis. Stats., to a new property owner.

### **Issue: Remove Interim Liability Protection Language (page 20)**

The Study Group recommends the repeal of s.292.15(2)(at), Wis. Stats., and removal of any other references to this statutory section. The Study Group believes that, since there are currently private insurance products available to address this interim risk, it is unnecessary for there to be an interim liability protection provided by state statute.

### **Issue: Clarify Waste Regulatory Issues At Brownfields Sites (page 21)**

The Study Group proposes changes in two areas:

- solid waste streamlining – the Study Group strongly supports the DNR's efforts to clarify and streamline the requirements and process for parties who want to develop properties which contain solid waste; the Group also recommends DNR quickly initiate rule-making changes to fully implement this approach, and continue to seek feedback from the Study Group members as this effort progresses; and
- hazardous waste cleanup – the Study Group recommends, to the extent feasible, that the DNR work with EPA to address liability concerns at brownfields associated with federal hazardous waste law.

### **Issue: Expand Off-Site Liability Exemption For Voluntary Party Liability Exemption (VPLE) (page 23)**

The Study Group proposes changing the statute s.292.15(2)(ag), Wis. Stats., to allow a full Certificate of Completion (COC) to be issued for properties impacted by off-site contamination in both soil and groundwater.

**Issue: Clarify Assignability Of Certificates Of Completion (COCs) For Voluntary Party Liability Exemptions (page 24)**

The Study Group proposes to change s.292.15(2), Wis. Stats., so the requirement to maintain and monitor the property applies only to the voluntary parties if they possess or control the property for which the COC was issued.

The Study Group also proposes adding a section under s.292.15(2)(b), Wis. Stats., which would allow exemptions to continue to apply to a voluntary party who no longer owns the property, even if the person in current possession or control fails to maintain and monitor the property.

**Issue: Voluntary Party Liability Exemption – Clarify Access In The Use Of Natural Attenuation (page 25)**

The Study Group recommends changing s.292.15(2)(ae), Wis. Stats., to require the voluntary party who currently owns the property to allow DNR and other specific authorized parties access to enter the property to take necessary actions to determine if natural attenuation has failed and respond in the event it has failed.

**Issue: Clarify Liability Issues Related To Sediment Contamination (page 26)**

The Study Group recommends amending the off-site liability exemption law, s.292.13, Wis. Stats., to clarify that it applies to sediments.

The Study Group also proposes that the DNR's contaminated sediment advisory committee should take on the responsibility to address policy issues related to contaminated sediment liability under state and federal laws (e.g. state riparian ownership law).

**Issue: Recognize Environmental Insurance As A Brownfields Tool (page 28)**

The Study Group recommends that all state agencies involved with brownfields issues, as well as the State Legislature, recognize the increasing role of environmental insurance and consider it as part of the solution to facilitate successful brownfields transactions.

**Issue: Recognize DNR's Enforcement Discretion As It Relates To Brownfields (page 29)**

The Study Group recognizes that the DNR has the ability to exercise enforcement discretion in some cases to facilitate brownfields development, and encourages DNR staff to utilize this discretion on a case-by-case basis.

## **Chapter 2 – Brownfields Incentives For Local Governments (Page 30)**

### **Issue: Modify Negotiated Sale In Lieu Of Bidding For Tax Delinquent Brownfields Properties (page 31)**

The Study Group recommends the following:

- create a statutory amendment to s.75.69(2), Wis. Stats., that would allow for a county or city of the first class to transfer tax delinquent property it owns, without using the competitive bidding process, if environmental pollution is present and the property meets the definition of a brownfield under s.292.75(1)(a), Wis. Stats.; and
- create language similar to provisions in s.75.106(2)[1999 Act 121] to:
  - provide a 15-day notice of the sale to the city, town or village where the parcel is located;
  - require an environmental site assessment of the property be completed and results sent to the DNR; and
  - require the purchaser to enter into an agreement with the DNR to clean up the parcel to the extent practicable; to minimize the harmful effects from the hazardous substance; and to maintain and monitor the parcel, all pursuant to rules promulgated by DNR.

### **Issue: Assign Judgment Of A Tax Deed Without Taking Title (page 32)**

The Study Group proposes the following:

- allow a county to execute a tax deed under s.75.14(1), Wis. Stats., to an individual under the same conditions as prescribed under s.75.106, Wis. Stats.; this would allow an individual the right to accept a deed which vests an absolute estate in fee simple for a brownfield property where a Phase I and II environmental assessment has been conducted if the individual agrees to further investigate and remediate the property per the requirements under s.75.106(2)(f), Wis. Stats.; and
- allow the individual who has elected to accept a tax deed under the above conditions to commence an action to bar former owners under s.75.39, Wis. Stats.

### **Issue: Modify Expenditure Restraint Exemption For Municipalities (page 33)**

The Study Group recommends amending state statutes so unpaid property taxes and special assessments on brownfields properties not count against the spending cap for municipalities.

### **Issue: Clarify Blight Elimination And Slum Clearance Authority (page 34)**

The Study Group recommends amending the Blight Area Law and the Blight Elimination and Slum Clearance Act to include “environmental pollution” in the definition of blighted area and blighted property. Also, the municipality or redevelopment authority should have the right to make environmental inspections of properties.

### **Issue: Develop Guidance To Integrate Off-Site Exemption And Right-Of-Way (ROW) Contamination (page 36)**

Local governments and affected state agencies should develop guidance that addresses how the state will apply the off-site liability exemption statute to local governments when contamination is discovered in the right-of-way (ROW), and consider taking into account several issues, including statutory criteria, degree of ownership interest by the local government, notification, and monitoring by Study Group members.

### **Issue: Right-Of-Way Contamination Notification During Closure (page 37)**

The Study Group recommends that part of the chs. NR 746/726 closure process should include notification to the municipality and adjacent landowner through a letter that informs them that an owner of an upgradient source of contamination is seeking closure on a site which impacts their interest, and that they may be eligible to obtain an off-site exemption letter.

**Issue: Modify DNR Guidelines Related To Wisconsin’s Privacy Act (Act 88) (page 38)**

The Study Group proposes that DNR’s implementation strategy for Wisconsin Act 88 should not consider name or street address of a site or facility as personally identifiable information; and that if this policy cannot be instituted administratively, it should be a statutory amendment.

**Issue: Encourage Brownfields Redevelopment In Comprehensive Land Use Planning (page 39)**

The Study Group proposal includes the recommendations of standardized definitions for local communities; training sessions; identification of potential funding and information sources available to carry out land use planning and creation of a “brownfields inventory”; and Internet access to site-specific data and guidance.

**Issue: Increase Outreach On Department Of Revenue (DOR) Assessment Valuation Process (page 40)**

The Study Group recommends expanding the manual language to include a variety of situations and conduct outreach efforts with local assessors and county treasurers beginning in the fall of 2000.

**Issue: Letter To Kettl Commission (page 41)**

The Study Group will communicate to appropriate parties the need to continue and expand the partnership between state and local units of government.

## **Chapter 3 – Financial Incentives For Brownfields (page 42)**

### **Issue: Strengthen And Stabilize Environmental Revenues (page 43)**

The Study Group recommends:

- repeal of the sunset on the vehicle environmental fee to maintain the fiscal health of the Environmental Fund and increase the fee to cover revenues needed for Commerce’s Brownfields Grant and DNR’s Site Assessment Grant; and
- provide a stable funding source for DNR staff.

### **Issue: Obtain Permanent Funding And Expand Brownfields Grant Program (page 44)**

The Study Group proposes several changes:

- providing permanent funding for the Brownfields Grant Program and repealing the sunset on the vehicle environmental fee of the Environmental Fund;
- increase funding for the grant program from \$12.2 million per biennium to \$15 per biennium;
- establish a quarterly application process;
- provide for one additional grant specialist at the Department of Commerce (DOC); and
- modify the current requirement that the DOC award seven grants for projects located in municipalities with a population of less than 30,000 to a requirement that Commerce must award an “equitable distribution” of grant projects.

### **Issue: Modify Environmental Remediation Tax Incremental Financing (ER TIF) District (page 46)**

The Study Group proposes the following changes:

- include delinquent taxes as an eligible cost;
- extend the ER TIF period from 16 to 23 years; and
- support the Department of Revenue’s (DOR) technical changes to the ER TIF.

### **Issue: Modify The DNR Site Assessment Grant (SAG) Program (page 47)**

The Study Group recommends to:

- continue the DNR’s Brownfields Site Assessment Grant program and increase SAG funding to \$5 million per biennium;
- establish a quarterly application process for the SAG;
- incorporate concepts of the original Sustainable Urban Development Zone (SUDZ) pilot program into the SAG program;
  - modify the eligible activities of the SAG to include area-wide groundwater investigations;
  - clarify that a local government may submit a single grant request for multiple contiguous properties that are under different ownership;
- clarify that asbestos abatement is an eligible SAG activity only if it is part of demolition;
- monitor the program by DNR staff to see whether there is an equitable distribution of the grants between communities across the state; and
- provide the DNR’s Bureau of Community Financial Assistance with one additional FTE to administer the SAG program.

### **Issue: Modify The Development Zone Tax Credits (page 49)**

The Study Group proposes the following changes:

- allow the tax credits to be transferable, within certain limits; and
- clarify that the tax credits to be applicable to the owner’s State of Wisconsin income, and not just to income generated specifically on the site.

**Issue: Streamline The Land Recycling Loan Program (LRLP) (page 51)**

The Study Group recommends the following changes to the LRLP:

- eliminate the use of the Intent to Apply (ITA) form and the December 31 deadline associated with the ITA;
- establish a quarterly application process for the LRLP;
- with the quarterly application process, clarify that the 40% of the funds that can be used for landfill projects would be calculated on a fiscal year basis;
- with the quarterly application process, DNR should clarify the LRLP scoring criteria;
- replenish LRLP to \$20 million at the end of every even-numbered calendar year;
- allow other credit quality collateral that will meet typical financial underwriting criteria to provide adequate security for the Land Recycling Loan, as opposed to currently allowing only the "Full Faith and Credit" of the municipality (i.e. General Obligation Bonds);
- when a necessary part of remediation, allow demolition as an eligible activity;
- make the loan available up front for Phase I and II environmental assessments, as well as site investigations; and
- implement and communicate the following two decisions made by the Land Recycling Loan subgroup:
  - if the property is sold – this must be fair market value – and the proceeds are less than the outstanding balance on the loan, then the municipality must repay the loan to the extent the proceeds allow, and then the municipality has the option of maintaining the remaining balance until the loan is paid off; and
  - if the municipality enters into a lease with a developer or other user, then the municipality need not prepay the loan; rather, it may continue to amortize on the original schedule until the property is sold or the loan fully paid; the Environmental Improvement Fund (EIF), however, will not accept lease payments as sole security for the loan.

**Issue: Expand Funding Opportunities For The Cleanup Of Brownfields Properties (page 53)**

The Brownfields Study Group did not reach general agreement on this issue, given the many diverse opinions of the group. Within the Study Group, there appeared to be two general proposals.

1. Cleanup funds for public greenspaces and recreational areas.
2. General cleanup moneys for other types of brownfields properties.

The Study Group also proposes that any state grants made available under Proposal 1 or 2 be conditioned on the following:

- be made available to local governments;
- be provided to properties where the person that caused the contamination is unknown, cannot be located or is financially unable to pay for the cleanup;
- to fund brownfields projects that would not be eligible for existing funds, such as the DERP, Agri-Chem Fund and PECFA;
- that the program be created to minimize duplication with other existing programs, such as the Department of Commerce's Brownfields Grant program; and
- the state agencies coordinate the grant and loan cycles of the brownfields funds to ensure that the most appropriate projects are getting funding by the most appropriate funding sources.

**Issue: Clarify Environmental Insurance As An Eligible Cost For Programs Dealing With Environmental Remediation (page 55)**

The Study Group recommends that each program should clarify whether or not environmental insurance is an eligible cost to all brownfields programs that address remediation costs. If it is found not eligible, environmental insurance should be added as an eligible cost.

**Issue: Target Gaming Revenue For Menomonee Valley Brownfields Redevelopment Project Funding (page 56)**

The Study Group proposes that a majority of the Potawatomi gaming revenues be dedicated to support the implementation of the Menomonee Valley Land Use Plan through brownfields redevelopment including:

- \$2.1 million annually in additional sustainable urban redevelopment funds grants to the City of Milwaukee for land acquisition, demolition, redevelopment and infrastructure and environmental investigation and remediation;
- \$1 million annually in additional grants to the City of Milwaukee to be administered by the Milwaukee Economic Development Corporation to continue its matching grant program; and
- \$900,000 annually in grants to Menomonee Valley Partners, Inc., a tax exempt non-profit corporation, to support the creation of jobs and private sector implementation of the Menomonee Valley Land Use Plan.

**Issue: Make Appropriate Brownfields Programs Have Quarterly Application Deadlines (page 58)**

The Study Group recommends quarterly deadlines for any brownfields financial programs where appropriate.

**Issue: Support Additional Brownfields Funding (page 59)**

The Study Group recommends that the Department of Commerce continue to use the \$5 million of federal Community Development Block Grant money per biennium for the BEBR, and encourages the DNR to establish a system under which more funding from the Stewardship's local assistance subprogram be provided in each fiscal year for grants for qualifying projects that relate to brownfields redevelopment.

# Chapter 1 – Brownfields Liability Protections

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## **Issue: Expand Liability Exemptions For Local Governments**

### ***Background***

Current liability protections for local governments are very important for brownfields redevelopment. Before the liability exemptions for local governmental units (LGUs) were created, LGUs that acquired contaminated property were considered “responsible parties” under Wisconsin's Hazardous Substance Discharge Law, ch. 292, Wis. Stats. (also known as the Spill Law), because they "possessed" or "controlled" the contaminated property.

As a result of these concerns, the Spill Law was amended to create specific exemptions from liability for LGUs in certain situations. These exemptions are found in s.292.11(9)(e), Wis. Stats. Local governments can qualify for this exemption if they acquire a property in one of a number of ways listed in the statute. There are several improvements that can be made to make the LGU exemption a more effective tool for brownfields cleanup and redevelopment.

### Stewardship Grants and Brownfields

The 1999-2001 Biennial Budget allowed LGUs to qualify for the liability exemption for property they purchased using a DNR Stewardship Grant. This change was made so that local governments can use these grants to convert brownfields properties into parks and open space, and at the same time qualify for the LGU exemption.

One reason for this change was that LGUs who are awarded Stewardship grants cannot use condemnation, a type of acquisition eligible for the exemption, to acquire the property. This section, s.292.11(9)(e)1m.f., Wis. Stats., references the appropriations for the old Stewardship program (1990-2000) and not the new program (Stewardship 2000) that was created in the last budget.

### Solid and Hazardous Waste Issues

The LGU exemption only exempts local governments from liability they could face under the Spill Law. Local governments are still concerned about liability if they take title to property that they could potentially be exposed to under hazardous waste and solid waste laws. If a local government qualifies for the LGU exemption, the DNR could not require the LGU to investigate and cleanup the property under the authority of the Spill Law, but the DNR could potentially use its authority under state solid waste laws to require the LGU to take actions.

While the DNR does not typically use this authority to force local governments to take actions at brownfields sites, this potential liability may be a disincentive for local governments to take over properties and may hinder a community's efforts at brownfields cleanup and redevelopment. A similar issue is related to potential liability under the hazardous waste regulations. However, hazardous waste liability is complicated by federal hazardous waste laws.

