



**Wisconsin Brownfields Assessment
Environmental Law Institute
(September 20, 2010 Discussion Draft)**

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I. EXECUTIVE SUMMARY

Wisconsin’s brownfields cleanup and redevelopment program has been very effective and has given rise to model area-wide initiatives. The following is a brief assessment of the program, including factors identified as central to Wisconsin’s achievements and recommendations for improvement. Some of the preliminary findings include:

- Wisconsin has developed an extremely well-coordinated redevelopment program. For small and large efforts alike, city, state, federal, and private parties work together to plan



and mobilize resources. The Wisconsin Department of Natural Resources (WDNR) and the Brownfields Study Group play a coordinating role. There may be room to institutionalize this coordination.

- The Wisconsin financial resources guide enables project proponents to piece together necessary financial resources to support the entire remediation and/or redevelopment process. The guide includes numerous programs, grants, loans, loan guarantees, and tax credits offered directly by the Wisconsin Department of Natural Resources and Department of Commerce, as well as various other state and federal agencies.
- Wisconsin's brownfields efforts are seamlessly integrated into the greater Wisconsin redevelopment program. This integration includes petroleum brownfields. There is ample information readily available on the WDNR website, including program details, guidance, and success stories that illustrate the types of projects that could be undertaken. In addition, the program staff make consistent efforts to encourage developers to contact them early and often throughout the redevelopment process.
- The Wisconsin financial resources guide enables project proponents to piece together necessary financial resources to support the entire remediation and/or redevelopment process. The guide includes numerous programs, grants, loans, loan guarantees, and tax credits offered directly by WDNR and the Wisconsin Department of Commerce (Commerce), as well as federal resources. Together with the readily available advice from the state redevelopment staff, it is relatively easy for both new and seasoned parties to access resources for remediation and redevelopment.
- Wisconsin's redevelopment program has been very successful. The program could benefit from increased communication about the benefits of its work. For example, data on the number of jobs and businesses and growth in tax bases could help increase communities' support for ongoing and future projects, and alleviate remaining stigma.
- The Menomonee Valley and the 30th Street Industrial Corridor are both examples of area-wide projects that have diverse partnerships that are able to access a variety of assistance programs to achieve broad-spectrum results.

II. THE PROGRAM

1) [Program Overview](#)

a. [Brief History and Legal Foundations](#)

In 1994, Wisconsin passed the Land Recycling Law. The first Wisconsin legislation to address brownfields, the law clarified assessment and cleanup liability for lenders, municipalities, and purchasers that met eligibility requirements. The second set of initiatives related to brownfields was implemented as part of its 1997-1999 biennial budget. The budget included incentives to expand the efforts begun in 1994, including the creation of the Commerce Brownfields Grant Program. It also established the Brownfields Study Group, which strives to help direct how brownfields are handled in the state. The Study Group makes recommendations to the state



legislature for improving program components such as financial resources and liability coverage.¹

The WDNR Remediation and Redevelopment Program (RR Program) provides oversight and project assistance, sometimes for a fee, and can provide redevelopment assistance upon request.² In addition, the RR Program notifies responsible parties or property owners when they are required to take action. If the party does not move forward in a timely manner, the RR Program has enforcement authority.³ Whether the cleanup is mandatory or voluntary, Wisc. Admin. Code, Natural Resources, Chapter 700 provides the detailed regulations for parties to follow.⁴

Chapter 292 of the Wisconsin Statutes governs contamination remediation. Among other things, it defines party responsibility, agency authority regarding environmental insurance, and availability of liability determinations, as well as the brownfields revolving loan program, brownfields site assessment grants, and brownfields green space grants. Chapter 75 of the Wisconsin Statutes contains some of the relevant tax incentives, including the tax cancellation incentive, foreclosure liability incentive, and tax deed liability incentive. The Department of Commerce's brownfields grants program is outlined in Chapter 560.

b. Program Elements

The Department of Natural Resources Remediation and Redevelopment Program (RR Program) is one component of the Wisconsin Brownfields Initiative. The RR Program oversees and assists with the investigation, cleanup, and redevelopment of contaminated properties in the state through the Wisconsin Brownfields Initiative. The program integrates state and federal efforts through a One Cleanup Program MOA with US EPA.⁵ It addresses contaminated properties, brownfields, new and historic spills, LUSTs, hazardous waste sites, Superfund sites, and closed solid waste landfills. Responsible parties, site owners, and affected third parties may all seek program assistance. The RR Program has issued approximately 22,000 no further action ("close out") letters, and estimates that there are 13,000 contaminated sites remaining – 8,000 of which are brownfields.⁶

Definition of a brownfield

The definition of brownfields used by the State of Wisconsin is:

¹ WI DNR, "Brownfields: Redeveloping Contaminated Property," <http://dnr.wi.gov/org/aw/rr/rbrownfields/index.htm> (last visited Apr. 27, 2010).

² Available assistance includes technical assistance letters, off-site letters, lease liability letters, lender liability letters, general liability clarification letters, negotiated agreements, voluntary party liability exemptions including certification of completions, local government liability exemptions, eligibility letters for the federal brownfields tax incentives, environmental insurance, funding assistance, and green team meetings. WI DNR, "Wisconsin's Remediation and Redevelopment Program – A National Model," <http://dnr.wi.gov/org/aw/rr/cleanup/model.htm> (last visited Apr. 27, 2010).

³ Wis. Stats. 292.11(7) (hazardous substance spills).

⁴ WI DNR, "Wisconsin's Remediation and Redevelopment Program – A National Model," <http://dnr.wi.gov/org/aw/rr/cleanup/model.htm> (last visited Apr. 27, 2010).

⁵ See MOA, WI DNR, "One Cleanup Program," <http://dnr.wi.gov/org/aw/rr/cleanup/ocp.htm> (last visited Apr. 27, 2010).

⁶ WI DNR, "Wisconsin's Remediation and Redevelopment Program – A National Model," <http://dnr.wi.gov/org/aw/rr/cleanup/model.htm> (last visited Apr. 27, 2010).



abandoned, idle or underused industrial or commercial facilities or sites, the expansion or redevelopment of which is adversely affected by actual or perceived environmental contamination.⁷

The WDNR's Remediation and Redevelopment Program explains that brownfields vary in size, location, age, and past use -- they can be anything from a five-hundred acre automobile assembly plant to a small, abandoned corner gas station. The definition of brownfields redevelopment is:

any work or undertaking by a person to acquire a brownfields facility or site and to raze, demolish, remove, reconstruct, renovate, or rehabilitate the facility or existing buildings, structures, or other improvements at the site for the purpose of promoting the use of the facility or site for commercial, industrial, or other purposes. 'Brownfields redevelopment' does not include construction of new facilities on the site for any purpose other than environmental remediation activities.⁸

WDNR points out that brownfields present "public health, economic, environmental and social challenges" to the rural and urban communities in which they exist. To note, the definition is limited to commercial and industrial properties, without explicitly mentioning residential sites.⁹

Brownfields Study Group

As mentioned previously, the Brownfields Study Group was created in 1998 by Wisconsin's Governor and state legislature to evaluate Wisconsin's current brownfields initiatives and to recommend improvements. The Brownfields Study Group consists of state and local officials, private parties, consultants, environmental lawyers, and academics who help determine the direction of state brownfields cleanup and redevelopment. The Study Group is a key Wisconsin innovation that has been the catalyst for numerous programmatic improvements over the years.¹⁰

Brownfield Site Assessment Grants

The Brownfield Site Assessment Grant (SAG) program replaced the federal Brownfields Environmental Assessment Program, which conducted its last assessment in 2000. The program provides local authorities with grants to investigate sites for which the party responsible for the contamination is unknown, cannot be located, or financially incapable of funding the process are

⁷WI DNR, "Brownfields: Redeveloping Contaminated Property," <http://www.dnr.state.wi.us/org/aw/rr/rbrownfields> (last visited Apr. 27, 2010). ⁷ Wis. Stats. 560.13(1)(a) (brownfields)

⁸ *Id.* (1)(b).

