

SUBGROUP: Funding Sustainability

Remediation and Redevelopment External Advisory Group



AGENDA

Remediation and Redevelopment External Advisory Group – Funding Sustainability

Thursday, Sept. 7, 2023

10-11:30 a.m.

State Natural Resources Building (GEF 2) | Room G-27

101 S. Webster St. Madison, WI

Register to attend via Zoom

<https://us02web.zoom.us/meeting/register/tZMsceiqzvwEteSRbzBRPASE7nuKFJls3P1>

In-person attendees should RSVP to Jody.Irland@wisconsin.gov by noon on Wednesday, Sept. 6, 2023

Introductions

- Agenda repair
- Meeting logistics
- Future meeting dates

Review Takeaways from Last Meeting

Updates on Current and Upcoming Federal/State Funding Opportunities

Funding Case Study

Issue Paper Review: "Funding Sustainability, Barriers to Project Funding"

Status of Drycleaning Environmental Repair Fund (DERF) and options to address the barriers

Next Steps and Assignments

Next meeting date

- Remediation and Redevelopment External Advisory Group (EAG) – Oct. 12, 2023
- RR EAG Subgroup Series – Dec. 5, 2023

Adjourn

Funding Case Studies
Remediation and Redevelopment External Advisory Group – Funding Sustainability
Prepared for discussion at September 7, 2023 subgroup meeting

Questions to consider for each scenario:

- What priority activities (e.g., assessment, site investigation, mitigation, remedial action, redevelopment planning, etc.) need funding at the site?
- What federal, state and local funding programs would be available to fund those activities based on the site specifics?
- Could private funding like bank financing, investor equity, be used to pay for some activities and potentially leverage public funding programs?
- Are there other funding or non-funding tools that could be used to complete these activities (e.g., tax incremental financing district (TID), EPA technical assistance for brownfields (TAB) program, etc.)?
- Are resources needed to help effectively “package” these funding mechanisms? If so, what might those resources look like?

Scenarios

1. A local government owns a former dry cleaner and has the local governmental unit liability exemption¹. The site has trichloroethylene (TCE) with known off-site vapor exposure. The off-site properties will need vapor mitigation systems that will require long term operation and maintenance.
2. A developer wants to redevelop a former manufacturing facility with polychlorinated biphenyls (PCBs) in the soil into multifamily residential. What resources are available to private entities only? Which resources would require the developer to partner with the local government and/or the DNR?
3. A responsible party is cleaning up a boat service station (still operating) with a leaking underground storage tank. The owner is unable to pay and the property is tax delinquent.
4. There is a vacant lot in a disadvantaged and underserved neighborhood along a river with heavy metal contamination. There is not a known future use and no known responsible party. What resources are available to the neighborhood group?

¹ The environmental liability exemption is available to local governments that acquire title to property for the purpose of slum clearance or blight elimination, or through any of the following methods: tax delinquency; bankruptcy proceedings; condemnation; eminent domain according to ch. 32, Wis. Stats.; escheat; using stewardship funds (and an agreement with DNR); or acquisition from another exempt LGU. Learn more at dnr.wi.gov, search “local governments and contaminated property.”

