Brownfields Study Group
Final Meeting Notes
March 16, 2001

Attendees
John Antaramian
Karen Asbjornson
Tom Bergamini
Brian Borofka
Loren Brumberg
Kelly Cochrane
Darsi Foss
Lilith Fowler
Judie Gibbon
Mark Giesfeldt
Matt Haessly
Jerry Hall
Art Harrington
Maureen Hubeler
Dan Kolberg
Bruce Keyes
Dennis Lawton
Peggy Lescrenier
Lee Madden
Percy Mather
Peter McAvoy
Jessica Milz
Tom Mueller
Peter Peshek
Lance Potter
Michael Prager
Brian Reilly
Joe Renville
Andrew Savagian
Pam Schaefer
Jeff Schoepke
Jason Scott
John Stibal
Joy Stieglitz
Buck Sweeney
Mark Thimke
Anna Thomas
Valarie Thomas
Sam Tobias
Marc Weinberger
Manyee Wong
Paul Zovic

Various handouts were available at this meeting. Please contact Andrew Savagian at 608-261-6422 or savaga@dnr.state.wi.us if you need more copies.

The purpose of this meeting was to review which of the Brownfields Study Group's recommendations are included in the governor's budget, and to make additional recommendations to forward to the Joint Finance Committee. In 1999, the Study Group went through each item and made non-state agency, majority decisions on what items to forward to Joint Finance. The letter was then sent by the non-state agency members of the Study Group to the Joint Finance Chairs.

On March 16, 2001, the Study Group discussed, and agreed to draft, a response letter to the Governor's budget, as requested by Senator Burke. The Group agreed to include non-state agency, majority decisions in the letter, and to note dissenting opinions. The letter will be drafted based on the proceedings of the March 16 meeting, summarized below.

Andrew Savagian will send the draft letter out over email, and people will have time to send in comments. Send dissenting opinions, in bullet point form, to Darsi Foss at fossd@dnr.state.wi.us or Andrew Savagian at savaga@dnr.state.wi.us.

Summary of Study Group Decisions from the March 16, 2001 meeting

√ Write a letter to the Joint Committee on Finance, from the non-state agency members of the Study Group.

- Include recommendations that the Group, as a majority, felt should be in the budget.
- Include the majority opinion of non-state agency members.
- Include dissenting opinions in bullet point form, if provided by members.
- Include language on the priority of each issue, as determined by the Group at this meeting.

√ DNR will send out a draft of the letter to the Study Group for approval.

√ Continue the Brownfields Study Group

- Possibly set up regional focus groups
- Should include work on federal brownfields programs/legislation.

I. Review of the Recommendations in the Governor's Budget

Staff from various state agencies went through each recommendation in the *2000 Study Group Final Report* and reported on whether or not the recommendations were included in the Governor's budget. The Study Group members then decided on which recommendations to include in a letter to the Joint Committee on Finance.

Chapter 1: Brownfields Liability Protections – Michael Prager, DNR

1. **Expand Liability Exemptions for LGUs**
   Yes, both recommendations are in the budget.

   The second (solid waste exemption for LGUs) may not be exactly what the Study Group recommended. Art Harrington will compare the budget with the Study Group recommendation, and if he sees the need for comments we will deal with this issue electronically in the next week. **Study Group members can look at the statutory language in the budget and send any comments or concerns to Michael Prager.** If Art or others have concerns about the statutory changes, Andrew Savagian will send them out over email, and people will have time to respond.

2. **Expand LGU Cause of Action ***
   No, not in the budget.

   Mark Thimke – Note that all of these issues do not have full committee support. I expressed hesitation about this proposal. Note that this is not unanimous.
   Group – Include in the letter. Medium priority.

* This item will be included in the letter to the Joint Committee on Finance.

3. **Remove Interim Liability Protection Language**
   Yes, in the budget.

4. **Example Off-site Liability Exemption for VPLE**
   Yes, in the budget.

5. **Clarify Assignability of COCs for VPLE**
   Yes, in the budget.

6. **VPLE – Clarify Access in the Use of Natural Attenuation**
   Yes, in the budget.

