



# Wisconsin Brownfields Study Group

1998 – 2019

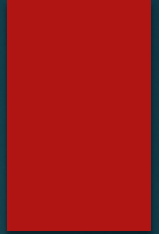
FRIDAY, JANUARY 25, 2019

GEF 2 OFFICE BUILDING (DNR) – ROOM G-09

WIFI NETWORK: DNR-GUEST

PASSWORD: GoodAYR&H2O

# Wisconsin Brownfields Study Group



- ▶ Welcome
- ▶ Introductions
- ▶ Agenda Repair



# Grant Proposal for Brownfields Sites

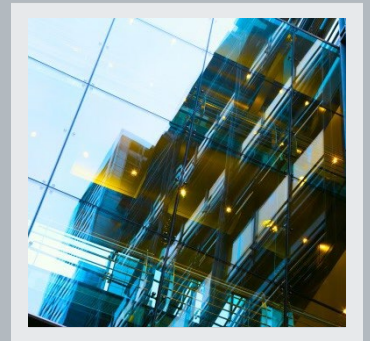
▶ Scott Wilson and Mark Thimke

# Act 70 Pilot: Brownfields/Air Permitting/Green Tier

- ▶ Mark Thimke and Art Harrington

# *Act 70 – Promoting Manufacturing Reuse of Brownfields Property*

Mark A. Thimke  
Brownfields Study Group  
January 25, 2019



# Background

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

# Air Permitting

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



# Green Tier

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



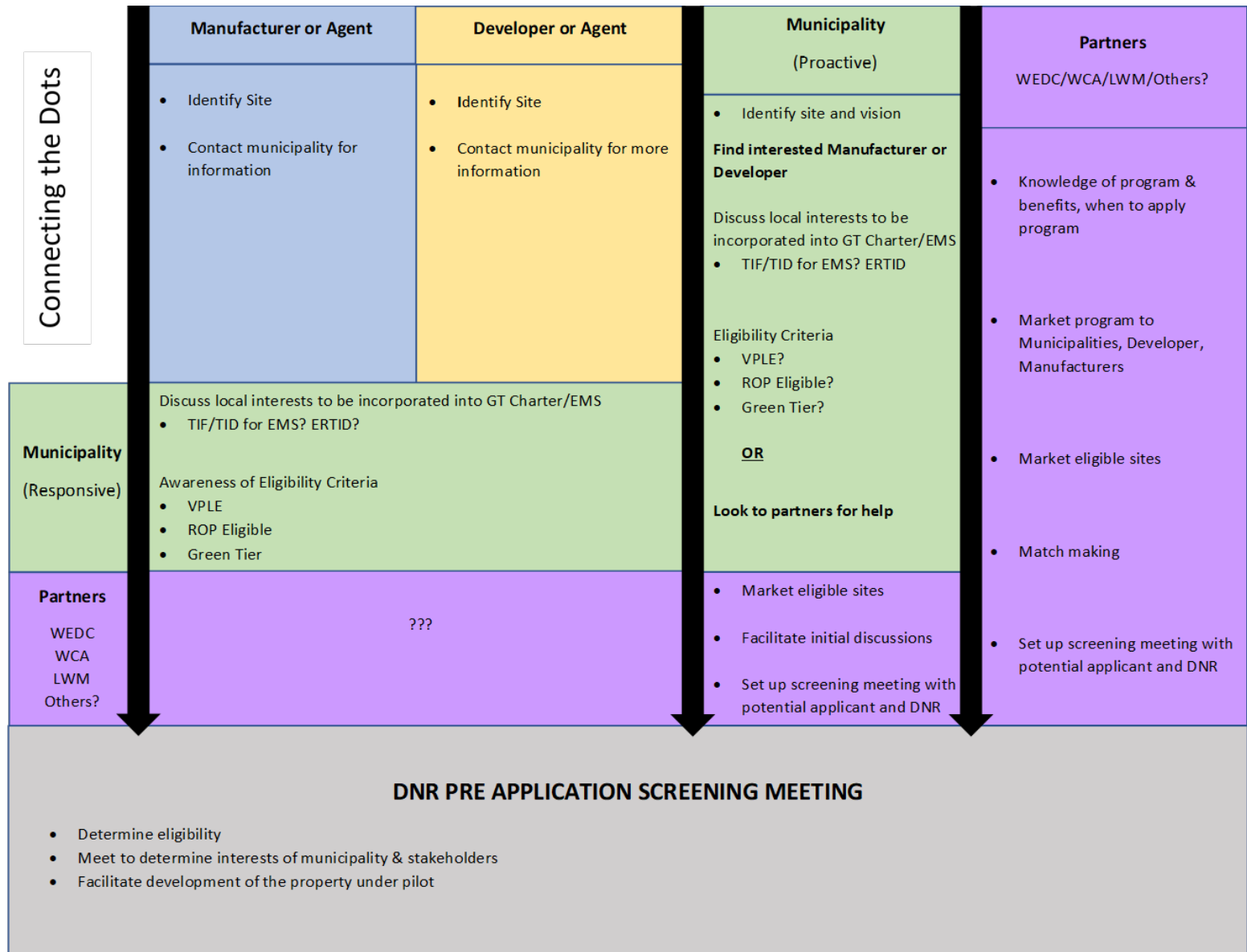
# Voluntary Party Liability Exemption

- Existing program
- No changes through Act 70

# Next Steps

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

## Connecting the Dots



# Updates to NR 700 Rules – Scope, Timeline and Public Input

- ▶ Updates to NR 700 to 754
- ▶ Creation of:
  - ▶ NR 756
  - ▶ NR 758



# RR Rule Updates

## Why?

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

# RR Rule Updates



## What?

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