Quick Reference Chart: Brownfield Cleanup and Redevelopment Funding

GRANTS Administering Agency	Eligible Entities and Sites	Planning	Acquisition	Phase I & II	UST Removal	Site Investigation	Demolition	Remedial Action Planning	Environmental Cleanup	Redevelopment	Asbestos Abatement	Emergency response
Wisconsin Assessment Monies Wisconsin Department of Natural Resources (DNR)	<ul style="list-style-type: none"> Local governments, tribes, businesses, individuals that did not cause the contamination Federally defined brownfield 			\$	\$	\$		\$				
Brownfield Site Assessment Grants Wisconsin Economic Development Corporation (WEDC)	<ul style="list-style-type: none"> Local governments, tribes, and local authorities that did not cause the contamination Properties that are abandoned, idle, or underused due to actual or perceived contamination caused by a person that cannot perform cleanup 			\$	\$	\$	\$				\$	
Federal Assessment Grants (Community-Wide) U.S. Environmental Protection Agency (EPA)	<ul style="list-style-type: none"> Local governments, states, tribes, nonprofits More than one federally defined brownfield site 	\$		\$		\$	\$				\$	
Federal Multipurpose Grant U.S. EPA	<ul style="list-style-type: none"> Local governments, states, tribes, nonprofits Federally defined brownfield site owned by applicant 	\$		\$		\$	\$	\$	\$		\$	
Federal Assessment Grants (State/Tribe Community-Wide) U.S. EPA	<ul style="list-style-type: none"> States and tribes Sites throughout entire jurisdiction 	\$		\$	\$	\$		\$			\$	
Federal Assessment Grants (Coalition) U.S. EPA	<ul style="list-style-type: none"> Lead entity of the coalition must be a state, county government, Indian tribe. Sites contaminated by hazardous substances, pollutants, contaminants, and/or petroleum 	\$		\$		\$	\$	\$			\$	
Community Development Block Grants (Entitlement) U.S. Housing & Urban Development (HUD)	<ul style="list-style-type: none"> Cities and urban counties that meet certain population requirements Areas with low- and moderate-income persons 	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	
Brownfield Grant Program WEDC	<ul style="list-style-type: none"> Local governments, businesses, nonprofits, individuals 		\$		\$	\$	\$		\$		\$	

	<ul style="list-style-type: none"> Commercial and industrial sites impacted by contamination caused by a person that cannot perform cleanup 												
Idle Sites Redevelopment Program WEDC	<ul style="list-style-type: none"> Any city, village, town, county, government entity, or tribe with either an approved project resolution or with private developer and an approved development agreement Properties with certain acreages and usage histories 						\$		\$	\$			
Community Development Investment Grant Program WEDC	<ul style="list-style-type: none"> Local governments, tribes Shovel-ready projects with emphasis on downtown community-driven effort 						\$			\$			
Vibrant Spaces Grant (Pilot Program) WEDC	<ul style="list-style-type: none"> Local governments and tribes Projects to develop and enhance public spaces 									\$			
Ready for Reuse Revolving Loan Fund Grants DNR	<ul style="list-style-type: none"> Local governments, tribes, nonprofits that did not cause the contamination Federally defined brownfield owned by applicant 				\$		\$	\$	\$		\$		
Knowles-Nelson Stewardship Grants (Local Assistance Subprograms) DNR	<ul style="list-style-type: none"> Local governments, tribes with an approved comprehensive outdoor recreation plan, nonprofit conservation organizations Scenic, recreational, agricultural, or natural lands 		\$							\$	\$		
Community Development Block Grant (State Programs) Wisconsin Department of Administration (DOA)	<ul style="list-style-type: none"> Local governments that are not CDBG entitlement communities (typically cities with less than 50,000 people and counties with less than 200,000 people) 	\$	\$		\$		\$		\$	\$	\$	\$	\$
Coastal Management Grants DOA	<ul style="list-style-type: none"> Local governments, state agencies, schools, regional planning commissions, tribes, nonprofits Properties in counties adjacent to the Great Lakes 	\$	\$				\$		\$	\$			
Federal Cleanup Grants U.S. EPA	<ul style="list-style-type: none"> Local governments, states, tribes, nonprofits Federally defined brownfield site owned by applicant 				\$		\$		\$		\$		
Federal Revolving Loan Fund Grants U.S. EPA	<ul style="list-style-type: none"> Local governments, states, tribes, nonprofits Federally defined brownfield site 				\$		\$		\$		\$		