### LGUs Negating An Exemption

Under s.292.11(9)(e)2.a., Wis. Stats., a local government could lose the liability exemption for a discharge that occurs as a result of an action taken by the local government. This section would apply if the local government caused the original contamination. For example, if the discharge is from a leaking underground storage tank operated by the city at the city garage, then the LGU would not qualify for this exemption and they would be considered responsible under the Spill Law.

Furthermore, if an LGU takes action at a site and exacerbates a discharge, that action would also be considered causing a discharge of a hazardous substance, and the LGU could lose the LGU exemption for the discharge they exacerbate. For example, if an LGU removes the pavement on a

property which is serving as a cap over contaminated soil, that action could result in increased infiltration and cause an increase in the discharge of the contamination into the groundwater.

### ***Proposal***

Based on the above issues discussed in the Liability Subcommittee, the Study Group proposes the following.

- Stewardship – amend the LGU exemption [s.292.11(9)(e)1m.f., Wis. Stats.] to eliminate reference to specific appropriations and add “the local governmental unit acquired the property using Stewardship program funds.”
- Solid Waste Liability – amend the law to extend the language in the LGU exemption [s.292.11(9)(e), Wis. Stats.] to exempt the LGU from the same solid waste laws included in the Voluntary Party Liability Exemption listed in s.292.15(2)(a), Wis. Stats; this would extend the exemption to cover the provisions of ss.289.05 (1), (2), (3) and (4), 289.42(1), 289.67, Wis. Stats., and any rules promulgated under those provisions.

This exemption from solid waste laws should be limited so that it does not apply to any municipal waste landfills (as defined in s.289.01(22), Stats.) or to any approved facilities (as defined in s.289.01(3), Stats.). This is the same exclusion that is contained in the Voluntary Party Liability Exemption (s.292.15(2)(d), Stats.). As a result, the exemption would only apply to historic fill sites. The exemptions from solids waste laws should also not apply to any facility that was owned or operated by the LGU.

The intent of the recommendation is that all the requirements and limitations contained in the existing LGU exemption statute (ss.292.11(9)(e)1 through 7, Stats.) would continue to apply. Specifically, an LGU that acquires a historic fill site would still be subject to s.292.11(9)(e)4, Stats., which applies when the LGU intends to use or redevelop the property subject to the exemption. This section states that the LGU exemption does not apply if the LGU does not take actions that the DNR determines are necessary to address threats to public health or safety. Also, this extension of the LGU exemption would only apply to the LGU and would not be transferable to future owners.

Furthermore, if there was a discharge of a hazardous substance at a historic fill site acquired by an LGU, this exemption would not limit the DNR authority to require (under authority under the Hazardous Substance Discharge Law - s.292.11, Wis. Stats.) any party who caused the discharge to take actions to respond to that discharge.

In addition to this statutory change, as part of the waste streamlining effort described in the issue "Clarify Waste Regulatory Issues At Brownfields Sites" on pages 21-22 in this chapter, the DNR should continue its efforts to clarify the options related to development on all types of solid waste sites.

- Hazardous Waste Liability – the Study Group supports the efforts undertaken by the DNR as part of the waste streamlining effort described in the issue "Clarify Waste Regulatory Issues At Brownfields Sites" on pages 21-22 in this chapter to address hazardous waste liability for local governments.
- Interpretation of Exemption – The Study Group recommends that DNR staff issue a written clarification that an LGU who causes or exacerbates a hazardous substance discharge would only be responsible for investigating and cleaning up that discharge and not all discharges on the property. Also, DNR staff should clarify, in writing, the conditions under which the actions of an LGU would cause or exacerbate a discharge of a hazardous substance on a

property. The DNR should also work with LGUs on a case-by-case basis to ensure that the actions of an LGU do not cause or exacerbate any discharges of hazardous substances on the property.

***Type of Change***

Statutory and Administrative

***Resources***

None

***Comments***

## **Issue: Expand Local Government Cause Of Action**

### ***Background***

The first Brownfields Study Group recommended a cause of action for local governments that was passed in the 1999-2001 State Biennial Budget (s.292.33, Wis. Stats.). This statutory section allows local units of government (LGUs) to recover cleanup costs from responsible parties (please see, "Strengthen Ability of Municipalities to Recover Environmental Costs", pp. 17-18, *1999 Brownfields Study Group Final Report*).

Some suggested that if this tool is available to local governments, it should also be available for private parties. Currently, private parties can only pursue cost recovery from persons who caused contamination on property through tort law or under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA).

The Brownfields Study Group examined local government cost recovery statute and determined that while it may be a useful tool for some brownfields projects, the law has some limitations. One concern is that some local governments work with private developers to cleanup and redevelopment brownfields. As currently written, the law only allows the local government to spend its funds to cleanup the site and only the local government can pursue the cost recovery.

Another limitation of the law is that it requires the local government to come up with the money first to cleanup the site and they the local government must accept the litigation risk that they may not be successful in court recovering their cleanup costs. If a local government does not have sufficient funding to pay for the cleanup for a large site, this tool would be of limited use. Furthermore, some members of the study group felt that this does not provide a significant incentive for private businesses to cleanup sites on their own and businesses responsible for contamination will have little incentive to negotiate with the local government to cleanup and develop the property.

### ***Proposal***

The Study Group recommends that local governments be allowed to assign their rights of cost recovery under s.292.33, Wis. Stats., to a new property owner.

This provision would allow the private party to pursue cost recovery on behalf of the local government. Under this recommendation, LGUs would be allowed assign the rights, under s.292.33, Wis. Stats., to a new owner such that the new owner could clean up the property and pursue cost recovery against the same responsible parties listed in s.292.33, Wis. Stats.

This cost recovery tool will be more flexible than current law to accommodate different types of brownfields projects. The changes should allow for either the new owner to clean up the site and pursue cost recovery, or the local government could clean up the site and assign the right of cost recovery to the new owner. The amended law should also allow for situations where the local government conducts part of the cleanup and the new owner conducts part of the cleanup. This change would allow local governments to facilitate brownfields cleanup and redevelopment without the local government needing to clean up the property themselves or take legal actions to recover the cleanup costs.

The Study Group considered creating a private cause of action, but felt that was not a good idea at this time to encourage brownfields cleanup. Such a change could have significant impacts beyond brownfields and serious thought and input should be given before a private cause of action is created.

***Type of Change***  
Statutory

***Resources***  
None

***Comments***

## **Issue: Remove Interim Liability Protection Language**

### ***Background***

This issue was included in the first Brownfields Study Group Report (please see pp. 62-63, *1999 Brownfields Study Group Final Report*). Under the Voluntary Party Liability Exemption (VPLE) process, s.292.15, Wis. Stats., DNR staff provide a party with a Certificate of Completion (COC) after they have successfully remediated the property. However, prior to the 1999-2001 State Biennial Budget, the liability exemption process did not provide “interim” liability protection during the period between the approval of the investigation and the issuance of a COC.

Voluntary parties, therefore, were not protected from liability by the State of Wisconsin for additional contamination that could be discovered during the remediation. During the discussion by the 1998 Study Group, some members expressed concern that this lack of interim protection created an impediment for redevelopment in cases where the remediation takes several years to complete.

The first Study Group recommended that a statutory liability protection be created, and the 1999-2001 State Budget (s.292.15(at), Wis. Stats.) addressed this issue. Under this statute, qualified parties can obtain interim liability protection where the DNR has approved a site investigation and those parties have agreed to implement a remediation approved by the department. The statute also states that parties would need to obtain environmental insurance to cover the cost to investigate and cleanup any contamination that may be discovered in the course of conducting the cleanup of the property.

### ***Proposal***

The Study Group recommends the repeal of s.292.15(2)(at), Wis. Stats., and removal of any other references to this statutory section.

There is currently a greater availability of insurance products and more flexibility insurance products than when the first Brownfields Study Group met in 1998. The Study Group believes that, since there are currently private insurance products available to address this interim risk, it is unnecessary for there to be an interim liability protection provided by state statute. A bureaucratic regulatory solution should be avoided when a private solution is available.

In addition, the Study Group also believes it is an unnecessary expenditure of effort for the state to implement this insurance program given that it may not be utilized and individuals can address this risk without state involvement.

### ***Type of Change***

Statutory

### ***Resources***

None

### ***Comments***

## **Issue: Clarify Waste Regulatory Issues At Brownfields Sites**

### ***Background***

The first Brownfields Study Group proposed a series of recommendations to clarify and streamline solid waste requirements as they relate to cleaning up and redeveloping brownfields properties (see pp. 58-62, *1999 Brownfields Study Group Report*). In response to these recommendations, the DNR formed an internal waste streamlining group which is responsible for implementing the recommendations from the initial Study Group report. There were two important efforts undertaken as part of this project:

1. develop a streamlined approach to handle the development of properties that contain solid waste; and
2. propose innovations related to hazardous waste cleanup issues.

### **Solid Waste Streamlining**

The DNR outlined its approach to streamline the process to handle development of properties with solid waste in a document titled "Framework For Handling Development Of Properties Which Contain Solid Waste" (please see Appendix A, pages 61-63). This document was presented and discussed at several meetings of the Brownfields Study Group in 2000.

### **Hazardous Waste Cleanup**

As part of this effort, the DNR is working to clarify and improve a number of areas related to hazardous waste cleanup and liability that relate to brownfields redevelopment. One aspect of this is that DNR began the process to develop a Regulatory Innovation Project with EPA. The details of the proposed regulatory innovation project are contained in the "Drafting Instructions For Hazardous Waste Remediation Proposal", (please see Appendix A, pages 65-66). In addition, DNR staff met with EPA staff on numerous occasions to discuss these issues. These drafting instructions and the results of these meetings with EPA have been shared with the Brownfields Study Group at several meetings throughout 2000.

### ***Proposal***

- Solid Waste Streamlining – the Study Group strongly supports the DNR's efforts to clarify and streamline the requirements and process for parties who want to develop properties which contain solid waste.

The Study Group supports and recommends continued progress on the effort outlined in the DNR's "Framework for Handling Development of Properties Which Contain Solid Waste" (please see Appendix A, pages 61-63). Specifically, the Study Group recommends the DNR continue to make timely progress to develop guidance and training for both DNR staff and external parties related to the process to obtain an expedited approval and exemption to build on an abandoned landfill.

Also, the Study Group recommends the DNR quickly start the process to implement rule changes that will be necessary to fully implement this approach. The Study Group recommends the DNR continue to seek feedback from the Brownfields Study Group members as this effort continues to progress.

- Hazardous Waste Cleanup – the Study Group recommends that, to the extent feasible, the DNR work with the EPA to address liability concerns at brownfields associated with federal hazardous waste law.

Hazardous waste laws and regulations have important impacts on brownfields cleanup. It is important that state cleanup regulations be flexible and results-based so that brownfields can

be cleaned up in a way that is clear, cost effective, and efficient. In addition to specific issues related to how the federal Resource Conservation and Recovery Act (RCRA) correction action program impacts the state's cleanup regulations, the Study Group also has concerns about potential liability that may result from hazardous waste laws. While there are a range of liability protections under state laws and under federal Superfund law for local governments and lenders, there are not such protections from hazardous waste law.

Some of these issues cannot be fully clarified unless federal laws are changed. The Study Group would support federal legislation that would provide specific liability protection from hazardous waste cleanup requirements for local governments, lenders, and parties that conduct voluntary cleanup with state oversight similar to the exemptions provided by the Superfund program.

The Study Group supports the DNR's efforts to work with EPA on this range of hazardous waste issues identified in the drafting instructions. Furthermore, the Study Group members will draft a letter to Wisconsin's congressional delegation on the brownfields impacts from RCRA urging changes to federal law.

***Type of Change***

Administrative

***Resources***

None

***Comments***

## **Issue: Expand Off-Site Liability Exemption For Voluntary Party Liability Exemption (VPLE)**

### ***Background***

The first Brownfields Study Group recommended that the Voluntary Party Liability Exemption law be changed to allow Certificates of Completion (COC) to be issued for sites where there is contamination on a property that has migrated from off-site, if the voluntary party is exempt from liability under the off-site exemption, s.292.13, Wis. Stats. (please see "Ensure Availability of a Full Certificate of Completion for Properties Impacted with Off-site Groundwater Contamination", pp. 66-67 in the *1999 Brownfields Study Group Final Report*).

The 1999-2001 State Biennial Budget created s.292.15(2)(ag), Wis. Stats., to allow COC's to be issued if there is contamination coming from off-site for which the voluntary party would be considered exempt under the off-site exemption statute. As currently written, the statute only applies to contamination from off-site in the groundwater and not soil.

### ***Proposal***

Change the statute s.292.15(2)(ag), Wis. Stats., to allow a full COC to be issued for properties impacted by contamination from off-site in both soil and groundwater. The statute currently refers to s.292.13(1); it should be changed to include s.292.13(1m), Wis. Stats., or amended to just refer to s.292.13, Wis. Stats. This should also include sediment contamination if s.292.13, Wis. Stats., is changed as recommended on pages 26-27 of this chapter.

### ***Type of Change***

Statutory

### ***Resources***

None

### ***Comments***

## **Issue: Clarify Assignability Of Certificates Of Completion (COCs) For Voluntary Party Liability Exemptions**

### ***Background***

Under the current Voluntary Party Liability Exemption (VPLE) law, s.292.15(3), Wis. Stats., the liability exemption can be assigned to future owners. However, Study Group members expressed a concern that future owners of a property may not maintain institutional controls as required by statute and as conditions of a Certificate of Completion (COC). It is currently unclear whether or not a voluntary party who no longer owns a property would still be exempt from liability if the property is not maintained and monitored as required by the statute and DNR regulations.

### ***Proposal***

To clarify this issue, the following two changes are proposed:

- change s.292.15(2), Wis. Stats., so that the requirement to maintain and monitor the property [s.292.15(2)(a)4 and s.292.15(2)(ae)4, Wis. Stats.] applies only to the voluntary parties if they possess or control the property for which the COC was issued; as under current law, the voluntary party who possesses or controls the property could potentially lose the VPLE and be subject to liability if they fail to maintain and monitor the property; and
- add a section under s.292.15(2)(b), Wis. Stats., which would allow the exemptions to continue to apply to a voluntary party who no longer owns a property, even if the person in current possession or control fails to maintain and monitor the property.

### ***Type of Change***

Statutory

### ***Resources***

None

### ***Comments***

## **Issue: Voluntary Party Liability Exemption – Clarify Access In The Use of Natural Attenuation**

### ***Background***

The first Brownfields Study Group (please see pp. 68-69 of the *1999 Brownfields Study Group Final Report*) recommended a statutory change to allow voluntary parties to obtain the liability exemption if they are using natural attenuation. Under this statute [s.292.15(2)(ae), Wis. Stats.], the DNR may require the voluntary party to obtain environmental insurance to cover the cost of cleanup in case natural attenuation fails.

The DNR is required to promulgate rules which will describe the specific conditions to obtain this insurance. Once this rule is promulgated, a voluntary party using natural attenuation who obtains the necessary insurance will receive a Certificate of Completion (COC). If it is discovered that natural attenuation failed after the COC has been issued, then an insurance claim would need to be filed to pay for the necessary cleanup actions. The current statute does not explicitly provide access to the property for the DNR or the parties responsible for the contamination to conduct these cleanup actions.

### ***Proposal***

A statutory change to s.292.15(2)(ae), Wis. Stats., should be made to require the voluntary party who currently owns the property to allow the DNR, a responsible party and any of their authorized representatives access to enter the property to take actions necessary to determine if natural attenuation has failed and to respond to the discharge in the event that natural attenuation has failed.

