



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

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December 7, 2007

Ms. Margaret Guerriero
RCRA Division Director
U.S. EPA - Region 5
77 W. Jackson Blvd.
Chicago, IL 60604

Subject: Evaluation of Wisconsin's Lender/LGU Pilot Program and Request for Future Utilization of the Approach.


Dear Ms. Guerriero:

In two December 7, 2001 letters, EPA approved our proposal for improving Wisconsin's ability to cleanup and redevelop Brownfield sites where hazardous waste activity has taken place. Based on these letters, WDNR subsequently prepared an application for federal funding to assist us in implementing this proposal. A pilot program was approved by EPA on January 7, 2003 and covered the period from January 1, 2003 to December 31, 2006.

The primary goal of this pilot program was to encourage cleanup and redevelopment by providing liability protection to local governmental units (LGU's), qualified economic development corporations (EDC's), or lenders that did not cause the contamination but are interested in acquiring property or lending money on property that has or may be contaminated with hazardous waste. The situations where WDNR would consider the use of enforcement discretion were set forth under the exemption provisions of the state's spill law, s. 292.11(9)(e), Wis. Stats., and s. 292.21 Wis. Stats. Our hope was that utilizing this approach would leverage the assistance of others to help get sites cleaned up and redeveloped, especially for those blighted or tax delinquent properties where the person that caused the contamination is not able to pay for the cleanup.

This letter provides EPA with our evaluation on the effectiveness of the program and the desirability of making the discretionary exemption process a permanent tool for the redevelopment of Brownfield's properties. Even though the number of applicants over the 4-year period was small, we believe the overall outcome of the pilot program have been very positive for those choosing to participate. As a result we want to continue encouraging LGU's, EDC's, and lenders to consider utilizing this option when appropriate for their particular situation.

Summary of Results

Ultimately, four local governments representing a total of six properties formally submitted written requests for liability clarification letters. WDNR reviewed all of the information provided including the LGU's proposed method of acquiring the property and in each case approved the use of enforcement discretion to help encourage cleanup and redevelopment of the properties. Below is a list of the local governments that submitted applications along with a brief summary of each of the projects.

City of Elkhorn (2 properties) - The city has acquired these two highly contaminated former industrial sites. Site investigation work has been proceeding to define the extent and significance of soil and groundwater contamination. Plans are being developed for asbestos and lead paint assessments, and for demolition of the on-site structures. Further investigations will be conducted beneath the buildings. The properties may ultimately be used as part of a business park area, or as a new municipal garage after remediation is completed.

City of Milwaukee - The city foreclosed on the property and received an EPA clean-up grant for soil remediation work. The clean-up was completed and the property was sold to Altera Coffee Roasters. Altera is currently redeveloping both the property and adjacent land areas. This has been a very successful redevelopment project and the ability to obtain a letter from WDNR indicating our willingness to utilize enforcement discretion was a critical component of the overall process.

City of Antigo (2 properties) - The city acquired the two properties as part of an area wide redevelopment project. No work has occurred on these parcels yet, as the city is working on other portions of the project area. These parcels are part of a larger waterfront development effort and obtaining WDNR's letter was an important first step in getting the project started.

City of Merrill - The property was a former dry cleaning facility and has been acquired by the City through tax foreclosure. Site assessment grant funds have been used to demolish the building and investigate the site. Ready for Reuse funds are being pursued to clean up the property and prepare it for future redevelopment.

Conclusions and Recommendations

Even though the number of applications was less than anticipated, the availability of a liability exemption through the pilot program contributed significantly to redevelopment efforts for the six properties summarized above. Discussions also occurred with a number of other LGU's evaluating the applicability of the RCRA exemption to their situations, but written requests for a liability exemption have not been received. Part of the reason for the limited number of applications being submitted is likely due to the perception that the program was temporary in nature. We received a number of questions including "what is a pilot exemption" and "does it go away at some time if EPA changes their mind"? Even though we explained that our liability decisions are permanent, concerns with the viability of the program were expressed by potential applicants.

As positive experience with this program continues, we expect an increased interest from local governments and others over time. In order to help expand the use of this important tool, WDNR recommends that EPA acknowledge that the use of enforcement discretion to provide liability protection can be a permanent option for addressing situations where hazardous waste contamination exists. We would continue to review each application to assure that any cleanups done at the sites will be carried out in a manner consistent with Wisconsin's authorized program and would propose discussing the results of implementing a long-term liability exemption option at our routine program evaluations.

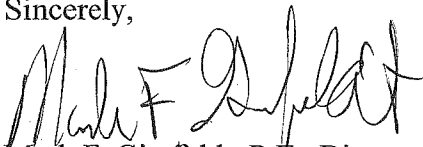
Summary

In summary, WDNR's use of enforcement discretion has been instrumental with helping local units of government make progress on all six of the complex contaminated properties identified in this letter. Based on our discussions with the four applicants as well as a number of others who evaluated the option but did not formally apply, it is our conclusion that the lack of applications is due in part to the fact that this is a pilot program. We request your concurrence that enforcement discretion decisions no longer need to be done on a pilot basis. This will help encourage communities to more readily participate in this program when they are attempting to cleanup and redevelop brownfields where hazardous waste activities have taken place.

As a final note, WDNR has felt for many years that the RCRA Hazardous Waste Program should have a statutory liability exemption similar to the one that exists for Superfund sites. Although our project was limited in scope, we believe that the preliminary results have confirmed that with the necessary sideboards in place, such an approach can result in more sites being cleaned up and redeveloped in a protective manner. We would like to have further discussions with you and EPA Headquarters representatives to explore the possibilities for pursuing Federal statutory revisions to encourage the cleanup and redevelopment of contaminated sites with RCRA implications.

If you have any questions regarding this letter or need additional information please do not hesitate to contact me.

Sincerely,



Mark F. Giesfeldt, P.E., Director
Bureau for Remediation and Redevelopment

c: Denise Reape – EPA Region 5
Dan Kolberg – RR



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OCT 26 2009

REPLY TO THE ATTENTION OF:

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Mr. Mark Giesfeldt
Bureau Director
Remediation and Redevelopment Program
Wisconsin Department of Natural Resources
P.O. Box 7921
Madison, Wisconsin 53707-7921


Dear Mr. Giesfeldt:

Thank you for your report on the Wisconsin Lender/Local Government Unit (LGU) Pilot Program, dated December 7, 2007. The U.S. Environmental Protection Agency agrees that the pilot program produced positive results for LGUs and appreciates the efforts of the Wisconsin Department of Natural Resources (WDNR). The December 7th document requested that: "In order to help expand the use of this important tool, WDNR recommends that EPA acknowledge that the use of enforcement discretion to provide liability protection can be a permanent option for addressing situations where hazardous waste contamination exists".

Wisconsin, as a state authorized to administer the Resource Conservation and Recovery Act (RCRA) program, may continue to exercise enforcement discretion with respect to LGUs, on a case-by-case basis, using the liability exemption provisions in s. 292, Wisconsin Stats. as guideposts. EPA Region 5 does not anticipate taking action pursuant to its RCRA corrective action authorities in such cases unless it determines one of the criteria listed in Section IV.B.1 of the WDNR/Region 5 MOA, dated December 6, 2006 is met.

Thank you for your continued efforts to encourage cleanup and redevelopment of Brownfields in Wisconsin. If you have any questions concerning this letter please feel free to contact me or your staff may contact Mr. Hak Cho, of my staff at (312) 886-0988.

Sincerely,


for Margaret M. Guerriero
Director
Land and Chemicals Division

Received

OCT 29 2009

REMEDICATION &
REDEVELOPMENT