

Wisconsin Brownfields Study Group

May 17, 2018 | 10:00am – 3:15pm

Godfrey & Kahn S.C.

833 East Michigan Street | Milwaukee, Wis. | 53202

Conference Call Option: 1-855-947-8255 | Passcode: 6612 745#

Scott Wilson	Ayres Associates	Andrew Savagian	DNR
Darsi Foss	DNR	Jodie Peotter	Ramaker & Associates
John Stibal	City of West Allis	Ben Peotter	Ayres Associates
Karen Dettmer	City of Milwaukee	Judy Fassbender	DNR
Bruce Keyes	Foley & Lardner	Kathryn Berger	WEDC
Jeanne Tarvin	Ramboll	Margaret Brunette	DNR
Geoff Siemering	UW Madison	Kristin Kurzka	The Sigma Group
Lynn Morgan	Waste Mgmt. Inc.	Tina Reese	The Reese Group
Kenn Anderson	Aon	Mat Reimer	City of Milwaukee
Michael Prager	DNR	Jolena Presti	Vandewalle
Christine Haag	DNR	Donna Volk	Ramboll
Sam Tobias	Fond du Lac County	John Delwiche	WE Energy
Nancy Frank	UW Milwaukee	Jenna Soyer	DNR
Art Harrington	Godfrey & Kahn	Sonya Rowe	DNR
Mick Skwarok	DNR	Mary Panzer (phone)	Panzer Public Affairs Consulting
Chris Valcheff	True North Consultants	Dave Misky	City of Milwaukee
Robert Langdon	SCS Engineers	Mark Thimke	Foley & Lardner
Dan Morgan	Tetra Tech	John Antaramian	City of Kenosha
D.J. Burns	Drake Consulting Group		

10:00 Welcome and Agenda Repair (Misky/Thimke)

5 min

10:05 2017 Wisconsin [Act 70](#) – Brownfields and Air Program (Thimke)

30 min

In its 2015 report, the Brownfields Study Group (BSG) included a proposal titled “Air Permit Certainty for Brownfield Developments” in an effort to promote redevelopment of brownfields properties as new manufacturing sites by reducing cost and risk associated with air permitting. 2017 Wisconsin Act 70 included a provision directing DNR to implement a pilot program under which an owner or operator is not required to make changes to air pollution controls due to new or modified requirements (excepting those required by the Clean Air Act) for 10 years. Thimke provided an update of the work to date and invited participation from interested BSG members or guests to participate in an advisory group working with the DNR. Contact Thimke, Art Harrington or Michael Prager (DNR) if interested.

10:35 Potential state funds for innocent landowners (Thimke)

10 min

Update from Thimke regarding recent legislative consideration to protect landowners from having to incur costs related to cleaning up property they purchased but did not contaminate. Assembly Environmental Committee requested the BSG to examine the issue and provide recommendations. Nancy Frank volunteered to work on this with Scott Wilson on this topic. Contact Scott Wilson if willing to help.

10:45 BRRTS on the Web – Input on redesign (Soyer/Rowe)

15 min

Sonya Rowe from DNR presented the BSG with overview of BOTW and requested input on options for redesign. With documents being added to BOTW, how should that information be presented? Advice from BSG: select most robust and convenient option. Send comments to Sonya.Rowe@wisconsin.gov. Presentation is on BSG web page.

11:00 Lender Liability Subgroup – report out/finalize recommendations (Thimke)

15 min

Thimke provided a summary of the lender subgroup’s efforts to date. Previously, the BSG recommended evaluating whether the statutory definition of lender should be expanded considering evolving lending requirements. A table of

issues and recommendations submitted by the subgroup was approved by the BSG. The table is on the BSG website. BSG did not recommend statutory changes at this time.

11:10 VPLE improvements subgroup (Thimke)

15 min

Thimke introduced the topic and the BSG discussed: Does the RR Program's VPLE program need improvements? Is it underutilized and why? BSG suggested that some people believe that VPLE is too expensive and time-consuming. Can the program be improved? Should DNR consider providing a fact sheet / guidance on VPLE to dispel misunderstandings? Also raised the notion of how VPLE would work considering emerging contaminants. The BSG decided to discuss this further at the next meeting and the BSG would discuss at the next meeting whether there is a need to form a subgroup to examine the issue. Contact Thimke or Michael Prager if you have ideas about this topic.