REIMBURSEMENT Administering Agency	Eligible Entities and Sites	Planning	Acquisition	Phase I & II	UST Removal	Site Investigation	Demolition	Remedial Action Planning	Environmental Cleanup	Redevelopment	Asbestos Abatement	Emergency response
Local Transportation Alternatives Program Grants Wisconsin Department of Transportation (DOT)	<ul style="list-style-type: none"> Local governments, regional transportation authorities, transit agencies, land and natural resource agencies, schools, tribes, nonprofits 	\$	\$							\$		
Agricultural Chemical Cleanup Program Wisconsin Department of Agriculture Trade & Consumer Protection (DATCP)	<ul style="list-style-type: none"> Persons that own or control a spilled agricultural chemical, caused the spill, or own property where the spill occurred 					\$	\$		\$			
Local Government Cost Recovery Local Government Units	<ul style="list-style-type: none"> Cities, towns, villages, and counties Properties acquired through special processes such as tax delinquency, eminent domain, slum clearance or blight elimination 				\$	\$		\$	\$			
Local Government Negotiation and Cost Recovery Local Government Units	<ul style="list-style-type: none"> A municipality, a redevelopment authority, or a public body designated by a municipality Properties owned fully or in part by the local government 					\$		\$	\$			
Local Governments Reimbursement Program U.S. EPA	<ul style="list-style-type: none"> Local governments, tribes that are not responsible for the spill or incident Properties within the jurisdiction of applicant 											\$
LOANS Administering Agency	Eligible Entities and Sites	Planning	Acquisition	Phase I & II	UST Removal	Site Investigation	Demolition	Remedial Action Planning	Environmental Cleanup	Redevelopment	Asbestos Abatement	Emergency response
State Trust Fund Loan Program Wisconsin Board of Commissioners of Public Lands	<ul style="list-style-type: none"> Cities, counties, towns, villages, lake districts, metropolitan sewerage districts, school districts, technical college districts, town sanitary districts 	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	
Small Business Administration Loans U.S. Small Business Administration	<ul style="list-style-type: none"> SBA-defined “small businesses”, businesses meeting certain net worth requirements, and businesses meeting certain credit requirements 	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	

Section 108 Loan Guarantee U.S HUD	<ul style="list-style-type: none"> States, metropolitan cities, urban counties, and certain CDBG non-entitlement communities that can pledge CDBG allocations to repay loan 	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
PACE Wisconsin Local Government Units	<ul style="list-style-type: none"> Property owners within communities that are part of the PACE Wisconsin Commission Commercial, industrial, non-profit, agriculture, and hospitality properties 			\$		\$		\$	\$	\$	\$	
Ready for Reuse Revolving Loan Fund DNR	<ul style="list-style-type: none"> Local governments (any “municipality” under Wisconsin Statutes § 67.01(5)) that did not cause the contamination Federally defined brownfield site 				\$		\$		\$		\$	
TAX CREDITS & INCENTIVES Administering Agency	Eligible Entities and Sites	Planning	Acquisition	Phase I & II	UST Removal	Site Investigation	Demolition	Remedial Action Planning	Environmental Cleanup	Redevelopment	Asbestos Abatement	Emergency response
Environmental Remediation Tax Incremental Financing Wisconsin Department of Revenue	<ul style="list-style-type: none"> Cities, villages, counties, and towns Areas in which 50% of the area has significant environmental pollution 	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	
Tax Incremental Financing Wisconsin Department of Revenue	<ul style="list-style-type: none"> Cities, villages, and towns with a project plan approved by a local authority (e.g., the planning commission) 	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	
New Market Tax Credits Wisconsin Housing & Economic Development Association (WHEDA)	<ul style="list-style-type: none"> Qualified active low-income community businesses, including nonprofits Community development project 	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	
Business Improvement Districts Local Government Units	<ul style="list-style-type: none"> Cities, towns, and villages that receive a BID petition from one or more affected property owners 	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	
Historic Preservation Income Tax Credits WEDC	<ul style="list-style-type: none"> Persons rehabilitating historic structures Certified historic structures used for income-producing purposes (i.e., business) 				\$					\$	\$	
Cancellation of Delinquent Property Taxes Local Governmental Units & DNR	<ul style="list-style-type: none"> Wisconsin counties and the City of Milwaukee may issue cancellation Property owners or buyers that enter cleanup agreements may qualify 		\$									
Reassignment of Tax Foreclosure Judgment Local Governmental Units & DNR	<ul style="list-style-type: none"> Counties and the City of Milwaukee using “in rem” or tax deed foreclosure Persons that agree to clean up contamination may request assignment of title 		\$									

