

Brownfields Study Group

July 24, 2014

9:30 a.m. – 4:00 p.m.

Lyman F. Anderson Agriculture & Conservation Center
(Dane County UW-Extension Office Building)
Room 121-A
5201 Fen Oak Drive, Madison, WI 53718

Attendees

Bruce Keyes	Foley & Lardner
Art Harrington	Godfrey & Kahn
Karen Dettmer	City of Milwaukee
Dave Misky	City of Milwaukee
John Stibal	City of West Allis
John Antaramian	ECC
Scott Wilson	Ayres Associates, Inc.
Ben Gramling	16 th Street Community Health Centers
Dan Kolberg	DNR
Eric Bott	WMC
Christine Haag	DNR
Michael Prager	DNR
Mark Thimke	Foley & Lardner
Darsi Foss	DNR
Mick Skwarok	DNR
Roy Wittenberg	Natural Resource Technology
Barry Ashenfelter	DNR
Gena Larson	DNR
Sonya Rowe	DNR
Jenna Soyer	DNR
Tom Coogan	DNR
Margaret Brunette	DNR
Jennifer Buzacky	White Hirschboeck Dudek
Frank Dombrowski	WE Energies
Tory Kress	City of Milwaukee
Mat Reimer	City of Milwaukee
Geoff Siemering	UW Soils Department

WELCOME & AGENDA REPAIR

Foss opened the meeting by expressing appreciation for the time BSG members and other have spent on the formation of these BSG issue papers. The BSG is an external/internal partnership that serves as a model for the rest of the Department.

PURPOSE OF MEETING

Foss explained that BSG subcommittee co-chairs will briefly present each draft issue paper. The purpose of this meeting is for BSG members and others present to provide substantive comments on these drafts.

Foss outlined the schedule for completion of the BSG report:

- By August 20th: Final issue papers due to state buddies (red-line)
- August 21-29: Edits for consistent voice, length, and appearance
- September 5: Next BSG meeting (support or dissenting opinions)
- September 19th: Letters of support/dissenting opinions due to buddies
- October: Subset of BSG meets with DNR Secretary on key recommendations
- December: Information-only presentation to Natural Resources Board
- January, 2015: Report issued and distributed

3rd party letters of support? If people / groups want to do that on a report basis or on the entire report, we'd accept those up to 9/19 for inclusion.

Is there a way to prioritize items of immediate action? Could subgroup items be interspersed? Some support for that. Darsi suggested a table of priority items. Also suggested to group by Type of Recommendation (legislative, etc.)

SUBGROUP: ECONOMIC IMPACT STUDY

Stibal: Report likely cost right around 50,000.

WEDA is the fiscal agent...WI Economic Development Institute is the private arm of WEDA and will be administering the project. Working on the RFP. Start the solicitation process very soon for the capital

Keyes: Public Policy Forum issuing study on Menomonee Valley Partnership in the fall.

SUBGROUP: LOCAL GOVERNMENT

G1: Provide an array of effective tools and a mutually agreeable process for transfer of tax delinquent brownfields from counties to municipalities.

Antaramian: Concerns on issue as written. Would like property cleaned up if city is going to take possession. Counties are getting too good a deal as proposed. Make the counties "whole," that's okay. But cities are picking up too much of the cost of cleanup. Prefers the current law.

Kolberg: At least 30 percent of Corp Counsels and Co Treasures don't like working within current statutory parameters.

Stibal: Refer issue back for clarification to the subgroup.

Foss: Maybe there's a hybrid option between this proposal and the current law.

G2: Clarify requirements for due diligence by exempt LGUs prior to redevelopment of brownfields for public use.

No comments on issue paper.

G3: Clarify definitions in ss. 66.0119, 75.06, and 75.377, Stats., to prevent environmental pollution, public health threats, waste and blight.

(Telephone) Bill Scott. Intent of legislature was clear, but has gaps. This fills in those gaps. Additions not outside original intended scope. Makes it easier for municipalities to get access to properties.

Dettmer: Also provides consistency in definition of pollution. Current statute doesn't cover waste.

G4: Allow counties to assign a deed in fee simple for a tax delinquent property to individuals under s. 75.14, Stats.

Kolberg: this was a previous proposal by the Group that didn't make it to legislature.

Foss: Are we saying that the county could give the city a property through this proposal? Can the county do *In Rem* and then flip it to the city...keeping out of the chain of title.

Thinke: Some outreach is needed to Corp Counsels on this.

Foss: We've been doing this, but we get stonewalled a lot.