⁹WDNR, "Brownfields: Redeveloping Contaminated Property," <http://www.dnr.state.wi.us/org/aw/rr/rbrownfields> (last visited Apr. 27, 2010).

¹⁰ For more information on the Study Group, see WDNR, "Brownfields Study Group," <http://dnr.wi.gov/org/aw/rr/rbrownfields/bsg/index.htm#2010> (last visited May 11, 2010).



eligible.¹¹ Eligible grant activities include Phase I and II site assessments, site investigations, demolition (and associated asbestos removal), and removing underground hazardous substance storage and/or petroleum; it does not encompass any cleanup activities. “Local government units” include cities, villages, towns, counties, redevelopment authorities, community development authorities, and housing authorities. However, the local government cannot have caused the contamination – only sites where the party responsible for the contamination is unknown, cannot be located, or financially incapable of funding the process are eligible.¹² It is also important to note that the Wisconsin definition of brownfields includes “industrial or commercial facilities or sites” – there is no mention of residential properties that may similarly be abandoned, idle, or underused due to actual or perceived contamination.¹³

Urban Reinvestment Initiative

The Urban Reinvestment Initiative was established by the Wisconsin Governor in 2005, as part of a package of legislation and executive orders aimed at safeguarding Wisconsin’s environment. It focuses on cleaning up economically and environmentally distressed urban neighborhoods. Concerns about liability for potentially contaminated sites can hinder urban redevelopment. Therefore, the Initiative commits state agencies to partner with local governments to facilitate the identification, remediation, and redevelopment of urban brownfields.

One of the first areas considered by the Initiative was the 30th Street Industrial Corridor in Milwaukee. DNR and the 30th Street Industrial Corridor Corporation have received a \$200,000 brownfield site assessment grant for hazardous substances, a \$200,000 brownfield site assessment grant for petroleum substances, and most recently a \$400,000 continuing site assessment grant from the US EPA for the corridor.¹⁴ Sites in this corridor are currently in the process of being remediated and progress is underway. In 2009, the EPA chose this area as an Environmental Justice Showcase Community. WDNR staff are working with EPA and City of Milwaukee staff to implement the goals of the Showcase program.¹⁵

Blight Elimination & Brownfield Redevelopment Program

Commerce administers a separate set of brownfield remediation grants through the Blight Elimination and Brownfield Redevelopment Program (BEBR). The grants cannot be used for Phase I and II environmental assessments, and are instead focused on remediation and redevelopment activities.¹⁶ Grants are limited at \$1.25 million, and they require a 20-50% match.¹⁷ The program generally receives \$7.5 million in state and federal funds annually.¹⁸

¹¹ Wis. Stats. 292.75(2)(b)-(c), Wis. Admin. Code NR 168.05 ; Wis. Stats. 292.75(7).

¹² Wis. Stats. 292.75(2)(b)-(c); Wis. Admin. Code NR 168.05.

¹³ See, e.g., Wis. Stats. 292.75(1)(a).

¹⁴ WI DNR, “Milwaukee’s 30th Street Industrial Corridor Project,” <http://dnr.wi.gov/org/aw/rr/rbrownfields/corridor.htm/> (last visited Apr. 27, 2010).

¹⁵ Wis. Stats. 292.75(1)(b), (3).

¹⁶ Wis. Admin. Code Comm. 110.07.

¹⁷ Wis. Stats. 560.1213(2)(b)(2).

¹⁸ WI Dept. of Commerce, “The Blight Elimination and Brownfields Redevelopment Program (BEBR),” <http://commerce.wi.gov/CD/CD-bfi-grants.html> (last visited Apr. 27, 2010).



Eligible parties include local governments, businesses, and individuals. As with the Site Assessment Grants for local governments, the grants are for sites with no responsible party.¹⁹ When applying for a BEBR grant, “[a] redevelopment plan that promotes economic development and has a positive effect on the environment is an essential element.”²⁰ The promotion of economic development is weighted 50%, while beneficial environmental impacts accounts for 25% of the decision; other evaluation criteria include the amount and quality of the applicant’s contribution to the project (15%) and how innovative the proposal is (10%).²¹

*Brownfield Green Space and Public Facilities Grants*²²

Administered by WDNR, Brownfield Green Space and Public Facilities Grants provide resources to local governments for remediation and redevelopment of sites with no responsible party, for uses that are of long-term public benefit.²³ Eligibility requirements include (i) an end use with long-term public benefit (proven by a 20-year deed restriction), (ii) the completion of Phase I and II environmental assessments with a remedial plan that has been approved by DNR, and (iii) proof of legal access to and control over the site.²⁴

The grants are limited to \$200,000, which can cover the costs of remediation activities, labor, handling of materials, equipment and facilities, professional services, and developing a remediation plan; it cannot cover the costs of Phase I and II environmental assessment, legal fees, licenses and applications, and demolitions.²⁵ In addition, depending on the size of the grant, a 20-50% match is required.

Ready for Reuse Loan and Grant Program

Administered by WDNR’s Remediation and Redevelopment Program, the Ready for Reuse Loan and Grant Program has been made possible through Recovery Act funding to WDNR’s Brownfield Revolving Loan Fund.²⁶ The program provides “hazardous substance (non-petroleum) cleanup funds for brownfields” and therefore helps non-profit organizations and local governments cleanup contamination at these sites.²⁷ Eligible uses for funding include cleanup actions, preparation and finalization of a Remedial Action Plan, demolition or site preparation,

¹⁹ Wis. Stats. 560.1213(2)(a)(2); Wis. Admin. Code Comm. 110.04.

²⁰ WI Dept. of Commerce, ‘Blight Elimination and Brownfields Redevelopment Program (BEBR),’ *supra* note 18.

²¹ Wis. Stats. 560.12(3).

²² This program has not been funded in recent budget years.

²³ WI DNR, “Brownfield Green Space and Public Facilities Grant,” http://dnr.wi.gov/org/aw/rr/rbrownfields/greenspace_grant.htm (last visited Apr. 27, 2010). NR 173.03(5) states that an eligible project refers to the remediation and redevelopment of an eligible site or facility that has a long-term public benefit, including the preservation of green space, the development of recreational areas, or the use of a property by the local government.

²⁴ *Id.* Wis. Admin. Code NR 173.1705(1.), 173.13.

²⁵ *Id.* 173.13.

²⁶ WDNR, “2009 Recovery Act Ready for Reuse Program,” <http://dnr.wi.gov/org/aw/rr/archives/pubs/RR821.pdf> (last visited Sept. 17, 2010).

²⁷ *id.*



asbestos abatement or lead mitigation costs, short-term site monitoring, environmental consulting fees, and public participation costs.²⁸

Applicants for Ready for Reuse loans and grants must be eligible governmental entities (e.g. county, city, town, or village governments), tribes, or eligible non-profit organizations. In order to be eligible, sites must meet the federal definition of eligible brownfield. The maximum amount of grant money a site can receive is \$200,000 per site.²⁹ Loans are without interest, and are intended for long-term projects.³⁰ Loan and grant applicants are required to provide at least a 22 percent match contribution, which can come from other state or local grants.³¹

Wisconsin Plant Recovery Initiative

The Wisconsin Plant Recovery Initiative is a new program administered by WDNR. It was created in response to the large number of business and plant closings in recent history in Wisconsin. The purpose of the initiative is to “help communities expedite the cleanup and revitalization of industrial and/or commercial facilities that have recently shut their doors.”³² Business and plant closings often leave real or perceived environmental contamination in their wake. However, it is possible to facilitate “the return of these facilities to productive use and encourage economic revitalization” through cleanup and redevelopment.³³

WPRI offers a number of cleanup and redevelopment tools, including: WDNR staff assistance, emergency assistance, \$1 million through WPRI Assessment Monies for the assessment of closing or closed plants, liability exemptions, and technical oversight.³⁴ WDNR offers to engage companies in dialogue around environmental and financial concerns.

