

Brownfields Initiatives In The 1999-2001 State Budget

Summary of Changes, Improvements and New Programs

Wisconsin's 1999-2001 biennial budget (1999 Wisconsin Act 9) includes a number of new programs and improvements to existing programs aimed at the redevelopment of brownfields properties in Wisconsin.

Wisconsin's brownfields initiative is a multi-agency effort to encourage the cleanup of brownfields. The 1999-2001 budget is the third major legislative initiative in Wisconsin to address brownfields properties.

Background

The first brownfields initiatives were contained in Wisconsin's Land Recycling Law, passed in 1994. This law took the initial steps to clarify the liability of lenders, municipalities and purchasers of brownfields properties.

The next set of brownfields initiatives became part of the state's 1997-99 biennial budget. This budget built upon and greatly expanded the brownfields initiatives in the Land Recycling Law by creating new financial incentives and expanding legal protections.

In 1998, the State Legislature directed the Wisconsin Department of Natural Resources (DNR) to coordinate the Brownfields Study Group to provide direction for the future of brownfields redevelopment in Wisconsin. In December of 1998, the Study Group

sent a final report to the legislature and the Governor which included more than 70 recommendations to improve the state's brownfields Initiative. Many of the Study Group's recommendations were included in the 1999-2001 state budget.

[Please note! This document summarizes the statutory changes and funding allocations in the budget related only to brownfields. For the complete statutory language relating to brownfields, and the rest of the 1999-2001 state budget, check out a copy of 1999 Wisconsin Act 9 on this web site: www.legis.state.wi.us/billtext/acts/99acts.html, or call the Legislative Document Room at 608-266-2400 for more information.]

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Financial Incentives

(1) Brownfields Site Assessment Grants for Local Governments

[Department of Natural Resources (s. 292.75, Wis. Stats.)]

The budget creates a new grant program that can be used by local governments to take the first steps to assess, clean up and redevelop a brownfield property. This \$1.45 million grant program will be administered by DNR.

- Eligible activities include:
 - site investigation;
 - demolition of structures;
 - removal of abandoned containers;
 - removal of underground storage tanks; and
 - asbestos abatement.
- 20% match from local government required
- For each year, no more than 15% of the grant funds can go to one community
- Local government must not have caused the contamination
- Responsible party must be unknown or unable to pay
- DNR has authority to write emergency rules to create the grant program

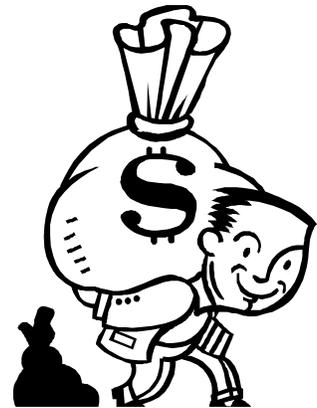
(2) Environmental Remediation Tax Incremental Financing (ER-TIF)

[Department of Revenue (s.66.462)]

The budget makes a number of improvements to the ER-TIF law to make this a more useful tool for financing brownfield projects. Created in the 1997-1999 state budget, ER-TIFs allow political subdivisions to pay for specific environmental expenses (e.g. investigation, cleanup) from the increased property taxes generated from the redeveloped property. The 1999-2001 state budget includes the following changes:

- expands eligible costs to include property acquisition costs, demolition costs, disposal of abandoned containers, removal of underground storage tanks, and asbestos removal;

- eligible costs must be reduced by any money the local government received or will receive from a local, state, or federal program for the remediation of contamination;
- allows local governments to create ER-TIFs for multiple contiguous parcels of property;
- allows local governments to use ER-TIFs to pay for a cleanup whether or not the local government owns the property;
- allows local governments to create ER-TIFs after the site investigation and remedial action plan have been approved by the DNR;
- allows local governments to incur eligible costs up to 15 years after the ER-TIF base is certified;
- the tax increment can not be used for otherwise eligible costs incurred after the DNR has determined that the site has been remediated, unless the costs are necessary to close the site; and
- ER-TIFs can be used to address area-wide groundwater contamination.



