

Contaminated Sediments External Advisory Group

Type of Proposal: Administrative

BACKGROUND

Assessment, risk management, and remedial decisions for cleaning up contaminated sediment involve more complex scientific and policy concerns than traditional brownfield cleanups, particularly where large coastal water bodies are impacted. Multiple government entities and overlapping programs are involved in data gathering, risk assessment, risk management, and remedial decisions at sediment sites. This results in delays and inefficiencies. Project-based communication and coordination is critical for effective and efficient remediation.

Contaminated sediment is cleaned up to protect human health and the environment. Wisconsin's rivers and lakes are of high economic, ecological and aesthetic importance to our state. The economic success of upland waterfront redevelopment, many of which may involve brownfields, is correlated to the environmental quality of the adjacent aquatic resource. Clean sediment contributes to a healthy ecosystem and a healthy economy.

Waterfront developers require and deserve certainty concerning cleanup objectives, standards and schedules, so their financial risk can be quantified and assessed. Regulatory uncertainty deters private involvement in sediment cleanups. This prevents improvements and reduces private investment in both aquatic and upland environments.

Successful cleanup of contaminated sediment does occur in Wisconsin. However, each cleanup is designed on a site by site basis. Clearly, each sediment project has unique attributes that must be addressed, but there are similarities that could be systematized. Voluntary sediment cleanups will become more frequent if responsible parties better understand the cleanup objectives, standards and schedules from the outset of the project.

PROPOSAL

The Brownfields Study Group supports further collaborative discussion on these issues prior to the development of solutions, and suggests the following steps forward.

DNR should establish an external advisory group to assist the Water, Remediation and Redevelopment, and Waste programs with their ongoing evaluation of contaminated sediment issues. The DNR Secretary should designate a senior manager to lead the contaminated sediment advisory group as it develops solutions to the issues identified below, in accordance with the proposed timeline. The BSG suggests the following steps forward:

- January 2015 - Form a team of diverse stakeholders and experienced professionals, including: Members suggested by BSG subgroup chairs; External members identified by DNR; DNR staff and managers.
- February 2015 - DNR hosts a team meeting to discuss the issues identified by the BSG and set priorities. The team also establishes how the external advisory group can help DNR solve the issues.
- March to June 2015 - DNR develops priority work products. Additional meetings are held as necessary to provide input on DNR work products.
- July 2015 - DNR completes work on several priority issues.
- August 2015 - With advisory group input, DNR develops work plans and timeline for remaining issues.

1. Three different DNR bureaus have jurisdiction on contaminated sediment cleanups. The BSG supports DNR efforts to clarify the roles and responsibilities of the RR, Water and Waste programs.

- Provide a determination on whether ch. NR 700, Wis. Admin. Code, applies to sediment cleanups.
- Provide guidance on the interface between chs. NR 700, NR 347, NR 500 and NR 105, Wis. Admin. Code.
- Provide guidance and a process for constructively resolving resource management conflicts (e.g. when is a soft edge to be used vs. a hard containment structure).

2. Request that DNR clarify definitions of sediment and soil, and resolve any discrepancies between definitions to provide certainty and consistency in demarcation of sediment and soil.

Contaminated Sediments Advisory Group - Continued

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- Provide guidance on sediment definition among the three bureaus.
 - Provide guidance on how soil is different from sediment.
 - Provide guidance on whether sediment can become soil and soil can become sediment.
 - Clarify the applicability of ch. NR 720, Wis. Admin. Code, to sediments.
3. Develop a clear process for upland redevelopment to occur before sediment remediation is completed.
 - Clarify whether DNR can/should approve the upland cleanup before the sediment is cleaned up. In the case where sediment contamination can't be clearly attributable to an upland source, should upland closures be delayed if DNR will not separate the upland from the sediment?
 4. Support DNR efforts to develop sediment cleanup standards to provide certainty and consistency.
 - The BSG recognizes that this is a very challenging effort.
 - Support DNR efforts to develop PAH standards for sediment cleanups.
 5. Support DNR efforts to develop a clear, streamlined process for management of sediment spoils in locations other than a licensed landfill.
 6. Request that DNR address the issues associated with RR GIS Registry and case closure at sediment sites.
 - Provide guidance on recognized issues such as limitations of GIS (e.g. no exact line of demarcation).
 - What is the definition of a "site" when DNR approves soft boundaries and containment with continuing obligations? Provide guidance on including the edge to the extent there is ongoing maintenance and reference this in GIS case closure submittals. Edge treatment should be recognized as part of the remedy.
 - Include sediment cleanups in the GIS registry.
 7. Support DNR efforts to modify s. 292.12, Stats. to address sediment cleanups with continuing obligations. Changes should include:
 - Financial security for engineered remedies in water.
 - Transparency in long-term care obligations, both as to agreements to perform and financial responsibilities.
 - Notice to property owners of any residual sediment contamination and engineered controls.
 - Clarify responsibilities of RPs, off-site owners, further owners of the source property, etc.
 - Should a cap maintenance plan incorporate provisions from other statutes or laws (e.g. Chapter 30, Stats.?)
 8. Request that DNR and BCPL clarify limitations on leasing authority for submerged lands in public trust waters. (i.e. Can BCPL issue a lease for a contaminated sediment cap?)
 9. Clarify how Wisconsin property laws regarding riparian ownership and control impact sediment investigations, cleanups and continuing obligations.
 10. Request that DNR provide guidance to address soil/groundwater vs. sediment sampling in wetlands and smaller aquatic environments.
 11. Modify VPLE law (s. 292.15, Stats.) to provide a clear path for sediment cleanups to qualify for VPLE to encourage a better and faster sediment cleanup.
 - Should upland sites be eligible for VPLE through a partial exemption if fully remediated while sediment cleanup is still in progress?
 - Is a financial assurance mechanism (insurance) necessary and how could this be accomplished?
 - Expand the type of liability protections provided through this process.

COMMENTS

No comments received.