7. **Clarify Liability Issues Related to Sediment Contamination**
   Yes, in the budget.

<u>Chapter 2: Brownfields Incentives for Local Governments – Dan Kolberg, DNR</u>

1. **Modify Negotiated Sale in Lieu of Bidding for Tax Delinquent Brownfield Properties**
   Yes, in the budget.

   This includes only cities of the first class because only cities of the first class have taxing authority.

2. **Assign Judgment of a Tax Deed Without Taking Title**
   Yes, both recommendations in the budget.

3. **Modify Expenditure Restraint Exemption for Municipalities ***
   No, not in the budget.

   Manyee Wong (Dept. of Administration) – This was denied in the last budget. There are other tools that LGUs can use for brownfields. If you provide one exemption, you set a precedence and others will want them.
   Marc Weinberger – Long-standing feeling of not wanting to punch holes in legislation. Also, for the group's information, we did not lobby to have this excluded.
   John Antaramian – The problem is that, if the goal is to redevelop brownfields, either the state has to get the cash, or give LGUs the ability to get the cash. We should include this in the letter.
   Foss – There are exceptions to the expenditure restraint, this wouldn't be the only one. There is less money this time around for brownfields, so this could be an important tool.
   Group – Include in the letter. High priority.

4. **Clarify Blight Elimination and Slum Clearance Authority**
   No, not in the budget.

   Manyee Wong – Denied in the last budget as well, probably due to the fact that there was not consensus from the Study Group.
   Art Harrington – Is there an opinion from the Legislative Reference Bureau that environmental pollution is relevant to blight elimination and slum clearance purposes. We should be careful on whether we want to advocate this or not.
   Mark Thimke – This will probably get fought in the courts. It is WMC's position that this is not part of the current law.
   Michael Prager – There may have been a case in Milwaukee or West Allis that has to do with this. WMC did propose specific changes.
   Thimke – We provided comments to invoke discussion. Our problem is tying this to "environmental pollution." We have provided alternative solutions, and committed to working with specific examples, but were never presented specific problems under existing law.
   John Antaramian – The compromise is too difficult.

* This item will be included in the letter to the Joint Committee on Finance.

Group – Do not include in the letter. Deal with this issue individually.

5. **Modify DNR Guidelines Related to Act 88 ***
No, not in the budget.

Darrell Bazzell has spoken to the Legislature and received a letter back, stating that their intent was to impact hunting and fishing licenses, not contamination (i.e. Remediation and Redevelopment) databases.
John Antaramian – I thought we had other concerns about how the language read.
Mark Giesfeldt – Some industries were concerned that personal information could be used against them. This group felt that as much information as possible about a site should be available.
Mark Thimke – These databases can be used proactively.
Group – Include in the letter. Comment that the group supports original Study Group recommendation and efforts of the DNR.

<u>Chapter 3: Financial Incentives for Brownfields</u>

1. **Strengthen and Stabilize Environmental Revenues – Mark Giesfeldt, DNR**

   a. *Repeal the sunset on the vehicle environmental fee.* *
   Yes, in the budget, in part.

   Giesfeldt – Sunset moved back, so we have money for the next biennium. But this will be an issue in the next biennium as well.
   Manyee Wong – The governor wants to look at other alternatives in the future.
   Tom Mueller – Reiterate that we would like permanent funding.
   Group – Include in the letter. Reiterate that we would like permanent funding.

   b. *Provide a stable funding source for DNR staff.* *
   Yes, in the budget, in part.

   (Mark presented some charts which describe the status of DNR - RR staff. He described changes in federal funding of the DNR programs and trends in DNR program revenue (fees).) Moving into the budget, DNR thought we were okay. After the budget, worst case is that we have a problem in FY03. Best case scenario, we will last through the next biennium, but will have problems in FY05.
   Group – Include in the letter. Reiterate that we would like permanent funding.

2. **Obtain Permanent Funding and Expand Brownfields Grant Program – Jason Scott, Commerce**

   a. *Provide permanent funding for the Brownfields Grant Program.* *
   Yes, in the budget, in part.