2) Program Partners

a. State government

WDNR and Commerce are the lead state agencies addressing the environmental component of brownfields in Wisconsin. WDNR’s RR Program oversees property cleanups and redevelopment, streamlining and consolidating state and federal cleanups (e.g. hazardous waste cleanup, underground storage tank investigation and cleanup, spill response, state-funded cleanups and brownfields) into a single program.³⁵ The RR Program also includes Wisconsin’s Initiative for Sustainable Cleanups (WISC), which “emphasizes the applicability of sustainable

²⁸ id

²⁹ WDNR, “Wisconsin Ready for Reuse Program: Hazardous Substance Loan & Grants,” <http://dnr.wi.gov/org/aw/rr/archives/pubs/RR753.pdf>.

³⁰ id

³¹ id

³² WDNR, “Wisconsin Plant Recovery Initiative,” <http://dnr.wi.gov/org/aw/rr/rbrownfields/wpri.htm>.

³³ id

³⁴ id

³⁵ id WDNR, “Remediation and Redevelopment Program,” <http://dnr.wi.gov/org/aw/rr/index.htm> (last visited Apr. 27, 2010).



technologies in site remediation” and promotes saving energy, reducing greenhouse gases, and minimizing waste through reuse and recycling.³⁶

According to the RR Program, local, state, and national interest in cleaning up and restoring brownfields to productive use has “transformed this environmental issue into a major public policy initiative” at the national, state, and local levels.³⁷ The State’s extensive programs on brownfields and redevelopment offer a great resource for this interest. Numerous funding opportunities are available to help restore existing brownfields – taking the form of grants, loans, and tax incentives, administered mainly through WDNR and Commerce.

WDNR’s and Commerce’s responsibilities are distinct from one another.³⁸ Commerce administers brownfields grants and remediation tax credits, and oversees low-to-medium risk petroleum sites. WDNR oversees site investigation and remediation of high priority petroleum sites, administers brownfields grants and loans, provides liability relief and insurance coverage, and coordinates the Brownfields Study Group.³⁹

This shared administrative authority began in December 1999, at which point the charge of a subset of LUST sites was transferred from DNR to Commerce.⁴⁰ Since the start of this new arrangement, DNR is specifically responsible for:

- 1) “establishing investigation and remedial action requirements for contamination in the NR 700 series of environmental rules”, and
- 2) “oversight of cleanups at petroleum tank discharges that include high risk factors.” Examples of high risk factors include “confirmed contamination in a water supply well above an NR 140 preventive action limit”, or “confirmed free petroleum product with a thickness of .01 feet or more.”

Meanwhile Commerce is responsible for:

- 1) “tank standards for both underground and aboveground tank systems”,
- 2) “Wisconsin’s tank registration database”,
- 3) “Wisconsin’s fund for reimbursement of environmental cleanup costs”, and
- 4) “oversight of cleanups at petroleum tank discharges that do not include high risk factors.”⁴¹

There are many other state agencies involved in redevelopment activities:

³⁶ WI DNR, “Wisconsin’s Initiative for Sustainable Cleanups (WISC),” <http://dnr.wi.gov/org/aw/rr/cleanup/wisc.htm> (last visited Apr. 27, 2010).

³⁷ WI DNR, “Brownfields: Redeveloping Contaminated Property,” <http://www.dnr.state.wi.us/org/aw/rr/brownfields/> (last visited Apr. 27, 2010).

³⁸ WI DNR, “Petroleum – Underground Storage Tanks (UST) and Leaking Underground Storage Tanks (LUST),” <http://www.dnr.state.wi.us/org/aw/rr/cleanup/petro.htm> (last visited Apr. 27, 2010).

³⁹ WDNR, Wisconsin’s Brownfields Initiative: 2006 Report to the Wisconsin State Legislature (2006), available at <http://dnr.wi.gov/org/aw/rr/archives/pubs/RR847.pdf>, at 2-3.

⁴⁰ Theresa Evanson *et. al*, Wisconsin Closure Protocol Study: A Retrospective Study of LUST Site Closures between 1999 and 2000 (2009), available at <http://www.dnr.state.wi.us/org/aw/rr/archives/pubs/RR805.pdf>.

⁴¹ *Id.*



- *Wisconsin Department of Administration* – administration of coastal management grants for brownfield sites to various parties; also provides funding to communities for developing the economic components to comprehensive planning grants;
- *Wisconsin Department of Agriculture, Trade and Consumer Protection* – coordination of brownfield issues at agricultural-related contaminated properties;
- *Wisconsin Department of Health and Family Services* – advises on environmental and public health-related issues at brownfield properties at the state and local level;
- *Wisconsin Department of Revenue* – administration of Environmental Remediation Tax Incremental Districts (ERTID) and Tax Incremental Districts (TIDs) that involve redevelopment of brownfields; and
- *Wisconsin Department of Transportation* – coordination of brownfield issues at transportation-related contaminated properties; administration of transportation-related funding for brownfield sites to various parties.”⁴²

b. Local government

Many local governments play significant roles in the redevelopment process, including providing funds and even acting as the developer, though there is no institutionalized role for local governments in the redevelopment process. The City of Milwaukee Brownfield Program has secured over \$24 million in federal and state grant funding since around 2000. The \$8 million Revolving Loan Program is sustainable because the principal is revolved but the interest on the loans is used for administrative costs. In regard to the city acting as the developer, the City of Milwaukee acquires numerous brownfields every year, from small ¼-acre parcels to large industrial lands of 84 and 133 acres. Beyond community interest and motivation, the city engages in redevelopment to create jobs, increase the tax base, and eliminate blight, among other public benefits. Most larger communities in Wisconsin have an economic development program in their government that has a brownfield program.

c. Federal government

There are numerous federal agencies that provide support for redevelopment in Wisconsin:

- US Environmental Protection Agency
- US Department of Housing and Urban Development
- US Small Business Administration
- US Department of Treasury
- US Department of Transportation
- US Department of Agriculture
- US National Park Service
- US Department of Commerce

⁴² WI DNR, *Wisconsin's Brownfields Initiative: 2006 Report to the Wisconsin State Legislature (2006)*, available at <http://dnr.wi.gov/org/aw/rr/archives/pubs/RR847.pdf>, at 2-3.



d. Public-private partnerships

Several area-wide projects in Wisconsin have benefited from the establishment of public-private partnerships that provide direction, strategy, and support. These include:

- The 30th Street Industrial Corridor Corporation
- Menomonee Valley Partners, Inc.

Other partnerships include:

- Prairie du Chien Industrial Development Corporation
- Future Neenah, Inc.
- Walnut Way Conservation Corp

e. Private parties (developers, community-based organizations, nonprofits)

Private parties are often involved in public-private redevelopment partnerships (see above), and communities are often credited with creating interest in particular projects. The RR program's progressive liability protections also encourage entirely private projects. There is no specific institutionalized process for encouraging stakeholder participation in the redevelopment process, such as during site selection and project design. The Wisconsin program could benefit from the establishment of stronger public participation processes, to ensure all voices in the community have the opportunity to be heard.

