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Umpire Process Wis. Stats. 292.35
WDNR Brownfields Study Group

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February 9, 2018
Umpire Process Wis. Stats. 292.35

• Introduction
• Presenters:
  − Molly Schmidt, Program and Policy Analyst, WDNR R&R Brownfields and Outreach
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• Overview of “umpire” process
• Case study
• Lessons learned
• Expansion of concept to non-LGU sites?
• BSG Subgroup?
Overview of “umpire” process

- Wis. Stats. §292.35 “Local Government Unit Negotiation and Cost Recovery”
  - Applies to:
    - A “Site” or “Facility” owned by an LGU
    - For a non owned Site or Facility, the LGU commits to paying >50% of non funded costs of investigation and remediation
- LGU must:
  - Identify “Responsible Parties” (292.11 plus generators, transporters, owner/operators)
  - Develop Remedial Action Plan
Overview of “umpire” process

• LGU must (cont.):
  − Notify RPs, providing public hearing for RAP
  − Allow RP and public comment for 30 days
  − Submit RAP plus any comments to WDNR
  − Upon receiving WDNR approval, serve “offer to settle” on RPs re contribution of investigation and remedial costs

• WDNR then proposes/appoints an “umpire”

• After approval, umpire presides over expedited negotiation (60 days, with recommendation 20 days later)
Overview of “umpire” process

• Outcomes:
  – Agreement in negotiation (LGU plus one or more parties)
  – Umpire recommended allocation (“design and implementation of the [RAP] and contribution of funds”), accepted/rejected w/in 60 days
• Contribution protection (WDNR/USEPA MOU)
• LGU may reject umpire recommendation as to any one RP
Overview of “umpire” process

• Outcomes - Litigation/Cost Recovery:
  − LGU can recover litigation expenses and interest if:
    • LGU accepts/RP rejects umpire’s allocation and LGU secures judgement > umpire’s allocation
    • LGU/RP reach agreement in negotiation or accept allocation, RP breaches commitment and LGU secures judgment
  − RP can recover litigation expenses (not interest) if RP accepts/LGU rejects allocation and RP secures judgement < umpire’s allocation
Case studies

• Ashwaubenon High School/Klipstine Park
  – Ashwaubenon School District/Village of Ashwaubenon (LGU) recover ~$1.9 million from RP
  – Two umpired negotiation sessions
  – settled via “agreement in negotiation” (early 2017)

• City of Manitowoc – Former Newton Gravel Pit
  – City of Manitowoc (LGU) plus ~4 RPs
  – Two umpired negotiation sessions (late 2017)
  – Three settlements (in principle) via “agreement”
  – Umpire recommendation to include one RP
Lessons learned

• §292.35 provides substantial leverage to LGU
• Potential conflict/awkward context if LGU is pursuing current local RPs
• Development of historical evidence is challenging
• “Public Hearing” creates favorable presumption
• Absence of NCP compliance is a benefit
• O/O share for LGU must be addressed
• Once umpire is approved, process moves very quickly
Thank You