### ***Type of Change***

Statutory

### ***Resources***

None

### ***Comments***

## **Issue: Clarify Liability Issues Related To Sediment Contamination**

### ***Background***

Brownfields redevelopment along rivers is an important issue in Wisconsin. Due to the long industrial history of Wisconsin, which included many industrial operations that were located along rivers before environmental laws were in place or enforced, a wide range of waste materials exist in our waterways and present a tremendous challenge to brownfields cleanup and redevelopment.

Sediment contamination is one type of riverway contamination that is of concern to federal, state and local officials. In many cases, there may be sediment contamination in a river adjacent to a property targeted for redevelopment.

Under Wisconsin law, the property boundary along a river extends to the middle of the body of water (lakes are owned by the people of the state under the Public Trust Doctrine). This is a complex area of law and there are a number of questions regarding how to cleanup brownfields along rivers where there are impacts to sediment, and whether or not a new owner is responsible for past sediment contamination under both state and federal law.

Also, there may be limited actions that can be taken related to this issue because many sediment cleanup issues are directed by federal law. This issue greatly impacts areas throughout Wisconsin given there are significant sediment cleanup sites in Wisconsin with federal involvement. A 1998 congressional report by the U.S. Environmental Protection Agency (EPA) on sediment contamination identified 10 watersheds in Wisconsin that contained areas of probable concern.

### ***Proposal***

The Study Group recommends amending the off-site liability exemption law, s.292.13, Wis. Stats., to clarify that it applies to sediments. Section 292.15(2)(ag), Wis. Stats., should also be revised to reflect this change.

This would clarify that property owners who have contaminated sediments on their property which resulted from an off-site source could not be held liable for cleanup under Wisconsin's Spill Law, as long as the property owner complies with the requirements of s.292.13, Wis. Stats.

This recommendation may not completely address this concern about liability related to contaminated sediments because there may also be federal and other state laws under which an owner could face liability. To address federal and state liability issues, one option that should be further explored is changing the Wisconsin riparian property ownership law to state that new property owners who buy land adjacent to a river do not have responsibility for contaminated sediments in the river adjacent to their property, as long as they are not otherwise responsible for the sediment contamination. If this change is possible, it could alleviate the concern that property owners would have if they own land adjacent to a river with contaminated sediments.

The Study Group proposes that the DNR's contaminated sediment advisory committee should take on the responsibility to address these policy issues. Department staff and the sediment advisory committee should also work with EPA to clarify the federal position on this issue and to identify the tools available (i.e. comfort letters, prospective purchaser agreements, etc.) to assist parties who are concerned with federal liability for contaminated sediments.

***Type of Change***

Statutory and Administrative

***Resources***

None

***Comments***

## **Issue: Recognize Environmental Insurance As A Brownfields Tool**

### ***Background***

As part of the Study Group's inquiry into the effectiveness of Wisconsin's Brownfields Initiative, members investigated the status of the environmental insurance products that can be used for brownfields. Liability Subcommittee members met with underwriters and brokers who specialize in environmental insurance for brownfields. Members also reviewed reports and other documents that summarized the state of the environmental insurance market.

The Study Group learned that there are a number of different products currently available that can be used to control the risk associated with a brownfields cleanup and redevelopment project. With the growth and maturity of the environmental insurance industry, new and more flexible tools are available that can be crafted for specific risks and circumstances. The two main products available are Pollution Legal Liability (PLL) insurance and Cleanup Cost Cap (CCC) insurance.

Pollution Legal Liability insurance is generally designed to cover both on-site and off-site cleanup of unknown pre-existing environmental conditions, new conditions which occur after the policy is incepted, third party bodily injury and property damage, defense costs, and a range of other related coverages. Cleanup Cost Cap (CCC) is the environmental insurance product designed to address known contamination. It is designed to pay for remediation cost overruns, in excess of the expected remedial action costs plus a buffer layer (acting as a deductible, usually a percentage of the expected cleanup costs).

### ***Proposal***

The Study Group recommends that all state agencies involved with brownfields issues, as well as the State Legislature, recognize the increasing role of environmental insurance and consider it as part of the solution to facilitate successful brownfields transactions. The Study Group suggests that as future changes are made to Wisconsin's liability protections and financial assistance programs, parties should consider how environmental insurance can work in conjunction with these tools and protections.

The Study Group acknowledges that environmental insurance is an important tool that can help facilitate brownfields cleanup and redevelopment. In many cases insurance can serve as a private sector solution to help turn an abandoned brownfields property into a productive use without additional government assistance or bureaucratic involvement.

### ***Type of Change***

Administrative

### ***Resources***

None

### ***Comments***

## **Issue: Recognize DNR's Enforcement Discretion As It Relates To Brownfields**

### ***Background***

The DNR has existing tools to provide liability protections for parties involved with brownfields projects that are provided for in state statutes and regulations. These tools include:

- voluntary party liability exemption (s.292.15, Wis. Stats.);
- close-out letters (s.NR 726.05(7));
- liability exemptions for lenders and representatives (s.292.21, Wis. Stats.);
- liability exemptions for local governments(s.292.11(9)(e), Wis. Stats.); and
- liability exemptions for property owners affected by contamination from off-site (s.292.13, Wis. Stats.); and
- negotiated agreement authority (s.292.11(7)(d), Wis. Stats.).

In addition to these specific protections, the DNR also has the ability to exercise enforcement discretion on a case-by-case basis. The Study Group examined the DNR's use of enforcement discretion as it relates to brownfields. The DNR can issue liability clarification letters which express the DNR's enforcement strategy or express that the DNR does not intend to pursue enforcement against a party who may be responsible under the Spill Law (for example, if another responsible party is working towards cleaning up the site).

The DNR can also utilize its ability to enter into negotiated agreements under s.292.11(7)(d), Wis. Stats. As part of these agreements, DNR staff can exercise enforcement discretion as appropriate. The DNR does not have the ability to create a specific liability exemption or indemnification if one is not provided by statute (see list above). However, DNR staff can use liability clarification letters or negotiated agreements to identify the anticipated time frame for remedial action or the DNR's enforcement strategy with respect to certain potentially responsible parties.

### ***Proposal***

The Study Group recognizes that the DNR has the ability to exercise enforcement discretion in some cases to facilitate brownfields redevelopment. Furthermore, the Study Group encourages the DNR to utilize this discretion on a case-by-case basis to help facilitate brownfields transactions for complex transactions or unique situations.

### ***Type of Change***

Administrative

### ***Resources***

None

### ***Comments***

## Chapter 2 – Brownfields Incentives For Local Governments

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## **Issue: Modify Negotiated Sale In Lieu Of Bidding For Tax Delinquent Brownfields Properties**

### ***Background***

Currently, a county or city of the first class must hold a competitive bidding process for the transfer of property that was acquired through the tax foreclosure process. The competitive bidding process and property transfer becomes complicated when a property is contaminated.

Often, an LGU works with a prospective purchaser to plan for the remediation and redevelopment of a contaminated property, and when the competitive bidding process is used, it is possible that the purchaser who has been cooperating with the LGU will not receive the property. The process also can result in a party acquiring the property and not completing the environmental remediation.

### ***Proposal***

The Study Group proposes the following:

- create a statutory amendment to s.75.69(2), Wis. Stats., that would allow for a county or city of the first class to transfer tax delinquent property it owns, without using the competitive bidding process, if environmental pollution is present and the property meets the definition of a brownfield under s.292.75(1)(a), Wis. Stats.; and
- create language similar to provisions in s.75.106(2)[1999 Act 121] to:
  - provide a 15-day notice of the sale to the city, town or village where the parcel is located;
  - require an environmental site assessment of the property be completed and results sent to the DNR; and
  - require the purchaser to enter into an agreement with the DNR to clean up the parcel to the extent practicable; to minimize the harmful effects from the hazardous substance; and to maintain and monitor the parcel, all pursuant to rules promulgated by DNR.

### ***Type of Change***

Statutory

### ***Resources***

None

### ***Comments***

## **Issue: Assign Judgment Of A Tax Deed Without Taking Title**

### ***Background***

Recently Wisconsin adopted changes that allow counties or the City of Milwaukee, which use foreclosure provisions under s.75.521, Wis. Stats., to assign their rights of ownership of a brownfields property to a third party if the property is subject to a foreclosure.

Under Wisconsin law, counties can take title to property using s.75.521, or s.75.14, Wis. Stats., using a tax deed, or s.75.19, Wis. Stats. to foreclose on a tax certificate. The recent changes apply only to s.75.521, Wis. Stats.

Under 1999 Wisconsin Act 121, a county or the City of Milwaukee can assign to an individual its right to judgment with respect to a brownfields parcel, as defined under s.560.13(1)(a), Wis. Stats. The right to judgment is subject to a foreclosure action under s.75.521, Wis. Stats., if the assignee agrees to remediate the property.

However, Act 121 did not provide a similar mechanism for counties that take a tax deed under s.75.14, Wis. Stats. As a result, counties that do not utilize the *in rem* process under s.75.521, Wis. Stats., are unable to convey delinquent brownfields property without entering into the chain of title.

To the extent that tax delinquent properties are returned to tax-paying status as a result of the proposal, county costs will be reduced to settling for the delinquent property taxes of contaminated properties. To the extent that the subsequent clean up and development of the parcel increase the parcel's assessed value, the tax base of the taxing jurisdictions where the parcel is located is expanded, relative to what it was had the parcel remained contaminated and delinquent.

### ***Proposal***

The Study Group proposes the following:

- allow a county to execute a tax deed under s.75.14(1), Wis. Stats., to an individual under the same conditions as prescribed under s.75.106, Wis. Stats.; this would allow an individual the right to accept a deed which vests an absolute estate in fee simple for a brownfields property where a Phase I and II environmental assessment has been conducted if the individual agrees to further investigate and remediate the property per the requirements under s.75.106(2)(f), Wis. Stats.; and
- allow the individual who has elected to accept a tax deed under the above conditions to commence an action to bar former owners under s.75.39, Wis. Stats.

### ***Type of Change***

Statutory

### ***Resources***

None

### ***Comments***

## **Issue: Modify Expenditure Restraint Exemption For Municipalities**

### ***Background***

Municipalities that acquire properties from a county through tax delinquency proceedings are often required to compensate the county for a portion of the delinquent taxes. The money the municipality pays the county for the property counts against their expenditure restraint authority. The expenditure restraint cap can be a disincentive to a municipality interested in taking a brownfields property.

### ***Proposal***

The Study Group proposes creating a statutory amendment that reads: “an act to amend 79.05(2)(c); and to create 79.05(7) of the statutes; relating to certain amounts paid for tax delinquent contaminated land not counted for purposes of expenditure restraint program.”

#### **Section 1. 79.05(2)(c) of the statutes is amended to read:**

79.05(2)(c) Its municipal budget, exclusive of principal and interest on long-term debt and amounts under sub. (7), for the year of the statement under s.79.015 Wis. Stats. increased over its municipal budget as adjusted under sub. (6), exclusive of principal and interest on long-term debt and amounts under sub. (7), for the year before that year by less than the sum of the inflation factor and the valuation factor, rounded to the nearest 0.10%.

#### **Section 2. 79.05(7) of the statutes is created to read:**

79.05(7) Any amount representing unpaid real property taxes and special assessments that is paid by a municipality to purchase property that is contaminated by a hazardous substance as defined in s.292.01(5) and that is either subject to a tax certificate issued under s.74.57 or that is property for which a county has taken a deed under ch. 75 is not included in the municipality’s budget for purposes of sub. (2).

### ***Type of Change***

Statutory

### ***Resources***

None

### ***Comments***

## **Issue: Clarify Blight Elimination And Slum Clearance Authority**

### ***Background***

In 1997, the State Legislature provided local units of government with an exemption from the hazardous substance Spill Law, s.292.11, Wis. Stats., if they acquired a property for the purpose of slum clearance or blight elimination. The state followed the lead of the EPA and the U.S. Department of Housing and Urban Development (HUD) in providing local governments more authority and protection for dealing with blighted brownfields properties.

While the Spill Law was clarified regarding slum and blight, certain members of the Brownfields Study Group believe it is necessary to make a clarification to the state's slum clearance and blight elimination statutes with respect to environmental pollution. Many properties that are blighted are also brownfields, and the clarification that environmental pollution is a blight factor would facilitate the redevelopment of these brownfields.

Additionally, the group proposes to clarify the inspection authority of municipalities and redevelopment authorities in regards to the inspection of a property within a blighted area or a single property that has previously been declared blighted. Presently, there is inspection authority for local governments that designate an area as blighted, but not for a single property that has been designated as blighted.

Due to the length of the proposed statutory changes, the complete language is in Appendix A, pages 67-71.

### ***Proposal***

The Study Group proposes creating a statutory amendment to add the term environmental pollution to the list of blight factors, with the definition of environmental pollution as the following:

- “Environmental pollution” has the meaning given in s.299.01(4), Wis. Stats.; provided, however, in the case of industrial or commercial property, the known or suspected environmental pollution must also adversely impact the expansion or redevelopment of the property. For purposes of this section, environmental pollution shall not include:
  1. any discharge for which a consent order under this chapter or chs. 289 or 291 or an agreement under 292.11(7)(d) or 292.31(8)(d) has been entered into and there is compliance with the consent order or agreement;
  2. the discharge is in compliance with a permit, license, approval, special order, waiver or variance under chs. 283 or 285 or under corresponding federal statutes or regulations;
  3. a discharge for which the department of natural resources, the department of commerce or the department of agriculture, trade and consumer protection has indicated that no further remedial activities are necessary; or
  4. a discharge that is exempt under 292.15(2) or 292.11(9)(e).
- Additionally, the group proposes to clarify the inspection authority for municipalities and redevelopment authorities to allow an environmental inspection of properties in blighted areas or of a single property determined to be blighted.

Please see Appendix A, pages 67-71, for complete statutory language.

***Type of Change***

Statutory

***Resources***

None

***Comments***

Wisconsin Manufacturers and Commerce (WMC) comments for changes to this issue are located in Appendix B on pages 72-73.

## **Issue: Develop Guidance To Integrate Off-Site Exemption And Right-Of-Way (ROW) Contamination**

### ***Background***

This issue has arisen because of concerns over the potential environmental liability that may accrue to the local unit of government if contamination is found in the road right-of-way (ROW). Local governments may own the ROW by having acquired the fee title to the ROW or the ROW may have been dedicated to the local government for a public purpose, such as a roadway. Where the ROW has been dedicated to the local government, the abutting property owner retains fee title to the centerline of the road. In some communities, ROWs can account for a significant portion of the total land area in a municipality.

As part of the site investigation process, local governments are frequently asked to allow abutting property owners access to the ROW to do environmental testing. Contamination in the ROW may be from several sources, including such sources as abutting properties, migration through utility corridors, spills, placement of contaminated fill materials or past uses of the property. Local governments have expressed concerns because it is often unclear who caused the contamination in the ROW and who owns the ROW property. Because of this, the state agency with jurisdiction over the type of contamination may be unsure as to which person they should notify as a responsible party if contamination is discovered in the ROW.

Currently, Wisconsin has an exemption from liability for persons – including local governments – affected by the discharge of a hazardous substance that has migrated from one source area onto another property (s.292.13, Wis. Stats.). This exemption was created to protect persons who may “possess” (i.e., own) or “control” a property that has been impacted by a neighboring property’s contamination. The exemption requires the person seeking the protections of the off-site exemption to meet certain statutory criteria. If those are met, the person can receive the protections of the off-site exemption and may request the exemption in writing from the DNR.