3) Program Effectiveness

a. Baseline information on brownfields, petroleum brownfields, and vacant properties

Brownfields

The WDNR RR Program website notes that there are over 13,000 contaminated properties in need of cleanup in Wisconsin – 8-10,000 of which are considered brownfields.⁴³ A different page from the Wisconsin DNR's Remediation and Redevelopment Program website states that there are approximately 10,000 brownfields in Wisconsin. Many sites contaminated with hazardous substances are assumed to be undiscovered, and therefore numbers are often estimated. The 2006 Annual Report from WDNR's Air and Waste Division estimates that approximately 2,600 brownfields requiring action remain undiscovered.⁴⁴

Contaminated properties

⁴³ WI DNR, "Wisconsin's Remediation and Redevelopment Program – A National Model," <http://www.dnr.state.wi.us/org/aw/rr/cleanup/model.htm> (last visited Apr. 27, 2010).) (estimating 8,000 brownfields); WDNR, "Brownfields: Redeveloping Contaminated Property," <http://www.dnr.state.wi.us/org/aw/rr/brownfields> (last visited Apr. 27, 2010) (estimating 10,000 brownfields).

⁴⁴ *Id.*



A 2006 report to the Wisconsin legislature reported the total number of contaminated properties as 5,618 which the remediation is not yet completed – of which 3,025 were petroleum and 2,593 were non-petroleum. Of the 18,585 sites that had been “closed” by then, 15,221 were petroleum and 3,364 were non-petroleum sites.⁴⁵

LUST/UST sites

As of September 30, 2009, the US EPA reported that Wisconsin had 14,920 active USTs, 18,801 confirmed LUST releases, 16,592 completed LUST cleanups, and 2,209 cleanups in backlog to be completed.⁴⁶ There are over 100,000 sites in Wisconsin which historically have had underground petroleum storage tanks – more than 21,300 of which have leaked petroleum into the underlying soil and groundwater.⁴⁷ According to WDNR’s Bureau for Remediation and Redevelopment Tracking System (BRRTS), Wisconsin currently has 2,041 open or conditionally-closed LUST sites and 17,705 closed LUST sites.⁴⁸

Vacant properties

[Seeking information]

| Brownfields | | | |
|--|---------------------------|---|---------------------------|
| Estimate 1 (DNR) | Estimate 2 (DNR) | Estimate of undiscovered brownfields (DNR) | |
| 8,000 | 10,000 | 2,600 | |
| Contaminated Properties | | | |
| | Petroleum | Non-petroleum | Total |
| Sites needing cleanup | 3,025 | 2,593 | 5,618 |
| Sites cleaned up* | 15,221 | 3,364 | 18,585 |
| * includes 66 properties will full liability release through voluntary cleanup | | | |
| LUST/UST | | | |
| Active USTs | Confirmed releases | Cleanups in backlog | Cleanups completed |

⁴⁵ WI DNR, “Wisconsin’s Brownfields Initiative: 2006 Report to the Wisconsin State Legislature” (2006), available at <http://dnr.wi.gov/org/aw/rr/archives/pubs/RR847.pdf>.

⁴⁶ US EPA, “UST/LUST Program Status in Wisconsin,” <http://www.epa.gov/swrust1/states/wi.htm> (last visited Apr. 27, 2010).

⁴⁷ Evanson, Theresa *et al*, “Wisconsin Closure Protocol Study: A Retrospective Study of LUST Site Closures between 1999 and 2000” (2009), available at <http://www.dnr.state.wi.us/org/aw/rr/archives/pubs/RR805.pdf>.

⁴⁸ WI DNR, “WDNR BRRTS on the Web,” <http://botw.dnr.state.wi.us/botw/SetUpBasicSearchForm.do> (last visited Apr. 27, 2010), Activity type “LUST” and change around status types. An *open site* is defined as “Spills, LUST, ERP, VPLE and Abandoned Container activities in need of cleanup or where cleanup is still underway.” A *conditionally-closed site* is defined as having “activities where investigation and cleanup of the contamination has been completed and the state has approved all cleanup actions.” A *closed site* is defined as having “activities where investigation and cleanup of the contamination has been completed and the state has approved all cleanup actions.” In all of these situations, the rules do not apply to “General Property” and “No Action Required by RR Program” activity types.



| | | | |
|--------------------------|--------|--------|-------|
| 14,920 | 18,801 | 16,592 | 2,209 |
| Vacant Properties | | | |
| | | | |

b. Information on redeveloped brownfields, petroleum brownfields, and vacant properties

[Seeking information]

III. PROGRAM COMPONENTS

1) Project Planning

a. Area-based approaches

Wisconsin does not have a specific policy relating to area-based approaches. However, successful public-private partnerships have formed to implement area-wide projects, such as the 30th Street Industrial Corridor and the Menomonee Valley. The state has been involved with and supported such projects. The statewide Sustainable Urban Development Zone (SUDZ) program deals with area-wide remediation and redevelopment. SUDZ is focused on certain geographic areas within Wisconsin, and seeks to “create a comprehensive set of financial incentives to promote the clean up and redevelopment of certain brownfields areas in a community.”⁴⁹ Initial target cities included Milwaukee and Oshkosh.

b. Infill policies (policies, resources, linkages to brownfields)

Infill development is addressed through the RR Program and other state-sponsored initiatives. For example of such an initiative is, the Urban Reinvestment Initiative which was launched by Governor Jim Doyle in 2005 as part of his *Conserve Wisconsin Plan*. The Urban Reinvestment Initiative “set as a state priority the cleanup of urban neighborhoods in economically and environmentally distressed areas.”⁵⁰ Acknowledging that “all too often urban redevelopment efforts stall due to fears of environmental contamination, liability issues, safety issues from dilapidated buildings, and lack of adequate space for new buildings,” the Governor suggested that an appropriate response would be a coordinated effort by “a multitude of public and private agencies, individuals and resources.”⁵¹ The first area targeted was Milwaukee’s 30th Street Industrial Corridor with the goal of assessing and cleaning up brownfields to remove health and environmental hazards.⁵² WDNR in partnership with the 30th Street Industrial Corridor Corporation and the Redevelopment Authority of the City of Milwaukee have received a \$200,000 brownfield site assessment grant for hazardous substances, a \$200,000 brownfield site

⁴⁹ Wernstedt, Kris & Robert Hersh (2003). “Brownfields Redevelopment in Wisconsin: Program, Citywide, and Site-Level Studies.” <http://www.cpeo.org/pubs/RFF-DP-03-53.pdf>.

⁵⁰ WI DNR, “Milwaukee’s 30th Street Industrial Corridor Project,” <http://dnr.wi.gov/org/aw/rr/rbrownfields/corridor.htm/> (last visited Apr. 27, 2010).

