

**BROWNFIELDS STUDY GROUP
MEETING
November 2, 2006**

I. Attendees

John Angeli, City of Fond du Lac
Lori Bowman, DATCP
Kevin Brehm, STS Consultants
Margaret Brunette, DNR
Kevin Bugel, Giles Engineering
D.J. Burns, Drake Environmental
Laurie Egge, DNR
Darsi Foss, DNR
Shelley Fox, DNR
Nancy Frank, UW-Milwaukee
Richard Gnat, KPRG and Assoc.
Mark Gordon, DNR
John Hammerberg, URS Corporation
Art Harrington, Quarles & Brady
Maureen Hubeler, DNR
Cassie Johnson, RMT Inc.
Bruce Keyes, Foley & Lardner
Larry Kirch, City of La Crosse
Percy Mather, DNR

Carol McCartney, Ayres Associates
Louis Maier, Factotum
Jessica Milz, DNR
Dave Misky, City of Milwaukee
Tom Mueller, TEMCO
Tom Mueller, Jr., TEMCO
Lisa Peterson, WI Land Title Assoc.
Michael Prager, DNR
Al Rabin, Commerce
Andrew Savagian, DNR
Jason Scott, Dept. of Commerce
Jim Schmidt, DNR
Stacy Schmoltdt, NRT
Justin Shell, DNR
Joy Stieglitz, Vandewalle & Assoc.
Ray Tierney, BT2
Scott Wilson, Ayres Associates
Paul Zovic, Shaw Environmental

II. Welcome, Introductions, Agenda Repair

NEXT MEETING: Scheduled for either MARCH 1 OR MARCH 8; Andrew Savagian will send out a notice to Study Group members about these dates

III. 2006 Brownfields Legislation & Universal Env. Covenants Act – Discussion

2006 Brownfields Legislation – Land Use Controls

Darsi Foss gave a brief overview of the new legislation that was recently passed, including October 1, 2006 implementation of the new ER TIF provisions; will also be discussing specifics to the Land Use Controls and how best to reach our target audiences and let them know about the change from deed restrictions to our on-line systems

Lisa Peterson, President of the Wisconsin Land Title Association, attended the meeting, provided a summary of what title insurance does and helped answer questions

Peterson: Title insurers are really looking at only the chain of title, we won't find your information because we don't have a duty to search for it; a title agency searches three different places at the County Register of Deeds Office; first we look at deeds in the chain in title, easements and any other covenants; some times title companies will go back 60 years, others do a 40-year search, some even less if it is just a refinance; so that's the first stop; and each county

office is set up differently, some have a track index that is set up via legal description, while others have a grantor/grantee index; if they have both indices the title company will search both

Peterson: The second stop is clerk of courts office; there we're sort of little mini lawyers looking for different actions, such as any liens in divorce, if anyone was divested of title in a divorce, foreclosures, etc., that may affect the title of the real estate; we're also looking at monetary items that affect people, such as wage claim liens, construction liens, condominium liens; because if you affect the people you affect the transaction

Peterson: The third stop is the treasure's office; there we check if there is a lien on taxes, any special assessment letters, unpaid taxes, or any similar activities that affect the real estate which in turn may affect the character of the property

Peterson: The title company reads through every single document, and the documents that get pulled out are the exceptions you see in a title commitment

Peterson: Historically, the Register of Deeds office is where we would see contamination via the deed restriction or deed notice; however, the myth out there is that title companies protect against environmental contamination or environmental liens; we do not require an environmental assessment or any other testing; the only thing we do is, if something is recorded we raise it as an exception, and buyers and lenders rely on that as notices of defects on the real estate

Peterson: I would bet that no title companies even know your site exist; our searches are very limited in scope; while there are title agencies in every county, very few cross county lines

Foss: What if we buy a property and it has a cap, how is that listed to the buyer? Is it a concern or is it listed in the title?