11:15 Clean Soil Guidance (Fassbender)

30 min

Judy Fassbender (DNR) provided an update on draft guidance "[Clean Soil Management: A Self-Implementing Option for Soil Excavated During a Response Action under Wis. Admin. Code chs. NR 700 through NR 750](#)" (RR-103). The draft guidance is open for public comment until May 24. The current version of the draft guidance includes modifications made in response to comments received when the guidance was initially out for comment in 2017. In the current version, the contaminant content criteria for meeting the clean determination include minor changes from the initial version. The applicability of the guidance has been substantially narrowed. The current version of the guidance is intended solely for use by responsible parties who are managing soil excavated as part of a response action pursuant to Wis. Stat. ch. 292. Presentation is on BSG web page.

Lunch & 20th Anniversary of BSG Celebration

45 min

12:55 Contaminated sediment update (Fassbender)

5 min

Key DNR staff members who were previously involved with the internal and external contaminated sediment teams have retired or taken new assignments. Work on the issues related to contaminated sediment will resume when new staff are in place.

1:00 Case Study: Harbor District, Inc. (Dan Adams)

30 min

Dan Adams is the Planning Director at Harbor District, Inc. Dan discussed recent waterfront revitalization efforts undertaken in Milwaukee and provided historical background on the area. Presentation is on BSG web page.

1:30 NR 712 Update (Foss)

10 min

RR Program Director Darsi Foss provided the BSG with an update on the DNR's draft guidance regarding NR 712 ([consultant qualifications](#)). The public comment period for the guidance recently closed and program staff are preparing a response to comments. Guidance will be finalized and available soon.

1:40 Closure Reconsideration Process (Foss)

5 min

Comment period for DNR's proposed guidance regarding [Closure Reconsideration](#) is open until June 6.

1:45 Emerging Contaminants Update (Foss)

5 min

Foss provided brief remarks regarding emerging contaminants. The RR program maintains a Wis. Admin. Code ch. NR 720 [spreadsheet](#) with soil residual contaminant levels (RCLs) that were calculated using U.S. EPA's Regional Screening Level (RSL) web calculator following the procedures in Wis. Admin. Code § NR 720.12, for determining soil direct-contact RCLs protective of human health. The DNR has authority to require that the responsible party develop a site-specific clean-up standard for all contaminated environmental media in accordance with Wis. Admin. Code § NR 722.09, if no numeric clean-up standard otherwise exists. For more information, see the [February 1, 2018 article](#) posted in the *RR Report* newsfeed. The BSG requested additional discussion on this topic, including the status of PFOS/PFAS.

1:50 Act 21 Update (Thimke)

10 min

2:00 Tax Code & Compliance Costs (Thimke)

10 min

2:00 BSG Updates**45 min****Federal Legislation Update (Scott Wilson)**

- Federal budget included the BUILD Act which reauthorized the EPA Brownfields programs and made changes to them.
- EPA Grant Guidelines are currently being rewritten and will be available in late August or September. Several significant changes expected.
- New EPA grants will expand recipients of federal brownfields funds to include non-profits and CDAs.
- Increases size of cleanup grants from \$200k to \$500k – with waiver to \$650k.
- Creates multi-purpose grant for up to \$1M to include inventory, planning, assessment & cleanup.
- Some administrative costs are now eligible for reimbursement under the grants.
- Criteria for awards may include whether a site is located adjacent to a body of water or within a federally designated floodplain and whether the redevelopment brownfield site will create renewable energy.
- It also extends the definition of a bona fide prospective purchaser to include lessees of property who enter a lease after January 1, 2002, (effective date of the 2002 act) and who meet the other criteria for the bona fide prospective purchaser defense.
- States and local governments that acquire properties through seizure or other law enforcement activities are excluded from CERCLA's definition of owner and operator, word "involuntary" was removed. Local governments who acquired property before 2002 even if local government didn't do all appropriate inquiry, can get EPA grants as long as they didn't cause or contribute to pollution.

EPA Meeting Summary (Thimke & Misky)

BSG Co-Chairs Mark Thimke and Dave Misky recently traveled to Chicago to meet with EPA officials regarding Wisconsin brownfields initiatives. They shared the BSG's 2015 report: *Investing in Wisconsin* and the economic report commissioned in 2015. They spoke about the critical 128a funds that Wisconsin receives to administer its brownfields initiatives. They also briefed EPA officials on the 2017 Wisconsin [Act 70](#) – Brownfields and Air Program and invited EPA representation at BSG meetings.

2:45 Standing Items (Thimke & Misky)**15 min**

- **WMC Update**
- **WEDC Update**
- **BSG Membership and Structure Update**
Misky and Thimke noted that there is room for new members. Please forward suggestions.
- **2015 BSG Report Recommendations Update**
BSG continues to use the report and work on recommendations
- **Next Regular Meeting - Location/Timeframe**
Considering a September timeframe. Will meet in the next few months to being planning.

3:00 Confirm Assignments and Adjourn (Misky/Thimke)