DIRECT ASSISTANCE Administering Agency	Eligible Entities and Sites	Planning	Acquisition	Phase I & II	UST Removal	Site Investigation	Demolition	Remedial Action Planning	Environmental Cleanup	Redevelopment	Asbestos Abatement	Emergency response
Targeted Brownfields Assessment U.S. EPA	<ul style="list-style-type: none"> Public entities (e.g., municipalities, regional planning commissions) and non-profit organizations. Contaminated property owned by the applicant or abandoned by the owner and obtainable by the applicant (e.g., through tax foreclosure). 			\$		\$		\$				
Regional Economic Development Partners WEDC	<ul style="list-style-type: none"> Local governments, businesses, nonprofits, and other stakeholders 	\$								\$		
Green Team Assistance DNR	<ul style="list-style-type: none"> Any local government or community in Wisconsin 	\$										
Design Wisconsin University of Wisconsin-Extension	<ul style="list-style-type: none"> Any local government or community in Wisconsin 	\$										
Technical Assistance to Brownfields Kansas State University & U.S. EPA	<ul style="list-style-type: none"> Local government units, communities, and stakeholders in Wisconsin and other EPA Region 5 states 	\$										

Issue Paper - Barriers to Project Funding

Funding Sustainability

Mark Rutkowski – Shannon & Wilson

TYPE OF RECOMMENDATION

Administrative background research and information summarized from EAG subgroup.

BACKGROUND

The EAG Funding Sustainability subgroup (FSS) met several times since December of 2022 and has evaluated funding needs and gaps for several types of sites and situations related to the Remediation and Redevelopment program. A number of funding issues were initially presented by the WDNR program staff to the FSS for consideration. These included:

- Funding deficiencies associated with dry cleaner and leaking underground storage (LUST) sites;
- Emerging contaminants;
- Program funding for complex sites;
- Innocent landowner sites; and
- Fees associated with WDNR technical assistance and document review.

The issues initially presented to the FSS were a starting point to address a number of funding gaps that were obvious to the WDNR R&R program staff based on their experience with historic site investigation and cleanup programs. Additional research into the historical and existing funding mechanisms by the FSS provided an expanded view of the current issues presented by the WDNR as well as the identification of funding gaps that are now considered a barrier to site closure and property redevelopment.

Continued discussion at FSS meetings and one-on-one conversations with interested parties coming from economic development authorities, community groups, environmental consultants, and other stakeholders identified additional concerns that had not been previously considered by the WDNR program staff. These include, but are not limited to:

- Shortage of funds for clean-up projects;
- Unmotivated property owners to clean-up their existing sites;
- No clear funding pathway from project inception to completion;
- Funding market studies to provide a direction for the land use at existing sites;
- Constrictive requirements of federal grant programs (e.g., Davis-Bacon Act);
- Guarantee of neighborhood health unfunded; and
- Lack of better education/messaging for owners/developers of contaminated sites.

The FSS has prepared the attached report that summarizes the barriers and funding needs that arose during the course of the FSS meetings and this report should be reviewed and approved by the FSS and the full EAG so it can be a resource for the FSS and EAG moving forward to prioritize needs and to consider recommendations to address those needs.

PROPOSAL

These draft issue papers and recommendations were developed by the Remediation and Redevelopment External Advisory Group and members of the public, and do not necessarily represent the opinions or the position of the Wisconsin Department of Natural Resources or other state agencies.

Remediation and Redevelopment External Advisory Group



Paper/Agenda #

The subgroup recommends that the issue paper be approved by the full EAG. This would allow the paper to be included in the record and on the EAG webpage from the EAG group as background information to document the observations and barriers to funding identified by the subgroup and the information can be considered by the subgroup as they consider recommendations to promote funding sustainability.

RESOURCES NEEDED

No resources are needed for this documentation to be recorded as a work product from the EAG.

ENVIRONMENTAL JUSTICE EVALUATION

The FSS considered a range of funding gaps and with each one, considered how the gap impacts communities that are underserved and affected disproportionately by environmental impacts. In some cases, the FSS identified that the lack of funds and barriers are in these underserved areas because sites located in areas with more economic activity are able to be cleaned up using existing tools and private resources. The paper also describes neighborhood health & safety itself as a funding gap that should be considered and this is most significantly a concern in underserved areas. As the FSS moves forward to prioritize gaps and needs and to recommend actions, the group plans to consider how funding can be targeted towards projects that have positive impacts on communities.