Peterson: The ones I see are just built into the deed as a restriction, and it would just be raised in the exceptions to the commitment, and the buyer will see that prior to closing; the problem is the seller doesn't order it until the buyer is locked in and committed; in most instances buyers aren't represented by attorneys; now with commercial deals, where you normally see brownfields, most buyers are represented by attorneys

Bruce Keyes: But what about people who don't know about these folks; like a remote purchaser, what about the person who doesn't have a cause of action or knows anyone connected to the property?

Tom Mueller: Residential property is one thing, but with commercial real estate you have so many people involved; couldn't you say that, to get a title policy, you have to look at *BRRTS on the Web* and the GIS system?

Peterson: With your system, often the person you're dealing with is not the record holder; we search by legal description and by name

Foss: But while the GIS Registry has a number of deed restrictions, folks need to realize there are several that do not have deed restrictions

Nancy Frank: I need to hear what objectives we're approaching; there's one objective to get info to people who may not know, and there's also another objective related to the Universal

Environmental Covenants Act; my question is about deed notices; how much trouble is it to do those types of things? It would at least get reported – is it useful?

Keyes: In the past, deed notices were recorded, but for the total universe of sites there's a certain number of properties that don't have them yet still have residual contamination; and in the end it's not the best system to convey active information that we need to have; with the GIS Registry, it shows the map of contamination, what types of barriers exist, etc.; and the conclusion is that it is very effective tool of communicating, to convey real information about a property; in the real world, everyone should pay attention to the GIS Registry

Laurie Egre: When we talked to bankers, mortgage bankers and mortgage brokers, they were a little concerned that the deed restrictions won't show up in future transactions; the bankers association said most larger banks are going to be looking at Phase I's for information on any commercial property; however, in small communities with small banks, small realtors, etc., they may not be as tuned into this

Harrington: Our world is somewhat small; the real question is who's at risk if this is not discovered? Is the state at risk? If a VPLE exemption is given and it's on the GIS Registry, and someone ignores it and it impinges the process, who's going to pay for that?

Foss: The owner of the property, under 292.15

Mueller: Didn't we already address this and give the state the enforcement authority?

Foss: Yes, the requirement to maintain and monitor for a VPLE rests with the current property owner.

Foss: Also, remember we had people not closing their properties and finishing the paperwork because the deed restrictions weren't working

Peterson: Whatever road you decide to go down, you'll have to undo it later; if you have a mechanism to create the notice you have to have a mechanism to remove it

Keyes: There is a mechanism that DNR can record on a title to record the restriction; however, there are these shades of gray, which is why the GIS is a more dynamic and useful tool to have

Egre: In talking to the realtors association folks, they mentioned some key points; you have to think not just about both the buyers and sellers; and not all the realtors are members of their association; another factor they said was we need to understand that they have a duty to disclose what they know about, but there is no incentive to look for contamination

Egre: We also went to state Regulation and Licensing, and while they do have a spot where they note people can look for contamination, it's not required and they have very old information on hand, i.e. like the old LUST list

DNR staff will continue to work on the implementation issue; if people have further ideas/comments, please contact Laurie Egre at 608-267-7560 or laurie.eger@wisconsin.gov

2006 Brownfields Legislation -- Expanding VPLE and LGU Exemptions For Unlicensed Landfills

Foss: The legislation is pretty clear, you won't get the VPLE and LGU exemption for an unlicensed landfill; we're creating a searchable list that will go on the web letting the public know how many are out there; there are well over 2,000 sites that have been licensed by DNR

DNR hopes to get listing on the web prior to end of the year; will be located on the Waste Program's web page; for more information, please contact Dan Kolberg at 608-267-7500 or dan.kolberg@wisconsin.gov

2006 Brownfields Legislation – Other Implementation Issues

Foss: We have modified our closure letters, which are now out on the web, with the new GIS checklist; we also have 5 percent or less of our closed sites that have off-site impacts that may require a LUC; we are developing an internal and external policy so folks know it does not nullify their off-site exemption; we also realize we really need to issue the off-site owner their own set of letters telling them about their protections

The RR Program is expecting to issue the guidance in the next 60 days

Universal Environmental Covenants Act (UECA)

Darsi Foss went over the hand out on the Universal Environmental Covenants (UECA); she talked with the UECA national group, and they may try to introduce UECA legislation next year;

IV. EPA Revolving Loan Fund & Municipal Debt – DECISION NEEDED

Darsi Foss gave a brief overview of the Ready For Reuse loans and grants program and some of the changes that could be made to make the program easier to implement and use

Mueller: In Ready For Reuse, if you go to municipal bonding, your term can be up to 20 years?

