

Waterfront Revitalization Subgroup Meeting #2 Minutes

April 14, 2014 | 1-3pm

Dane County Land & Water Resources Department
5201 Fen Oak Drive, Conference Room AB, Madison, WI
or Call-In at (888) 291-0310 passcode 7526216#

ATTENDEES

Bruce Keyes, Foley & Lardner (Waterfront Revitalization Subgroup Co-Chair)
David Misky, City of Milwaukee (Waterfront Revitalization Subgroup Co-Chair)
Andrew Mott, AECOM
Tiffany Goebel, WE Energies
Laurie Parsons, NRT
Mary Panzer, Panzer Public Affairs Cons.
Mat Reimer, City of Milwaukee
Dan Helsel, DNR
Larry Kirch, City of La Crosse
Tom German, BCPL
Mike Friis, DOA
Michael Prager, DNR
Sheri Walz, WisDOT
Al Erickson, CH2MHILL
Shelley Warwick, DNR
Christine Haag, DNR (Waterfront Subgroup "Buddy")

AGENDA ITEM #1: Reminder to Sign In

Relevant Attachments: None

Discussion: None

AGENDA ITEM #2: Waterfront Initiative – Summary of March 31, 2014 Meeting

Relevant Attachments: March 31, 2014 meeting notes

Discussion: Co-Chair Misky provided and overview of the March 31 meeting, where the group discussed topics of concern and organized them into four sub-topics: Aging Infrastructure and Legacy Issues; Regulatory Process; Financial; and Contamination Issues.

| Action Item | Decision/Recommendation | Dissenting Opinions |
|-------------|-------------------------|---------------------|
| None | | |
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| Assignments | Timeframe | Person(s) Responsible |
|-------------|-----------|-----------------------|
| None | | |
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AGENDA ITEM #3: Topic – Contamination (Statement of Issues)

Relevant Attachments:

- List of definitions
- “Statement of Issues – Contamination” (submitted by Bruce Keyes, April 14, 2014)

Discussion: Co-Chairs Misky and Keyes opened the discussion by suggesting that the group discuss the list of contamination issues identified by the subgroup at the 3/31 meeting, which Keyes summarized in a memo dated April 14, 2014. These issues were further separated into three categories:

1. Immediate opportunities for Brownfield Study Group Action
2. Larger issues for Brownfield Study Group Action
3. Outside Chapter 292 or NR 700 Regulation

1. Immediate Opportunities for Study Group Action:**a. Definition of Sediment vs. Soil –**

- Line fluctuates at upland vs. OHWM. Is this the demarcation line?
- We clean up the upland, then sediments are subject to different care
- We may be losing opportunities to deal with near-shore issues
- Cleaning up sediments after an upland cleanup is difficult because the development is in place
- This is an issue with natural slopes
- How is the material being managed?
- NR 700 process applies but no standards
- Is there a way to deal with the “edge” materials?

b. Beneficial Reuse of Dredge Spoils –

- Is there a streamlined process for beneficially reusing sediment spoils?
- Does NR 700 apply to sediments?
- Edge issue – soft boundary – who has jurisdiction? (Chapter 30 if below OHWM?)
- Do we have case studies we could look at to identify commonality of issues?
- For upland cleanups we have NR 700. How much sediment can /should be pulled out? What are the sediment cleanup criteria?
 - NR 347 would be dredging
 - NR 700 would be edge removal
 - NR 500 to get exemption so protective if concentrations are known
- Does a cap maintenance plan reach into the edge and water? What happens if catastrophic failure?
- A proactive approach with communities was suggested when it comes to setting or amending a bulkhead line. Allow for an additional 18” between the barrier and bulkhead line so that maintenance or shoring up is possible on the water side.

c. (Note: Performance standards for sediments, edge or dredge spoils was on the agenda but was not specifically discussed.)**d. GIS and Case Closure –**

- GIS will not give an exact line of demarcation
- When filing for case closure a survey is needed. What is the definition of a “site” to incorporate the edge as we move to soft boundaries and containment with continuing obligations?