# RR Rule Update



## **Anticipated Completion:**

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

# RR Rule Update



## **Public Input:**

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



# RR Rule Update

## **Public Input:**

- ▶ Kick off meeting – February 5, 10-11  
    ▶ DNR Madison Office, G09
- ▶ Monthly public input meetings scheduled throughout 2019

# RR Rule Update

## Website:

[https://dnr.wi.gov/topic/Brownfields/  
RuleChanges.html#meetings](https://dnr.wi.gov/topic/Brownfields/RuleChanges.html#meetings)

## For More Information:

▶ Molly Schmidt

▶ [MollyE.Schmidt@wisconsin.gov](mailto:MollyE.Schmidt@wisconsin.gov)

▶ 608-267-7500

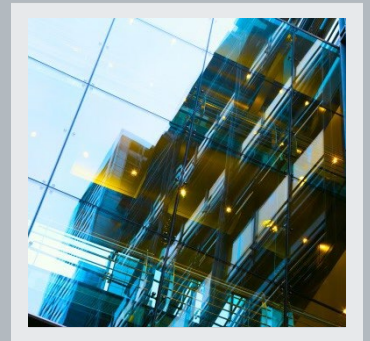


# VPLE Topics

- ▶ DNR Update
- ▶ Study Group Update

# Voluntary Party Liability Exemption (VPLE)

Mark A. Thimke  
Brownfields Study Group  
January 25, 2019





# VPLE Update

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

# PFAS and Emerging Contaminants

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

# PFAS and Emerging Contaminants

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



# PFAS and Emerging Contaminants

- ▶ DHS Update (Yang and Thiboldeaux)

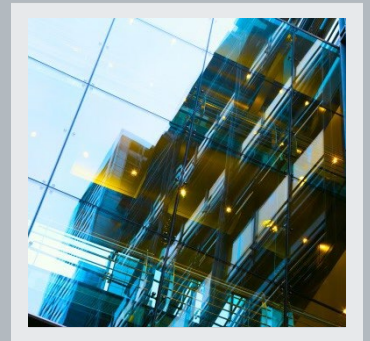


# PFAS and Emerging Contaminants

- ▶ State Resources/Actions (Thimke)

# PFOS Update – Other States/U.S. EPA

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Brownfields Study Group  
January 25, 2019