Darsi: Yes

Meuller: I think we need John Stibal's and Mayor Antaramian's opinion on this issue; or if you're going to use a note, is there any way you can extend the note's time to five years

Jessica Milz: Julie Ebert said that you can re-issue the note for five years and that you can do it twice; and I know some states don't have these ways to accept debt

Mueller: Does Ready For Reuse have a payback on the note like the Land Recycling Loan Program?

Foss: That would be on a case-by-case issue

John Angeli: I would like to request that DNR staff pursue changes to the agreement with EPA that would allow distribution of loan funds to local communities in a manner similar to the state CDBG (Commerce) program

Foss: This is not an allowable option under the federal brownfields law, and has nothing to do with the cooperative agreement; the money comes to DNR in the form of a grant, that we can sub grant up to 40% out to communities that own the property; the remaining 60% of the funds – at a

minimum – MUST be loaned from DNR to the recipient; under the terms of DNR's cooperative agreement with the EPA, the recipient is a local government; the other contributing factor to the complexity is the state borrowing laws, Chapter 60, which limit the options that the local government may use when taking on an RLF loan as a "municipal obligation"

Group agreed that DNR should move forward with changes to Ready For Reuse, and that staff should check back with the Study Group with updates; if anybody has any ideas related to bond obligation issues, please contact Jessica Milz at 608-267-6743 or jessica.milz@wisconsin.gov, or Darsi Foss at 608-267-6713 or darsi.foss@wisconsin.gov

V. Financial/Big Picture Subgroup

Andrew Savagian gave a final report for the Financial/Big Picture subgroup; the group met in September, and instead of forwarding a list of recommendations, the subgroup proposed that the Study Group identify and work with champions/supporters in the State Legislature on developing a strategy for brownfields legislation and funding

DNR will be sending out a draft of the subgroup's strategy via email; all subgroup meeting notes and other information is posted on the web site at <http://dnr.wi.gov/org/aw/rr/rbrownfields/bsg/index.htm#sub>

VI. Wisconsin Economic Development Audit – Discussion

Darsi Foss introduced Shelley Fox, who will be the new grants manager for the DNR's Brownfields Section

Foss: This was the largest state audit completed on any state programs; the key parts relate to 'actual' project results, and for the brownfields initiative we are still working on developing more of those types of concrete results, and the Study Group should be aware that this document could re-surface during the budget debate

Mueller: Folks may want to check out the Wisconsin Economic Development Agency (WEDA) web site; the group testified a lot at the legislative hearings; the DNR's Site Assessment Grants were also praised during the hearings

VII. Federal, State Updates

Avial/Caust of Action

Darsi Foss gave a brief overview on Aviall and the federal changes

Harrington: I don't see why we can't resurrect this issue as a group

Study Group agreed to take up this issue again, and maybe have a smaller group scope out an issue paper

30th Street Industrail Corridor Grants

Percy Mather provided an update on the \$400,000 grant received from EPA for 30th Street; site assessment work is moving quickly for 15 properties in the corridor; for the next EPA grant cycle, the partners (DNR, city and 30th Street Industrial Corridor Coalition) is asking EPA for the

same amounts – \$200,000 for petroleum assessment grants and \$200,000 for hazardous substance assessment grants

Mather: There is also some groundbreaking public health work going on with 30th Street through the Agency for Toxic Substances and Disease Registry (ATSDR), which is part of the Centers for Disease Control (CDC); have a PhD fellow located in EPA's Region 5 headquarters in Chicago; she's monitoring changes to health indicators as work continues in the 30th Street Corridor