⁵¹ *Id.*

⁵² *Id.*



assessment grant for petroleum substances, and most recently a \$400,000 continuing site assessment grant from US EPA for the area.⁵³

The Wisconsin Comprehensive Planning Law, effective since 1999, requires public participation for local land use decisions.⁵⁴ Local communities are fully able to make their own decisions, but must develop a comprehensive plan that incorporates issues and opportunities; housing; transportation; utilities and community facilities; agricultural, natural and cultural resources; economic development; intergovernmental cooperation; land use; and implementation.⁵⁵

Another local initiative is the BUILD (Better Urban Infill Development) Program in Dane County, which includes Madison. BUILD seeks to plan and implement infill redevelopment through planning grants, education, and code reform. According to the Comprehensive Plan of a village within Dane County, BUILD projects are:

geared toward more efficient and effective utilization of existing infrastructure; encouraging the location of community services, jobs and shopping within neighborhoods; stabilization of neighborhoods, downtowns, and business districts; providing housing and jobs for low to moderate income people; promoting alternative transportation modes; and avoiding the pre-mature conversion of agricultural land.⁵⁶

BUILD's definition of infill development is: "the economic use of vacant land, or restoration or rehabilitation of existing structures or infrastructure, in already urbanized areas where water, sewer, and other public services are in place, that maintains the continuity of the original community fabric." From 1999 to 2006, a total of 66 BUILD grants – amounting to \$960,000 – were awarded to almost 30 municipalities seeking to plan infill redevelopment.⁵⁷

c. Reuse options and risk-based corrective action

The RR Program emphasizes consideration of end uses before engaging in remediation. It may be useful to develop a catalog of reuse options to broaden the spectrum of end uses parties consider. In October 2009 US EPA published a petroleum brownfields reuse options catalog, *Petroleum Brownfields: Selecting a Reuse Option*,⁵⁸ which provides a good model for a state-specific resource that emphasizes uses particularly suited to Wisconsin and/or specific areas within the state.

⁵³ WDNR, "Milwaukee's 30th Street Industrial Corridor Project," <http://dnr.wi.gov/org/aw/rr/rbrownfields/corridor.htm/> (last visited Apr. 27, 2010).

⁵⁴ Wisconsin Department of Administration (2010). "What is a Comprehensive Plan?" <http://www.doa.state.wi.us/category.asp?linkcatid=743&linkid=128&locid=9>.

⁵⁵ id.

⁵⁶ Village of Cottage Grove Comprehensive Plan, "Chapter 11: Implementation" (2009), available at http://www.village.cottage-grove.wi.us/master_plan/pdfs/master/page49.pdf.

⁵⁷ Dane County Planning and Development, "BUILD Grant Program," <http://www.co.dane.wi.us/PLANDEV/community/build/> (last visited Apr. 27, 2010).

⁵⁸ US EPA, *Petroleum Brownfields: Selecting a Reuse Option*, Doc. 510-R-09-004 (Oct. 2009).



Wisconsin has engaged in risk-based corrective action for many years. By the mid-1990s, the corrective action program had a system for classifying sites based on their threat to public health or the environment, which provided prescribed response actions and investigation protocols. After the relevant cleanup standard is identified, remediation goals and methods are determined, which can include both engineering and institutional controls. If monitoring data demonstrates that the remediation goals have been achieved, the site might then be eligible for closure.⁵⁹

2) Information Management

a. Inventories and alternative information sources

WDNR collates information about contaminated properties in the Bureau for Remediation and Redevelopment Tracking System (BRRTS). The information can be viewed online in either a text-based format, *BRRTS on the Web*, or a map-based format, the *RR Sites Map*.⁶⁰

The system is easy to navigate and provides both a visual overview of properties in the system and detailed site-specific information. The system includes information such as the site location, type of activity on the site, level of petroleum risk, what agency has jurisdiction, DNR funding assistance, contamination investigations and cleanups, and other actions taken on the site.

b. Benefits data collection and dissemination

On particular occasions Wisconsin has tabulated data on the benefits of redevelopment. For example, in the Wisconsin Brownfields Initiative 2006 Report to the State Legislature, Commerce estimated that its financial support for brownfield redevelopment projects would result in 5,860 new full-time jobs, taxable property value increases of \$210 million, and the cleanup and reuse of 1,350 acres. The Wisconsin Department of Transportation reported that five of its Transportation Economic Assistance Program grants involving brownfields development resulted in 1,953 direct and indirect jobs and \$112.75 million in private investment.⁶¹ However, there is no systematic process in place for collecting and disseminating such information. The redevelopment programs could benefit from an institutionalized process for collecting data on the benefits obtained through redevelopment and publicizing it to increase community support and momentum for future projects.

The Menomonee Valley Benchmarking Initiative (MVBI) is model that Wisconsin could use as a basis for an expanded monitoring and information dissemination strategy. MVBI is a partnership between the Sixteenth Street Community Health Center, the University of Wisconsin,

⁵⁹ See WDNR, RBCA Fact Sheet: Application of Risk-Based Corrective Action (RBCA) Procedures in Wisconsin (1996) (citing NR 140, 708, 710, 716, 720, 722, 724), available at <http://www.epa.gov/OUST/rbdm/wirbcafs.pdf>.

⁶⁰ WI DNR, "Welcome to the Bureau of for Remediation and Redevelopment Tracking System (BRRTS) on the Web," <http://dnr.wi.gov/org/aw/rr/brrts/index.htm> (last visited Apr. 27, 2010).

⁶¹ WI DNR, "Wisconsin's Brownfields Initiative: 2006 Report to the State Legislature" (2006), at 7, 12-13, available at <http://dnr.wi.gov/org/aw/rr/archives/pubs/RR847.pdf>.



Milwaukee Center for Urban Initiatives and Research, and other governmental and nongovernmental entities. The partnership identifies social, economic, and environmental indicators of the status of the Menomonee Valley, and uses benchmarks to periodically measure progress on individual issues towards the goal of improving the Valley. For example, employment benchmarks include employment levels in the Menomonee Valley, employment by business activity, income, residential location of Menomonee Valley employees, and provision of health insurance.⁶² This approach combines two important components of successful redevelopment efforts: monitoring progress and communicating success.

3) Legal Tools

a. Institutional controls (UECA, tracking, efficacy)

Wisconsin has not adopted the Uniform Environmental Covenants Act (UECA). However, institutional controls can be used in Wisconsin remediation projects, where they are often referred to as continuing obligations or land use controls. Before 2006, Wisconsin used deed restrictions to create residual contamination public records. However, experience found that deed restrictions could not always be implemented, could not always be found or understood, and could be impediments to property transactions.⁶³ In 2006, with the passage of state brownfields legislation, conditions in closure approval letters replaced deed restrictions as the method for recording and implementing institutional controls. Wisconsin considered implementing the UECA, but decided it did not cover all off-site impacts, cannot be scaled to minor impacts, and can make it hard to alter or remove controls once established.⁶⁴ Institutional controls, which run with the property pursuant to Wisconsin Statutes chapter 292.12, are now tracked in the GIS portion of the RR Program's on-line database called the Contaminated Lands Environmental Action Network (CLESN).⁶⁵

The GIS registry includes:

- Sites closed with groundwater use restrictions prior to November 2001;
- Sites closed with residual groundwater contamination since November 2001;
- Site closed with residual soil contamination since August 2002; and
- Sites closed with conditions of closure since June 2006.⁶⁶

Institutional controls are used primarily in three situations:

- When there is a requirement to maintain an engineering control;
- When a physical structure impeded full investigation, so additional investigation and/or cleanup will need to occur if the structure is removed; and

⁶² Menomonee Valley Benchmarking Initiative, "State of the Valley—Employment" (2003), available at <http://epic.cuir.uwm.edu/mvbi/pdfs/employment.pdf>

⁶³ WI DNR, Lessons Learned: Wisconsin's Evaluation of its Institutional Controls Program, EPA Grant RP00E48201 (Jan. 2010).