### ***Proposal***

Local governments and affected state agencies should develop guidance that addresses how the state will apply the off-site liability exemption statute to local governments when contamination is discovered in the ROW. The guidance should take into consideration the statutory criteria for the off-site exemption, and the degree of ownership interest the local government has in the ROW.

In addition, the local governments and state should determine the most efficient ways to notify each other of ownership issues in the ROW, if contamination is found. Also, the state should provide its staff and the local governments with guidance on when to identify the local government as a responsible party in a ROW contamination situation. The Brownfields Study Group should monitor the progress of this effort, and recommend any necessary administrative, regulatory or statutory changes based on the results of implementing this guidance.

### ***Type of Change***

Administrative

### ***Resources***

None

### ***Comments***

## **Issue: Right-Of-Way (ROW) Contamination Notification During Closure**

### ***Background***

The proposed changes to chs. NR 726 and 746, which allow for closure of a site when the groundwater environmental standard is exceeded in the right-of-way, cause concern in regards to the adjacent and downgradient landowners. In most cases, the right-of-way is owned by the abutting property owner and not the local government.

Under the proposed changes to chs. NR 726 and 746, it is not a requirement for the responsible party to notify the abutting landowner about the contamination. The closure will impact the downgradient property owner's rights. While there is a requirement that the municipality be notified, there is no process to voice concerns.

### ***Proposal***

The Study Group recommends that part of the chs. NR 746/726 closure process should include notification to the municipality and adjacent landowner through a letter that informs them that an owner of an upgradient source of contamination is seeking closure on a site which impacts their interest, and that they may be eligible to obtain an off-site exemption letter.

### ***Type of Change***

Administrative

### ***Resources***

None

### ***Comments***

## **Issue: Modify DNR Guidelines Related To Wisconsin's Privacy Act (Act 88)**

### ***Background***

The 1999 Wisconsin Act 88 was passed to prevent state agencies from distributing personally identifiable information to the public and prevent state agencies from selling mailing lists to marketers. The statute took effect November 1, 2000.

The statute provides an option to individuals filling out state agency forms to not have their personally identifiable information distributed on any list that the agency furnishes to another person. Personally identifiable information includes an individual's name, social security number, telephone number, street address, post office box or zip code.

Currently, the DNR's implementation strategy for this legislation is not finalized. The Study Group is concerned that limiting the information available through DNR databases will have a significant negative impact on the ability to understand the environmental conditions in an area. The Bureau for Remediation and Redevelopment Tracking System (BRRTS), a web-based database available to the public, lists open and closed contaminated sites and facilities that have been reported to the DNR as having a discharge.

The BRRTS is currently available to the public on the Internet. However, only the site and facility information is provided, not the names and information of individuals who may own the property. Efforts to limit the distribution of personal information such as the site address and common name will minimize the usefulness of the database and impede the sharing of information on environmental conditions.

The department also maintains well logs, another database that provides important information to the public that may be compromised by the restrictions of Act 88.

### ***Proposal***

The Study Group proposes the following:

- the DNR's implementation strategy for Wisconsin Act 88 should not consider the name or street address of a site or facility as personally identifiable information; this type of information is necessary in order to collect useful information for the public and encourage the remediation and redevelopment of brownfields; the DNR will continue to strive to provide the most accurate information possible through BRRTS and other databases; and
- if this policy cannot be instituted administratively, it should be a statutory amendment.

### ***Type of Change***

Administrative or Statutory

### ***Resources***

None

### ***Comments***

## **Issue: Encourage Brownfields Redevelopment In Comprehensive Land Use Planning**

### ***Background***

The State Legislature passed the New Comprehensive Planning Law in the 1999-2001 State Biennial Budget, which states that by 2010 local governments must adopt a Comprehensive Plan to guide their land use planning efforts. There are nine elements included in the plan that cover all aspects of local planning. Included within the elements are requirements that relate to brownfields, including an inventory of brownfields within a community and a focus on the redevelopment of brownfields as an aid to reduce sprawl.

Study Group members would like to play a role in the development of guidance to help local governments and their consultants focus on brownfields projects in their New Comprehensive Plans, and to encourage consistent and accurate data collection that may be used on a statewide basis.

### ***Proposal***

The Study Group proposes the following:

- standardized recommendations and definitions should be offered to local communities and consultants in a guidance format and training sessions;
- potential funding sources available to carry out these activities should be identified in addition to sources of information that may help a local government develop their “brownfields inventory”;
- to the extent possible, site-specific data and guidance should be available on the Internet;
- the availability of state agency outreach dollars to help with this effort should be researched; and
- the UW Extension and the Office of Land Information Services should utilize the Brownfields Study Group services in this effort.

### ***Type of Change***

Administrative

### ***Resources***

None

### ***Comments***

## **Issue: Increase Outreach On Department Of Revenue (DOR) Assessment Valuation Process**

### ***Background***

The Department of Revenue's (DOR) determination of assessment value and assessment guidelines of commercial and manufacturing properties is important to brownfields due to the accumulation of delinquent taxes. It is the process by which the baseline value of a Tax Incremental Financing District (TIF) or an Environmental Remediation Tax Increment Financing District (ER TIF) is established.

County treasurers are able to request a re-assessment, as is any individual who is interested in the value of a specific property, and the re-assessment may have information that the property value may have changed due to contamination. However, it is not known if it is common knowledge that any individual can request a re-assessment. Assessments are changed January 1, and stand for the entire year.

In recent years, the DOR has changed their assessment manual to aid assessors in evaluating the value of a contaminated property. The current manual spells out that a reassessment should occur if the well or groundwater is contaminated. However, this limits the conditions under which the property is reassessed and can lead to excessive delinquent taxes accumulating on a site that has significant contamination.

### ***Proposal***

The Study Group suggests several proposals that will clarify DOR's manual and design a brownfields outreach effort for local assessors and county treasurers, especially for tax delinquent properties.

- Expand the manual language to include a variety of situations, not just those that refer to contaminated well and groundwater.
- Conduct outreach efforts with local assessors at their fall 2000 and future trainings.
- Conduct outreach efforts with county treasurers to inform them that a request for devaluation due to environmental contamination can be made by any individual.

### ***Type of Change***

Administrative

### ***Resources***

None

### ***Comments***

## **Issue: Letter To Kettl Commission**

### ***Background***

In April 2000, Governor Tommy G. Thompson announced the creation of a commission that will study the roles of state and local governments and how they can best provide the most efficient and cost-effective service to Wisconsin residents in the 21<sup>st</sup> century. Professor Don Kettl of the LaFollette Institute of the University of Wisconsin-Madison chairs the commission.

The Study Group sent a letter to the commission to inform them of the working partnership between state and local government in the area of brownfields remediation and redevelopment. The letter encouraged the commissioners to look at the *1999 Brownfields Study Group Report*, and to maintain adequate levels of state funding and staffing to allow the departments of Natural Resources and Commerce to continue providing technical assistance, financial assistance for environmental investigation and remediation, and liability exemptions to those parties interested in remediating and redeveloping brownfields properties.

Please see Appendix A, page 71, for the full text of the letter.

### ***Proposal***

The Study Group will communicate to appropriate parties the need to continue and expand the partnership between state and local units of government.

### ***Type of Change***

Administrative

### ***Resources***

None

### ***Comments***

## Chapter 3 – Financial Incentives For Brownfields



### *Potential Revenue Sources*

The Financial Incentives Subcommittee of the Brownfields Study Group was charged with the task of examining funding for brownfields incentives. Several potential funding sources were identified. They include:

- repeal the sunset on the Environmental Fund's vehicle environmental impact fee and increase the fee;
- apportion a percentage of the existing real estate transfer fee;
- increase the real estate transfer fee;
- create a special assessment on greenfields development;
- use bonds to support the proposed increases in grant funds; and
- apportion money from the General Purpose Revenue.

### Incentives Proposed In This Chapter

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## **Issue: Strengthen And Stabilize Environmental Revenues**

### ***Background***

#### Environmental Fund

Over \$15.2 million is deposited in the Environmental Fund each year from a variety of funding sources, including waste disposal fees, pesticide sales fees, natural resource assessments and the motor vehicle registration fee. These funds are appropriated to five state agencies – Natural Resources, Commerce, Health and Family Services, Military Affairs and the Wisconsin University System – for major environmental programs including brownfields, spills/emergency response and remediation of contaminated sites. Expenditures currently meet or are projected to exceed revenues paid into the Environmental Fund. Any significant new proposals or program expansions will require a new or increased revenue source(s), or a reduction in existing programs.

The Environmental Fund faces a significant revenue shortfall in 2001. Section 342.14(1r), Wis. Stats., requires an environmental impact fee of \$6 to be paid upon filing an application for certificate of title for a vehicle. This provision has generated \$6.8 million annually, or more than 45% of the revenue to the Environmental Fund. The statutory language requiring this fee will lapse, or sunset, on June 30, 2001.

Unless the sunset is repealed and the fee retained, or another source of revenue identified, the Legislature will need to drastically reduce appropriations from the Environmental Fund. This will impact a number of programs, including funds for DNR brownfields staff, money to cleanup orphaned properties, money for Commerce's Brownfields Grant program, and money to continue DNR's Site Assessment Grant (SAG) program.

#### NR 749 Fees for Services

The DNR is authorized to charge fees for certain services, such as reviewing site investigation reports and providing site closure letters. The funds generated from these fees – approximately \$400,000 annually – are appropriated to DNR to fund staff providing these services.

In the initial years of this program, revenues exceeded expenditures, creating a balance of fees available for future use. However, current revenues are insufficient to fund the number of DNR staff payrolled to fee-funded positions, and the balance is being depleted. It is projected that available fee revenues will be insufficient to fund current program revenue staffing levels in 2002.

### ***Proposals***

The Study Group recommends:

- repeal of the sunset on the vehicle environmental fee to maintain the fiscal health of the Environmental Fund and increase the fee to cover revenues needed for Commerce's Brownfields Grant and DNR's Site Assessment Grant; and
- provide a stable funding source for DNR staff.

### ***Type of Change***

Statutory

### ***Resources***

None

### ***Comments***

## **Issue: Obtain Permanent Funding And Expand Brownfields Grant Program**

### ***Background***

The Study Group was directed by the state Legislature in 1998 to “study the potential methods to provide long-term funding of brownfields financial assistance programs.” The Environmental Fund is the funding source for the Brownfields Grant program. It was originally authorized in the 1997-1999 biennial budget to provide \$10 million per biennium in grants, and was continued in the 1999-2001 biennial budget at \$12.2 million per biennium. It is currently scheduled to sunset in the year 2001.

As in past years, the current demand for the Brownfields Grants continues to exceed the available funds. During the past three rounds of competition, \$15.8 million has been available to assist in the cleanup and redevelopment of brownfields. However, application requests have exceeded \$53 million. As a result, 39 of the 106 applicants have received financial support for their projects. These 39 projects will allow the restoration of over 500 acres of abandoned or under-used contaminated sites. In addition, these projects will provide a positive economic benefit by creating over 3,000 jobs and increasing property values by \$225 million.

In accordance with legislative requirements, the Department of Commerce bases the grant awards on the following four criteria: 1) the potential of the project to promote economic development in the surrounding area (50%); 2) whether the project will have a positive effect on the environment (25%); 3) the amount and quality of the recipient’s contribution (15%); and 4) the innovativeness of the recipient’s proposal for remediation and redevelopment (10%).

### ***Proposals***

The Study Group proposed the following changes:

- as in the original Brownfields Study Group report, the Study Group proposes providing permanent funding for the Brownfields Grant Program and repealing the sunset on the vehicle environmental fee of the Environmental Fund;
- due to the high demand for this grant money, the Study Group recommends that the amount of funding for the grant be increased from \$12.2 million per biennium to \$15 million per biennium;
- establish a quarterly application process;
- provide funding for one additional grant specialist staff person at the Department of Commerce’s brownfields program, bringing the permanent staff number to a total of three to administer the grant; and
- modify the current requirement [s.560.13(4)(c), Wis. Stats.] that the Department of Commerce award at least seven grants for projects located in municipalities with a population of less than 30,000 to a requirement that Commerce must award an "equitable distribution" of grant projects.

### ***Type of Change***

Statutory

### ***Resources***

None

### ***Comments***

Department of Commerce Comments: at this time the Department of Commerce would like to provide a dissenting opinion about the quarterly funding cycle. At the present time the Department does not see the need to change the annual competition for Brownfields grants to a

quarterly cycle. The applicants for brownfields grants to date have not indicated any type of hardship due to the timing of the grants. In most cases the grant is one component of a number of funding sources that usually are firmed up following the awarding of the grant and these projects are taking some time to actually come together after the awarding of the brownfields grant (the only time when the timing of the grant presented an issue was due to the late passage of the last biennial budget). Also, staffing limitations would make quarterly funding a difficult one to administer at this time. Please note: that if the appropriation is changed from an annual to a continuing appropriation it is possible that some of the funds awarded may be returned to Commerce if not utilized and this could open up additional special application periods during the year.

## **Issue: Modify Environmental Remediation Tax Incremental Financing (ER TIF) District**

### ***Background***

The State of Wisconsin created the Environmental Remediation Tax Incremental Financing district (ER TIF), a new type of TIF district, in the 1997-99 State Biennial Budget. Based on recommendations from the 1998 Brownfields Study Group, the ER TIF was modified in the 1999-2001 Biennial Budget in order to make the ER TIF a more useful tool for financing brownfields projects.

The ER TIF allows political subdivisions to pay for specific environmental expenses from the increased property taxes generated from the redeveloped property. Eligible costs include remediation, property acquisition, demolition, underground tank removal, investigation, monitoring and restoration of soil, surface water, groundwater and more.

### ***Proposal***

To date not many local governments have utilized the ER TIF. In order to strengthen the law and encourage its use, the Study Group would like to propose the following modifications to further improve the ER TIF:

- include delinquent taxes as an eligible cost;
- extend the ER TIF period of certification from 16 to 23 years; and
- support the Department of Revenue's (DOR) technical changes, which include:
  - creating a definition of "environmental remediation tax incremental district" that is somewhat similar to the definition of "tax incremental district" under the TIF program;
  - making changes to the definitions of "environmental remediation tax increment", "environmental remediation tax incremental base", and "taxable property"; and
  - modifying certain provisions of the program to apply to contiguous parcels of property or land, as well as a parcel of property or land.

### ***Type of Change***

Statutory

### ***Resources***

None

### ***Comments***

Department of Revenue Comments: the department has some concerns about allowing delinquent taxes as an eligible cost in ER TIF districts. Many properties have languished with mounting delinquent tax bills because the county or city entity has not initiated tax deed or foreclosure actions. Current statutory authority exists to write-off or reduce delinquent taxes in order to promote development of contaminated property. If this proposal moves forward, serious consideration should be given to limiting the amount of delinquent taxes that can be deemed as an eligible cost for the ER TIF district.

## **Issue: Modify The DNR Site Assessment Grant (SAG) Program**

### ***Background***

The DNR's Brownfields Site Assessment Grant (SAG) is a program that allows local governments to begin investigating and take preliminary actions at environmentally contaminated properties. The Local Government Subcommittee of the 1998 Brownfields Study Group felt that certain brownfields issues for local governments were not being addressed.

These issues included the short term need of local governments to "jump start" brownfields projects by conducting Phase I and II environmental assessments, conducting investigations, removing underground storage tanks, demolishing structures, and other preliminary activities that were not covered by other state funding programs.