   Scott – Will be a problem again in FY03.
   Group – Include in the letter. Recommend permanent funding. Put the permanent funding issues (1a, 1b, and 2a) in one recommendation in the letter.

   b. *Increase funding for the Grant program to $15 million.* *
   No, not in the budget.

   Scott – There is a slight decrease in the funding.
   Group – Include in the letter. Recommend at least $13 million. Need to show the demand for money and over-subscription of the program in the letter.

   c. *Establish a quarterly application process.* *
   No, not in the budget.

* This item will be included in the letter to the Joint Committee on Finance.

Scott – Commerce did not fully support this recommendation. There is an onerous work level required for this, and there isn't adequate staff at Commerce.
Joy Stieglitz – How about twice a year? Development doesn't happen on a yearly basis, and we're losing projects.
Peggy Lescrenier – I agree, but staffing is the problem.
Sam Tobias – I really think it needs to be at least twice a year.
John Antaramian – I think that the minimum should be twice a year, if not quarterly.
Peter Peshek – Doesn't Commerce have to meet our needs as a customer? We ask DNR to meet our needs. The Mayor is right, there is a dynamic economic field that needs more flexibility. The needs of a customer matter. "No" is not acceptable. Each agency should be held at the same accountability level.
Group – Include in the letter. Recommend that grants be awarded more frequently, at a minimum of twice a year.

d. *Provide one additional grant specialist.* *
No, not in budget.

Group – Advocate that Commerce utilize existing agency resources. If they can demonstrate need, the Study Group would support a 13.10 request to the Joint Committee on Finance, outside the biennial budget process.

e. *Modify the current requirement that DOC award 7 grants for projects in communities >30,000 to equitable distribution.* *
No, not in the budget.

Group – Include in the letter. Medium priority.

Items "f" and "g" are recommendations by Commerce that are included in the governor's budget, but are not recommendations made by the Brownfields Study Group.

f. *Exclude EPA and DNR liens and back taxes from eligibility.*
This was a Dept. of Commerce recommendation, not a Study Group recommendation. This has always been Commerce policy, but this would clarify issue in statute. Forgiveness of back taxes can be used as a match.

Commerce agreed to get information out in writing that clarifies that a Commerce grant can not be used to pay off a lien on a property or pay delinquent taxes. However, applicants who have paid those costs can use them as a grant "match."

g. *Eliminate the requirement that Commerce must allocate a specified amount of total grant monies for grants of certain amounts.*
Again, this was a Commerce recommendation which is in the budget. Tier system would still apply to the required match

3. Modify ERTIF – Marc Weinberger, Department of Revenue

a. *Include delinquent taxes as eligible cost.* *
No, not in budget.

Dept. of Revenue opposed this issue.
Group – Include in the letter. Medium priority.

b. *Extend ERTIF period from 16 to 23 years.* *
Not, not in budget.

* This item will be included in the letter to the Joint Committee on Finance.

Weinberger – DOR does not oppose this change.
Bruce Keyes – We were looking at a 15 year spending authority, with a 23 year recovery.
John Antaramian – The problem here is practical, not philosophical. I could not have done a project in Kenosha with the way the ERTIF works. If the ERTIF is cut off and kept at 16 years, no one will ever use them. My recommendation is 10 years on expenditures for an ER TIF.
Michael Prager – One of the reasons it is 15 years is because of concerns about long term monitoring.
Group – Include in the letter. High priority.

c. Support DOR Technical changes
Yes, in the budget.

These changes will fix language in the statutes. All are in the budget. It looks more administratively like TIF.
Michael Prager – It would be a good idea for people who work with TIFs to look at the language and see if they have any questions or concerns. John Rothschild and John Robinson are going to look at these as well.
Get comments to Anna Thomas (thomaa@dnr.state.wi.us) and Marc Weinberger (mweinber@dor.state.wi.us) by 3/23/01.