⁶⁴ WI DNR, "DNR Information on Contaminated Properties," *Presentation available at* <http://dnr.wi.gov/org/aw/rr/technical/info.pdf>

⁶⁵ *Id.*

⁶⁶ *Id.*



- When the state imposes other limitations and the property use later changes.⁶⁷

Since 2003, WDNR has conducted land use control (LUC) audits to ensure compliance with conditions that were part of the site closure. An audit includes (i) a review of the state's file, (ii) an interview with the site owner, (iii) a visit to the property, and (iv) a written summary of results.⁶⁸ In fiscal year 2008, WDNR completed 60 audits at randomly selected sites, which took an average of 16 hours each. WDNR took follow-up actions at 18% of the audited sites, such as requiring information about cap inspections and repairs.⁶⁹ As of August 2009, audits had been completed on 278 sites total; 41 required follow-up, 18 of which were brought back into compliance.⁷⁰

b. Liability protection (coverage, eligibility)

Parties causing, possessing, or controlling contamination – that is, the discharge of a hazardous substance – are required to report, investigate, and clean it up. DNR may, upon request, help parties determine their potential liability, and/or issue letters stating whether further action is required.⁷¹ WDNR typically charges a \$500 fee for liability determination letters.

There are four exemptions from liability:

- Local governments who “involuntarily” acquire (i.e. through tax foreclosure) contaminated property (no DNR determination letter required);
- Lenders may qualify if they are engaged in normal lending, acquiring foreclosed properties, inspecting properties, enforcing security interests, or acting as representatives;
- Third parties whose property was contaminated by a neighbors’; and
- Parties who enter into the Voluntary Party Liability Exemption (VPLE) process, whereby a responsible party can initiate the cleanup and thus ultimately obtain exemption from future liability.⁷² The VPLE process is described in-depth on the WDNR website.⁷³

Liability under Wisconsin law differs with that under federal law in that there is no bona fide prospective purchaser exemption under Wisconsin law.⁷⁴

c. Environmental insurance

⁶⁷ WI DNR, Lessons Learned: Wisconsin's Evaluation of its Institutional Controls Program, EPA Grant RP00E48201 (Jan. 2010).

⁶⁸ WI DNR, “CERCLA § 128(a) Grant Accomplishments, Report Period: Sept. 1, 2007 to Feb. 29, 2008,” available at <http://dnr.wi.gov/org/aw/rr/archives/pubs/RR844.pdf>.

⁶⁹ WI DNR, “CERCLA § 128(a) Grant Accomplishments, Report Period: Sept. 1, 2007 to Aug. 31, 2008,” available at <http://dnr.wi.gov/org/aw/rr/archives/pubs/RR845.pdf>.

⁷⁰ WI DNR, “CERCLA § 128(a) Grant Accomplishments, Report Period: Sept. 1, 2008 to Aug. 31, 2009,” available at <http://www.dnr.state.wi.us/ORG/aw/rr/archives/pubs/RR865.pdf>.

⁷¹ Wis. Stats. 292.55 (request for liability clarification and technical assistance).

⁷² Wis. Stats. 29211(9)(e); 292.15.

⁷³ WI DNR, “Voluntary Party Liability Exemption (VPLE),” <http://dnr.wi.gov/org/aw/rr/liability/vple.htm> (last visited Apr. 27, 2010).

⁷⁴ See WI DNR, “Environmental Liability,” <http://www.dnr.state.wi.us/org/aw/rr/liability/index.htm> (last visited Apr. 27, 2010).



Under the Wisconsin Brownfields Insurance program, WDNR was given the authority to, if it so chose, work with private insurers to make environmental insurance available to parties.⁷⁵ WDNR has selected Chartis Environmental as the program's insurance provider. Chartis offers a 10% discount on a brownfield insurance policy, Pollution Legal Liability Select, which is available to developers, businesses, and local governments, including those that entered into the VPLE process. WDNR pre-negotiated certain coverage enhancements for the policy, and there is also a streamlined underwriting and negotiation process.⁷⁶ Parties can apply after completing Phase I and II environmental assessments. It covers site investigation and cleanup, third-party claims, business interruptions, disposal site pollution, and material transportation costs.⁷⁷ Wisconsin also offers VPLE insurance. Eligible parties that conduct environmental investigations and cleanups can receive a certificate of completion, which will limit environmental liability in the future. Projects that plan to use natural attenuation are required to obtain environmental insurance through a state program to finance the cleanup of the site if natural attenuation fails. VPLE insurance can be used for this purpose.⁷⁸

d. Property holding measures and systems

Wisconsin has not established measures or systems for holding remediated properties until the market supports redevelopment. This could be a beneficial addition to the program in slow economic times, when there is a need to continue investigating and/or cleaning potentially contaminated properties but the market may not be ready for the remediated sites. Wisconsin's Community Development Authorities (CDAs) have been involved in redevelopment efforts – for example, the West Allis CDA and Neenah CDA – and may offer a possible platform for such a system.

e. Targeted foreclosure, eminent domain, and land use control authority

Wisconsin has an expedited process to transfer foreclosed properties to third parties. In 2000, the Wisconsin legislature passed Act 121, which allowed counties and the City of Milwaukee to transfer tax delinquent brownfields to a new owner for cleanup and redevelopment. The property is transferred during the court proceeding: once DNR receives the results of an environmental assessment, the county can assign its right to take judgment with respect to a foreclosed upon parcel. If there are hazardous substances on the property, the assignee must enter into an agreement with DNR to clean the parcel to the extent practicable and minimize any harmful effects. After the assignee completes a Phase II assessment and enters into a cleanup agreement, the new owner obtains fee simple title to the property. The foreclosure judgment itself typically removes most liens.⁷⁹

⁷⁵ Wis. Stats. 292.53 (availability of environmental insurance).

⁷⁶ Chartis Insurance, "Wisconsin Brownfields Insurance Program (WBIP)," http://www.chartisinsurance.com/us-wisconsin-brownfields-insurance-program_295_182030.html (last visited Apr. 27, 2010).

⁷⁷ WI DNR, Wisconsin Brownfields Insurance Program, <http://dnr.wi.gov/org/aw/rr/rbrownfields/wbip.htm> (last visited Apr. 27, 2010); Wis. Stats. 292.53.

⁷⁸ WI DNR, "Voluntary Party Cleanup," <http://dnr.wi.gov/org/aw/rr/liability/vple.htm>.

⁷⁹ 1999 Wisconsin Act 121, An act to create 75.106 of the statutes; relating to: assigning a judgment in a tax foreclosure action (enacted May 8, 2000).



At the local government level, Milwaukee is exploring innovative ways to not only address current brownfields, but to prevent the creation of new ones. The city is developing a Hazardous Sites Ordinance that will help preserve medium and large industrial land parcels by limiting uses that often create brownfields. The city has used land use policy to prevent certain uses, but an ordinance is required to deny land uses based on contamination. The idea is to create an additional layer of protection for non-brownfield sites, so as to restrict land uses that may create brownfields – such as automotive repair, gas stations, hazardous materials facilities, and material reclamation or recycling facilities – when there may be more appropriate locations.⁸⁰

4) Resources

a. Coordination of resources to support entire process

To make financial resources accessible and easily understood, the Wisconsin DNR publishes *The Financial Resource Guide for Cleanup and Redevelopment* - its ninth edition was published in 2009. This document provides an overview of the grants, reimbursement programs, loans/loan guarantee programs, and tax credits/incentives available within and outside the state.⁸¹ The resource contains easy-to-use tools such as a matrix of available funding that identifies which project stages the assistance can be used for. It is a user-friendly and comprehensive resource that can be helpful to those relatively new to the field while also providing detailed information for more advanced program participants. The guide is readily available on the WDNR website at <http://dnr.wi.gov/org/aw/rr/archives/pubs/RR539.pdf>.