- Include the edge to the extent there is ongoing maintenance and reference these in GIS case closure submittals. Edge treatment is part of the remedy.
- Does the definition of “site” need to be tightened?
- How are riparian rights different? Should definition of site extend to the center of the river? Or does it end at the soft boundary or OHWM? From a liability standpoint does liability extend to the centerline? (Tom G. – yes.)
- Question is not whether landowner is liable - question is where does RR stop and Water begin?
- Sediment cleanups are not currently in the GIS registry. How do people know about continuing obligations?
- Where remediation is occurring in the bed, should this be part of case closure? Part of RR database? Part of surface water viewer? (Note – is Kate Barrett a resource?)
- North Avenue dam – 30 years from now, how does someone know not to puncture the PCB containment structure? RR GIS registry?
- In a lakebed setting, how do we put in a containment structure for sediment capping when access is given via 50 year lake bed lease?
- Do we want to make a recommendation to bifurcate the sediment portion from the upland portion? If they are separated, access is an issue. Could there be partial closure?
- Entire “site” extends into river, so there is a natural concern to ensure that cleanup of the river is continued
- Under CERCLA, the “site” includes the edge of contamination that emanates from the source.
 - Could there be partial closure of the upland?
 - When there is an expensive remedy on the upland, it’s an expensive work-around to deal with sediments later
- How often does this come up? MGPs were always on water. Other industrial sites like paper mills were always on water
- There is lots of sediment in rivers. How do we attribute it?
- Resolving the attributable sediment is a huge question. Should we hold up upland closures because we’re not separating the upland from the sediment?
- **Options:**
 - Ad hoc approach
 - Comprehensive – no case closure until everything is in place
 - Circumstances where there could be upland closure or upland partial closure

2. Longer Term Issues for Possible Study Group Action:

a. Should VPLE apply to riparian rights and sediments?

- Should upland sites get VPLE (partial exemption?) if fully remediated, to allow upland redevelopment to occur while sediment is still in the cleanup process? Are there downsides to this?
- If sediment is cleaned up should VPLE be issued?
 - Practical Issue: sediment can move. The system is not static.
 - Legal Issue: Good that we’re trying to quantify some level of liability. In Wisconsin we can’t split the riparian rights from the upland. If we gave VPLE on the upland, owner would still have liability for sediments. (If we allowed a split, the owner could spin off contaminated sediment portion to an LLC.) If on a lake, lake bed leases are temporary – regarding continuing obligations, how will maintenance work occur beyond the life of a lake bed lease?
 - Financial Issue: need a financial assurance mechanism
 - RP Issue: why can’t a responsible party be told they’re done? This would give an incentive for a better cleanup.
- Limits on lakebed leases (Tom German, BCPL)
 - BCPL has limited leasing authority

- Leases are only for 50 years
- Only to the riparian owner
- Only in the Great Lakes and where ACOE has navigation authority
- Leases can be issued to a municipality for navigation and recreational purposes related to navigation
- Legislative land grant takes the bed out of BCPL's authority (state constitution imposes limitations)

b. Managing Continuing Obligations at Sediment Sites and Application of Ch 292.12

- VPLE for sediments with a cap: additional overlay by BCPL – can these rights be captured? Can rights conveyed by BCPL through lease allow capping and maintenance?
- Seawalls – if the seawall is removed and the site converts to a soft edge, does this reopen a closed case? Would also need approval from Water to make this change
 - Is there language in the closure doc that reopens the site for Water if altering below the OHWM?
 - Look at cap maintenance plans to incorporate Waterway-specific language
- 292.12 – for upland, offsite impacted owners may have responsibility to maintain a cap, which hasn't been a big issue for upland innocent parties. When in a river, the owner has "qualified title" to the thread, but state has navigational servitude. Party would need permission to begin with to place a structure in the river that affects navigation.
- How do we provide notice of continuing obligations in water – should it be a deed restriction?
- Question – should 292.12 be fixed as it relates to sediment cleanups and downstream issues?
- Do we need offsite liability letters? Are adjacent riparian owners (of downstream contamination):
 - Not enough of a demonstrated need?
 - Entitled to offsite liability exemption? (Is anyone seeking to hold riparian owners liable?)
 - Could create a best-practice issue with high exposure and not much payoff

3. Contamination Issues for Action Outside Study Group Scope (Chapter 292 and NR 700): not discussed.

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|-------------|-----------|-----------------------|
| None | | |
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AGENDA ITEM #4: Next Steps – Timeline and Possible Assignments

Relevant Attachments: None

Discussion: None

NEXT MEETING

Date: April 28, 2014 and May 12, 2014

Time: 1:00 to 3:00 pm

Location or Call-in Info: Location TBA. Call-in info: (888) 291-0310 passcode 7526216#