(3) Land Recycling Loan Program

[Department of Natural Resources (s.281.60)]

The Land Recycling Municipal Loan was created in the 1997-1999 state budget and is available to municipalities for the investigation and cleanup of contaminated properties. Changes to the program include:

- the interest rate was reduced to 0% (previous interest rate was 55% of market interest rate; the law still includes a service fee which is currently 0.5% of the loan balance); and
- expanding local governments who are eligible for loans to include community development authorities and housing authorities.



(4) Brownfields Grants

[Department of Commerce (s.560.13)]

The Brownfields Grant Program, the cornerstone of the financial programs passed in the last biennial budget, will expand over the next two years increasing the amount of funding available to \$12.2 million. The sunset on the fee that funds the Brownfields Grant program remains for July 1, 2001. Also, a Brownfields grant award does not preclude a project from receiving other state loans or grants.

(6) Sustainable Urban Development Zone (SUDZ) program

[Department of Natural Resources with other agencies (s.292.77)]

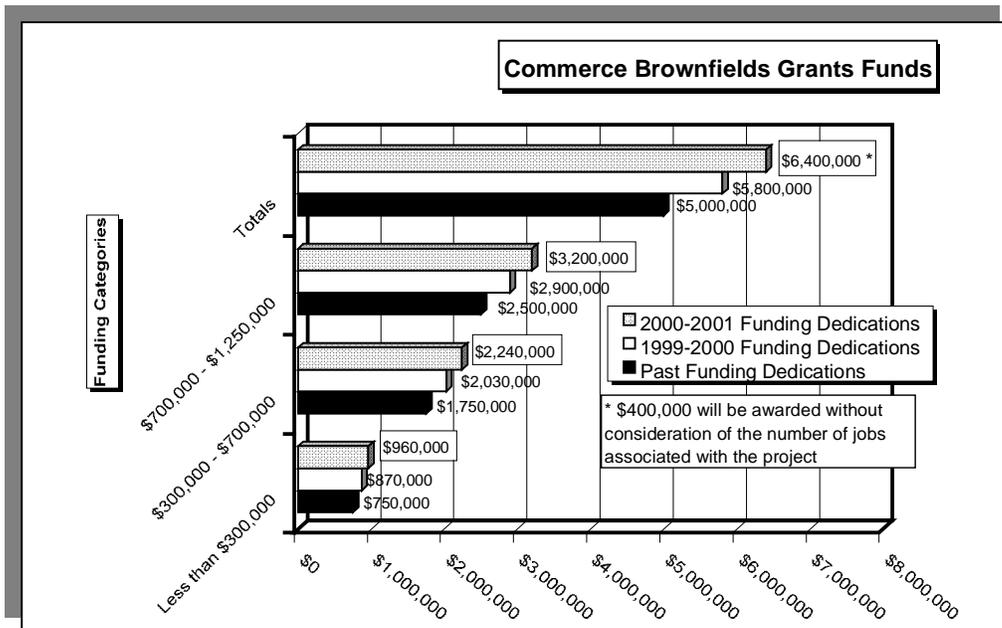
- This new pilot program will be developed by the DNR in conjunction with Commerce and the Department of Administration. The program would promote financial incentives to cleanup and redevelop brownfield properties in five cities. The program makes available \$2.45 million for investigation and

cleanup in Milwaukee, Green Bay, Oshkosh, Beloit and La Crosse.

(7) Brownfields Loan Guarantee

[Wisconsin Housing and Economic Development Authority (WHEDA) (s.234.88)]

The budget eliminates the Brownfields Loan Guarantee. The funding from the Loan Guarantee was transferred to other brownfields programs.



(5) Enterprise Development Zones

[Department of Commerce (s.560.785 and s.560.797)]

- Department of Commerce can now designate enterprise development zones primarily based on their potential to encourage significant environmental remediation
- Department of Commerce must create at least ten enterprise development zones to encourage environmental remediation
- If an eligible party wants to claim the environmental remediation tax credit, they do 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

(8) Economic Development Grants

[Department of Commerce (s.560.139)]

The Department of Commerce will provide a total of \$900,000 in grants to the Milwaukee Economic Development Corporation (MEDC) over the biennium. The grants will be used for remediation and redevelopment activities in the Menomonee River Valley. Persons awarded grants will be required to provide a 50% match towards project costs.



