Wisconsin Brownfields Study Group

- Welcome
- Introductions
- Agenda Repair
Grant Proposal for Brownfields Sites

Scott Wilson and Mark Thimke
Act 70 Pilot: Brownfields/Air Permitting/Green Tier

- Mark Thimke and Art Harrington
Act 70 – Promoting Manufacturing Reuse of Brownfields Property

Mark A. Thimke
Brownfields Study Group
January 25, 2019
Background

- Pilot program – part of Brownfields Study Group 2015 list of priority initiatives
- Goal – develop incentives that provide “certainty” to promote manufacturing reuse of sites
- Pilot combined – 3 WDNR programs
  - Air permitting
  - Cleanup
  - Green Tier
- Act 70 Advisory Group in WDNR led by Bart Sponseller, with participation – Kristin Hart, Laurel Sukup and Michael Prager
- BSG participants – Art Harrington, Jennifer Buzecky and Mark Thimke
Air Permitting

- Focus on medium sized businesses
- Avoid complex federal overlay of Clean Air Act applicable to larger facilities
- Developed new permit with Air Bureau/Green Tier
  - 80% major source threshold registration permit (most cases 80 tpy)
  - Permanent permit
  - Creates “bubble” over facility, allowing changes to occur without delayed air permitting
  - Tied to Green Tier – EMS/audits to assure compliance, promote superior environmental performance
- Permit about to be issued – U.S. EPA approved; no adverse public comment
- Permit allows up to 3 years to move to Green Tier status, receive benefits immediately
Green Tier

- Developing “pro forma” Green Tier approvals for both standalone redevelopment (contract) or for industrial park redevelopment (charter)
- Costs for meeting Green Tier requirements – EMS can be part of ETID development costs
Voluntary Party Liability Exemption

- Existing program
- No changes through Act 70
Next Steps

- Refinement of the Green Tier charter approach for industrial parks
- Marketing of program through WEDC, League of Municipalities and one-on-one contacts with local redevelopment authorities
- Explore additional benefits to encourage sustainable manufacturing redevelopment projects
**Connecting the Dots**

**Manufacturer or Agent**
- Identify Site
- Contact municipality for information

**Developer or Agent**
- Identify Site
- Contact municipality for more information

**Municipality (Proactive)**
- Identify site and vision
- Find interested Manufacturer or Developer
  - Discuss local interests to be incorporated into GT Charter/EMS
    - TIF/TID for EMS? ERTID?
- Eligibility Criteria
  - VPLE?
  - ROP Eligible?
  - Green Tier?
- OR
  - Look to partners for help

**Municipality (Responsive)**
- Discuss local interests to be incorporated into GT Charter/EMS
  - TIF/TID for EMS? ERTID?
- Awareness of Eligibility Criteria
  - VPLE
  - ROP Eligible
  - Green Tier

**Partners**
- WEDC
- WCA
- LWM
- Others?

**DNR PRE APPLICATION SCREENING MEETING**
- Determine eligibility
- Meet to determine interests of municipality & stakeholders
- Facilitate development of the property under pilot

- Market eligible sites
- Facilitate initial discussions
- Set up screening meeting with potential applicant and DNR

- Knowledge of program & benefits, when to apply program
- Market program to Municipalities, Developer, Manufacturers
- Market eligible sites
- Match making
- Set up screening meeting with potential applicant and DNR
Updates to NR 700 Rules – Scope, Timeline and Public Input

- Updates to NR 700 to 754
- Creation of:
  - NR 756
  - NR 758
RR Rule Updates

Why?

- Emergency rules – meet Act 204 mandate
- Permanent rules – update to:
  - Be consistent with statutory revisions
  - Clarify portions of code due to changes in law
  - Simplify portions of code and provide further direction
RR Rule Updates

What?

- Sites with contaminated sediment
- Financial responsibility
- Voluntary parties and insurance
- Voluntary parties and property boundaries
- Updates and clarifications to rules for all types of sites
RR Rule Update

Anticipated Completion:

- Rule development – May 2020
- Economic impact analysis – July 2020
- 2 public hearings – October 2020 in Madison and Wausau or Eau Claire
- Request NRB adoption – Spring 2021
RR Rule Update

Public Input:

- Broad range of topics
- Town hall-style meetings will allow many people to provide input on the topics that interest them
- Also plan to use topical focus groups
RR Rule Update

Public Input:

- Kick off meeting – February 5, 10-1
  - DNR Madison Office, G09
- Monthly public input meetings scheduled throughout 2019
RR Rule Update

Website:
https://dnr.wi.gov/topic/Brownfields/RuleChanges.html#meetings

For More Information:
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VPLE Topics

- DNR Update
- Study Group Update
Voluntary Party Liability Exemption (VPLE)

Mark A. Thimke
Brownfields Study Group
January 25, 2019
VPLE Update

- May 2018 – Brownfields Study Group approved review of VPLE (what works/what does not)
- Initial meeting – July 28, 2018
- Focus turned to “emerging chemicals,” especially after WDNR’s “interim decision”
- Brownfields Study Group direction – preserve existing program but understand state concerns
- Options for changes that may occur
  - Insurance as a tool – Kenn Anderson, AON
  - Potential tie in with Green Tier for future commercial/industrial uses
  - Off-ramps from VPLE coverage
  - More limited scope of VPLE coverage
  - Previous COCs – retain/change status
PFAS and Emerging Contaminants