The Study Group recommended in their Report that a site assessment grant program be created to address these needs. The 1999-2001 State Biennial Budget created the Site Assessment Grant program (SAG) and allotted \$1.45 million to the program (s.292.75, Wis. Stats.). The SAG provides funding to local governments for preliminary efforts at contaminated sites and allows applicants to meet certain requirements for state brownfields grants administered by the Department of Commerce (please see pp. 50-51 of the *1999 Brownfields Study Group Report*).

Eligible SAG activities include:

- Phase I and II environmental assessments;
- site investigation;
- demolition of any structures or buildings;
- asbestos abatement; and
- removal and proper disposal or treatment of abandoned containers, underground hazardous substance storage tank systems, or underground petroleum product storage tank systems.

For the round of small SAG grants – between \$2,000-30,000 – DNR staff received 82 applications totaling \$1.8 million. Grants were awarded in September to 41 of the 82 applicants for a total of \$1.01 million. For the round of large grants – between \$30,001 and \$100,000 – DNR staff have received 29 applications totaling \$2.02 million at the time of this Report's publication. There are \$435,000 in large grant funds available for the 29 applicants.

The State Legislature also created, based upon recommendations from the 1998 Study Group, the Sustainable Urban Development Zone (SUDZ) program. This \$2.38 million pilot program promotes financial incentives to cleanup and redevelop brownfields. The original Brownfields Study Group proposal of the SUDZ was aimed at generating area-wide groundwater contamination studies. However, the budget provided that the SUDZ pilot program be directed at five pilot cities – Milwaukee, Green Bay, Oshkosh, Beloit and La Crosse – and eliminated the area-wide groundwater component of the program.

### ***Proposals***

The Study Group recommends to:

- continue the DNR's Brownfields Site Assessment Grant program and increase SAG funding to \$5 million per biennium;
- establish a quarterly application process for the SAG;
- incorporate concepts of the original Sustainable Urban Development Zone (SUDZ) pilot program into the SAG program;
  - modify the eligible activities of the SAG to include area-wide groundwater investigations;

- clarify that a local government may submit a single grant request for multiple contiguous properties that are under different ownership;
- clarify that asbestos abatement is an eligible SAG activity only if it is part of demolition;
- monitor the program by DNR staff to see whether there is an equitable distribution of the grants between communities across the state; and
- provide the DNR's Bureau of Community Financial Assistance with one additional FTE to administer the SAG program.

***Type of Change***

Statutory and Administrative

***Resources***

None

***Comments***

## **Issue: Modify The Development Zone Tax Credits**

### ***Background***

The Department of Commerce manages two development zone programs which provide tax incentives to businesses willing to start, expand or relocate within areas of Wisconsin which are economically distressed. The Enterprise Development Zone (EDZ) and Wisconsin Community Development Zone (CDZ) programs encourage private investment and aim at improving the quality and quantity of employment opportunities in specially designated areas.

Brownfields are common within these zones. Each zone has one or more of the following indicators:

- unemployment rates that are higher than the state average;
- the percentage of people at or below 80% of the statewide median household income is higher than the state average; and
- the percentage of households receiving unemployment or public assistance is higher than the state average.

Two types of tax credits are available as financial incentives in these development zones: job creation tax credits and environmental remediation tax credits. Environmental remediation tax credits are non-refundable and available for 50% of all remediation costs affected by environmental pollution in a brownfields. Even though the program changed from a 7.5% credit to a 50% credit in January of 1998, the environmental remediation tax credit program continues to be under-subscribed.

In the 1999-2001 State Biennial Budget, three changes were made that pertain to brownfields initiatives in the development zones. First, the Department of Commerce can now designate Enterprise Development Zones primarily based on their potential to encourage significant environmental remediation. Second, the Department of Commerce must create at least ten Enterprise Development Zones to encourage environmental remediation. Lastly, an eligible party who wants to claim the environmental remediation tax credit does not need to meet the requirement that 25% of all development zone tax credits must be claimed based on creating or retaining full time jobs.

### ***Proposals***

In order for these tax credits to be an effective incentive to promote brownfields cleanup and redevelopment, the Study Group proposes the following changes to the program:

- allow the tax credits to be transferable, within the following limits:
  - within a business; and
  - to the next property owner; and
- clarify that the tax credits to be applicable to the owner's State of Wisconsin income, and not just to income generated specifically on the site.

### ***Type of Change***

Statutory and Administrative

### ***Resources***

None

### ***Comments***

Department of Revenue Comments: the department opposes all aspects of this recommendation. The development zone tax credits already provide a substantial financial incentive. Changes made to the program in the 1999-2000 biennial budget relaxed the jobs credit requirement in

instances where environmental remediation is part of the development. The Department of Commerce should be allowed to administer the program under current law before any more changes are made.

The main concept of a development zone – targeted economic activity in a designated area – is diminished if the credit is applied to the owner’s gross income in other locations. Taxpayers are currently allowed 15 years to use the credit to offset income generated in the development zone. 1999 Wisconsin Act 9 restored language that specifically limits tax credits to the income generated by business activities within the development zone. The report recommendation to “clarify” this point directly contradicts the recent action of the Legislature.

Finally, transfer of tax credits greatly complicates the administration of the tax code. Because credits are subject to future audits, if a credit was denied or modified, the adjustment would affect not only the original taxpayer, but also any entity that bought or sold a credit in the interim period. Tracking the credits will increase accounting costs for businesses. Development zone tax credits should be used to promote economic activity and encourage environmental remediation, and not treated as a tradable commodity.

Department of Commerce Comments: the Department of Commerce at this time is not in favor of the transferability of the credits. The mechanics involved would be cumbersome for Commerce as well as the Department of Revenue. There are a number of projects currently being evaluated for the environmental remediation tax credits, and Commerce believes that the present tax credit will prove to be a meaningful tool. Commerce will work with the Department of Revenue to clarify the issue regarding the applicability mentioned in the second bullet point.

## **Issue: Streamline The Land Recycling Loan Program**

### ***Background***

In the 1997-1999 State Biennial Budget, \$20 million dollars was appropriated to create the DNR's Land Recycling Loan Program (LRLP). The LRLP uses monies repaid to Wisconsin through the federal Clean Water State Revolving Fund (CWSRF) program. These loans, available to both municipal landfills and municipal brownfields sites, are aimed at assisting municipalities with the cleanup of properties they own but did not contaminate.

The 1998 Brownfields Study Group examined the LRLP and made various recommendations. Two Study Group recommendations were accepted into the 1999-2001 State Biennial Budget. The first was to reduce the interest rate of the loan. The loan is now a 0% loan, with a 0.5% annual service fee. The second recommendation expanded the definition of local government to include community development authorities and housing authorities as eligible borrowers.

The Brownfields Study Group continues to identify ways to improve the LRLP so it is attractive to Wisconsin communities. Members of the Study Group are concerned with the length of time to receive a Land Recycling Loan, as well as the differences between the eligible activities of the federal CWSRF and the state LRLP. The EPA lists the eligible brownfields activities for CWSRF funds to include the following:

- excavation and disposal of underground storage tanks;
- constructed wetlands (to act as a filtering mechanism);
- capping of wells;
- excavation, removal, and disposal of contaminated soil or sediments;
- tunnel demolition;
- well abandonment; and
- Phase I, Phase II, and Phase III assessments.

The eligible activities for the LRLP are limited to site investigation and cleanup. Demolition is only an eligible activity when it deals with water quality or a threat to water quality.

### ***Proposal***

In an attempt to make the LRLP more useful, the Study Group met with the Department of Administration and the DNR's Bureau of Community Financial Assistance and arrived at the following proposals:

- eliminate the use of the Intent to Apply (ITA) form and the December 31 deadline associated with the ITA;
- establish a quarterly application process for the LRLP;
- with the quarterly application process, clarify that the 40% of the funds that can be used for landfill projects would be calculated on a fiscal year basis;
- with the quarterly application process, DNR staff should clarify the LRLP scoring criteria;
- replenish LRLP to \$20 million at the end of every even-numbered calendar year;
- allow other credit quality collateral that will meet typical financial underwriting criteria to provide adequate security for the Land Recycling Loan, as opposed to currently allowing only the "Full Faith and Credit" of the municipality (i.e. General Obligation Bonds);
- when a necessary part of remediation, allow demolition as an eligible activity;
- make the loan available up front for Phase I and II environmental assessments, as well as site investigations; and

- implement and communicate the following two decisions made by the Land Recycling Loan subgroup:
  - if the property is sold – at fair market value – and the proceeds are less than the outstanding balance on the loan, then the municipality must repay the loan to the extent the proceeds allow, and then the municipality has the option of maintaining the remaining balance until the loan is paid off; and
  - if the municipality enters into a lease with a developer or other user, then the municipality need not prepay the loan; rather, it may continue to amortize on the original schedule until the property is sold or the loan fully paid; the Environmental Improvement Fund (EIF), however, will not accept lease payments as sole security for the loan.

***Type of Change***

Administrative, Regulatory, or Statutory

***Resources***

None

***Comments***

Department of Natural Resources Comments: the Department of Natural Resources understands and agrees with what the Brownfields Study Group is trying to achieve with the first two recommendations listed above. However, the department believes the same results can be reached without pursuing statutory changes, and is willing to continue to work with members of the Study Group to develop acceptable alternatives.

## **Issue: Expand Funding Opportunities For The Cleanup Of Brownfields Properties**

### ***Background***

Financial incentives for brownfields cleanup and redevelopment have been the focus of many Wisconsin legislative initiatives in recent years. In the 1999-2001 State Biennial Budget, many changes were made to improve the state of brownfields funding. The 2000 Brownfields Study Group continues to make suggestions to enhance and expand these funding sources.

A number of the members of the Study Group are interested in reusing a brownfields property in Wisconsin, for otherwise viable and beneficial projects, but are not able to secure private or public funds to clean up a property. In a great many of those situations, local governments or developers move to other, non-brownfields properties that are more easily developed, often leading to unwanted growth patterns in a community and leaving behind a contaminated property.

The state currently has a number of programs, designed to assist with the cleanup of contaminated properties, which fit certain specialized criteria. Wisconsin has funds to clean up properties with a specific public health menace to contamination from certain types of agricultural, dry cleaner, and petroleum uses. In addition, the state has a competitive brownfields grant program at the Department of Commerce to promote the cleanup and redevelopment of brownfields that have the potential to promote a positive economic impact on the area within that particular community. The Department of Natural Resources' Land Recycling Loan Program also fills a specialized function. It provides low-interest loans to local governments that want to cleanup properties that they own, if they did not cause the contamination.

The 1998 and 2000 Brownfields Study Groups have had significant discussions over the issue of funds for environmental cleanups. As such, there have been a plethora of opinions on whether Wisconsin's current need for cleanup funds was a matter of needing: (1) more money for existing programs; (2) funding for new programs, and the scope of any new program; or (3) both of those.

### ***Proposal***

The Brownfields Study Group did not reach general agreement on this issue, given the many diverse opinions of the group. Within the Study Group, there appeared to be two general proposals.

1. Cleanup funds for public greenspaces and recreational areas.

Most members of the Brownfields Study Group agreed that funds for the cleanup of public greenspaces, parks and other public recreational areas was a brownfields funding need that the state should address through the next biennial budget process. For many older industrial contaminated properties in communities today, their best and highest reuse is as public greenspace or for other public purposes. The state currently lacks a state funding mechanism for assist with the cleanup of those brownfields properties.

- Properties for which the highest and best reuse is as parks or open spaces; and
2. General cleanup moneys for other types of brownfields properties.

In addition to state funds for the cleanup of public parks, many members of the Brownfields Study Group felt that more moneys for the cleanup of other types of properties were needed.

One of the exceptions to this general support was the Department of Commerce (please see Commerce's comments in Appendix B on pages 74-75). The advocates for this proposal believe that the properties that *generally* have not been competitive for existing funds tend to have certain characteristics, which are:

- A. Properties designated for public use (e.g., public buildings), where there is little or no data to support the positive economic impact on the community (e.g., no increase in property taxes, no economic distress in area, and no creation of new jobs);
- B. Properties where cleanup moneys are sought and there is a commitment from a private party to develop the property, but the economic impact of the project is relatively minimal (few or no new jobs, little increase in taxable base, no economic distress); and
- C. Properties where cleanup moneys are sought and there is no firm commitment from a private party to develop the property, such that the economic impact of the project on the community is unknown.

### ***Funding Guidelines***

The Study Group proposes that any state grants made available under Proposal 1 or 2 be conditioned on the following:

- be made available to local governments;
- be provided to properties where the person that caused the contamination is unknown, cannot be located or is financially unable to pay for the cleanup;
- to fund brownfields projects that would not be eligible for existing funds, such as the DERP, Agri-Chem Fund and PECFA;
- that the program be created to minimize duplication with other existing programs, such as the Department of Commerce's Brownfields Grant program; and
- the state agencies coordinate the grant and loan cycles of the brownfields funds to ensure that the most appropriate projects are getting funding by the most appropriate funding sources.

### ***Type of change***

Statutory

### ***Resources***

\$1-\$3 million in funds per biennium

### ***Comments***

Department of Commerce dissenting comments on this issue are found in Appendix B on pages 74-75.

## **Issue: Clarify Environmental Insurance As An Eligible Cost For Programs Dealing With Environmental Remediation**

### ***Background***

As brownfields remediation and redevelopment projects have become more common, so has the concept of environmental insurance. Cost cap and pollution legal liability environmental insurance make it more feasible to engage in projects with potentially large costs or unknown circumstances.

### ***Proposal***

The Study Group recommends that each program should clarify whether or not environmental insurance is an eligible cost to all brownfields programs that address remediation costs. If it is found not eligible, environmental insurance should be added as an eligible cost.

### ***Type of Change***

Administrative

### ***Resources***

None

### ***Comments***

## **Issue: Target Gaming Revenue For Menomonee Valley Brownfields Redevelopment Project Funding**

### ***Background***

Eight of the 11 amended Indian Gaming Compact Memoranda of Understanding require that the Governor undertake his best efforts, within the scope of his authority, to assure that monies paid to the state under the agreements are expended for specific purposes.

In the MOU signed by the Forest County Potawatomi Community and the state of Wisconsin, the specified purposes are: (a) economic development initiatives to benefit Tribes and/or American Indians within Wisconsin; (b) economic development initiatives in regions around casinos; (c) promotion of tourism within the State of Wisconsin; and (d) support of programs and services of the County in which the Tribe is located. The 1999 Act 9 (the 1999-01 State Biennial Budget) fully committed available revenues from gaming compacts.

Under Act 9, the Governor and Legislature allocated over \$42 million biennially from gaming receipts for a variety of purposes including: grants and loans for economic development and diversification, higher education grants for tribal college students, statewide tourism promotion, and vocational rehabilitation services for Native American individuals and tribes and bands. Funds allocated under 1999 Act 9 did include \$900,000 to the City of Milwaukee to make grants, administered by the Milwaukee Economic Development Corporation, for environmental remediation and economic redevelopment projects in the Menomonee Valley.

The Forest County Potawatomi Community is located in Milwaukee and Forest County, and generates approximately \$6 million of their \$6.375 million payment to the state in Milwaukee County. The area around the Potawatomi Casino, which is the Menomonee Valley, has been identified as the largest contiguous brownfields in the State and is a prime target for brownfields redevelopment. Current needs for the implementation of the Menomonee Valley Land Use Plan have been identified in the range of \$15 to \$20 million over the next two years.

