



Umpire Process Wis. Stats. 292.35 WDNR Brownfields Study Group

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Umpire Process Wis. Stats. 292.35

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

Overview of “umpire” process

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

Overview of “umpire” process

- LGU must (cont.):
 - Notify RPs, providing public hearing for RAP
 - Allow RP and public comment for 30 days
 - Submit RAP plus any comments to WDNR
 - Upon receiving WDNR approval, serve “offer to settle” on RPs re contribution of investigation and remedial costs
- WDNR then proposes/appoints an “umpire”
- After approval, umpire presides over expedited negotiation (60 days, with recommendation 20 days later)

Overview of “umpire” process

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

Overview of “umpire” process

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

Case studies

- Ashwaubenon High School/Klipstine Park
 - Ashwaubenon School District/Village of Ashwaubenon (LGU) recover ~\$1.9 million from RP
 - Two umpired negotiation sessions
 - settled via “agreement in negotiation” (early 2017)
- City of Manitowoc – Former Newton Gravel Pit
 - City of Manitowoc (LGU) plus ~4 RPs
 - Two umpired negotiation sessions (late 2017)
 - Three settlements (in principle) via “agreement”
 - Umpire recommendation to include one RP

Lessons learned

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

Thank You

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