Dave Misky: Benji Timm, the project manager for the entire corridor, has re-located to a field office in 30th Street; there are more than 200 contaminated properties listed in the DNR's contaminated sites database from 30th Street alone so, in addition to the \$400,000 the city has spent additional time and money (including some SAGs) in this area, and also involved other community and police organizations in the effort

Land Use Control Grants

Foss: DNR is applying for \$400,000 to help with the implementation of the new land use control legislation; if we receive the grant we'll use these funds to meet with our target audiences (i.e. lenders, bankers, etc.) to find out what 's working and what isn't

Frank: We're looking for spring projects on non-urban sites for UW-Milwaukee students

Foss: Michael Prager, as part of his DNR Leadership Academy project, is coordinating with state universities on brownfields efforts

Justin Shell: The UW-Madison also looking for projects at this time

New Revolving Loan Fund & Site Assessment Grants

Foss: The DNR will be applying for additional funding for hazardous substance funds

Current Ready For Reuse Funding

Milz: DNR still has a lot of petroleum money left to give out; please note, however, that we won't pay for what PECFA will already pay for

Joy Stieglitz: What's the distinguishing criteria for someone wanting to get a grant vs. a loan?

Milz: For a grant, the local government must own the property and they can apply for a maximum of \$200,000; for a loan, the local government does not have to own it and can partner with developers, non-profits, etc., and there is no limit for what they can ask for (other than the total amounts available)

Department of Commerce Brownfields Grants

Jason Scott: To date Commerce has awarded eight grants; of the eight, two have fit the "small community" criteria, so we still need to award five grants that meet the small community definition; so far we've awarded \$2.7 million of the \$7 million available, which leaves \$4.3 million; we have nearly \$2 million in applications pending and we expect even more demand as time goes on; a lot usually come in January February

Al Rabin: This is the most competitive grant cycle we've seen so far; the demand is great so we could be out of funding fairly soon

Foss: Where's the city of Madison project at?

Scott: They've received \$1M the past fiscal year, and Madison wants to create a flexible program of their own

Land Recycling Loan Program (LRLP)

Maureen Hubeler: If all goes well, West Allis is scheduled to sign all their loan documents; once they do, they'll get \$1.6M for the Pressed Steel site, and some of the costs will be carried over to the Ready For Reuse program; applications were due August 1 and October 1; so far just have the city of New Richmond's application for 2006-07 Fiscal Year;

Hubeler: After West Allis, the LRLP will have \$6.8 million left

All Appropriate Inquiry (AAI) Goes Into Affect

Foss: As of Nov. 1, AAI went into affect; contact Darsi Foss if you have questions at 608-261-6422 or darsi.foss@wisconsin.gov

LUNCH

VIII. LEEDS – Overview

Burce Keyes gave a presentation about LEED and LEED-ND, required standards, etc., and provided a Milwaukee case study

Keyes: LEED standards have different ratings, related to energy efficiency, air quality, rate of turnover on the air and other sustainability concepts; at this point a lot of people in the development community have not fully embraced the idea of LEED, but other entities out there are starting to, including local governments; the Natural Resources Defense Council (NRDC) and the Congress for a New Urbanism are working with the U.S. Green Building Council about the broader, more holistic concepts for neighborhoods

Stats: See Bruce's HOUT about large redevelopment stats/figures

Keyes: Infill and appropriate development of undeveloped land are the main ways we can use LEED; LEED-ND = Neighborhood Developments; we are currently working on a LEED-ND standards; we plan to do a pilot in next few months, it'll run for a year, then there will be a vote on the standard in 2007-08

Keyes: There's a whole checklist/series of factors to look for, such as location efficiency, near transportation, near storm water/sewer water, jobs and housing balance, etc.; you can get points for a brownfields site, such as the property has to be located on a brownfield site, has to be remediated so controlling public authority approves the remedy, etc.

