

**Remediation and  
Redevelopment Program**

**Issues & Trends Series  
2015**

March 4, 2015 12:00 p.m. – 1:00 p.m.  
Conference Call

Dial: 1-855-947-8255  
Passcode: 6612 745#



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**Speaker**



**Dan Kolberg, P.E.**  
Local Governmental Specialist  
DNR Brownfields & Outreach Section,  
Madison

**608-267-7500**  
**dan.kolberg@wisconsin.gov**

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**LGU Exemption &  
Property Acquisition**

To assist LGUs  
with the reuse  
of contaminated  
properties



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**LGU Exemption & Property Acquisition**

**Property Acquisition Issues**

- Local Strategies
- Liability Protections
- Acquisition Methods
- Applicable Tools

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 **Definition** 

**What are Brownfields?**

- Commercial or Industrial Properties
- Abandoned, Idle or Under-used
- Redevelopment hindered by real or perceived contamination



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**BF Red Flags for LGUs:**

- ❖ **Closed or closing businesses**
  - ✓ Bankruptcies
  - ✓ Tax delinquencies
- ❖ **Vacant or abandoned buildings**
  - ✓ Deterioration
  - ✓ Trespassing / Theft
- ❖ **Confirmed or suspected contamination**
  - ✓ Reported spills
  - ✓ ESA testing (Phase I and II)
- ❖ **Obstacles to redevelopment**
  - ✓ Lookers but no buyers
  - ✓ Too many costs



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 **Acquisition Strategies?** 

*"Don't know what questions to ask"*  
*"Confusion"*  
**"No Interested Buyers"**  
*"Getting bad advice from bankers, realtors, and lawyers"*  
*"Town managers terrified"*

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**FAQ on Acquisition**

- Why would we acquire this property?
- What's it going to cost us? We have no \$.
- Will we have to investigate/clean it up?
- Current property owner's responsibility?
- Who would want this until it's cleaned up?
- Is there \$\$\$ available to help us?
- What procedures apply?
- What steps do we need to follow?
- Where do we start?

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 **Strategic Overview** 

**How Can DNR Help?**

- **Green Team Meetings**
- **Liability Clarification**
- **Technical Assistance**
- **Financial Assistance**



**DNR provides tools to assist successful redevelopments!**

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 **LGU Liability Exemption** 

- Spills Law exemption (s. 292.11, SS)
  - Investigation
  - Clean-up
  - Financial responsibility
- Limited actions may be needed
- Opportunity to “Broker property”
- Encourage redevelopment – take control
- Avoid risks/problems

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 **LGU Liability Exemption** 

**Who is Eligible?**

  


**Towns  
Cities  
Counties  
Villages  
Housing Authorities  
CDAs  
Others...**

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**Eligible Acquisition Methods**

1. Tax delinquency
2. Bankruptcy court order
3. Condemnation (Friendly or adversarial)
4. Eminent domain
5. Escheat (no heirs)
6. Slum clearance or blight elimination
7. Another eligible LGU
8. Using Stewardship Funds, with cleanup agreement

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 **Solid Waste Exemption**   
(s.292.23, SS.)

- Requires request for Liability Clarification Letter
- SW Exemption for unlicensed disposal sites
- LGU can not have Owned or Operated site
- Acquisition method same as LGU Exemption
- Comply with Building on Abandoned Landfill requirements
- Maintain & monitor H & S systems

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**LGU Case Example**

**How does the LGU exemption work?**

- **Scenario One:** LGU acquires property and does not reuse the property.
- **Scenario Two:** LGU acquires property and plans to reuse.

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**Scenario One: LGU does not reuse property**

**At this property, LGU:**

- must acquire in “statutory” manner
- must remove USTs (ATCP 93)
- report discharge(s)
- should restrict access, sample and remove above ground containers in situations where new discharges could occur
- need not investigate and clean up the hazardous substance discharges, including off-site impacts
- LGU may be looking for time/money to determine what to do with the property

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**Scenario 2: LGU reuses the property**

**LGU must:**

- must acquire in "statutory" manner
- report discharge(s)
- must remove underground storage tanks
- should restrict access, sample and remove above ground containers in situations where new discharges could occur.
- AND.....