SUBGROUP: TECHNICAL

T1: Negotiate waiver for EPA Deed Restriction requirement on sites listed in state GIS Registry

Foss: Recent discussions with EPA. EPA is willing to negotiate on recent sites and superfund alternatives. A draft list of sites is forthcoming.

Harrington: Will this be an MOU?

Dettmer: Should we include language that we negotiate with DOJ, too?

Foss: Incorporate "federally enforceable agreements."

T2: Improve and clarify process for management of building materials contaminated with PCBs under the One Cleanup Program.

Dettmer: Fortunate to have OCP with EPA. DNR recently updated guidance on the Program. When PCB material falls under several categories, how is it managed?

Foss: Gary Edelstein will get back to those who commented on the guidance. NR 718 allows RR jurisdiction for determining contaminated soil movement on the response site. RR and Waste could work with EPA on further guidance and coordinate, but not advisable to rework the OCP MOU. Provision in s. 292 for comfort letters from RR. Management of this material off-site is a Waste program issue.

Harrington: Would be really helpful to have a contact person on these issues to help navigate the intricacies of these situations.

T3: Provide guidance on urban agriculture best practices and application of regulatory standards.

Dettmer: Group dealt with question of “Will urban ag popularity become a brownfield problem?”

Foss: Should DHS be mentioned in here as a partner in making recommendations. Recognize that they play a role in helping to figure out this issue. Under “type of recommendation” mention that DNR work with DHS.

T4: Vapor intrusion

Dettmer: VI is new and confusing. Some confusion over DNR regulations. What’s reportable. How is reportable. DNR staff have good ideas/information, but it’s not adequately shared at this time. Looking for clarification...guidance...consolidation of information and results (GIS)...BMPs needed. Optimistic that issues will be ironed out over the next few years.

Keyes: Closure issues. Based on 4 year old requirements? Or on current standards?

Foss: It’s what applicable at the time of closure. Work with the project manager on requirements. Site by site basis is probably the way to go.

Harrington: Did group consider/explore inconsistencies between EPA and DNR?

Dettmer: DNR looks to be more inclusive. No recommendation to make it more consistent.

T5: Background levels of contaminants (PAHs, lead, etc.)

Wilson: Looking for DNR to provide clarity and guidance on the issue.

Foss: Would group consider adding that DNR did a background arsenic study?

Coogan: Arsenic survey took 7 years and \$250,000. Contracted with USGS to do the study. Coogan will provide cost break-down to Scott for inclusion in the report.

Foss: Identify priority compounds since it’s a lengthy, costly process.

Thimke: There are already databases available.

Harrington: A host of sub-issues here based on naturally occurring contaminants versus man-made.

Foss: Give us clear direction on how you’d like DNR to do this. Contaminants. Locations. Natural or man-made.

T6: Low hazard exemptions

Foss: Update...several weeks ago, the waste program sent out some guidance for 21 day public review. RR will be sending something out soon to clarify the RR program jurisdictions under NR 718. Clarify exemptions. And a 3rd guidance on how RR and Waste are to work

together on these issues. Judy Fassbender to send out ready documents/guidance in the next few weeks to BSG members.

Foss: Group might want to look at quarry issues and the record-keeping – lack of – of what is ending up in those properties.

SUBGROUP: FINANCIAL

F1: Inefficient BID regulations

No comments

F2: Brownfield grants to local governments

Wilson: Why twice a year applications versus open application period.

Antaramian: Staffing issues sort of driving this. Easier for staff to know when the applications will come in.

Harrington: There should be a requirement for grant recipients to track and report on project outcomes.

Haag: EPA Brownfields grant recipients are required to report project outcomes in EPA's ACRES system (e.g. change in property value, jobs created, public space created, acres cleaned up, etc.) We could collect similar information.

Stibal: This would be worthwhile information. We should include both economic and quality of life data (e.g. acres cleaned up, public access and open space).

F3: Environmental management account structural deficit

No comments. Just making the state aware of a problem.

F4: Remediation and redevelopment tools

Antaramian: "PACE" proposal. Asking everyone to be sure that they review the proposal. Wants be sure that everyone is on board.

F5: Simplify environmental remediation tax incremental financing districts (ER TIFs)

Antaramian: 10-15 communities using ER TIFs. Proposal takes the best part of TIFs and adds the ER component to it.

Prager: Did DOR weigh in on this?

Antaramian: DOR might like it, but hasn't gone through administrative review.

Ashenfelter: Legislature has a special committee reviewing TIFs.

F6: Brownfield funding options for local governments

SUBGROUP: LIABILITY

L1: Private cost recovery action

Foss: Are there local government cause of action safeguards?

Thimke: Existing exemptions maintained.

Harrington: Should old industrial owners be responsible to cleanup to new residential standards?

