

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#





Speaker



Dan Kolberg, P.E.

Local Governmental Specialist

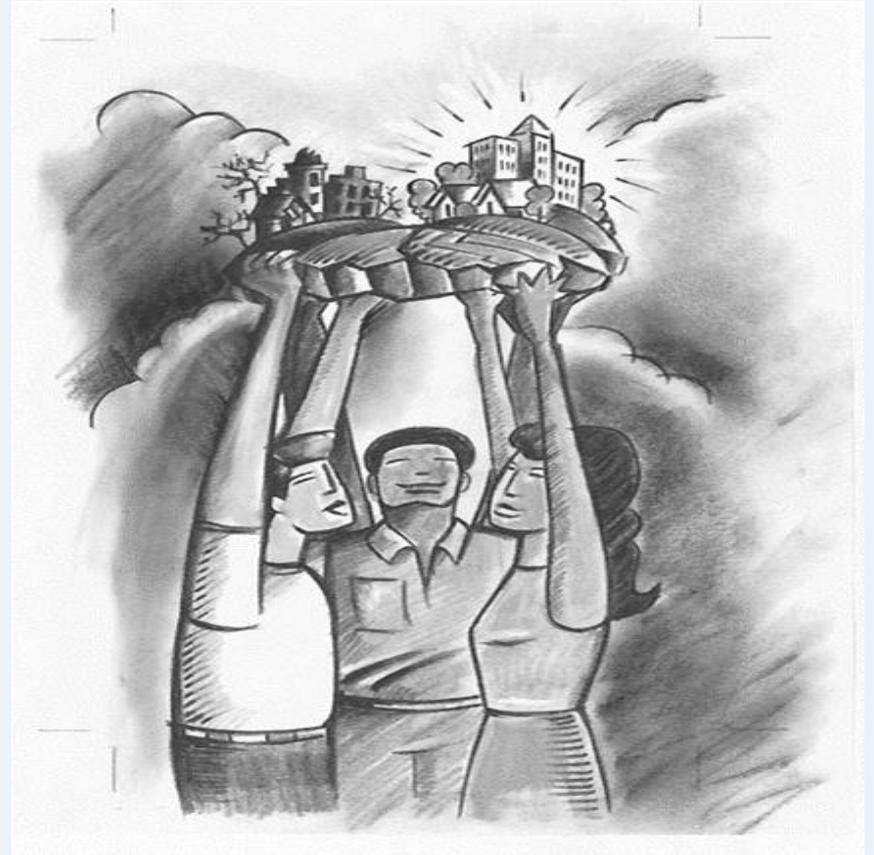
**DNR Brownfields & Outreach Section,
Madison**

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LGU Exemption & Property Acquisition

To assist LGUs with the reuse of contaminated properties



LGU Exemption & Property Acquisition

Property Acquisition Issues

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



Definition



What are Brownfields?

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









BF Red Flags for LGUs:

❖ **Closed or closing businesses**

- ✓ Bankruptcies
- ✓ Tax delinquencies

❖ **Vacant or abandoned buildings**

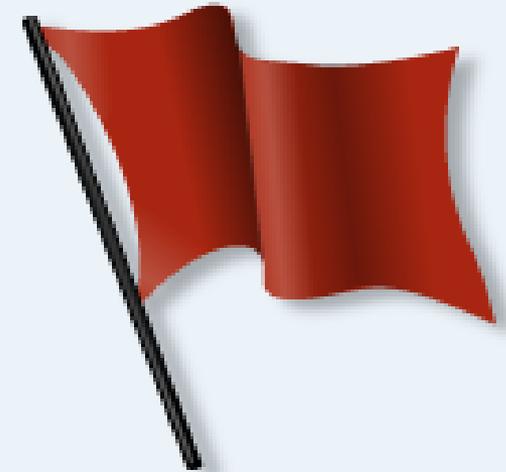
- ✓ Deterioration
- ✓ Trespassing / Theft

❖ **Confirmed or suspected contamination**

- ✓ Reported spills
- ✓ ESA testing (Phase I and II)

❖ **Obstacles to redevelopment**

- ✓ Lookers but no buyers
- ✓ Too many costs





Acquisition Strategies?