Liability Protections and Clarifications

[All exemptions listed here administered by the DNR]

(1) Lender Liability Exemptions (s.292.21 (1)(c), Wis. Stats.)

The liability protections for lenders from the hazardous substance discharge law were slightly changed in the budget.

- Lenders who acquire property through enforcement of a security interest must agree to allow DNR or Responsible Parties access to the property to take any response action, must agree to avoid interfering with that response action, and avoid actions that worsen the discharge
- Extends the exemption to apply to properties where a discharge was from a federally regulated underground storage tank

(2) Liability Exemptions for Local Governmental Units (s.292.11(9)(e))

Under current law, Local Governmental Units (LGUs) are exempt from certain provisions of the Spill Law (s. 292, Wis. Stats.) if they acquire property via specific methods listed in the statute.

The proposed budget expands the types of acquisition eligible for the exemption to include:

- property acquired through escheat (LGU acquisition when owner dies without a will); and
- property acquired using a grant from the state's Stewardship program, if the LGU enters into an agreement with the DNR to ensure that the discharge was not caused by the LGU and the LGU takes any necessary action to reduce to acceptable levels any substantial threat to public health or safety.



Before the budget was passed, the statute contained a section stating that the LGU exemption did not apply if the discharge of a hazardous substance was from a federally regulated underground storage tank. The budget removes this exclusion.

The budget also requires LGUs and Economic Development Corporations to allow access to DNR or a responsible party to take response actions. The statute is further clarified so that the exemption applies not only to discharges on the property, but also to discharges that originated on the property but have migrated off-site.

Finally, the budget expands the definition of an LGU to include community development authorities.

(3) Hazardous Waste Exemptions for Local Governmental Units (s.292.24)

The budget contains a new statutory section that exempts LGUs from certain hazardous waste requirements if all the following conditions have been met:

- the LGU acquired the property in a way or for a purpose described in s. 292.11(9)(e)1m
- an investigation is conducted that identifies hazardous waste discharges on the property and is approved by the DNR;
- any hazardous waste discharge is cleaned up;
- the LGU received an approval from the DNR that the hazardous waste has been satisfactorily cleaned up;
 - the LGU maintains and monitors property;
 - the LGU did not cause the hazardous waste discharge; and
 - a hazardous waste treatment, storage, or disposal facility did not operate on the property after the date that the LGU acquired the property.



Voluntary Party Liability Exemption (VPLE) Process

[Administered by the DNR]

(1) Eligibility (s.292.15(1)(f), Wis. Stats.)

Anyone who completes the necessary steps to receive a Certificate of Completion is now eligible to receive the Voluntary Party Liability Exemption (VPLE) because the state budget language removed the “reckless and intentional” criteria. A voluntary party now means any person who submits an application and pays the fees.

(2) Exemption (s.292.15(2)(a))

- The statute was amended to clarify that the VPLE applies not only to discharges of hazardous substances that are present on the property, but to discharges that originated from the property but subsequently migrated off-site.
- Statute explicitly states that the VPLE applies only to hazardous substances that were released before the environmental investigation was approved by the DNR .

(3) Natural Attenuation (s.292.15(2)(ae))

Voluntary parties can receive a Certificate of Completion (COC) before groundwater contamination is brought into compliance with state groundwater enforcement standards if all the requirements to receive the VPLE are met and:

- the DNR determines that natural attenuation will restore the groundwater quality in accordance with s. NR 726.05; and
- if required by the department, the voluntary party obtains and maintains environmental insurance to cover cleanup costs if natural attenuation fails; DNR has authority to write emergency rules that determine requirements for the insurance.

(4) Property Affected by Off-site Discharge (s.292.15(2)(ag))

Voluntary parties can receive a COC for properties where a hazardous substance exists on the property that originates from an off-site

source if all the following conditions have been met:

- the voluntary party receives a written determination from the DNR that he/she has met all the requirements under s. 292.13 for the off-site exemption;
- the voluntary party continues to satisfy the conditions of the off-site exemption, including cooperating with the DNR and the responsible parties; and
- all other VPLE requirements are met.