### ***Proposal***

Dedicate a majority of the Potawatomi gaming revenues to support the implementation of the Menomonee Valley Land Use Plan through brownfields redevelopment including:

- \$2.1 million annually in additional sustainable urban redevelopment funds grants to the City of Milwaukee for land acquisition, demolition, redevelopment and infrastructure and environmental investigation and remediation;
- \$1 million annually in additional grants to the City of Milwaukee to be administered by the Milwaukee Economic Development Corporation to continue its matching grant program; and
- \$900,000 annually in grants to Menomonee Valley Partners, Inc., a tax exempt non-profit corporation, to support the creation of jobs and private sector implementation of the Menomonee Valley Land Use Plan.

### ***Type of Change***

Statutory

### ***Resources***

Reallocation of existing Potawatomi gaming receipts, which amount to more than \$6 million annually.

***Comments***

Potawatomi Tribes Comments: the Potawatomi Tribe supports the proposed use of \$4 Million annually of gaming revenues for the purposes described. Please see additional comments in Appendix B on pages 75-76.

Department of Commerce Comments: the Department of Commerce reserves the right to oppose this change if any of the existing programs that utilize the gaming revenue dollars currently directed to the department are affected (reduced) in any way.

The Menomonee Valley Partners (MVP) comments in support of this issue are found in Appendix B on page 77.

## **Issue: Make Appropriate Brownfields Programs Have Quarterly Application Deadlines**

### ***Background***

Brownfields remediation and redevelopment projects are often time-sensitive. A yearly application for a brownfields financial program does not give applicants enough opportunities to apply when they have a developer ready to purchase a property.

### ***Proposal***

Have quarterly deadlines for any brownfields financial programs where appropriate.

### ***Type of Change***

Administrative

### ***Resources***

None

### ***Comments***

## **Issue: Support Additional Brownfields Funding**

### ***Background***

The following funding programs were studied briefly by the Financial Incentives Subcommittee. Although the Study Group feels these programs are of great importance, time did not permit their thorough examination. These programs may be studied in future meetings of the Brownfields Study Group.

### ***Proposals***

#### **Blight Elimination and Brownfields Redevelopment (BEBR) Grants**

The Study Group recommends that the Department of Commerce continue to use the \$5 million of federal Community Development Block Grant money per biennium for the BEBR.

### **Stewardship**

The Study Group encourages the DNR to establish a system under which more funding from the local assistance subprogram be provided in each fiscal year for grants for qualifying projects that relate to brownfields redevelopment.

### ***Type of Change***

Administrative

### ***Resources***

None

### ***Comments***

# APPENDICES

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## Appendix A – Additional Information

### Chapter 1 – Brownfields Liability Protections

#### **Framework For Handling Development Of Properties Which Contain Solid Waste Proposal And Letter To EPA From DNR Secretary George E. Meyer. (Issue “Clarify Waste Regulatory Issues At Brownfields Sites,” pages 21-22)**

##### INTRODUCTION

The purpose of this paper is to lay out the general concepts that the Streamlining Team has developed for handling redevelopment of properties in which both the Waste and Remediation programs are involved due to the presence of solid waste. This process, as it is laid out, is not currently aimed at the remediation or development of sites where contamination may be present from spills of hazardous substances (those types of sites are and will still be handled under the NR 700 process).

##### PRINCIPLES

The approach described below is based on a number of considerations.

- First, there is a recognition that properties affected by the NR 506 ban on building on abandoned landfills range from small volumes of relatively inert materials placed as fill on a property prior to the advent of solid waste regulations, to large, modern landfills. The range of risk represented by these extremes should be reflected in the level of regulation we apply as well as the environmental benefits that may occur through development (ie. Capping areas that previously had no cap.). Situations which present little risk to human health and the environment should be the responsibility of the property owner with little or no DNR staff involvement, while situations that involve greater risk should involve commensurate DNR oversight.
- Second, it must be clear to both RPs/developers and internal staff what DNR program will have the lead responsibility and what process will be followed. Generally we recommend that a consistent program lead be maintained throughout the process, that the direction provided in the April 30, 1997 report titled “Programmatic Responsibility for Solid Waste Landfills with Contamination” be followed where possible, and that staff from other relevant programs become involved on an as-needed basis.
- Third, we wanted to develop ideas that could be implemented in the short term and supplemented later by rule making.

##### CATEGORIZATION

We split the universe of sites into 3 categories:

- 1) *Unlicensed( historic fill) sites.* This is anticipated to be the largest category of sites and, in general, would pose a wide range of environmental and safety risks.. It would also represent the most common situation for a site redevelopment. This includes situations where development has begun and waste is discovered during excavation, situations where waste is discovered during an environmental assessment process, and historic landfills that stopped filling or accepting waste prior to the beginning of DNR’s landfill licensing efforts in 1970. Although this category would generally contain the lowest risk sites, it may also contain some of the more complex and higher risk sites (ie Law Park in Madison, Miller Park Stadium in Milwaukee ,coal gas sites, etc.).
- 2) *Sites that were initially licensed as landfills before 1978.* This would generally include the Town and Village landfills that were less than 50,000 cubic yards and open burned their waste, larger city and privately owned landfills developed prior to 1978 and industrial waste monofills (coal ash, foundry sand and papermill sludge) developed prior to 1978. Many of these landfills have groundwater monitoring wells and some have engineered caps and may have previous Waste Management Program involvement.
- 3) *Sites that were initially licensed as landfills after 1978.* These are sites that meet the statutory definition of “approved”. This includes all landfills which received their initial license after May 21, 1978 (and includes a few sites which were initially licensed between 1975 and 1978 and were determined by DNR to substantially meet the 1978 standards), maintain financial

responsibility, and in most cases have a liner, leachate collection system and engineered cap. Development on or adjacent to these sites would generally present the greatest risk of causing environmental harm due to the generation of gases and reduction in volume due to decomposition.

#### PROGRAM LEAD

In order to provide continuity to our external customers, we believe that the lead program contact for a site should remain throughout the life of the development project for Categories 1 (RR lead) and 3 (Waste lead). For Category 2 sites, the Waste Program would have the lead up to the point where an evaluation of contamination is made. If it is determined that an investigation is necessary, the lead would switch to the RR Program. This division of responsibilities is consistent with the April 30<sup>th</sup>, 1997, report "Programmatic Responsibility for Solid Waste Landfills with Contamination" that provides direction for which program has the lead responsibility.

#### PROGRAM COOPERATION

Although the program lead is specified by the category the site falls into, it is imperative that all situations are handled consistently and in accordance with the rules and policies of both programs. In general, this means that both programs will follow the same process and communicate significant decisions. On specific projects it will be necessary for the lead program to request assistance from the other program to take advantage of that program's expertise and maintain a consistent approach. Situations for which a team approach would be appropriate include large landfills in Category 1 and landfills in category 2, particularly those with engineering features (eg. caps), or sites with an on-going environmental monitoring program.

#### GENERAL APPROACH

*Category 1:* The first step for a category 1 site is to determine the site's risk level. This may be done by sampling and testing to characterize the site conditions and determine contaminant levels in the waste. In very simple cases where the waste is a small volume of known waste and there are no sensitive environmental factors (proximity to groundwater, etc.) knowledge may be appropriate to presume that no release has occurred. The more common case will involve some level of waste characterization, soil sampling, groundwater monitoring or gas monitoring. If an environmental or human health and safety problem does not exist at the site and the development will not cause a future problem in these areas (see the EDUCATION section below) then the developer would be eligible for an expedited exemption (see the EXPEDITED EXEMPTION section below). If a release were discovered, then the developer would need to determine the degree and extent of contamination by following the requirements of NR 716. A staff person from the Waste program may be assigned to assist with these sites, where appropriate.

*Category 2:* The same approach as laid out in Category 1 should be followed except that a staff member of the RR program would be assigned to assist the Waste program lead (facilitating continuity on the project if the lead program changes).

*Category 3:* The exemption to build on a category 3 landfill would require the issuance of a plan modification by the Waste Program.

#### EXPEDITED EXEMPTION

The ultimate goal for simple, low risk situations is to develop rule criteria under which the prohibition from building on an abandoned landfill would not apply. The exemption would be predicated on the developer establishing that there is no current significant environmental impact or human health and safety problem and that the proposed development will not cause a future significant problem in these areas. The exemption rule language would contain specific performance standards similar to s.NR 504.04(4), which would include such things as no detrimental affect on groundwater, surface water, critical habitat, and wetlands, and no migration of explosive or toxic gasses.

Since rule criteria would take considerable time to develop and implement, for the short term we could develop an expedited exemption which would be issued on a case by case basis but would be a standardized format. This was done in the beneficial use program as an interim measure while NR 538 was developed. In the case of the beneficial use exemptions, we specified information (waste characterization, proposed use, etc.) that was necessary for us to review the proposal and determine if the expedited exemption process was appropriate (case by case reviews with customized exemptions were still available but took longer to review and process). In the case of the "building on abandoned landfill" expedited exemption, we would specify submittal of information on a Department supplied form documenting how the developer determined that there were no existing significant impacts, how development related impacts

would be prevented, the nature of the proposed development, etc. One concern is that the developer may state that the above conditions have been met without having the technical basis to make that determination. To prevent this situation, we would require that the exemption application be submitted by a PE or PG, and require a certification that “to the best of their professional judgment” the site has been adequately characterized and should not violate any of the performance standards.

The location of sites receiving an exemption, would be recorded on a tracking system.

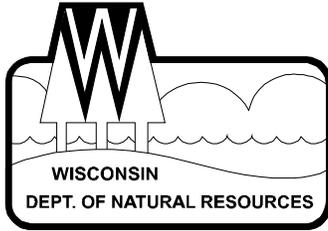
## EDUCATION

A critical step in streamlining the process for development of property where waste has been deposited requires development of a number of informational items.

- First, the general process that a developer needs to follow should be clearly laid out in easy to understand language. This will help the developer to understand what the development will entail as far as risk and cost, and avoid unknown surprises in the regulatory process (the site investigation will help reduce unknown surprises with the environmental conditions).
- Second, we need to develop a clear explanation of the types of environmental and safety concerns that may be involved in development of a property that contains solid waste. And, having raised the flag of what can go wrong, we also need to suggest ways of designing around or compensating for situations that could cause environmental problems. Much of this information currently exists in the “Building on Abandoned Landfill” guidance document, but it will need to be reformatted and updated.
- Third, we need to develop information to supplement existing site characterization guidance (guidance that has already been developed for spills and tank releases) that addresses the waste aspects of the site investigation. This information should also discuss the potential liabilities that could be involved if the site is not characterized adequately before development.

## TERMINOLOGY

The development community has raised concerns as part of the Brownfields Study Group process regarding the use of the word “landfill”. They believe that having the label “landfill” attached to a property is perceived as an unnecessary impediment to development. Particularly in cases that fall into Category 1, the landfill label may be misleading. The DNR’s concern is that properties where waste has been deposited be investigated to determine if there has been a release to the environment, and that further development will not cause an environmental or safety problem. In NR 538 we had a similar terminology concern. It was believed that contractors would not be willing to beneficially use materials that carried the solid waste label. To alleviate that “perception” concern we adopted the term “industrial by-product” and defined it as “...nonhazardous solid waste...”. This allowed us to avoid the perception problem but continue to apply relevant regulations. We should work with the development community to find an acceptable term other than “landfill” for sites that were never licensed as landfills. The term “historic fill site” has been used in other states. The term could then be defined as “...a landfill that was established before 1970 and which was not licensed by the Department as a landfill...”.



## State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Tommy G. Thompson, Governor  
George E. Meyer, Secretary

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Madison, Wisconsin 53707-7921  
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February 4, 2000

Francis X. Lyons, Regional Administrator  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604-3507

Dear Mr. Lyons:

There is considerable interest in Wisconsin among a broad spectrum of people who would like to see a more streamlined approach for dealing with hazardous waste issues at clean up and redevelopment projects. As a result, the Wisconsin Department of Natural Resources has been meeting with an advisory group (the "Brownfields Study Group") to receive their input on this issue. While we already have some significant agreements in place with Region 5 on this issue, we and our customers need further flexibility and innovation to make these site clean-ups consistent with all the other clean-up and redevelopment projects in Wisconsin.

We believe that this issue is well suited for a Regulatory Innovation Agreement in accordance with the "Joint EPA/State Agreement to Pursue Regulatory Innovation." I am writing to inform you that we are drafting a proposal for accomplishing this objective. I'd also like to emphasize the importance of this proposal to our external customers and to this agency. This will be of highest priority for our managers, and I hope that it will be assigned a high level of importance by Region 5 management as well.

Enclosed is a set of drafting instructions that my staff has developed. These instructions will be used to prepare the proposal. We hope to have final proposal ready for your review by the end of May, but we also recognize a need for dialogue and feedback well before the drafting is complete. We'd like to begin that dialogue as soon as possible. Jerri Anne Garl and Lynda Wiese are our respective designated lead agency contacts for Regulatory Innovation Proposals. Your Division Directors, our Bureau Directors and other members of the management teams should also be heavily involved. I am requesting that Jerri Anne and Lynda coordinate a kick-off meeting to begin some of the conceptual discussions as soon as possible.

Thank you for your attention to this issue.

Sincerely,

George E. Meyer  
Secretary

cc: Jerri Anne Garl - EPA  
Robert Springer - EPA  
William Munro - EPA  
Jay Hochmuth - WDNR  
Lynda Wiese - WDNR  
Sue Bangert - WDNR  
Mark Giesfeldt - WDNR  
Mary Jo Kopecky - WDNR  
Mark Gordon - WDNR  
Kevin Kessler - WDNR

## **Drafting Instructions For Hazardous Waste Remediation. (Issue “Clarify Waste Regulatory Issues At Brownfields Sites,” pages 21-22)**

### Background

Over the last 6 months a significant amount of time and effort has been spent discussing a number of issues regarding remediation of sites that have contaminated media defined as hazardous waste. While most were resolved, there were three major issues where consensus could not be reached. The unresolved issues were presented to the Air and Waste Management Team for resolution on December 17, 1999. Due to the complexity of the issues and the limited time available it was not possible to resolve the issues at that meeting. However, a process was developed for reaching resolution. The major component of the proposed process is the preparation of a comprehensive plan for dealing with cleanup of sites contaminated with hazardous waste. The proposal will be presented to the Brownfields Study Group and EPA for concurrence.

The RR Strategic Direction Report (September, 1995) and subsequent guidance (5/20/97 memo) gave the RR Program responsibility for hazardous waste cleanups. These documents also indicated that the NR 700 rule series should be uniformly applied to all environmental remediation actions. However, since that time there have been different interpretations on the extent to which the NR 700 series is intended to supplant vs. supplement the NR 600 series for hazardous waste remediation projects. These differing interpretations have resulted in the inconsistent handling of these types of projects. In addition, the Waste Management Program has raised concerns regarding program integrity and applicability of federal guidance and policy to cleanups where hazardous waste is involved.

The RR Strategic Direction Report goes on to say that: “the Department should aggressively seek concurrence with a cultural change in the relationship it has with EPA to redefine state-federal partnership and seek EPA’s assistance in leveraging other federal agencies with the capacity to assist in converting contaminated lands to beneficial use.” The instructions listed below follow this recommendation by specifying that the comprehensive plan be drafted to uniformly utilize the NR 700 series for all cleanups involving hazardous waste. The instructions also identify that a provision be included for expanding the liability exemptions that apply to lenders and local units of government under RCRA, similar to provisions in the state spill law and Federal Superfund law. Finally, the instructions identify those provisions for ensuring consistent case close-out decisions and the role of enforcement under NR 600 should be included.