COMMENTS

[Notable comments from issue paper draft writing process from subgroup members, including alternative approaches considered]

These draft issue papers and recommendations were developed by the Remediation and Redevelopment External Advisory Group and members of the public, and do not necessarily represent the opinions or the position of the Wisconsin Department of Natural Resources or other state agencies.

Barriers to Project Funding – Summary of the funding needs and gaps identified by the EAG – Funding Sustainably Subgroup.

From: Mark Rutkowski – Shannon & Wilson

Background of Stalled Sites; Legacy LUST and Dry-Cleaner Sites

The primary goal of the FSS is identifying additional funding mechanisms that can be used to address persistently overlooked, stubborn brownfield sites, including former gasoline service stations and dry-cleaner sites that still have unresolved site investigation or site remediation issues. As of March 27, 2023, there are over 2,599 open sites² that fall under the jurisdiction of the WDNR RR program.³ Of these, 156 are known former or existing dry-cleaner sites, 655 are Leaking Underground Storage Tank (LUST) sites, with the remainder a mix of Environmental Repair Program (ERP) sites including unresolved spills, landfill corrective actions, and manufacturing facilities with reported releases, to name a few.

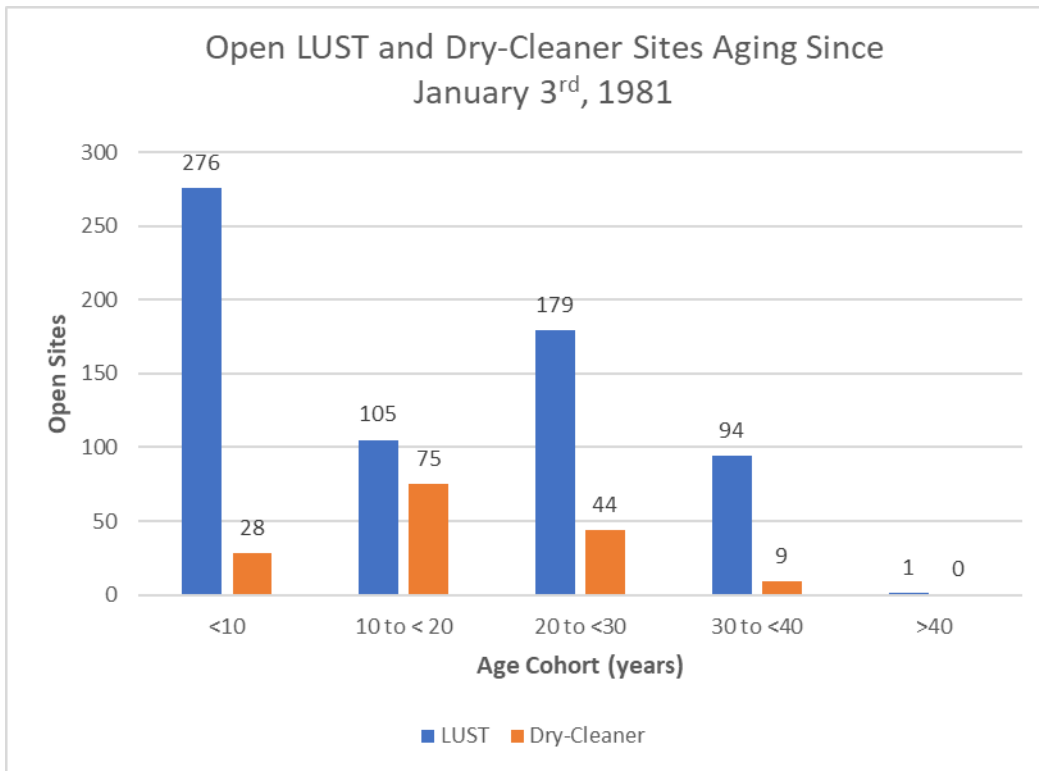
For the record, the oldest open dry cleaner site identified in the WDNR BRRTS database dates back to September 9, 1983 with the most recent dry cleaner site added to the BRRTS list on July 7th, 2022. The oldest open LUST site dates back to December 3rd, 1981 with the most recent LUST site added to the BRRTS list on February 10th, 2023. A landfill site in Eau Claire is the oldest open ERP site in the BRRTS database; this case file was opened on November 3rd, 1969.