Petroleum Brownfields

There are a number of media through which Wisconsin presents its information on petroleum brownfields. WDNR's Petroleum web page provides a useful overview of UST and LUST regulations, and leads to many other information-rich resources – including factsheets, tank regulations, and informative studies.⁸² One particularly comprehensive study is the April 2009 *Wisconsin Closure Protocol Study* by WDNR and several other partners. In addition to its overview of UST and LUST rules and an evaluation of methods for determining LUST site closure, it also includes 23 figures, 12 tables, and 12 appendices, and outlines other resources and materials provided by the state of Wisconsin.⁸³

There are several significant and publicly accessible internet resources as well, such as the DNR's Wisconsin GIS Registry (part of the Contaminated Lands Environmental Action

⁸⁰ See Karen Dettmer, City of Milwaukee, Policymaking for the Prevention of Brownfields (presentation Nov. 18, 2009) (on file with authors).

⁸¹ WI DNR and WI Dept. of Commerce, "The Financial Resource Guide for Cleanup and Redevelopment" (2009), available at <http://dnr.wi.gov/org/aw/rr/archives/pubs/RR539.pdf>.

⁸² WI DNR, "Petroleum – Underground Storage Tanks (UST) and Leaking Underground Storage Tanks (LUST)," <http://www.dnr.state.wi.us/org/aw/rr/cleanup/petro.htm> (last visited Apr. 27, 2010).

⁸³ Evanson, Theresa *et al.*, "Wisconsin Closure Protocol Study: A Retrospective Study of LUST Site Closures between 1999 and 2000" (2009), available at <http://www.dnr.state.wi.us/org/aw/rr/archives/pubs/RR805.pdf>.



Network, or CLEAN) – which includes at minimum all of the sites closed with a groundwater use restriction between November 1996 and November 2001.⁸⁴ And, as mentioned above, WDNR’s BRRTS is also part of CLEAN, and is a resource which contains site information and a record of agency actions at all contaminated sites in the state.⁸⁵ The “RR Sites Map” includes map locations and downloadable files on sites with contaminated soil and/or groundwater.⁸⁶ There are also several online sources available through Commerce, such as a database which maintains information on over 160,000 USTs in Wisconsin, and a Tracker website that includes information on claims and reimbursement awards for LUST cleanups.⁸⁷

For petroleum brownfields, readily available information covers topics including: UST and LUST regulations, methods for determining LUST site closure, site information, a record of agency actions at all contaminated sites in the state, and information on claims and reimbursement awards for LUST cleanups in the state.

b. Available resources (quantity, timeline, eligibility constraints)

There are grant opportunities through both the Department of Natural Resources and the Department of Commerce for helping local municipalities address brownfields and further redevelopment. *See Appendix A for a complete list of available financial resources.*

Funding from WDNR

WDNR offers a number of grants and other financial resources. The most significant grants issued by WDNR are the “Brownfield Site Assessment Grants for Local Governments” which can either be small (\$30,000 or less) or large (\$30,001 up to \$100,000). From 1999 to 2009, a total of 781 applications were received by WDNR, requesting a total of \$31.7 million. In response to these applications, 440 grants were funded for a total of \$15 million.⁸⁸ The Brownfield Site Assessment Grants for Local Governments help “local governments conduct initial activities and investigations of known or suspected environmentally contaminated property” and have \$1.7 million available each year.⁸⁹ These grants replaced the prior federal/WDNR Brownfield Environmental Assessment Grants program.

Other grant and loan programs through WDNR include the Brownfields Green Space and Public Facilities Grant Program⁹⁰ and the Dry Cleaner Environmental Response Fund.⁹¹

⁸⁴ WI ⁸⁴ WDNR, “Welcome to RR Sites Map, <http://dnr.wi.gov/org/aw/rr/gis/index.htm> (last visited Apr. 27, 2010).

⁸⁵ WDNR, “Welcome to the Bureau of Remediation and Redevelopment Tracking System (BRRTS) on the Web,” <http://dnr.wi.gov/org/aw/rr/brrts/index.htm> (last visited Apr. 27, 2010).

⁸⁶ WI DNR, “RR Sites Map,” <http://dnrmaps.wisconsin.gov/imf/imf.jsp?site=brrts2.gisregistry> (last visited Apr. 27, 2010).

⁸⁷ WI Dept. of Commerce, “Storage Tank Database Information,” <http://commerce.wi.gov/ER/ER-EN-tanks-info.html> (last visited Apr. 27, 2010); WI Dept. of Commerce, “ERS Tracker on the Web,”

http://commerce.wi.gov/php/ERS_tracker_on_web/ers_tracker_on_web.php (last visited Apr. 27, 2010).

⁸⁸ WI DNR, “DNR Brownfield Site Assessment Grant 1999-2000,” <http://dnr.wi.gov/org/aw/rr/financial/sag/highlights.pdf> (last visited Apr. 27, 2010).

⁸⁹ WI DNR, “Brownfield Site Assessment Grant (SAG) for Local Governments,” <http://www.dnr.state.wi.us/org/aw/rr/brownfields/sag.htm> (last visited Apr. 27, 2010).

⁹⁰ WI DNR, “Brownfield Green Space and Public Facilities Grant,” http://www.dnr.state.wi.us/org/aw/rr/brownfields/greenspace_grant.htm (last visited Apr. 27, 2010).



The Wisconsin Plant Recovery Initiative (WPRI) and WPRI Assessment Monies also provide assistance and funding towards cleaning up and revitalizing closed-down businesses and plants.

Another relevant program through the WDNR is the Ready for Reuse Loan and Grant Program, which offers two types of funding: 1) Hazardous Substance Loans and Grants, and 2) Petroleum Loans and Grants.⁹² The DNR also received 2009 American Recovery and Reinvestment Act funding for the Ready for Reuse Program, and was used for hazardous substance loans to local governments and non-profits.

Funding from Commerce

The Department of Commerce has a number of relevant grants, tax credits, and bonds. As mentioned previously, the Blight Elimination and Brownfield Redevelopment Program (BEBR) offers grants which can be used “for brownfields redevelopment or associated environmental remediation activities.”⁹³ The Department of Commerce also administers the Brownfields Redevelopment Program, which “provides grant funds to assist local governments, businesses, and individuals with assessing and remediating the environmental contamination of an abandoned, idle or underused industrial or commercial facility or site.”⁹⁴

Overall, 150 projects have been assisted through grants from Commerce – totaling \$63,556,380 during the period from 1998 to 2006.⁹⁵ Information about these grants is listed under the “Petroleum and Tanks” tab of the Commerce website.⁹⁶

The Department of Commerce also administers several tax credits. The Community Development Zone Program is a “tax credit program started to encourage private investment” into distressed areas that have been designated “community development zones” and to “create quality jobs”.⁹⁷ Other tax credits through the Department of Commerce are Environmental Remediation Tax Credits which offer “tax benefits to encourage private investment in targeted areas” that are considered economically-distressed and to “improve both the quality and quantity

⁹¹ WI DNR, “Dry Cleaner Environmental Response Fund Program,” <http://www.dnr.state.wi.us/org/aw/rr/financial/dryclean.html> (last visited Apr. 27, 2010).

⁹² WI DNR, “Wisconsin Ready for Reuse Loan and Grant Program,” <http://www.dnr.state.wi.us/org/aw/rr/rif/index.htm> (last visited Apr. 27, 2010); WI DNR, “Ready for Reuse Hazardous Substance Loans and Grants,” <http://www.dnr.state.wi.us/org/aw/rr/rif/recovery.htm> (last visited Apr. 27, 2010); WI DNR, “Wisconsin Ready for Reuse Loan and Grant Program: Petroleum Funding,” <http://www.dnr.state.wi.us/org/aw/rr/rif/petro.htm> (last visited Apr. 27, 2010); WI DNR, “Financial Resources for Cleaning Up and Redeveloping Contaminated Properties,” <http://www.dnr.state.wi.us/org/aw/rr/financial/index.htm> (last visited Apr. 27, 2010).