Example: Stockyards property in Milwaukee's Menomonee Valley; the Menomonee Valley Partners (MVP) acquired the property and did pre-development work; now they are selling, but in order to be a buyer MPV has mandated that the party satisfy certain requirements, such as environmental and job criteria related to LEED

IX. DATCP Orchards Task Force

Lori Bowman from DATCP attended the meeting to talk about the agency's potassium arsenate task force and what they're working on; they're trying to get developers, realtors, environmental groups, consultants, attorneys, the medical communities and other key stakeholders to come forward and provide input, so far they've had one meeting in October, and hope to meet in November, then again in January and February

Foss: Do you think rules or legislation will come out of this?

Bowman: We just asked them to be more open; it was not our expectation that rules or changes to rules or statutes would come from this; however, they should feel free to talk about issues related to the rules; also, since we work under the NR 700 rule series, DNR will be interested and is encouraged to weigh in, and why they're serving as technical advisors on the task force

Foss: What other states are tackling this issue?

Bowman: New Jersey and Washington have already assembled task forces; they're focuses are slightly different due to their state specific issues

Scott Wilson: Why does the task force work need to be completed so soon?

Bowman: Our goal was to wrap this up in a six month time frame, but this is flexible, so if we need more time to discuss this issue, we won't have any hesitation to commit more time and resources

X. State Agencies – Update

Wisconsin Brownfields Insurance Program (WBIP)

Michael Prager: The agreement has finally been signed by AIG and sent to DNR for Secretary Hassett's signature; this is really a privatized program, but if a voluntary party wants protection, they can go get it and at a better price than on the open market, and along with this and other incentives, makes it more attractive for parties to want to cleanup and redevelop brownfields

Prager: Lenders and businesses will be interested in this tool also; there's a basic menu that they offer, and they have other items you can also negotiate over as part of your insurance package, but the idea is to create a program that is more streamlined, efficient and cost effective

Prager: We'll be issuing a news release and conducting outreach once the agreement is signed this month, and also working with AIG and the state's broker, AON, to hold a few seminars in 2007; later, we'll also be able to check on how the program is performing and have an opportunity to make changes, and we'll share that information with the Study Group as it becomes available

Keys: Is it a limited term contract with AIG?

Prager: Yes; also, don't forget that for the Ready For Reuse program, grants and a portion of the loans can go for insurance, and Commerce can use it for a match as well

DNR's Green Space and Public Facilities Grants

Prager: DNR has nearly completed the second round of grants, as a refresher, we have \$1 million, we receive applications in July and to date we have awarded six grants; we're still looking at two more; we've awarded \$756,000; we have additional grants we're looking at that could use up the rest of the money, but we are still encouraging folks to talk to us about the potential for submitting additional grant applications

DNR's Site Assessment Grants (SAGs)

Prager: The SAG applications were due yesterday, November 1; our goal is to have them awarded by the end of February; for any unused funding, we'll do outreach in the *RR Report*, *Re News* and the web

Wilson: What about the use of SAGs to pay for Remedial Action Reports/Plans?

Prager: It's in the grant statute that you can use SAGs for Site Investigation Reports, but the RAPs are different

Foss: It is an eligible match cost, so it's still in the mix

Margaret Brunette: We're not even getting SI's coming out of the SAGs; we're getting the final reports, and we might get Phase I and II's but not very many SI's

NR 700/720 Rule Changes

Mark Gordon provide an update on main NR 700 rule package; these changes are just to update and be consistent with policy changes over the years; the internal rule drafting is complete; however, NR 726 is still being worked to incorporate the new legislation; also with 726, it doesn't flow very well, so DNR is restructuring it to flow better and joining all the closure information together; internal drafting will be done by the end of this year; we'll share that with the Study Group and the Technical Focus group; after that feedback, we'll go to Natural Resources Board (NRB) and get the ok to hold hearings

Prager: Also, we're making changes to NR 750, which is related to the VPLE process: we need some cleanup language there

Mark Gordon also provided an update on changes to NR 720, the DNR's soil cleanup standards; the Study Group and the technical focus group have already provided feedback, and the group discussed several changes to the rule; NR 720 changes will follow the same time line as with the NR 700 rule package

Please contact Mark Gordon at 608-266-7278 or mark.gordon@wisconsin.gov for more information

Adjourn