(5) Interim Liability Protection for Discharges Discovered After Environmental Investigation (s.292.15 (2) (at))

The budget contains a new statutory liability protection that voluntary parties can receive before they obtain a Certificate of Completion.

Voluntary parties can receive interim liability protection with respect to a discharge of a hazardous substance if the discharge occurred before the environmental investigation was completed and a number of conditions have been met.

This interim liability protection exempts parties from the same sections of the solid waste, hazardous waste, and hazardous substance discharge laws as the voluntary party liability exemption.

In order to receive this interim exemption the following conditions must be met:

- an environmental investigation has been completed and approved by the DNR;
- if required by the DNR, the voluntary party enters into an agreement with the DNR to conduct the cleanup;
- the voluntary party obtains and maintains insurance to cover the cleanup costs for any hazardous substance discharge that occurred before the site investigation is completed that may be discovered during the course of the cleanup;

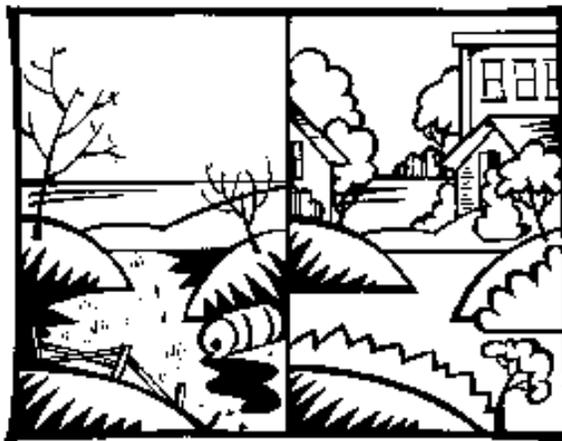


- the insurance would name the DNR and the voluntary party as the insureds (DNR will need to write rules that determine requirements for the insurance); and
- a hazardous substance discharge that was missed during the initial investigation is discovered before the cleanup is completed.

(6) Biennial Report on the Status of the VPLE (s.292.25)

The budget requires DNR to prepare a biennial report that describes the status of the sites in the VPLE process (s. 292.15). This report will include information about:

- number of sites in the VPLE process;
- number of sites that received Certificates of Completion;
- number of sites where the cleanup failed or additional contamination was found after the Certificate of Completion was issued;
- number of VPLE sites where the DNR determined that it was necessary to use money from the Environmental Fund for remedial action and the estimated costs; and
- number of sites for which a claim was made against a required insurance policy.



Local Governments Tools

(1) Transfer of Tax Delinquent Contaminated Property from Counties to Cities (s. 75.17, Wis. Stats.)

Counties must take a tax deed for property that is subject to a tax certificate (i.e. is tax delinquent) if all of the following conditions have been met:

- the property is contaminated with a hazardous substance;
- the municipality gives written request to the county; and
- the request is made within two years after the redemption period has ended (usually two years after the tax certificate has been issued).

The county may then retain ownership of the property or transfer ownership to the municipality.

(2) Local Government Cost Recovery Cause of Action (s.292.33)

The budget contains a new statutory section that allows local units of government to recover cleanup costs from responsible parties.

Responsible parties include:

- a person who possessed or controlled the hazardous substance that was discharged on the property at the time the property was acquired by the LGU; and
- a person who caused the hazardous substance contamination.

Local Governments cannot recover cleanup costs from:

- a person who is exempt from liability under the spill law (lenders, local governments, etc.);
- a person who has entered into a consent order regarding the discharge if the person is in compliance with the order;
- persons who caused a discharge in compliance with a permit, license, or other approval; and

- a persons if the discharge was caused by an act of God, an act of war, or an act or omission of a third party.

Recoverable costs include:

- site investigation;
- planning of remedial activities;
- remedial activities; and
- some administration fees.

Other limitations and requirements are described in the statute.

