

# **Brownfields Study Group Meeting**

**April 12, 2013  
9:30 a.m. – 3:30 p.m.**

J.F. Ahern  
3201 W. Canal St.  
Milwaukee, WI

**Attendees: See last page**

## **Homework Items**

1. Explore options for finding more funds for assessments.
2. Robin Schmidt (DNR Community Finance) – invite her to future meeting with Study Group to discuss implementation of new legislation under the Clean Water Fund, to allow pilot project and principal forgiveness to communities for non-point pollution project.
3. Assign a couple members from BSG to the Water team looking at the above issue.
4. Explore having a Waterfront Redevelopment sub-group of BSG
5. Report back to BSG from the inter-agency group on waterfront redevelopment.
6. Create links to US Navy info on VI mitigation systems.
7. Model Ordinance development: Approval for Structural Removal and Vapor Ordinance regarding sampling and use of mitigation systems.
8. Clarify/simplify RR Program versus Waste Program when moving contaminated soil off site.
9. Create SUBGROUP to simplify NR 718 v NR 500 issues.
10. Next Meeting Items: WEDC Land Certification Program & VPLE and Sediments
11. Clarify to BSG our understanding of the new public notice procedure for producing written guidance.
12. Explore a statutory change on LLCs, and when they can be created at a contaminated property.

## **Welcome & Agenda Repair**

Bruce Keyes provided a little history of the Menomonee Valley redevelopment. He introduced Dave Reinelt from J.F. Ahern. Dave provided background of Ahern and the new facility.

## **State Budget – Darsi Foss (for Mark Giesfeldt)**

Not a lot that affects environmental cleanups. A minor item: There's an option for RPs, working with EPA and DNR, to pay DNR directly. VPLE hourly fee would be the rate to DNR.

Major item: Moving PECFA, technical site review and its administration, back to DNR. 28.5 positions moving back to DNR. RR would implement the LUST program and the funds. This is a proposal in the executive budget that will need to be approved by the full legislature.

Also, Robin Schmidt from Community Financial Assistance met with staff from RR. Money from EPA (Principal Forgiveness) mostly to small communities. Legislation passed to do some Clean Water Fund projects to prevent non source pollution (Phosphorous). But there might be some overlap with brownfield projects. Could have Robin present at future meeting.

## **Urban Agriculture Study – Ben Gramling – Discussion Item**

At the meeting in November 2012, Ben gave a presentation of the key steps involved in the investigation of lead contamination in urban gardening. Today's presentation is the preliminary findings.

## **Waterfront Redevelopment Initiative – Christine Haag (DNR) & Helen Sarakinos (River Alliance of Wisconsin) – Discussion**

River Alliance is a 20-year-old group based in Madison. First 12 years, the focus of the group didn't include (avoided) any river with too much development. The group worked primarily on agriculture-related issues (run-off, etc) and focused on the protection of pristine areas.

Several years ago, a refocusing occurred. RAW began looking at "developed" rivers and asked "How can we engage in urban areas? How do we leverage the various resources on a statewide level?" This led to the development of the current "white paper" on waterfront development based on meetings with many WI communities who have experience with waterfront redevelopment project.

SARAKINOS: Shopped around to relevant agencies and the Cabinet level to further develop. Some waterfront development is tied to brownfields cleanups. Want to vet the document with the BSG and, moving forward, what are the important elements to create at the state level to move this forward.

FOSS: Meeting with eight agencies on April 16, 2013 to "kick off" the discussion. One of the questions is how do you create an initiative w/o legislation? Don't want to move forward w/o something of substance. We plan to work with communities to get feedback on their experience. We also plan to assemble DNR internal teams/individuals. There are staffing / resource questions. It is in the initial stages right now.

KEYES: Maybe a waterfront focus (sub-group) of the BSG? People in Wisconsin understand and relate to water. This may be an opportunity to bridge the larger mission of the BSG to a population we might not otherwise reach.

THIMKE: What was done in Sheboygan serves as a good example. Look at opportunities to provide incentives through state and federal resources to encourage larger waterfront redevelopment projects. Need to have some creative flexibility.

GRAMLING: Agree. Look at something that's working well as a model. Cautionary thought: be careful about redevelopment versus revitalization and protection.

KEYES: Mix of redevelopment and recreational opportunities is a real value. It enhances both. The redevelopment of the Menomonee River Valley has been successful in part because of this mix. Companies located in the valley because of the Hank Aaron State Trail. We may want to put together case studies to highlight this.

MISKY: It will be important to have one point of contact.

THIMKE: Flexibility is important. No "one size fits all" approach for this sort of work.

KIRCH: Pinpoint key people. (suggested Wisconsin Commercial Ports Association and the Army Corp of Engineers' "River Navigator" program for the Mississippi River)

HARRINGTON: Look at land values near rivers/waterfronts. Assessed property value within six blocks. Turn this into an economic development issue.