4. Modify the DNR Site Assessment Grant Program – Manyee Wong, Dept. of Administration

a. Transfer the Site Assessment Grant program and 1 FTE from the DNR to the Dept. of Commerce *
John Stibal – I don't understand the reason for the transfer. The program is designed to do investigations. I recommend keeping it in the DNR, who oversees environmental investigations. Why is administration proposing to transfer program to Commerce?
Wong – Based on discussions with Commerce, this was included in budget. Commerce has expressed that there has been a lot of confusion from applicants and callers, and it was also a way to address Commerce's need for staff.
Mark Thimke – Just because it's a grant program, having it in Commerce doesn't make it more efficient.
Tom Mueller – Having been involved in the advisory board, and having been involved with the grants, I don't see how the efficiency could increase. This is another oversubscribed program. You will have to go through the rule process again. It is a very prescripted application, you know what the points are when you submit an application. It worked extremely well, better than I've seen in a lot of situations.
Stibal – Commerce was surprised at this budget item as well. I recommend that this is a high priority to stay in the DNR.
Sam Tobias – I want to re-emphasize the efficiency issue. The SAG has worked great in a short period of time. I don't see how we can improve on the efficiency. I urge to make it an extremely high priority.
Jason Scott – If these programs were meant to work together, Commerce would be an appropriate place to have the grants.
Group – Include in the letter. "Overwhelming consensus" to keep program and 1 FTE at DNR. High + priority.

b. Continue SAG and increase to $5 million. *
No, not in budget.

Group – Include in the letter. Recommend at least $2 million over the biennium. Demonstrate the demand for funds in the letter. Highlight that this creates a pipeline for sites that may be eligible for Commerce grants.

c. Establish a quarterly application process for the SAG. *
No, not in budget.

* This item will be included in the letter to the Joint Committee on Finance.

Group – Include in the letter. Recommend at least 2 cycles per year.

d. *Incorporate concepts of the original SUDZ pilot program into the SAG program. **
No, not in budget.

Group – Include in the letter. Low priority.

e. *Clarify that asbestos abatement is an eligible SAG activity only if it is part of a demolition.**
No, not in budget.

Group – Include in the letter. High priority.

f. *Provide DNR's Bureau of Community Financial Assistance with one additional FTE to administer the SAG program. **
No, not in budget.

John Antaramian – Is this recommendation asking for an increase in personnel?
Foss – Yes.
Antaramian – I'm not ready to say that we should add an FTE, for the same reasons as I stated for Commerce.
Tom Mueller – We wanted to add a person when we were going to $5 million, so I don't think we need more staffing. We should advocate that staffing was appropriate in the past.
Valarie Thomas – I'm a project position, which means there is no money to pay for me after June 30.
Mueller – So this recommendation is to have just one FTE to run SAG, not two.
Antaramian – Where did the money come from to fund the SAG project position in CFA?
Giesfeldt – Program Revenue.
Bruce Keyes – The budget already includes a position for SAG, so maybe we shouldn't eliminate the position.
Tom Mueller – I still think we should say that SAG stays at the DNR, and they need a position to run it.
Group – Include in the letter. Recommend that a position is needed to administer the SAG.

5. Modify the Development Zone Tax Credits – Jason Scott, Commerce

a. *Allow tax credits to be transferable, within certain limits. **
No, not in the budget.

Scott – Both Commerce and DOR opposed this.
Group – Include in the letter. Low to medium priority.

b. *Clarify that these tax credits be applicable to the State of Wisconsin income. **
No, not in the budget.

Tom Mueller – This is a major point in making tax credits more usable.
Marc Weinberger – Our positions are that the credits are for the zone, and that the credits should only be used there.
Bruce Keyes – I agree that there may be other solutions. Leave as low priority.
Group – Include in the letter. Low priority.

6. Streamline the Land Recycling Loan Program – Anna Thomas, DNR
None of the recommendations were in the budget.

Manyee Wong – We felt that these issues could be dealt with administratively at the DNR. As far as replenishing the fund, there is still ample money there, nearly $19 million. Michael Wolff, in Capital

* This item will be included in the letter to the Joint Committee on Finance.

