

Brownfields Study Group  
November 22, 2013  
DNR Central Office / GEF 2  
Room G-09  
101 S. Webster St., Madison, WI  
9:30 a.m. – 3:00 p.m.

Attendees:

Christine Haag – DNR  
Brynn Berms – City of Madison  
Darlene Brandt – City of Oshkosh  
Donna Volk – AECOM  
Lanette Altenbach – AECOM  
Buck Sweeney – Axley Law  
Barry Ashenfelter – DNR  
Jenna Soyer – DNR  
Sonya Rowe – DNR  
D.J. Burns – Drake Consulting  
Judy Fassbender – DNR  
Mark Giesfeldt – DNR  
Michael Prager – DNR  
Larry Kirch – City of La Crosse  
Sam Tobias – Fond du Lac County  
Al Rabin – WEDC  
Adam Gallagher – Dane Co. Treasurer  
Dan Kolberg – DNR  
Ben Gramling – 16<sup>th</sup> St. Community Health Clinic  
Mat Reimer – RACM  
Dave Misky – RACM  
Nancy Frank – UWM  
Art Harrington – Godfrey & Kahn  
Jodie Potter – True North Consultants  
Scott C. Wilson – Ayres Associates  
Mary Panzer – Panzer Public Affairs  
Bruce Keyes – Foley & Lardner  
Mark Thimke – Foley & Lardner  
Shelley Fox – DNR  
Lacey Cochart – DNR  
Andrew Savagian – DNR  
Darsi Foss – DNR  
Mick Skwarok - DNR

**Welcome, Introductions, Agenda Repair**

## **AB 444**

(<https://docs.legis.wisconsin.gov/2013/proposals/ab444>)

(<http://dnr.wi.gov/topic/Brownfields/documents/bsg/fiscalest1113.pdf>)

(<http://dnr.wi.gov/topic/Brownfields/documents/bsg/landfilltax.pdf>)

(<http://dnr.wi.gov/topic/Brownfields/documents/bsg/testimony1113.pdf>)

Brad Wolbert, DNR Section Chief-Recycling and Solid Waste

AB 444 sets waivers for tipping fees on some solid waste, including contaminated soils. The issue of interest to the BSG is a waiver from tipping fees for contaminated soil from a brownfield cleanup site.

It's estimated that \$1.6 million per year would possibly be waived, resulting in a decrease of revenue to the Wisconsin Environmental Fund. That fund provides resources for a variety of programs, such as:

- Staff in solid waste program and some in RR;
- WEDC SAG program; and
- Recycling Grants to Local Governments.

FOSS: There are already some exceptions to the tipping fees including petroleum contaminated soil used for daily cover

KEYES: Nothing in AB 444 would help reduce cost of cleaning up brownfields for most cases, not sure what the intent is of that part of the bill. May be better to provide more grant money rather than cut these fees.

WOLBERT: The soil provisions alone in the bill would mean an estimated \$500,000 in reduction to the Environmental Fund.

STIBAL: The loss of revenue to that fund is a problem. What's the agency's position on the bill?

WOLBERT: DNR doesn't have one officially. The BSG could take a position if so desired.

PRAGER: This bill would only reduce part of the cost to transport and dispose of contaminated soil; you would still need to pay the disposal charge by the landfill.

HARRINGTON: There are obviously concerns with the bill. Discussion is necessary.

Group discussed ideas to engage sponsors to raise BSG's concerns about bill and discuss alternatives. Darsi Foss summarized comments into a motion – The Study Group will prepare a letter to the bill sponsors and to officials at Waste Management requesting that we meet with them to discuss the intent of the bill and the concerns of the Study Group has regarding the fiscal impact and implementation concerns.

No objections to motion to send a letter to bill author/co-sponsor and to officials at Waste Management.

Several Study Group members volunteered for small group (Art Harrington, Scott Wilson, John Antaramian, and John Stibal) to draft/sign a letter and to meet with the sponsors to discuss bill.

## **WEDC Update - Al Rabin**

There are a couple new programs at WEDC...and thanks to **Michael Prager** for helping review applications.

1. Idle Industrial Site Redevelopment Program: \$3 million budgeted. Nov. 1 application deadline. Up to \$1 million per successful applicant. Requirements: 10 acres / 25 years industrial use / vacant or underutilized for at least past 5 years. Received 16 applications and nearly \$12 million requested. Approximately 66 percent of application sites adversely affected by contamination. Half of applications sought to be redeveloped for industrial use; the other half for residential or retail use. Plan to make award announcements in late December. Prager and Rabin agreed: based on applications there's still lots of interest in brownfields redevelopment.
2. Community Development Investment Program. Ongoing competition. Targeting projects that are shovel-ready. Focus on downtown redevelopment efforts and those projects with measurable job creation potential. Currently have three applications in-house. Expecting more.

The SAG program is going well. Good demand for funds.

FOSS: Could WEDC consider reducing the acreage for Idle Sites Program?

RABIN: If it's less than 10 acres, applicants should really consider alternate sources, such as those in the Brownfield Grant Program. The Idle Site Program is focused more on the infrastructure of the site.

KEYES: Is there a way for BSG to better engage WEDC so get ideas into the process early as programs are being developed.

RABIN: Communicate with CEO Reed Hall. Send a letter; show interest.