### **Voluntary Party Liability Exemption and Sediment Sites Legislative Proposal** **– Michael Prager, Darsi Foss, Mark Thimke, Art Harrington, Ken Anderson** **(Aon) - Discussion**

THIMKE: Extending VPLE program to waterfront area. Provide similar protections in sediment arena, similar to groundwater issues. VPLE extension could bring Water and RR closer together...better working partners. Help with to encourage more cleanup at these waterfront sites.

PRAGER: White paper lays out structure for statutory language, similar to current VPLE program. Discussed options on what type of sites would be excluded by statute. Also talked about whether most sites should be allowed to enter program and try and get through but they could have hard time meeting the technical requirements. Partial cleanups may be allowed to allow upland cleanup and redevelopment before cleanup of all sediment is completed. Set up insurance provisions similar to current VPLE program.

ANDERSON: Provided background on current insurance program. AIG takes on risk of natural attenuation failing after DNR issued a closure letter. DNR has been with AIG for 13 years.

Approached them with the new VPLE sediment issue. Should know within a week or two if they're willing to take on that risk. Insurance companies are leery when they hear about PCB sediment cleanup and insurance in Wisconsin based on Fox River experience. There is a level of underwriting comfort, but it's not a done deal. May have oversight/ individual site underwriting initially... would likely have AIG underwriters evaluate technical aspects of the cleanup. AIG is rethinking premiums for sediment sites and will likely be more than for traditional VPLE sites.

PRAGER: Wants feedback from BSG. Is this the right thing to do and the right way to go forward. DNR is more comfortable with Option 1.

DARSI: Capping issue for sediment sites is an issue for VPLE and sediments. DNR doesn't have much experience with it and difficult to monitor that cap in waterway is being maintained, if site were to receive an exemption; who would monitor the cap to ensure it remained protective.

DISCUSSION: Some pointed out that it may be hard to limit all bio-accumulators because many sites have a mix of contaminants in the sediment. Some discussion about whether any party should be eligible to participate and what the insurance would cover.

THIMKE: Will move forward on preparing bill and keep the Study Group informed on progress. The key is getting information back from the insurers on (1) whether they would underwrite such actions; and (2) the costs of doing so.

### **City of Milwaukee and Menomonee Valley Highlights – Dave Misky, Benji Timm, Karen Dettmer, Tory Kress (all with City of Milwaukee) and Laura Bray with Menomonee Valley Partners – Informational**

TIMM: Century City Development. Old A.O. Smith site. Automotive / Military / Agricultural. Tower Automotive acquired and slowly began to shrink. Tower began selling off portions of property around 2005. 2009 the redevelopment authority acquired acreage. Went through the common cleanup steps. \$4M asbestos cleanup a big part of it. Finishing up Demolition and moving into remediation phase.

TIMM: Storm water management considerations. 60 acres of space for sale. In next couple years, developing the Century City business park.

MISKY: City TIF and tax levy funds. Success here gave City confidence that RACM could be a big partner in development. RACM asked to come up with \$9M in funds.

DETTMER: Milwaukee Die Cast (Holtan St.) cleanup. Looking for RPs. Nobody claiming responsibility, but a company is willing to pay for cleanup to avoid litigation. The property is about to be transferred to the Redevelopment Authority. Cleanup will cost \$5-7M.

BRAY: Non-Profit set up in 1999. Owe a lot of the development of the both the group and the Menomonee Valley itself to the Study Group. 1,200 acres of land in heart of the region. Historically a marsh. Filled in in the late 1800's.

## **Proposed changes to Federal Brownfields Law – Darsi Foss – Informational**

### **Vapor Intrusion: Updates – Mark Gordon, Michael Prager – Informational**

PRAGER: VI important topic and with regards to VPLE sites, we want to evaluate that pathway. Make sure remedy addresses VI in order to get closure. On sites with open land, continuing obligations to address VI if future development. Some sites that received Certificates of Completion in early years did not address VI issue, one site is being bought and did due diligence and the buyer identified possibility of VI. DNR can't reopen sites that have liability exemption but this is something we are thinking about.

FOSS: Some of these early sites were approved based on industrial use but if there is a switch in use, could be an issue.

THIMKE: Any way to track that online?

FOSS: If we can get some IT resources, we'll do that. We are working on it, but don't have IT resources at present.

GORDON: There have been several situations recently where contractors/developers are proposing to use undersized or lower quality materials when constructing new buildings on or near VOC sources in order to minimize costs. While we typically can't require the use of specific materials, we will require testing to prove that the system is working properly. There are design and material recommendations from US Navy on VI issues and we'll link that information soon on our webpage.

GORDON: Active vs Passive systems: if fairly low levels of contaminants are present, and the system was only installed to minimize the potential for vapor intrusion, you can use a passive system. But when there are high levels of contaminants, the active system is the way to go. Advice: set up passive to convert to active if it doesn't achieve the negative pressures necessary.