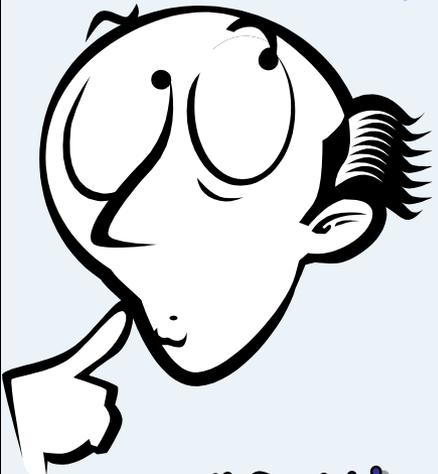
"Don't know what questions to ask"

"Confusion"

"No Interested Buyers"

"Getting bad advice from bankers, realtors, and lawyers"

"Town managers terrified"



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?



Strategic Overview



How Can DNR Help?



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

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



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



LGU Liability Exemption



Who is Eligible?



Towns
Cities
Counties
Villages
Housing Authorities
CDAs
Others...

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



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

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.

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**

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.....**

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.

Superfund (CERCLA) Liability

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



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”



The DNR Recommends



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

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



LGU Exemption & Property Acquisition

**General Liability
Clarification Letters**

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



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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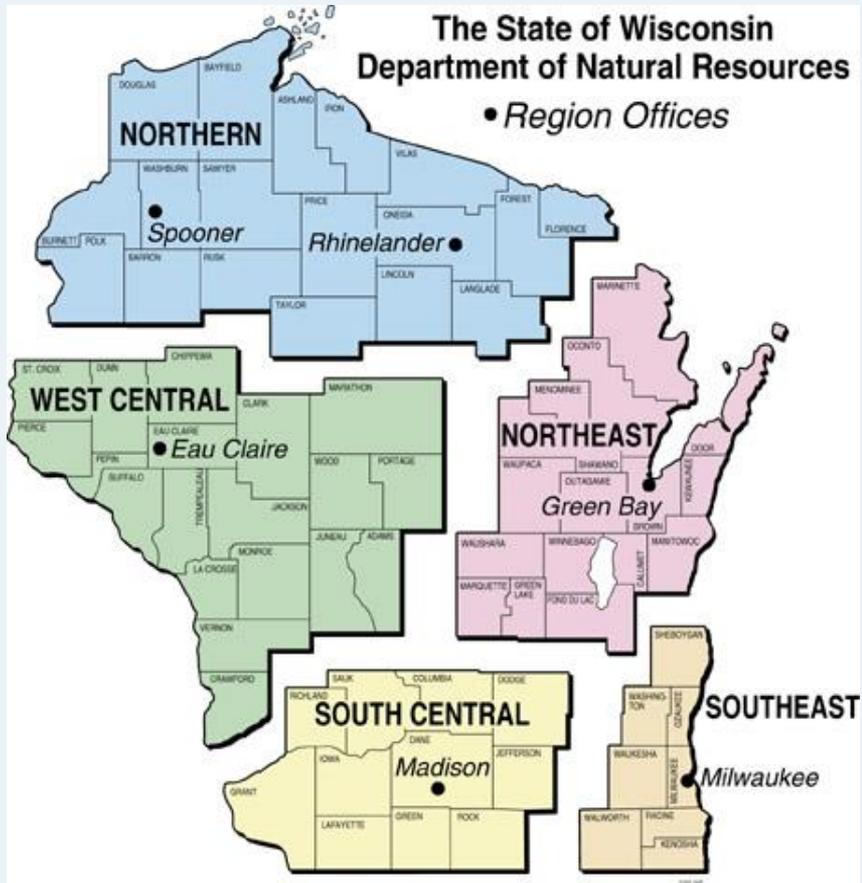
Green Team Meetings

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



DNR Regions



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



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



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

Questions?

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Sheboygan...then



Sheboygan...now



DePere...then



DePere...now



Kenosha...then



Kenosha...now



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**Next Event: May 6, 2015
12:00 p.m.
Conference Call**

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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

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

DNRRRComments@wisconsin.gov

Thank you