² Open sites require additional investigation, remedial, or administrative action as required by the agency with administrative authority.

³ Source: WDNR Bureau for Remediation and Redevelopment Tracking System (BRRTS) website.

Exhibit 1 – Aging Account of Open LUST and Dry-Cleaner sites from 1981 to Present.

Since 2010, on average 84 new LUST sites are opened while on average 148 sites are closed out. Dry-Cleaner sites have closed out at on a rate of 7 sites per year. There is still a surplus of both LUST and Dry-Cleaner sites as evident by the chart above.



In order to ease the financial burden for all dry-cleaning site owners and operators, the Dry Cleaner Environmental Repair Fund (DERF) was created in 1997 to provide funding for the investigation and clean-up of dry-cleaner sites. Not all dry-cleaning owner operators were able to leverage DERF funds for their site investigation and remediation work. Funding for DERF was sourced, in part, by a surcharge on the volume of dry-cleaning solvent used by each facility. The volume of dry-cleaning solvent used has decreased over time since 1997 due to a change in consumer purchase habits and reduced use of dry-clean only garments. With less money into the fund, fewer sites are getting cleaned up.

At its inception, there was nearly \$1.4 million (M) in DERF annual revenue that could be used for site investigation and clean up fee reimbursement. Accordingly, the WDNR DERF program revenues in FY 2022 were less than \$500,000.

Currently there are \$3.38M in unpaid claims with another \$4.307M in approved investigation and cleanup costs that still have not been submitted for reimbursement. Reimbursements go back to the facility owner or their consultants as claims are paid. It is projected that the total fund liability may approach over \$50M over

These draft issue papers and recommendations were developed by the Remediation and Redevelopment External Advisory Group and members of the public, and do not necessarily represent the opinions or the position of the Wisconsin Department of Natural Resources or other state agencies.

the next 10 years. According to the WDNR records, there are approximately 350 dry cleaning sites with known contamination statewide. Only 221 of these sites are eligible for DERF program reimbursement.⁴

Stalled petroleum sites under the LUST program have experienced a fate similar to that of the DERF sites. The Petroleum Environmental Cleanup Fund Act (PECFA) was a program funded by a \$0.03/gallon tax on gasoline that was used to pay for the investigation and remediation of federally regulated underground storage tank sites at petroleum marketers (primarily gasoline service stations and convenience stores) and home heating oil tank systems. While new LUST sites are added to the WDNR case list, closure rates of LUST cases have dropped significantly since the sunset date for the PECFA program on June 30, 2020.⁵

Current federal funds earmarked for LUST site work are dedicated to funding WDNR staff positions. Ironically, the WDNR must meet federal LUST closure targets (including a number of LUST site case closures) in order to receive continued funding for WDNR staff. EPA is funding staff, not site investigations or cleanups.

Environmental Impacts

Dry-cleaner product impacts to soil and groundwater have the potential to have a greater impact on human health now than at the time of the discovery of a release at these sites. Today, there is a better understanding of the human health exposure pathway from volatile organic vapors that was not a consideration 10-years ago. Volatile organic compound vapors associated with dry cleaning and gasoline product releases have been identified as a risk to human health via the vapor intrusion exposure pathway.

Cracks in basement floors, floor penetrations for utility lines, sump pump crocks, or other subsurface foundation features in close proximity to soil and groundwater impacted by volatile organic compounds especially trichloroethylene (TCE) are a direct threat to human health. The WDNR estimates that there are 508 open non-dry-cleaning sites with TCE impacts. Currently, there are 33 open dry-cleaning sites with known TCE contamination that are not DERF eligible. In addition, sites that were previously closed by the WDNR prior to 2012 were not investigated for vapor intrusion issues.⁶

Financial Inequity

Dry-cleaning operations and petroleum marketers and convenience store operators have successfully utilized the DERF and PECFA programs to investigate and remediate their sites to the satisfaction of the WDNR or Wisconsin Department of Commerce (WDCOMM)⁷. According to the WDNR website, 195 dry cleaner sites have received case closure letters. Over 20,300 LUST sites have been closed by the WDNR /WDCOMM with 12,537 of those sites being eligible for PECFA funding.