### Drafting Instructions

The spill law (s.292.11, stats.) and the NR 700 series shall form the basis for developing a comprehensive plan for addressing sites that have contaminated media defined as hazardous waste. State and federal hazardous waste law will be used as the basis for dealing with situations where voluntary cleanups are not accomplished in a timely fashion. The Plan will be submitted to EPA for approval under the Innovative Regulatory Agreement between EPA and ECOS. That Plan will include any needed revisions to the NR 700 series, the NR 600 series, and any other related DNR rules. The Plan will also include the RR Program position on the 3 issues discussed at the December 17, 1999 Air and Waste Management Team meeting. These include: 1) Utilizing EPA’s Area of Contamination (AOC) policy such that waste being managed within an AOC would not constitute active management of a hazardous waste. 2) Allowing full use of the NR 700 series and associated state guidance when selecting remedies and closing out sites contaminated with hazardous waste. This would include use of institutional controls and natural attenuation. 3) Allowing in-situ treatment of soil and groundwater contaminated by a listed or characteristic waste, after the waste is defined as hazardous, without a hazardous waste treatment license or variance. All other issues that were identified and resolved as part of the solid waste streamlining team discussions are to be included as agreed between the Waste Management and RR Programs.

The Plan needs to address the process (i.e. rule revisions, guidance development, training, etc.) that will be used to ensure consistent decision making in these areas. The Plan will include proposed guidance and any necessary rules to ensure consistent decision making for sites covered by the proposal. Areas to be covered at a minimum include: 1) need for and procedures for NR 600 variances; 2) consistency in determining whether timely and satisfactory cleanup under NR 700 is occurring and defining when NR 600 requirements will be invoked; and 3) identifying the role of enforcement and the shift from voluntary cleanup under NR 700, and those that are not voluntary, or require enforcement activities under NR 600. The existing draft hazardous waste variance guidance that has been under development for quite some time

shall be part of the Plan to ensure consistency. The draft guidance may be modified to reflect these drafting instructions with respect to the three issues that have been in dispute.

Another issue that needs to be addressed is the consistent management of petroleum contaminated media. This situation first became an issue when EPA promulgated the toxicity characteristic (TC) rule and concluded that media contaminated with a release of petroleum from federally regulated underground storage tanks are deferred from complying with the hazardous waste rules while media contaminated with releases of petroleum from above ground storage tanks (AST's) and spills are not exempt. In 1992, EPA issued a draft rule that expanded the deferral to all petroleum releases, but subsequently withdrew the rule when they decided to address the issue during development of the HWIR-Media rule. Unfortunately, the Media rule that was promulgated in November, 1998 was significantly reduced in scope from what was originally envisioned and as result it did not address how media contaminated with releases from AST's or spills should be managed. Therefore, this Plan should identify a process that delineates how all petroleum contaminated media will be managed consistent with the NR 700 series.

In addition to the provisions listed above, the Plan should also include a specific proposal for incorporating existing lender and local government liability exemptions under the state spill law and CERCLA to sites with RCRA implications. This would apply to any facility that ever managed or notified as managing hazardous waste including existing treatment, storage and disposal (TSD) facilities. The Plan should seek concurrence that routine lender operations such as normal banking activities, acquisition of property through foreclosures, removal of equipment or fixtures, and inspection of properties would not trigger RCRA liability. For local governments (LGU's), the Plan should seek EPA's concurrence that LGU's acquiring property involuntarily (i.e. slum clearance, blight elimination, condemnation, eminent domain, escheat or tax foreclosure) would not be considered an owner/operator under RCRA. Both lenders and LGU's would need to comply with the criteria included in the spill law such as allowing access to the property and not taking any actions that would cause or exasperate a release. The intent of these provisions is to encourage remediation and redevelopment of RCRA sites in a manner consistent with what is allowed under CERCLA and the state spill law.

As part of developing the Plan, consideration should be given to whether any of the components identified above would qualify as an EPA "RCRA/Brownfields Pilot Project". EPA's guidance should be evaluated to determine whether it would be advantageous to submit a pilot project proposal in parallel with the Regulatory Innovation Proposal. If it is determined that a RCRA/Brownfields Pilot Project proposal should be submitted, the comprehensive plan described above will still be submitted to EPA as a Regulatory Innovation proposal.

#### Summary

A draft Plan addressing the instructions included above should be completed by March 31, 2000. At that point, the draft will be shared with the Brownfields Study Group and EPA for their review and feedback. The Plan should be a stand-alone document that references or incorporates all of the major documents utilized by the RR Program to implement the investigation and remediation of contaminated sites. Examples include: ch. 292, stats., NR 700 series, NR 140, Natural Attenuation guidance, institutional controls guidance, soil cleanup standards guidance, NR 140 implementation guidance, PAH soil cleanup guidance, hazardous waste variance guidance, and other documents as appropriate. After the feedback is evaluated, the Plan will be updated and submitted to EPA for approval. Once EPA approves the Plan, the Department will initiate any needed rulemaking called for in the Plan. While rulemaking is pending, guidance will be issued to staff for implementing the Plan. It is anticipated that guidance will be issued in September, 2000.

## Appendix A (con't.)

### Chapter 2 – Brownfields Incentives For Local Governments

**Statutory Language for “Clarify Blight Elimination and Slum Clearance Authority.”**  
**(Issue “Clarify Blight Elimination and Slum Clearance Authority, pages 34-35;**  
**changes to statute are underlined)**

#### **66.43 Blighted area law.**

\*\*\*

- (3) Definitions. The following terms whenever used or referred to in this section shall, for the purposes of this section and unless a different intent clearly appears from the context, be constructed as follows:

(a) “Blighted area” means any area, including a slum area, in which a majority of the structures are residential or in which there is a predominance of buildings or improvements, whether residential or nonresidential, and which, by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation or open spaces, high density of population and overcrowding, environmental pollution or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency and crime, and is detrimental to the public health, safety, morals or welfare.

\*\*\*

(bm): “Environmental pollution” has the meaning given in s. 66.431 (2m)(fm).

\* \* \*

- (4) Power of Cities.

(a) Every city is granted, in addition to its other powers, all powers necessary or convenient to carry out and effectuate the purposes and provisions of this section, including the following powers in addition to others herein granted:

\*\*\*

3. Within its boundaries, to acquire by purchase, eminent domain or otherwise, any real or personal property or any interest therein, together with any improvement thereon, necessary or incidental to a redevelopment project; to hold, improve, clear or prepare for redevelopment any such property; to sell, lease, subdivide, retain for its own use, mortgage, or otherwise encumber or dispose of any such property or any interest therein; to enter into contracts with redevelopers of property containing covenants, restrictions, and conditions regarding the use of such property in accordance with a redevelopment plan and such other covenants, restrictions and conditions as it may deem necessary to prevent occurrence of blighted areas or to effectuate the purposes or covenants running with the land, and to provide appropriate remedies for any breach runoff; within the boundaries of the city to enter into any building or property in any project area in order to make inspections, surveys, appraisals, soundings, test borings or environmental investigations, and to obtain an order for this purpose from a court of competent jurisdiction in the event entry is denied or resisted.

The power to conduct environmental investigations of any building or property in any project area may not be exercised until such area has been declared to be blighted pursuant to this section.

**66.431 Blight elimination and slum clearance.**

\*\*\*

**(2m) Definitions**

\*\*\*

**(b) “Blighted area” means any of the following:**

1. An area, including a slum area, in which there is a predominance of buildings or improvements, whether residential or non-residential, which by reason of dilapidation, deterioration, age, or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding, environmental pollution or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, or crime, and is detrimental to the public health, safety, morals or welfare.
2. An area which by reason of the presence of a substantial number of substandard, slum, deteriorated structures, predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility or usefulness, unsanitary or unsafe conditions, deterioration of the site or other improvements, diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title, environmental pollution or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs or arrests the sound growth of a city, retards the provision of housing accommodations or constitutes an economic or social liability and is a menace to the public health, safety, morals, or welfare in its present condition and use.
3. An area which is predominantly open and which because of obsolete platting, diversity of ownership, deterioration of structures or of site improvements, environmental pollution, or otherwise, substantially impairs or arrests the sound growth of the community.

**(bm) “Blighted property” means any property within a city, whether residential or nonresidential, which by reason of dilapidation, deterioration, age or obsolescence, inadequate provisions for ventilation, light, air or sanitation, high density of population and overcrowding, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, is conducive to ill health, transmission of disease, infant of mortality, juvenile delinquency or crime, and is detrimental to the public, safety, morals or welfare or any property which by reason of faulty lot layout in relation to size, adequacy, accessibility or usefulness, insanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax or special assessment delinquency exceeding the fair market value of the land, defective or unusual conditions of life, environmental pollution, or the existence of conditions**

which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs or arrests the sound growth of a city, retards the provisions of housing accommodations or constitutes an economic or social liability and is a menace to the public health, safety, morals, or welfare in its present condition and use, or any property which is predominantly open and which because of obsolete platting, diversity or ownership, deterioration of structures or of site improvements, environmental pollution, or otherwise, substantially impairs or arrests the sound growth of the community.

\* \* \*

**(fm)** “Environmental pollution” has the meaning given in s. 299.01 (4); provided, however, in the case of industrial or commercial property, the known or suspected environmental pollution must also adversely impact the expansion or redevelopment of the property. For purposes of this section, environmental pollution shall not include:

1. Any discharge for which a consent order under this chapter or ch. 289 or 291 or an agreement under 292.11(7)(d) or 292.31(8)(d) has been entered into and there is compliance with the consent order or agreement;
2. The discharge is in compliance with a permit, license, approval, special order, waiver or variance under ch. 283 or 285 or under corresponding federal statutes or regulations;
3. A discharge for which the department of natural resources, the department of commerce or the department of agriculture, trade and consumer protection has indicated that no further remedial activities are necessary; or
4. A discharge that is exempt under 292.15(2) or 292.11(9)(e)

\* \* \*

**(5)** Powers or Redevelopment Authorities. (a) Every authority is granted, in addition to any other powers, all powers necessary or incidental to carry out and effectuate the purposes of this section, including the following powers:

\* \* \*

**3.a.** Within the boundaries of the city to acquire, purchase, lease, eminent domain, or otherwise, any real or personal property or any interest therein, together with any improvements thereon, necessary or incidental to a redevelopment or urban renewal project; to hold, improve, clear or prepare for redevelopment or urban renewal any such property; to sell, lease, subdivide, retain or make available for the city’s use; to mortgage or otherwise encumber or dispose of any such property or any interest therein; to enter into contracts with redevelopers of property containing covenants, restrictions and conditions regarding the use of such property in accordance with a redevelopment or urban renewal plan, and other such covenants, restrictions and conditions as the authority deems necessary to prevent a reoccurrence of blighted areas or to effectuate the purposes of this section; to make any of such covenants, restrictions, conditions or covenants running with the land and to provide appropriate remedies for any breach thereof; to arrange or contract for the furnishings of service, privileges, works or facilities for, or in connection with a project; to temporarily operate and maintain real property acquired by it in a

project area for or in connection with a project pending the disposition of the property for such uses and purposes as may be deemed desirable even though not in conformity with the redevelopment plan for the area; within the boundaries of the city to enter into any building or property in any project area or any blighted property in order to make inspections, survey appraisals, soundings or test borings, environmental investigations and to obtain an order for this purpose from a court of competent jurisdiction in the event entry is denied or resisted; to own and hold property and to insure or provide for the insurance of any real or personal property or any of its operations against any risks or hazards, including the power to pay premiums on any such insurance; to invest any project funds held in reserves or sinking funds or any such funds not required for immediate disbursement in property or securities in which savings banks may legally invest funds subject to their control; to redeem its bonds issued under this section at the redemption price established therein or to purchase such bonds at less than redemption price established therein or to purchase such bonds at less than redemption price, all such bonds so redeemed therein or purchased to be canceled; to develop, test and report methods and techniques, and carry out demonstrations and other activities, for the prevention and elimination of slums and blight; and to disseminate blight elimination, slum clearance and urban renewal information.

b. The power to conduct environmental investigations of any building or property in any area or any blighted property under sub. (a)3.a. may not be exercised until such area or property has been declared or determined to be blighted pursuant to this section.

#### 66.46 Tax incremental law.

- (1) **Short Title.** This section shall be known and may be cited as the “Tax Incremental Law”.
- (2) **Definitions.** In this section, unless a different intent clearly appears from the context:
  - (a). 1. “Blighted area” means any of the following:
    - a. An area, including a slum area, in which the structures, buildings or improvements, which by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding, environmental pollution or the existence of conditions which endanger life or property by fire and other causes, or the combination of these factors is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, or crime, and is detrimental to the public health, safety, morals or welfare.
    - b. An area which is predominantly open and which consists primarily of an abandoned highway corridor, as defined s. 66.431(2m)(a), or that consists of land upon which buildings or structures have been demolished and which because of obsolete platting, diversity of ownership, deterioration of structures or of site improvements, environmental pollution or otherwise, substantially impairs or arrests the sound growth of the community.

2. “Blighted area” does not include predominantly open land area that has been developed only for agricultural purposes.

(am) “environmental pollution” has the meaning given in s.299.01(4).

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**Letter to the Kettl Commission.  
(Page 41)**

November 6, 2000  
LaFollette Institute  
1225 Observatory Drive  
Madison, WI 53706

Dear Professor Don Kettl:

In recent years the state of Wisconsin has become a leader in developing innovative approaches and partnerships which have focused on the redevelopment of Brownfields. The efforts have resulted in tax delinquent and blighted properties being cleaned up, neighborhoods revitalized and the expansion of the local property tax base. The role of the state has been to provide technical and financial assistance and to limit liability for voluntary parties and local units of government that seek cleanup to brownfields. Without the state’s participation many, if not most of these sites, would not be redeveloped.

As your Commission looks at the relationship between the state and local units of government we encourage you to maintain and strengthen the role of the state as a partner in the Brownfield redevelopment process. That role includes:

- Providing technical assistance to properties
- Providing financial assistance for site investigation activities and source removal
- Funding of remediation activities, and
- Limiting the liability of innocent parties.

To ensure the continued success of the Brownfield program it is important that the Departments of Natural Resources and Commerce have the financial tools and staffing available to them. We strongly encourage the members of the Commission to review the Brownfield Study Group Final Report prepared in 1999. The Study Group, which has been appointed by DNR Secretary George Meyer, has continued to meet and will be making a number of recommendations to improve the Brownfield program later this fall.

Thank you in advance for your efforts to evaluate intergovernmental relationships and we encourage you to consider the Brownfields initiative as a model on establishing a state local partnership. Representatives of the Study Group would be happy to meet with you or members of the Commission to answer any questions that you may have.

Sincerely,

The Brownfields Study Group

## **Appendix B – Comments On Issues**

### **Chapter 2 – Brownfields Incentives For Local Governments**

#### **Wisconsin Manufacturers and Commerce (WMC) comments on the issue “Clarify Blight Elimination and Slum Clearance Authority.” (pages 34-35)**

October 10, 2000

Joy Stieglitz  
Vandewalle & Associates  
120 East Lakeside Street  
Madison, WI 53715

Dear Joy:

Thank you for your August 2 and 21 letters, in which you provided WMC with language regarding some proposed changes to Wisconsin’s Slum and Blight law. As you are aware, WMC opposed changes that were proposed to this law during the last legislative session. While we have explained our concerns regarding these changes to the Brownfields Study Group and others on numerous occasions, I have reiterated them below.

As originally proposed in the *1999 Brownfields Study Group Report*, these changes would include in the definitions of “blighted area” and “blighted property” any property that contained “environmental pollution.” Furthermore, the term “environmental pollution” was broadly defined as “contaminating or rendering unclean or impure the air, land or waters of the state....” Wis. Stat. sec. 299.01(4). The changes would also specify that redevelopment authorities could enter blighted property to make “environmental investigations”(See *Brownfields Study Group Report*, Appendix B).