GORDON: When installing these systems, work with a trained professional. DHS coordinates a radon course that is offered twice per year. It covers testing & remediation. DNR working with DHS and U of MN to develop a 2-day continuing education course on vapor mitigation.

### **Managing contaminated soils from response action sites: Low Hazard Exemption, ch. NR 718, and other recent issues - Discussion** **Mark Gordon, DNR**

GORDON: From RR perspective, NR 718 provides broad authority for addressing contaminated soils. NR 718 can also be used if you encounter waste materials on property and intend to dispose of that material on the property. If you need to take waste materials off-site, then NR 718 does not apply.

## **Lender Issues with Acquiring Title to Properties - Discussion**

KEYES: Addressing lenders who are confused about lender liability protections. Some confusion out there. Is this a widespread problem. Anyone else running into issues?

KOLBERG: Yes...we're seeing it, too. Lenders are creating LLCs.

KEYES: Not all lenders are trying to avoid liability by creating LLCs. At least some are creating places to hold contaminated properties until a better market emerges to allow postponed sales of the properties.

KOLBERG: DNR has been seeing far more lenders dealing with contaminated properties than at any time since the origin of the Lender Liability Exemption in 1995. More than 100 liability clarification letters have been written, pointing to the questions and issues being faced by the lenders.

THIMKE: At some point we need to address how some LLCs use the designation as an LLC solely to avoid liability.

FOSS: We will need to look at the statute, s. 292.21, that addresses lender liability protections.

## **State Updates – Informational**

### **WAM and Ready for Reuse**

SOYER: WAM spending so far: \$300,000 hazardous / \$65,000 petroleum.

HAAG: Four new projects awarded (or about to be awarded). Some additional funds went to a project in Kenosha. The money is gone, but we expect to receive supplemental funding. We encourage anyone who may have a project to talk with us and submit an application so that the project is in the cue when funding is available. Having projects in the cue also helps us demonstrate our need for additional funding to EPA. The program gave out about 1.9 million in last year.

NR 700

GORDON: NR 700 approved by NRB in Feb. 2013. Sent to Legislature in early March. Senate and Assembly review. Senate took no action; it's been forwarded. Assembly time expires week of 4/15. If legislature takes full time, we're looking at a September promulgation.

When we know the effective date, we'll do some outreach. There are new fees coming with NR 700 revisions.

## WEDC

RABIN: Kathryn Berger will be the southeast Wisconsin representative. Give Kathryn a call right away if you have projects in the southeast. Her contact info is on the WEDC website.

Brownfield grant program competitive this year. WEDC has requested additional funds.

WEDC is revising its website. Marketing information will be more user-friendly.

## Lean Six Sigma & DNR Closures

FOSS: Closure: so far, four have been administratively incomplete. This is a big improvement. Good feedback from consultants. Staff will tweak the closure form beginning July based on input. Closure documents will be available as .pdf files and available on the web.

Lean Six Sigma II project is underway.

## Adjourn

### List of attendees

Laurie Parsons – Natural Resource Technology  
Rick Fox – Natural Resource Technology  
Kathryn Berger – WI Economic Development Corporation (WEDC)  
Lanette Altenbach – AECOM  
D.J. Burns – Drake Environmental  
Kevin Bugel – Giles Engineering  
Tina Reese Symbiont  
Al Rabin – WI Economic Development Corporation (WEDC)  
Thomas Jansen – WE Energies  
Frank Dombrowski – WE Energies  
Dave Zolp – Geosyntec  
Chris Valcheff – SCS Engineers  
Harris Byers – UW Milwaukee  
Nancy Frank – UW Milwaukee

Brian Hinrichs – Foth  
Karen Dettmer – City of Milwaukee  
Dalila Cardona – 16<sup>th</sup> St. Community Health Center  
Kimberly Njoroge – Walnut Way Conservation Corp.  
Sam Tobias – Fond du Lac County  
Steve Ventura – UW Madison  
Helen Sarakinos, River Alliance  
Ben Gramling – 16<sup>th</sup> St. Community Health Center  
John Antaramian – ECC Corp  
Art Harrington – Godfrey & Kahn  
Dan Buss – CDM Smith  
Dave Misky – City of Milwaukee  
Bruce Keyes – Foley & Lardner  
Scott C. Wilson – Ayres Associates, Inc.  
Mark Thimke – Foley & Lardner  
Joy Stieglitz – Vandewalle & Associates  
Larry Kirch – City of La Crosse  
Mat Reimer – City of Milwaukee  
Jim Frymark – Cedar Corporation  
Tom Coogan - DNR  
Michael Prager – DNR  
Christine Haag – DNR  
Mick Skwarok – DNR  
Darsi Foss – DNR  
Dan Kolberg - DNR  
Margaret Brunette - DNR  
Michele Norman – DNR  
Ron Kroepfl – DNR  
Jenna Soyer - DNR