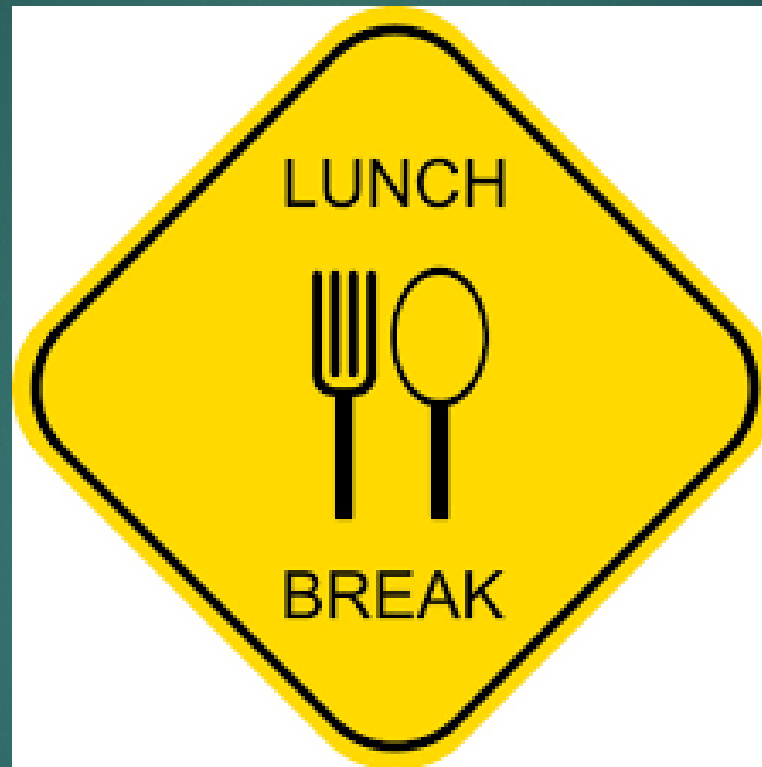
# PFOS Update

- Michigan

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

# PFOS Update

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





# DNR Updates

## RR Year in Review (Foss)

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

# DNR Updates



## RR Strategic Plan Update (Foss)

### ► Recent Accomplishments

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



# DNR Updates

## RR Strategic Plan Update (Foss)

### ► Short-Term Future Goals

- Rule Drafting
- PFAS
- New Hires
- PECXit Strategy

# DNR Updates



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



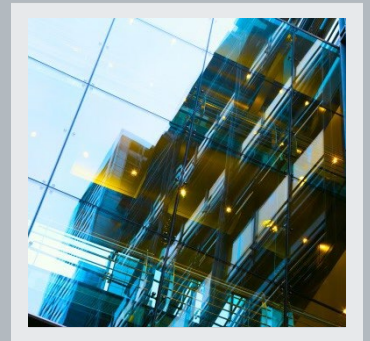
# DNR Updates



- ▶ Exempt Soil Guidance (Fassbender )
- ▶ NR 712 Implementation (Foss)
- ▶ RR Staffing / Funding (Soyer)

# Wisconsin Act 369 – *Guiding “Guidance” and Other Administrative Law Changes*

Mark A. Thimke  
Brownfields Study Group  
January 25, 2019



# New State Legislation

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



# Guidance Documents

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

# Guidance

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

# What is a “Guidance Document”?

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

# Rulemaking

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



# Department Legal Interpretations

- Agency legal interpretation is given **no** deference in a “proceeding”
  - Net effect – courts decide and only published court decisions are given weight
- *Myers v. DNR*, 2019 WI 5 (Jan. 18, 2019)
  - Wisconsin Supreme Court – no deference to DNR legal position/interpretation
  - Literal interpretation of regulatory authority

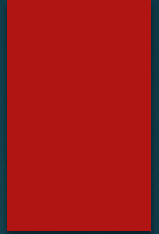
# Act 21 Update

- *Kinnard* – CAFO case before District II Court of Appeals
- No decision on Act 21 – court certified case to Wisconsin Supreme Court

# EPA Brownfields Update and Realignment



# BSG 2015 Report Accomplishments and New Initiatives





# Standing Items



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