Finance at DOA, had concerns with the credit quality collateral and Phase I and II environmental assessment recommendations.
John Antaramian – I was told that a lot of these would need statutory changes.
Maureen Hubeler – I believe the ITA would need a statutory change, the credit quality is in the statutes, and the Phase I and II assessments need statutory changes.
Antaramian – If some of these could be done by rules, I'd be very pleased. The $20 million would be replenished up to that amount, but if that isn't done this year it's okay. This program isn't one that I care a lot about, but it could be very effective for small communities. If we're not going to make it work, why are we funding a staff person to administer this? I think these changes would make the program work. This program needs to be made to work or eliminated, along with the position associated with it.
John Stibal – It's too good to not try to make it work. Let's recommend that the statutory changes be made.
Tom Mueller – This would end up being close to a 50% match, with the way this works out. This will work for developers. But if these other changes aren't made, it won't work.
Darsi Foss – I appreciate all the extra time that people have put in on this. I think there may be some clarification needed. I think we need people to get back in the room one last time to understand where everybody's issues are.
Group – DNR should make administrative and statutory changes. Secretary of DNR should direct staff to do so.

a. *Eliminate the ITA.* *
No, not in the budget.

Group – Include in letter. High priority.

b. *Establish a quarterly application process.* *
No, not in the budget.

Group – Include in the letter. Recommend at least semi-annual loan cycles.

Group – Include all of the recommendations for the Land Recycling Loan in the letter. High priority.

7. Expand Funding Opportunities for Cleanup of Brownfields – Manyee Wong, DOA

a. *Brownfield Study Group Recommendation* *
No, not in the budget.

Wong – There was limited funding. We felt that there are funds out there that could address the green space issue, such as Stewardship. (It should be noted that Stewardship pays for acquisition of properties, not investigations or cleanup.)
Stieglitz – I'd like to see a comment still stand on the cleanup opportunities issue. We spent a lot of time on this, and it still isn't addressed. It's not our highest priority.
Group – Include in the letter. Comment that there is a continuing need for this issue but acknowledge that there are funding restraints. Forward original recommendation of the Study Group for green space, public projects, and non-economic projects.

b. *Gaming Economic Diversification Grants* *
Wong – Brownfields remediation was added to the Gaming Economic Diversification Grants.
Group – Unclear on how Gaming Economic Diversification Grants work, how it could be used for brownfields and what type of projects could be funded.
Peggy Lescrenier – This is a very flexible program.
Stieglitz – The very first criteria for this program are the same as the criteria we were concerned about to begin with, which is economic and job development criteria.

Wong – The reason why the Gaming Grants don't fit the cleanup opportunity goals is that they weren't meant to.
Foss – To get the Gaming Grants, you need to have economic impacts.
Group – Raised questions as to the purpose and applicability of the Gaming Economic Diversification Grant for brownfields. Unclear about criteria and usability.

8. **Target Gaming Revenue for Menomonee Valley Brownfields Redevelopment Project Funding – Manyee Wong, DOA**
   Yes, in budget, in part.

   Money was allotted in this budget.
   Group – No comment on this issue.

II. Additional Information

Additional information was handed out at the meeting. Call Andrew Savagian if you would like a copy.

1. **Proposal to modify s. 709.03, Wis. Stats. (Real Estate Condition Report) – Mark Giesfeldt, DNR**
   In an effort for the public's right to know, we thought this would be helpful. We'd like to know what people think. This replaces deed notices for groundwater use restrictions in instances of natural attenuation. This is an easier system for well drillers.
   John Stibal – I like it.
   Group – Recommend to the Joint Committee on Finance.

2. **Additional Charts – Andrew Savagian, DNR**
   Two additional charts have been handed out. The first one shows the funding programs in the 01-03 budget as compared to the current funding. The other lists funding programs for brownfields in other states. Call Andrew for additional copies.

III. The Future of the Brownfields Study Group

Mark Giesfeldt – There has been a suggestion from Mark Thimke, Peter Peshek and Art Harrington that we also focus on regional brownfields study committees.
Tom Mueller – I think this is still a dynamic process, and the Group should keep going.
Mark Thimke – We suggested a regional implementation focus, but didn't suggest that the large group should stop.
Bruce Keyes – I agree and would like to see a southeast committee get underway soon.
Joy Stieglitz – What is the mission or focus of the group now? Will we do another report?
Darsi Foss – I think the focus will change as we do implementation and can change again in the next budget process.
John Stibal – A scorecard of what gets in the budget would be nice.
John Antaramian – One thing this group might want to do is to address federal legislation in the future.
Group – Agrees on the need for continuing the Brownfields Study Group.