**Holtz-Krause Landfill Success** (Thimke & Ron Frehner from Conestoga-Rovers & Associates)

<http://dnr.wi.gov/topic/Brownfields/documents/bsg/HoltzKrause2.pdf>

<http://dnr.wi.gov/topic/Brownfields/documents/bsg/HoltzKrause.pdf>

A presentation was provided of the new soccer complex being built in Wausau, using environmental clean-up/settlement funds.

## **Model Salvage Ordinance**

Jenna Soyer & John Antaramian

ANTARAMIAN: Businesses faced with bankruptcy or just departure, will often strip a building and sell to a LLC that scraps the place, then leaves. City gets stuck with a shell of a building.

Model ordinance gives city ability to control the process.

HARRINGTON: This could help bring lenders to the table for discussion before assets are removed from the property.

FOSS: In 19 years, our program hasn't had contact with a lender who's gone into a property to remove anything of value, even though they are supposed to contact DNR.

THIMKE: Should this be crafted as a local ordinance, or should this be a state statute?

HARRINGTON: Could be both, but consider how long it might take to get something in place in state statute.

Prior to the lunch break, DNR Sec. Cathy Stepp and AWaRe Division Administrator Pat Stevens visited the Study Group. Sec. Stepp thanked the group for its dedicated service to the state. Stepp remarked that the work in the brownfields program is a good sell across the state and across the political divide. She encouraged members to identify areas in which she can play a larger role to support the program across the state and "across the street," a reference to the Legislature.

ANTARAMIAN: Let's come up with a list of wants/needs to bring to Secretary to engage her and take her up on her offer to help work with promoting Brownfields.

KEYES: Suggested a BSG report (every couple years) to help educate legislators on Brownfield issues and what the BSG does.

ANTARAMIAN: Legislature needs to be reminded that it created the BSG and that it still exists. Make appointments with Legislative leaders and with BSG members' own representatives.

- LUNCH-

### **Lender Liability & LLCs**

FOSS: We continue to work on this issue. Let's bring it back to this group at next meeting. DNR and DOJ share concerns.

### **PECFA Update**

GIESFELDT: PECFA staff has moved. Panzer and Fassbender have staff in their programs. Working through claims and it's going well. Program is figuring out the

statewide workload. Met with stakeholders and putting together a formal group modeled after BSG.

FASSBENDER: First meeting of stakeholders group likely sometime in January. Charter for the group was just submitted to DNR management.

GIESFELDT: BSG will remain primary policy group. It is important to clean up those PECFA sites so that they don't become brownfield sites.

### **VPLE / Sediments / 292.12**

<http://dnr.wi.gov/topic/Brownfields/documents/bsg/VPLE1113.pdf>

<http://dnr.wi.gov/topic/Brownfields/documents/bsg/sediments.pdf>

PRAGER: This issue of creating a way for sediment cleanup sites to get the Voluntary Party Liability Exemption was discussed at the April Study Group meeting but some issues have come up as we have been working with Mark Thimke and the Water Program about the legislation. An issue paper was sent to the Study Group and copies are available on the table.

THIMKE: presented a Power Point presentation that describes the reason for legislation and the issues that would be included in the proposal. The history of how sediment cleanups were overseen in Wisconsin. The distinction between sediment and soil is not currently very clear. Because of Wisconsin waterfront property law, the DNR's requirements for continuing obligations need to be fixed for sediment cleanups to clarify the responsibilities of RPs and other property owners who own land impacted by sediment contamination. Proposal would include insurance requirement similar to the way we address groundwater using natural attenuation. We also would like to include relief from possibility of Natural Resource Damage claims as part of proposal.

PRAGER: For the insurance, we asked Kenn Anderson, with Aon (the state's insurance broker) to approach our existing carrier, AIG about whether they could insure these VPLE sediment sites since they understand VPLE and are comfortable with it. We've shared a lot of information with them and met with them.

KENN ANDERSON (via phone): Kenn summarized efforts to get AIG to be willing to insure sediment cleanup sites. They are somewhat hesitant to participate in part due to experience with Fox River cleanup. At this time they have not yet agreed to set up a structured policy similar to what we have for groundwater but we are presenting them detailed site information about first site pursuing VPLE for sediment in Sheboygan and will continue to work with them. We may go to other insurance companies to see if they could write a policy to meet this need.

THIMKE: We want insurance to make this proposal work and this is an important issue.

HARRINGTON: How would you address Natural Resource Damage if there are other trustees including federal government? Would there need to be a public review?

THIMKE: My recommendation would by statute say the WI DOJ has determined that the claim against the resource has been satisfied and the Feds could not double file on the same resource.

We will keep the Study Group informed as we get more information from the insurance company and as we get a draft of the bill to share.

## **State/Program Updates**

### **Waterfront Redevelopment**

CHRISTINE HAAG: Provided historical update. Moving forward cautiously with a waterfront development program. It's been tried in other agencies. Not met with much success. Two goals by January 1: Convene the inter-agency group to discuss roles and responsibilities, and make a visit or two to waterfront communities.

THIMKE: Impressed by new Water Division leadership and encouraged that this will be a success.

### **WAM Update**

<http://dnr.wi.gov/topic/Brownfields/documents/bsg/WAMupdate1113.pdf>