⁹³ WI Dept. of Commerce, “The Blight Elimination and Brownfield Redevelopment Program (BEBR),” <http://www.commerce.state.wi.us/CD/CD-bfi-grants.html> (last visited Apr. 27, 2010).

⁹⁴ *Id.*

⁹⁵ WI DNR, “Wisconsin’s Brownfields Initiative: 2006 Report to the Wisconsin State Legislature” (2006), available at <http://dnr.wi.gov/org/aw/rr/archives/pubs/RR847.pdf>, at 2-3.

⁹⁶ WI DNR and WI Dept. of Commerce, “The Financial Resource Guide for Cleanup and Redevelopment” (2009), available at <http://dnr.wi.gov/org/aw/rr/archives/pubs/RR539.pdf>.

⁹⁷ City of Green Bay, “Economic Development,” <http://www.ci.green-bay.wi.us/EconomicDevelopment/TaxCredits.html> (last visited Apr. 27, 2010).



of employment opportunities.”⁹⁸ The Environmental Remediation Credit covers 50 percent of all remediation costs affected by environmental pollutions and costs from investigation of a brownfield. Industrial Revenue Bonds are also offered to help small manufacturers with expansion projects.⁹⁹

Other Brownfields Funding

Outside of WDNR and Commerce, notable reimbursement programs include the Agricultural Chemical Cleanup Program (Department of Agriculture, Trade, and Consumer Protection), Local Government Cost Recovery, and Local Governments Reimbursement Program.¹⁰⁰ Other grant opportunities include the Brownfield Economic Development Initiative (BEDI), Brownfield Green Space and Public Facilities Grants, Brownfield Site Assessment Grants, Community Development Block Grants, Wisconsin Coastal Management Grants (Department of Administration), Transportation Economic Assistance Program Grants (Department of Transportation), and State Trust Land Funds.¹⁰¹

The City of Milwaukee has several different funding opportunities for the private sector including a Revolving Loan Fund (which was started with an EPA grant) and Site Assessment Grants (funded by Milwaukee Economic Development Corporation and Block Grant funds).

Petroleum Brownfields Funding

There are a number of financial resources available in Wisconsin to address petroleum brownfields, some of which are federally administered. For example, US EPA administers Federal Brownfields Assessment Grants, Federal Brownfields Site Cleanup Grants, and Federal Brownfields Revolving Loan Fund Grants, all of which are available to sites in Wisconsin. The relevant application processes are explained in the WDNR’s financial resources guide, as well as on the US EPA website. American Recovery and Reinvestment Act of 2009 (ARRA) funds can also be used for petroleum brownfields.¹⁰² ARRA allocated \$600 million to Superfund Sites, \$200 million to Leaking Underground Storage Tank (LUST) sites (see below for how Wisconsin’s LUST allocation was awarded to individual communities), and \$100 million to brownfields.¹⁰³

At the state level, Commerce administers a number of reimbursement programs, including the Petroleum Environmental Cleanup Fund Award (PECFA) program. PECFA is a reimbursement

⁹⁸ WI Dept. of Commerce, “Brownfields Initiative – Additional Department Assistance,” <http://www.commerce.state.wi.us/CD/CD-bfi-programs.html> (last visited Apr. 27, 2010).

⁹⁹ WI Dept. of Commerce, “Wisconsin’s Industrial Revenue Bond Program,” <http://commerce.wi.gov/BD/BD-IRB.html> (last visited Apr. 27, 2010).

¹⁰⁰ WI DNR and WI Dept. of Commerce, “The Financial Resource Guide for Cleanup and Redevelopment” (2009), available at <http://dnr.wi.gov/org/aw/rr/archives/pubs/RR539.pdf>.

¹⁰¹ Board of Commissioners of Public Lands, “Loan Program,” <http://bcpl.wisconsin.gov/section.asp?linkid=1438&locid=145> (last visited Apr. 27, 2010).

¹⁰² WDNR, “Federal Recovery Act Funding and the RR Program,” <http://www.dnr.state.wi.us/org/aw/rr/financial/fedfunding.htm> (last visited Apr. 27, 2010).

¹⁰³ *Id.*



program that returns “a portion of incurred remedial cleanup costs to owners of eligible petroleum product systems” after the removal or replacement of LUST systems.¹⁰⁴ Established in 1987, PECFA is funded by a state tax on gasoline sales.¹⁰⁵ One difference between the WI PECFA program and LUST funds in other states is that WI allows for new owners of properties with older tanks to register those tanks and qualify for the funding. As a result, local governments and developers can use this funding to pay for investigation and remediation of petroleum contamination at many brownfield sites. Additionally, in addition, in August 2009, Wisconsin Governor Jim Doyle announced additional statewide LUST grant awards which included: \$3 million in Recovery Act funds for Milwaukee LUST projects, \$2 million in LUST Recovery Act funds for Stetsonville projects, \$118,000 in LUST Recovery Act dollars to the city of Beaver Dam, \$200,000 in Recovery Act funds for a LUST project in Mauston, and \$105,000 for LUST projects in Marinette.¹⁰⁶

c. [Are the above resources sufficient, appropriate, and oriented correctly?](#)

[Seeking information]

5) [Institutional structures](#)

Wisconsin does not have statutory or regulatory provisions establishing a single harmonized process for redeveloping contaminated properties. However, despite the lack of institutional systems for harmonizing redevelopment processes, the various Wisconsin programs and entities that contribute to redevelopment – such as WDNR, Wisconsin Department of Commerce, the Wisconsin Department of Transportation, and the Brownfields Study Group, to name just a few – work together to support a relatively coordinated and constantly evolving and improving process. The entities are well versed with each others’ programs and help parties piece together available resources (e.g. the financial resources guide). Although the program has been very successful in achieving a coordinated, harmonized process, it may be beneficial to institutionalize the inter- and intra-agency relationships so that coordination is ensured.

Another aspect of the Wisconsin redevelopment programs that may be improved by institutionalization is the role of public participation in the remediation and redevelopment process. Regulatory or statutory requirements that partnerships and processes seek a broad spectrum of public participation may be a beneficial long-term measure. This is especially true for smaller projects, which rarely have the advantage of public-private partnership support to help with community inclusion.

¹⁰⁴ WI Dept. of Commerce, “Petroleum Environmental Cleanup Fund Award (PECFA),” <http://www.commerce.state.wi.us/er/ER-PECFA-Home.html> (last visited Apr. 27, 2010).

¹⁰⁵ Evanson, Theresa *et al.*, “Wisconsin Closure Protocol Study: A Retrospective Study of LUST Site Closures between 1999 and 2000” (2009), *available at* <http://www.dnr.state.wi.us/org/aw/rr/archives/pubs/RR805.pdf>.

¹⁰⁶ WI DNR, “Federal Recovery Act Funding and the RR Program,” <http://www.dnr.state.wi.us/org/aw/rr/financial/fedfunding.htm> (last visited Apr. 27, 2010).



A third procedure that could improve Wisconsin's redevelopment efforts would be additional institutionalized monitoring processes. Wisconsin currently conducts audits of institutional controls, which it includes in its Section 128(a) reports. These types of monitoring measures could be institutionalized within the state programs to ensure they continue. Additional monitoring of program success – such as the development and implementation of benchmarks as seen in the MVBI, *supra* – could also benefit the programs.

6) [Communication and Outreach](#)

Wisconsin state and local entities are excellent at communicating information about redevelopment programs and opportunities to the public. The website contains large quantities of easy to navigate information and downloadable sources, and WDNR makes concerted efforts to encourage people to contact them early and frequently throughout the process. The process appears to depend on the dedication and commitment of the people working within the programs. Institutionalizing processes may help ensure that communication and outreach efforts remain strong over time.

DRAFT