Sites that have not benefitted from the DERF or PECFA program are the small filling stations or the mom-and-pop dry cleaner that did not do enough volume to meet required DERF or PECFA program deductibles. Many

⁴ WDNR Funding area presentation; Jenna Soyer, March, 2023.

⁵ Ibid.

⁶ Ibid.

⁷ For a time, the Wisconsin Department of Commerce (WDCOMM) provided oversight of simple site closure (soil only) impacts for the PECFA program.

of these operations went out of business. Some were passed down to family or simply abandoned. This is especially true of sites located in Environmental Justice (EJ)⁸ communities.

The financial inequity for small petroleum marketers, mom and pop dry cleaners, and EJ communities resulted in a lack of lobbying efforts, legislative representation, and a clear mechanism for obtaining the needed funds for addressing the resulting impacts to human health and the environment as a result of real or perceived releases from their sites.

For a small community or an EJ neighborhood, the result is a boarded-up property, abandoned lot, or public eye sore. The abandoned site becomes a greater tax burden on others in the community with one (or more) parcels in the area in tax delinquency or bankruptcy. Property values in adjacent neighborhoods are also impacted.

Impacted soil and groundwater at these sites will continue to be a threat to human health and the environment. Redevelopment may not be an option simply based on the economics of the site itself; it is not a business-worthy piece of land as valued or perceived in the current redevelopment market.

Lack of funds

In general, a decrease in the amount of money available for site remediation was a concern expressed by economic development corporations (EDCs) and municipalities alike. Historically, the Wisconsin Economic Development Corporation (WEDC) provided grants of up to \$500,000 for site investigation and cleanup. In FY 2023, the maximum award “generally does not exceed \$250,000 unless the request is for a project that...clearly justifies an award beyond normal parameters”⁹. As discussed with FSS members, the \$250,000 award amount is not enough to clean up a site to a level suitable for redevelopment.

Lack of funds available for cleanup are also problematic in some communities that have set up Tax Incremental Funding (TIF) districts for larger-scale economic redevelopment projects. There can be a disconnect between the TIF district funding and the level of effort and funds needed to clean up a site to an appropriate level for redevelopment.

Property Owners

Another barrier to redevelopment of legacy sites and redevelopment are property owners that are unwilling or unable to complete the required activities needed to get a property to closure. They may or may not be aware of their responsibilities as a Responsible Party (RP) and can also be wary of the WDNR’s involvement in handling their personal property. Others may have inherited a family business or a family property where unbeknownst to them, an environmental liability exists.

Properties that have been acquired by the local municipality or passed down from a family member may be stagnant due to a number of reasons including:

⁸ Environmental justice is defined by the EPA as the fair treatment and meaningful involvement of all people regardless of race, color, or national origin or income with respect to the development, implementation, and enforcement of environmental laws, regulations and policies.

⁹ Wisconsin Economic Development Corporation Program Guidelines for Fiscal Year 2023.

- No clear understanding of the best use of the property (market study);
- Sites passed over by developers as not worthy redevelopment; and
- Innocent landowner unaware and not-responsible for environmental contamination.

Funding for market-studies, redevelopment of sites passed over by developers for the sake of neighborhood improvement, and financial assistance for innocent landowners would serve to remove legacy sites from the BRRS list and create opportunities for new taxable revenue streams from sites long forgotten.

Property owners (including municipalities, EDCs, and a viable responsible party) may have an understanding of their environmental responsibilities as a RP but may not have an understanding of the commercial real estate market. As a result, a property may lie in limbo for years waiting for a call from a developer, municipality or EDC authority. Funding a market study for stagnant legacy sites should be a consideration as part of closing out and redeveloping legacy sites.

Funding Formula

Another concern expressed by FSS members was a lack of a clearly defined path toward funding a site investigation and clean up project from start to finish. According to a revised but unpublished version of the WDNR Remediation & Redevelopment document entitled *Draft Quick Reference Chart: Brownfield Cleanup and Redevelopment Funding* (WDNR Publication RR-077, May 2023), there are:

- Seventeen grant programs;
- Five reimbursement plans;
- Five loan funding mechanisms;
- Seven tax credits and incentives; and
- Five direct assistance organizations.