While these changes may appear minor on their face, they greatly expand the authority of local governmental units (LGU). LGUs have the authority to inspect and take blighted property. Consequently, the proposed changes would have given LGUs the ability to inspect and condemn any property containing environmental pollution. Moreover, because of the broad definition of “environmental pollution,” this authority would have extended to almost any property.

These changes would have also impacted Wisconsin’s remediation laws. Unlike other owners who acquire property for redevelopment, LGU’s can obtain an exemption from the Spill Law for property that they obtain for the purposes of slum or blight elimination. Wis. Stat. § 292.11(9)(e) 1m.d. By expanding what property can be taken as ‘blighted,’ this liability protection is available for more lands. In addition to this liability protection, LGUs, pursuant to 1999 WI Act 9, now can sue responsible parties to recover remediation and investigation costs incurred for contaminated property they obtain through their blight authority.

These changes have been of concern for a number of reasons. Obviously, these provisions greatly expand the authority of LGUs. Perhaps even more importantly, they provide LGUs with a great advantage in negotiations with responsible parties, since the LGU has the power to take the property at issue, clean it up, and recover those cleanup costs from the responsible parties. While brownfields initiatives in this state have generally tried to foster a cooperative approach to cleanups, this proposal clearly sets up the LGUs to take an adversarial approach to brownfield redevelopment.

We have now reviewed the version of statutory changes accompanying your August 21 letter. We appreciate the changes that were made to attempt to address WMC's concern. In response, we propose eliminating the term "environmental pollution," and replacing it with the term "environmental contamination." A proposed definition of this term is enclosed for your review.

The proposed draft also provides authority for LGUs to conduct environmental investigations. In regard to § 66.43(4)(a) 3, The last sentence is unclear and needs to be modified. We suggest the sentence be modified to read: "The power to conduct environmental investigations in a project area may not be exercised until the process specified in sub. (5) is completed for that project area." Similarly, §66.431(5)(a)(3)(b) should be modified to read: "The power to conduct environmental investigations pursuant to this section may not be exercised until the process specified in sub. (6) is completed for that property, or, for a 1<sup>st</sup> class city, the process specified in par. (5)(c) is completed for that property.

In conclusion, please note that we are still in the process of obtaining feedback from our members on the changes we proposed above. Consequently, please be aware that these comments are preliminary in nature, and that we reserve the right to provide additional comments in the future.

Please contact me if you would like to discuss this matter further.

Sincerely,

Patrick Stevens  
Director, Environmental Policy

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Subject: Definition of Environmental Contamination

Amendment: Create s. 66.431(3)(bm) to read as follows:

"Environmental Contamination" means the presence of environmental contamination above the residual contaminant level for industrial property as defined by the department of natural resources under s.292.11 or in excess of the enforcement standards for groundwater as set forth by the department of natural resources under ch. 160; provided, however, no property shall be deemed to have environmental contamination if:

- (1) the environmental contamination is located on property which is the subject of a consent order under this chapter or ch. 280 or 291 or an agreement under s.292.11(7)(d) or 292.31(8)(h) has been entered into and there is compliance with the consent order or agreement;
- (2) the environmental contamination resulted from a discharge in compliance with a permit, license, approval, special order, waiver or variance under ch. 283 or 285 or under corresponding federal statutes or regulations;
- (3) the department of natural resources, the department of commerce or the department of agriculture, trade and consumer protection has indicated that no further remedial activities are necessary in order to address the environmental contamination;
- (4) the department of natural resources has issued an exemption from liability under s.292.15(2) or 292.13 with respect to the property.

## Appendix B (con't.)

### Chapter 3 – Financial Incentives For Brownfields

#### **Wisconsin Department Of Commerce's comments on the issue "Expand Funding Opportunities For The Cleanup Of Brownfields Properties." (pages 53-54)**

#### **CORRESPONDENCE/MEMORANDUM**

State of Wisconsin  
Department of Commerce

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**DATE:** November 21, 2000

**TO:** Andrew Savagian  
Department of Natural Resources

**FROM:** Peggy Lescrenier, Administrator – Community Development  
John Stricker, Area Development Manager  
Jason Scott, Brownfields Grant Specialist

**SUBJECT:** EXPANDED FUNDING OPPORTUNITIES FOR THE CLEANUP OF  
BROWNFIELDS PROPERTIES

While some Brownfields Study Group members supported the funding of parks and recreation areas (i.e. proposal #1) and a few members appeared to support funding to non-economic projects (proposal #2), the Department of Commerce can not fully support either of the two proposals that resulted due to the following reasons:

- 1) Deviation from Intent. Funding of non-economic projects, would be a broad departure from the limited discussion that took place during the final Study Group meetings. While some non-competitive project types were discussed, this proposal does not represent a consensus of opinion by Study Group members.
- 2) Lack of Study Group Input and Discussion. These proposals are the result of short discussions, among a few members of the Study Group, during the final meeting or two of the year. To be properly addressed, this issue should have been a topic of the Financial Incentives Sub-committee and discussed during the previous nine months that meetings were held. Study Group members were not given an adequate amount of time to ask questions, discuss concerns, and provide input on this topic.
- 3) Duplication of Existing Programs. It is unlikely that a program to fund non-economic projects could "minimize-to the extent possible" duplication of other existing programs. The Brownfields Grant Program has funded a variety of projects including those without firm development commitment, some projects with little job creation, as well as a public library that did not increase the taxable base. Currently, this program must award \$400,000 to projects unrelated to the number of jobs created.

The Site Assessment Grant provides funding for numerous activities including site assessments, site investigations, tank removals, hazardous waste removal, demolition, and associated asbestos removal. As the eligible applicant, local governmental units can apply for or on behalf of public green space projects, public building projects, as well as projects without development or economic potential.

In addition, the Land Recycling Loan program can provide cleanup funding necessary for municipal owned properties, provided there a threat of ground water contamination. This program can include public green space, public buildings, and does not require redevelopment or economic impacts.

- 4) Lack of Priority. An additional program, that could conceivably fund almost any contaminated property, is not a sensible use or approach with state funds. It is best to concentrate on those projects that have the highest potential of public benefit and returns. The existing brownfields programs rightfully focus on quality projects that will leverage the public dollar. By funding such projects, as we do now with the available programs, these communities receive additional benefits found in job creation and tax base growth. The revenue generated from the resulting economic development can make it possible for these communities to either create parks and green space or to support non-economic brownfields projects. It would be inefficient and ineffective to provide additional cleanup dollars for a program to be a “catch-all” to those projects with little or no redevelopment potential.

If funding is necessary for parks and recreation projects, it would be an appropriate activity for the Stewardship Program. As was proposed during the 1999 Brownfields Study Group meetings, Stewardship money should be made available to investigate and clean up properties where the end use is green space.

In summary, based on the reasons above, the Department of Commerce opposes the creation of a new financial assistance program as proposed in the issue “Expanded Funding Opportunities for the Cleanup of Brownfields Properties”.

cc: Brenda Blanchard, Secretary  
Phil Albert, Deputy Secretary  
Mark Giesfeldt, Director – Bureau for Remediation and Redevelopment, DNR  
Darsi Foss, Brownfields Section Chief – DNR  
John Stibal, Director of Economic Development – West Allis  
Financial Subcommittee Study Group Members

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**Forest County Potawatomi Community comments on the issue “Target Gaming Revenue For Menomonee Valley Brownfields Redevelopment Project Funding.” (pages 56-57)**

September 7, 2000

Governor Tommy Thompson  
Room 125 South  
State Capitol  
Madison WI 53702

RE: Forest County Potawatomi Community Support for Menomonee Valley Brownfield Development and the Canal Street Expansion Project

Dear Governor Thompson:

I am writing you in my capacity as Chairman for the Forest County Potawatomi Tribal Community (“Potawatomi”). The purpose of this letter is to indicate our strong support for the proposal of the Brownfield Study Group (“Group”) to dedicate Potawatomi Gaming Revenues, which are sent to the State annually, for Brownfield development in the Menomonee Valley in

Milwaukee. We also support using Potawatomi Gaming Revenues for the Canal Street Extension Project (“Project”).

The Potawatomi have a significant interest in encouraging economic development in the Menomonee Valley. We funded studies on behalf of the Menomonee Valley Partners, which are specifically designed to provide important infrastructure improvements in the valley. These proposed infrastructure improvements are a necessary pre-condition for job creation and private sector development in the Menomonee Valley.

One of these proposed infrastructure improvements is the Canal Street Expansion Project. This Project would provide a direct link between the intersection of 6th and Canal Streets on the east and Miller Park on the west. The Canal Street extension is an important improvement project, which we believe will provide a “bridge” to allow natural economic forces to stimulate redevelopment in this important Brownfield corridor in the heart of the Milwaukee urban area.

An extended Canal Street will also create a potential traffic mitigation route during the Marquette Interchange Construction scheduled for 2004. We understand that an extended Canal Street will also provide a viable route for the Henry Aaron State Trail to pass safely through railroad yards in the valley, thus eliminating the need for multiple bridges. In addition to the challenges presented by concerns regarding preexisting contamination in this area, the Canal Street extension involves many complicated rail relocation and reconstruction issues of the new Canal Street Corridor. These rail improvements in the valley will likely reduce freight train traffic on the proposed Amtrak High Speed Rail Line into Milwaukee.

We believe that \$6 million annually of the Potawatomi Gaming Revenues which we send to the State should be dedicated to the Menomonee Valley for this development. This use of our revenues will provide substantial dividends for economic development. Redevelopment of the Menomonee Valley will benefit property owners in the Menomonee Valley, the surrounding community and the entire State, in the form of job creation and increased tax revenues. For all these reasons, the Potawatomi wholeheartedly endorse the proposal to fund the redevelopment efforts in the Menomonee Valley through the Potawatomi Gaming Revenues and strongly endorse the inclusion of this proposal in the final Brownfield Study Report.

Thank you for your consideration of this letter of support.

Very truly yours,

FOREST COUNTY POTAWATOMI  
COMMUNITY

Harold Frank  
Tribal Chairman

CC: Mayor John Norquist  
Senator Brian Burke, Joint Finance Committee Co-Chair  
Donald Schuenke, Chairman, Menomonee Valley Partners  
George Meyer, Secretary of DNR  
Executive Council  
Jeffrey A. Crawford, Forest County Potawatomi Attorney General  
Darsi Foss, DNR Bureau of Remediation and Redevelopment

**Menomonee Valley Partners (MVP) comments on the issue “Target Gaming Revenue For Menomonee Valley Brownfields Redevelopment Project Funding.” (pages 56-57)**

December 20, 2000

VIA FACSIMILE

Mr. Andrew Savagian  
Wisconsin Department of Natural Resources  
P.O. Box 7921  
Madison, Wisconsin 53707-7921

Re: Brownfields Study Group  
Dedicated Revenues for Menomonee Valley Brownfields

Dear Mr. Savagian:

Menomonee Valley Partners, Inc. (“MVP”) is pleased to take this opportunity to provide comments on the proposed Brownfields Study Group report. By way of background, MVP is a non-profit group comprised of local community leaders seeking to encourage the redevelopment of Milwaukee’s Menomonee River Valley. We are already making a difference in the Menomonee Valley. We have successfully attracted the attention of several companies who are now pursuing expansion or relocation in the Valley. We have helped attract state and federal resources to the area, and in response to a recent report issued by MVP, the City of Milwaukee has begun condemnation proceedings on a 100 acre brownfield that has been vacant and underutilized for decades.

The benefits of a revitalized Menomonee Valley are numerous, among them an increase in living-wage jobs near where people already live, the retention of Milwaukee’s historically strong skilled labor force, creation of competitive business locations adjacent to the State’s largest labor source, and reduced pressures on Southeast Wisconsin’s open space, water, and air resources.

From both the private sector and public sector, there now is great momentum and support for the redevelopment of the Valley. We strongly support the proposal of the Brownfields Study Group to earmark funds generated by the Potawatomi Casino to be used in association with Menomonee Valley redevelopment. These funds will provide a critical and necessary resource to assist in revitalizing the Valley and bringing it back into full productive use, which will greatly benefit the City, the metropolitan area, and the State of Wisconsin.

Thank you very much for your consideration and support.

Very truly yours,

Donald J. Schuenke  
President

## Appendix C – Brownfields Study Group Membership

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## Appendix E – Brownfields Study Group Operating Guidelines and Schedule

### Study Group

- Members in the BF Study Group are selected by the DNR Secretary.
- Each BF Study Group meeting will be noticed. No later **than 2 weeks** prior to a subcommittee meeting, the chairs will notify DNR staff and DNR staff will ensure that all BF Study Group members and interested parties are notified of meeting times, locations, and agendas.
- All meetings of the BF Study Group and its subcommittees are open to the public.
- A draft of minutes from each BF Study Group meeting will be distributed to the membership for comments and approval no later than **8 working days** after each meeting. A final draft of the minutes will be distributed to the BF Study Group and put on the Study Group's web page within **2 weeks** of the meeting (web page address: [www.dnr.state.wi.us/org/aw/rr/rbrownfields/bsg/index.htm](http://www.dnr.state.wi.us/org/aw/rr/rbrownfields/bsg/index.htm)).
- The format for recommendations will include a background narrative, followed by the proposed recommendation, type of recommendation (administrative, statutory, or regulatory) and any resources needed (staff and/or funding).
- The Study Group will review the draft recommendations from the subcommittees, and may include supporting or dissenting comments that will be attached to the final recommendations for inclusion in the Final Report.

### Subcommittees

- Each subcommittee will have a chairperson, who is a member of the BF Study Group. Membership can be made up of persons on the larger Study Group and relevant outside parties.
- Each subcommittee meeting will be noticed. No later **than 2 weeks** prior to a subcommittee meeting, the chairs will notify DNR staff and DNR staff will ensure that all BF Study Group members and interested parties are notified of meeting times, locations, and agendas.
- Membership in the subcommittee will be from a wide variety of interests, to ensure a balanced group, and ultimately acceptance of the recommendations of the BF Study Group from the broadest base of support.
- The chairs will provide DNR staff – for distribution – the names and associates of those on the subcommittee.
- Each subcommittee will keep minutes of meetings, and forward a draft of those minutes to DNR staff for distribution to the subcommittee for approval no later than **8 working days** after each meeting. A final draft of the minutes will be distributed to the BF Study Group and put on the Study Group's web page within **3 weeks** of the meeting (web page address: [www.dnr.state.wi.us/org/aw/rr/rbrownfields/bsg/index.htm](http://www.dnr.state.wi.us/org/aw/rr/rbrownfields/bsg/index.htm)).

- Each subcommittee will be responsible for identifying options for resolving brownfields issues; a priority for each issue; identifying what type of change is necessary – such as statutory, regulatory, or administrative (e.g. fact sheet or training); and the amount of resources (e.g. staff or money) needed for the state or local entity to implement the brownfields initiative.

### **Time Line**

- The subcommittees will report to the BF Study Group by **July 21** with draft recommendations of their subcommittee’s priority issues and potential recommendations for resolution.
- By **September 1**, the subcommittees’ final recommendations will be due to the BF Study Group for consolidation into the BF Study Group Final Report.
- By **September 22**, the draft consolidated Report will be circulated to the BF Study Group for review and approval to coincide with the planned Study Group meeting date.
- By **October 31**, the BF Study Group Final Report will be forwarded to the governor and the State Legislature.



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