IV. Updates

1. **Waste Streamlining**
   <u>Solid Waste – Gene Mitchell, DNR</u>
   Our goals are to try and set up a more transparent process. A developer should be able to understand what they need to do and who they need to talk to in order to get through this process. We'd like to reduce the effort on lower risk sites.

   We have identified a number of pieces of information, and put them into a package. We have completed a number of those components, and handed them out in the past. A couple more pieces were just completed (an investigation guidance, flowchart and description of the process). The

application is now more standardized, and includes check boxes instead of a narrative form, and is hopefully easier and faster to get through.

The entire package is under review from DNR management teams, and they are expected back by March 30. We expect to reconcile issues by April 13. We'd like to set up a meeting for April 16 with you to talk about the draft package.

A meeting is set for 1:00 on Wednesday, April 18 with Study Group members to discuss the waste streamlining information package. Andrew Savagian will send out a meeting notice and information by email.

<u>Hazardous Waste</u> – Mark Gordon, DNR
We are trying to develop a process for sites with hazardous waste whereby the investigation, selection of a remedy and cleanup are as consistent with NR700 as possible. A couple of different documents have been emailed to the group.

We met with EPA last Friday. The meeting went very well. They acknowledged the fact that these proposals have a lot of merit. They gave us some direction on how to package our final request.

We have one fairly minor issue to resolve internally, but otherwise are ready to move on to EPA.

Mark Thimke – We've been struggling with hazardous waste for a number of years, and it sounds like we're hearing something positive from EPA now. Let's get that down in writing now. We need this resolved now.
John Antaramian – I agree, we need to get a letter. EPA hasn't had the authority from day one, and then we don't need to mess with this anymore.
Antaramian – I want the Department heads in here to explain how they intend to work with us and with each other.

Mark Gordon will send letters out as they get finalized. In the future, the group can identify other documents that they see a need for.

2. **Federal Brownfields Legislation – Darsi Foss, DNR**
There is federal brownfields legislation right now in the Senate. The House doesn't have a bill yet. The Senate bill deals with CERCLA basically as the only barrier to brownfields.
If people want to get involved with this or if you'd like more information, let Darsi know (608-267-6713).

3. **VPLE Insurance – Michael Prager, DNR**
NR754, the VPLE Insurance rule, has been approved. A new fact sheet is now on the web. Call Michael at 608-261-4927 with any questions.

4. **Department of Commerce Grants – Jason Scott, Commerce**
Round 4 grants will be announced in the future.
Jason is the new Brownfields Consultant (formerly the Brownfields Ombudsman position), replacing Jackie Jarvis. Jason's old position is open.

5. **SAG – Percy Mather, DNR**
The SAG has been very successful. Two projects are already completed, and others have submitted reimbursement requests.

6. **Comprehensive Land Use – Dan Kolberg, DNR**
Quite a bit is going on. UW Extension is coordinating with state agencies. We will be putting together fact sheets and guidance at the DNR.

7. **Stewardship – Dan Kolberg, DNR**

The statutory language (on Local Government Exemption for property acquired using Stewardship grants) has been changed in the proposed budget.
As requested in the *1998 Brownfields Study Group Report*, a DNR work group is in progress to discuss integration, coordination and streamlining on the use of Stewardship Grants for brownfields.. There will be coordinated training for DNR staff.

8. Federal BF Tax Incentive – Anna Thomas, DNR

This tax incentive has been extended to January 1, 2004. It has also been expanded to all sites which have a hazardous substance release. More information is in the Remediation & Redevelopment (R&R) newsletter, *ReNews*, and on the R&R electronic listserv. Contact Anna at thomaa@dnr.state.wi.us for more information.

* This item will be included in the letter to the Joint Committee on Finance.