In aggregate, the grants, reimbursement plans, loan, and tax credit incentives provide financial assistance for planning, acquisition, Phase I & II ESAs, Site Investigations, Demolition, Remedial Action Planning, Environmental Cleanup, Asbestos abatement, and Emergency Response. However, the process to move a site through from start to finish for a particular site is not in place and makes selecting the correct program a barrier to redevelopment and site closure.

Constrictive Federal Grant Requirements; Davis-Bacon Act

Developers have also balked at some of the federal paperwork requirements tied to federal grants funding redevelopment. The requirement that raised the most concern is documenting the Davis-Bacon prevailing wage requirement for federal contract work.

These draft issue papers and recommendations were developed by the Remediation and Redevelopment External Advisory Group and members of the public, and do not necessarily represent the opinions or the position of the Wisconsin Department of Natural Resources or other state agencies.

The Davis-Bacon and Related Acts¹⁰ apply to contractors and subcontractors performing on federally funded or assisted contracts in excess of \$2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works. Davis-Bacon Act and Related Act contractors and subcontractors must pay their laborers and mechanics employed under the contract no less than the locally prevailing wages and fringe benefits for corresponding work on similar projects in the area.

The Davis-Bacon Act directs the Department of Labor to determine such locally prevailing wage rates. The Davis-Bacon Act applies to contractors and subcontractors performing work on federal or District of Columbia contracts. The Davis-Bacon Act prevailing wage provisions apply to the “Related Acts,” under which federal agencies assist construction projects through grants, loans, loan guarantees, and insurance.

For prime contracts in excess of \$100,000, contractors and subcontractors must also, under the provisions of the Contract Work Hours and Safety Standards Act, as amended, pay laborers and mechanics, including guards and watchmen, at least one and one-half times their regular rate of pay for all hours worked over 40 in a workweek. The overtime provisions of the Fair Labor Standards Act may also apply to DBA-covered contracts.

Developers view the prevailing wage paperwork requirements and certified payroll reporting as barriers to the completion of their redevelopment project.

Neighborhood health & Safety/Environmental Stewardship

Recent issues with trichloroethylene (TCE) vapor impacts at the “Community Within the Corridor” apartments have raised concerns about neighborhood health & safety at Environmental Repair Program (ERP) sites. FSS attendees voiced their concern about neighborhood health & safety and the fact that neighborhoods in Environmental Justice communities have limited resources for managing environmental issues. Based on input from the Sherman Park Community Association, funding/resources are needed for:

- Community education and outreach;
- Grants for reinvesting into the EJ neighborhoods;
- Redevelopment for housing; and
- Health & safety needs of the community.

In conjunction with community environmental health & safety, the FSS group identified the need for identifying, auditing, and monitoring sites with residual contamination. These may be older sites that have been closed with no contingencies, sites closed with deed restrictions, or sites closed with continuing obligations (COs). This is especially true of sites that have residual soil and/or groundwater impacted by volatile organic constituents with the potential for vapor intrusion. The nature and extent of the impacts associated with sites closed with COs is significant. It was determined that a separate subgroup will be needed to address the issues associated with funding an environmental stewardship program.

¹⁰ All information on Bacon-Davis and Related Acts provided by the US-Department of Labor website.



Other Barriers

Aside from the insolvent DERF program and the former PECFA mechanism for LUST sites, there are few options for small mom & pop owner-operators, disadvantaged businessowners, and owners in EJ communities or neighborhoods as well as municipalities/Economic Development groups to complete the site investigation and remediation to site closure. The WDNR has ERP funds for hiring contractors for assessment and remediation at some sites, but these funds may not address sites at properties that are passed over by developers (considered non-business worthy) or still under the control of a responsible party. ERP funds managed by the WDNR are limited in their scope of use.

Currently there are no resources available to fund additional site investigation and clean-up work under the existing statutes. A statutory change is needed in order to create a funding authority that can direct the utilization of funds for investigation and remediation at these open sites.

DRAFT