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**Scenario 2: LGU reuses the property**

**....LGU & DNR need to work cooperatively to:**

- Enable LGU to obtain sufficient environmental data for DNR to determine if a substantial threat is present given the intended use.
- Review the data and proposed redevelopment plan, provided by the LGU.
- Ensure LGU's intended use of property does not cause a new discharge or worsen an existing discharge.

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**Superfund (CERCLA) Liability**

- Involuntary acquisition (EPA Definition)
  - LGU can't be RP
  - Not an "owner or operator" under CERCLA
  - Provides 3<sup>rd</sup> party lawsuit defense
- Or voluntary acquisition with AAI/BFPP
  - Same protections available
- Eligible for federal funds either way

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 **AAI & Direct Purchase** 

- AAI recommended for direct purchases  
Phase I - 40 CFR 312 or ASTM E 1527-13
- Is the property contaminated?
  - Yes. Bona fide prospective purchaser (BFPP) defense
  - Letter to claim and justify BFPP status
  - Assert intent and plans to comply with “Continuing Obligations”

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 **The DNR Recommends** 



- Maximize your opportunities – Use available tools
- Choose acquisition method wisely
- Talk with DNR early and often

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**Acquisition of Contaminated Property:**

- ❖ Due Diligence (All Appropriate Inquiries – AAI; w/i 180 days before acquisition)
- ❖ CERCLA (Superfund) Liability Protection (Fed)
  - ✓ Third Party Liability Defense
  - ✓ Eligibility for Federal Funding
- ❖ LGU Liability Exemption (Wisconsin)
- ❖ Work Closely with DNR



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**LGU Exemption & Property Acquisition**

**General Liability Clarification Letters**

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**Liability Clarification Letters**

- Request form for letter
- Summary of site conditions
- Summary of land ownership conditions
- Explanation of exemptions
- Determination of eligibility
- Discussion of continuing obligations
- Answers to questions

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 **The DNR Recommends** 



- A liability clarification letter is \$700 well spent
- Take advantage of available info sources
- Assess risks and characterize brownfields fully.

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**LGU Exemption & Property Acquisition**

**Green Team Meetings**

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**Green Team Meeting Basics**

- Personalized approach for LGU
- Topics: liability, process, financial assistance, alternatives, strategies, schedules
- DNR, WEDC, other staff as needed
- Site specific or general resources available
- Coordinate meeting w/ regional outreach staff

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 **DNR Regions** 

The State of Wisconsin  
Department of Natural Resources  
Region Offices



- Northern
- West Central
- South Central
- Southeast
- Northeast

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 **Key Points** 

- **LGUs are the Key to Success!**
- Acquisition method ALWAYS matters (DNR)
- LGU should evaluate all acquisition alternatives
- LGUs have missed opportunities/lost rights
- Consider LGU Exemptions
- AAI rules create options
  - CERCLA liability exemption/legal defense
  - Eligibility for Federal Brownfields funds

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 **Many Other Tools** 

- Tax Incentives (75.105, .106, .17)
- Negotiated Agreements
- Development Agrmts.
- Inspection Authorities
- Cost Recovery
- Civil Immunity
- Financial Resources
- Partnerships/Teams
- Departments of Health, WEDC, Revenue, DATCP, Administration, and Transportation

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**Questions?**

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**Sheboygan...then**



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**Sheboygan...now**



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**DePere...then**



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**DePere...now**



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**Kenosha...then**



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**Kenosha...now**



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Questions?

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**Remediation and  
Redevelopment Program**

May 6, 2015

**The Lender Liability Exemption and  
Relationships to LGU Property Acquisitions**

Audio from today's presentation and information about this and  
future *Issues & Trends Series* can be found on the RR Program  
Training Webpage at: [dnr.wi.gov/topic/Brownfields/Training.html](http://dnr.wi.gov/topic/Brownfields/Training.html)

Questions / Comments / Suggestions regarding the  
Issues & Trends Series can be submitted to:

**[DNRRRComments@wisconsin.gov](mailto:DNRRRComments@wisconsin.gov)**

*Thank you*

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