Frank: Can you address the “proportionality” issue?

Eric Bott: This could be controversial and draw opposition from industry.

L2: Innovative air/brownfields program

Thimke: Meld Air and Brownfields together to promote new manufacturing in the state. Encourage people to build on brownfields. Incentives to deal with contamination issues. This encourages a look at air standards in a similar way.

Bott: Have you considered funding sources?

Thimke: Not yet.

Foss: By end of August, discuss this with the Air program. Prager to arrange a meeting with the Program and with interested BSG members (Thimke/Bott?)

L3: Lender liability re: Wis. Stat. 292.21

Thimke: This issue paper is probably going to take some additional work. Need to reach out (more) to lender industry. 90s statutes based on those old lending structures trying to address current issues. Lending practices have changed. Need to update the statute.

Foss: DOJ concerned about under-funded LLCs.

Thimke: There are legitimate LLCs and there are some with the wrong intent.

Keyes: Non-traditional lenders not represented by banking organizations and we need to do a better job of reaching out to them and understanding them.

Kolberg: We’ve trying for years to reach out to lender groups and having these conversations. Hard groups to engage en masse. DNR would appreciate ideas and suggestions.

L4: Clarifying off-site liability exemption for vapor intrusion

Foss: Not an exemption from reporting. Just liability.

Dettmer: Do you need to identify an RP?

Thimke: No.

L5: “VPLE property” and redevelopment issues prior to issuance of a CoC

Foss: Are these administrative? We should sit down with our lawyer to find an easy, administrative way to accomplish this...versus a legislative fix.

Foss: This probably won't be just a VPLE issue.

Keyes: This might create an opportunity for abuse that wouldn't otherwise be there.

Thimke: Limitations Paper coming. Michael Prager will follow-up.

SUBGROUP: WATERFRONT

W1: Regulatory process – Internal DNR coordination

No comments

W2: Regulatory process – Outreach and Communication

No comments

W3: Regulatory process – Legislative direction to create a waterfront program

Keyes: This one is a “Think Big” issue. Similar to some other Great Lakes states legislation.

W4: Regulatory process – Geographic information system resources

No comments

W5: Public trust doctrine

Foss: Water program may not have resources to do some of this. You might consider putting some program revenue in place to try to accomplish this. Federal resources may not allow for much of this. People and funding source needed.

W6: Sustainable urban waterfront revitalization team (SUWR)

No comments

W7: Aging infrastructure – Clarify cross-program issues on dams

No comments

W8: Aging infrastructure – Coordination with Army Corps of Engineers

No comments

W9: Aging infrastructure – Consistent direction on seawalls and structures

No comments

W10: Aging infrastructure – Protecting public capital investment

Wilson: In general...how do some of these relate to brownfields? Dams, for example. Don't disagree...just curious.

Misky: Felt like some of these are protective of soil / water interfaces.

Keys: Waterfronts were some of the earliest developed areas, with manufacturing and industry associated.

Foss: Baraboo is a good example...redevelopment along the river, included some dam removal.

Dettmer: Add some language to these issues to explain why this is a BSG issue. Or maybe just add this language to the beginning of a Waterfront section.

Gramling: Other agencies here? Floodplain issues? FEMA involvement?

SUBGROUP: SEDIMENTS

Foss: Monetary and big ticket items. A small group met with the Water program to go over these issues. This might be a long process. An internal RR/Integrated Sediment Team meeting to combine priorities. Will come back to the BSG sediment folks with results of that meeting. The DNR sediment program is interested in working on these issues with BSG.

Thimke: Some in the regulated community are frustrated with DNR sediment program and inconsistent application of regulations.

Foss: September 23 is meeting date with sediment program. Lots of administrative recommendations on how to address sediment issues.

Thimke: Concerned that the issue is not moving forward. Integrated Sediment Team is stalled.

Foss: The sediment subgroup should put together a timeframe/timeline for the Report so that there are benchmarks to meet. Darsi, Christine, Prager will meet to develop this.

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TO DO ITEMS

1. Foss: The sediment subgroup should put together a timeframe/timeline for the Report so that there are benchmarks to meet. Darsi, Christine, Prager will meet to develop this.
2. Judy Fassbender to send out ready documents/guidance in the next few weeks to BSG members.
3. DNR-based matrix of priorities / find a logical way to organize materials
4. Prager to distribute the missing Liability Issue piece.

5. Prager to arrange a meeting on Issue L2 with the Air Program and with interested BSG members (Thimke/Bott?)
6. Secretary's schedule for a face to face meeting (1 hour). Need volunteers from BSG.
7. Volunteers for December NRB schedule for an Information Only presentation