(3) Agreements Between DNR and Local Governments to Address Area-Wide Groundwater Contamination (s.292.11(7)(d))

The DNR may enter into agreements which contain a schedule for conducting non-emergency actions with Local Governmental Units (LGUs) acting on behalf of private property owners.

The LGUs can enter into these agreements within business improvement districts or areas designated by the LGUs that consist of two or more properties with groundwater contamination, or two or more properties that are brownfields.



Other Issues

(1) Report on Brownfields Efforts – Multi-agency Requirement (s.292.255, Wis. Stats.)

The Department of Natural Resources, Department of Administration, and Department of Commerce shall submit a report to the legislature which evaluates the effectiveness of the state's brownfields initiative.

To order additional publications, or for more information on the Remediation and Redevelopment (RR) Program, please see our web site at www.dnr.state.wi.us/org/aw/rr; or call the RR Information Line at 800-367-6076 (in-state long-distance), or 608-264-6020 (Madison area and out-of-state long distance).



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Guide to Brownfields Budget Provisions

ISSUE/ TITLE	AGENCY	CITE	CONTACT
Financial Incentives			
Local Government Site Assessment Grant	Department of Natural Resources	s. 292.75, Wis. Stats.	Percy Mather (608) 266-9263
Environmental Remediation Tax Incremental Financing (ER-TIF)	Department of Revenue	s. 66.462	Judy Gibbon (608) 266-5708
Land Recycling Loan Program	Department of Natural Resources	s. 281.60	Maureen Hubeler (608) 266-0849
Brownfields Grants	Department of Commerce	s. 560.13	Jackie Jarvis (608) 266-7562
Enterprise Development Zones	Department of Commerce	s. 560.797	Jackie Jarvis (608) 266-7562
Sustainable Urban Development Zone (SUDZ) program	Department of Natural Resources with other agencies	s. 292.77	Cami Peterson (608) 267-7550
Brownfields Loan Guarantee	Wisconsin Housing and Economic Development Authority (WHEDA)	s. 234.88	NA
Economic Development Grants	Department of Commerce	s. 560.139	Jackie Jarvis (608) 266-7562
Liability Protections and Clarifications			
Lender Liability Exemptions	Department of Natural Resources	s. 292.21 (1)(c)	Michael Prager (608) 261-4927
Liability Exemptions for Local Governmental Units	Department of Natural Resources	s. 292.11(9)(e)	Cami Peterson (608) 267-7550
Hazardous Waste Exemptions for Local Governmental Units	Department of Natural Resources	s. 292.24	Cami Peterson (608) 267-7550



Voluntary Party Liability Exemption (VPLE) Process			
Eligibility	Department of Natural Resources	s. 292.15(1)(f)	Michael Prager (608) 261-4927 Percy Mather (608) 266-9263
The Exemption	Department of Natural Resources	s. 292.15(2)(a)	Michael Prager (608) 261-4927 Percy Mather (608) 266-9263
Natural Attenuation and environmental insurance	Department of Natural Resources	s. 292.15(2)(ae)	Michael Prager (608) 261-4927
Property affected by off-site discharge	Department of Natural Resources	s. 292.15(2)(ag)	Percy Mather (608) 266-9263
Interim Liability Protection for Discharges discovered after environmental investigation	Department of Natural Resources	s. 292.15 (2) (at)	Michael Prager (608) 261-4927
Biennial Report on the Status of the Voluntary Party Liability Exemption	Department of Natural Resources	s. 292.25	Darsi Foss (608) 267-6713
Local Governments Tools			
Transfer of Tax Delinquent Contaminated Property from Counties to Cities	This is basically a self-implementing statute	s. 75.17	NA
Local Government Cost Recovery Cause of Action	This is basically a self-implementing statute, the Department of Natural Resources may be involved in some cases	s. 292.33	Cami Peterson (608) 267-7550
Agreements between DNR and Local Governments to address Area-Wide Groundwater Contamination	Department of Natural Resources	s. 292.11(7)(d)	Percy Mather (608) 266-9263
Other Issues			
Report on brownfields efforts-Multi-Agency Requirement	DNR, DOA, and Commerce,	s. 292.255	Darsi Foss (608) 267-6713