- MPCA Visit (Foss, Haag, Fassbender, Stocks)
- DNR Emerging Contaminant Strategy (Sponseller, Foss, Stocks, Savagian)
  - PFAS in drinking water SOP
  - Communication plan and webpage
  - Multistate collaborative workgroups
  - Inter-agency coordination – cross-media issues
  - Inter-division GIS team
  - Technical and policy staff
  - Program-specific plans
PFAS and Emerging Contaminants

- RR Emerging Contaminant Task Force – Technical and Policy (Foss)
- BOTW Update (Soyer)
PFAS and Emerging Contaminants

- DHS Update (Yang and Thiboldeaux)
PFAS and Emerging Contaminants

- State Resources/Actions (Thimke)
PFOS Update

- Michigan
  - Very active in addressing PFOS
  - Municipal wastewater treatment plant’s required to investigate industrial dischargers to treatment plants
  - Number of industrial facilities with PFOS in discharge
  - Reduction/elimination program required
PFOS Update

- Standards adoption – New Hampshire/New York
- Petitions for standards – Michigan (NRDC)
- Enforcement settlements – North Carolina
- U.S. EPA
  - No movement on drinking water standard
  - Potential “hazardous substance” listing
DNR Updates

RR Year in Review (Foss)

- 1,282 Acres Ready for Reuse
- 336 Case Closures
- 3 WPRI Letters Issued
- 205 RP Letters Issued
- 101 Redevelopment Assistance Tools
- 13 New VPLE COCs
- 55 Green Team Meetings
- 4 New VPLE Program Applications
- 66 Audits of Institutional Controls
- 15 Workshops/Training Meetings Held
- $399,753 Bankruptcy (Trust) Funds Spent (KEP)
DNR Updates

RR Strategic Plan Update (Foss)

Recent Accomplishments

- NR 718 Materials Management
- RR 800 Vapor Intrusion Guidance
- Records Management/Digitization
- Hydro College
- Resource Modules
DNR Updates

RR Strategic Plan Update (Foss)

- Short-Term Future Goals
  - Rule Drafting
  - PFAS
  - New Hires
  - PECXit Strategy
DNR Updates

- Dry Cleaner Environmental Repair Fund (DERF) (Fassbender)
  - $1.5 million in reimbursements requested
  - 38 claims
  - Anticipate paying these claims by February 2024
DNR Updates

- Exempt Soil Guidance (Fassbender)
- NR 712 Implementation (Foss)
- RR Staffing / Funding (Soyer)
Wisconsin Act 369 – Guiding “Guidance” and Other Administrative Law Changes

Mark A. Thimke
Brownfields Study Group
January 25, 2019
New State Legislation

- “Lame Duck” session law – Wisconsin Act 369
- Significant changes to the development and use of guidance documents/rulemaking and agency legal interpretations
Guidance Documents

- All guidance documents – must go through notice/comment
- Continuing public comment after guidance document issued
- No force of law/provides no authority, unless it is explicitly referencing law
- If guidance document relied on, person may challenge “legality”/“wisdom” of guidance document
- If agency varies from guidance document and person relied on it, then agency justify need for variance outweighing reliance
- Petitions may be made to convert guidance to rule
Guidance

- Certification that guidance document –
  - No standard, requirement or threshold “not explicitly required or explicitly permitted” by law in guidance document
  - No standard, requirement or threshold “more restrictive”
- Must identify each federal law, state law or rule that supports “any statement or interpretation of law” in the guidance document
- Effective July 1, 2019
- **But** – any prior guidance document not adopted through public comment and not certified (as above), void
What is a “Guidance Document”?

- New definitions
- **Any** document of “communication”
  - Includes manual, handbook, “directive” or informational bulletin
  - Explains implementation of law or rule or current/proposed operating procedure of agency
  - Gives advice on application of law or statute/rule
  - Legislative Council to assist in determining what is and what is not “guidance”
- Also specifies what a guidance document **is not**
- Query – if agency relies on federal guidance, is that a state guidance?
Rulemaking

- Advisory committees – members’ names must be provided to Legislature
- Rulemaking process can be suspended any number of times by Legislature
Department Legal Interpretations

- Agency legal interpretation is given **no** deference in a “proceeding”
  - Net effect – courts decide and only published court decisions are given weight

- *Myers v. DNR, 2019 WI 5 (Jan. 18, 2019)*
  - Wisconsin Supreme Court – no deference to DNR legal position/interpretation
  - Literal interpretation of regulatory authority
Act 21 Update

- *Kinnard* – CAFO case before District II Court of Appeals
- No decision on Act 21 – court certified case to Wisconsin Supreme Court
EPA Brownfields Update and Realignment
Standing Items

- WMC Update
- WEDC Update
- BSG membership and structure update
- Next regular meeting
- Confirmation of assignments