

# Brownfields Funding at the Legislature

## Priorities/Issues

1. Renew Henn Cty and Ramsey County Mtge Registration Fee Program that funds ERF
  - a. Both programs sunset Jan 1 2013
  - b. Will need 2012 effort to renew
  - c. Potential to add other metro counties to avoid Mpls/St. Paul stigma (Dakota, Anoka, Wright, Olmstead, St. Louis)
  - d. Go for 7-10 yrs, more sustainable than current 3 yr term (leads to funding not just projects in pipeline, but new projects)
  - e. Will need # on annual dollars each county receives from program, as well as potential new \$ for new counties
  - f. Market program as job creator, and end of program as job killer.
  - g. Developer testify as we pay mtge tax, and use program to create jobs (avoid focus on residential)
  - h. Get \$ per \$100,000 mtge pd (is it \$100??)
  
2. Defend Met C LCA Program
  - a. Focus on regional approach and efficiency
  - b. Pro business job creator, not just policy wonks determining winners and losers
  - c. Need to overcome lack of political consequences for scrapping LCA program
  - d. Developers and Chambers of Commerce (not Mpls or St. Paul) to testify
  - e. Susan Haig great to work with, open to help!
  
3. DEED Demo Loan Program
  - a. At least enabling legislation, ideally \$7 to \$10 million
  - b. Focus on rural communities, helps sell our priorities # 1 and # 2 above
  
4. Next Steps
  - a. Meet EDAM August 18 to coordinate priorities for 2012
  - b. Set up Mtg Met C Chair
  - c. Senate (Michel – Chair Jobs and Eco Dev, Ormand (Chair – Tax will need her for Mtge Tax)
  - d. House – Gunther Chair Eco Dev.
  - e. End of day all decision made by leadership

## **Brownfield Reuse in Economically Distressed Areas - Rural and Urban**

**Group Members:** Martha Faust, MN Brownfields; Justin Eilers, Metropolitan Council; Brian Hegge, MSA Professional Services; Stacey Van Patten, MPCA; Shanna Schmitt, MPCA; Michael Goalen, HR Green; Dan Salzer, Wenck

### **Priority topics for group members:**

- Determine funding services/opportunities in rural areas
- Develop distressed areas into community gardens (City of Council Bluffs, IA)
- Real estate development opportunities and provide strategic economic advice to communities
- Targeting distressed brownfield sites w/MPCA growing interest in urban gardens (EPA doing pilot program for urban gardening)
- Help educate communities on brownfield opportunities in distressed areas
- Rural sites and distressed sites difficult to redevelop

### **Rural Communities**

- Limited presence by MN Brownfields in rural MN – working with Kansas State University and regional development agencies to provide outreach to greater MN
- MPCA recently started sending letters to county commissioners, cities, tribes, etc. to enhance greater MN outreach efforts
- State of Wisconsin actively targets small communities and could be a model for Minnesota
- DEED sets aside 35% of available grant dollars for rural MN, but struggles to reach that threshold
- Surprising lack of brownfield grant disbursements in St. Cloud, Rochester, Mankato.
- Need to pursue more public-private partnerships and have expanded plan approach to communities such as the Main Street area in Moorhead, MN
- Public-private partnerships help move sites past assessment & into redevelopment because everyone involved is connected to the results and will work together to achieve the end goals
- Smaller communities & current owners of brownfield sites may be reluctant to get involved because they are concerned about liability
- Increasing awareness and activity in rural communities requires a lot of private face time
- Rural communities have more physical space available – less pressure to redevelop existing brownfield sites
- Must convince rural communities to look beyond costs and need to sell long term benefits of cleanup/redevelopment – action must be driven by community and private investors

### **Tribal Communities**

- Get EPA funding specific to tribal communities
- Funding is key – TBRA & DEED aren't getting out the door
- Similar to rural communities, tribes need to be educated, need public-private partnerships, and must be community driven
- Must develop relationships

### **Distressed Corridors in Urban Areas**

- There is distrust at the community level: people don't feel like there is an opportunity to be involved
- People want to see the community improve but are afraid it won't be their community anymore
- Has to be a community wide approach with community involvement from the early planning stages
- Have to have a plan to promote community involvement and minimize distrust
- Need someone connected to the project(s) politically or financially to drive the cleanup/redevelopment

## Closure of Sites with Vapor Intrusion Issues

**Facilitator:** Hans Neve, MPCA. **Other Contributors:** Marie McCallum, Ryan Construction; Rick Jolley, MPCA; Mary Finch, Barr Engineering; Catherine Stott, Burn & McDonnell Engineering Co

The break-out group discussion of issues related to site closure at vapor intrusion sites included issues ranging from liability assurances and coverage, site reopeners, the effect of new guidance/standards, property access and when and the long term obligations at sites with mitigation systems have been met and how this documented with the MPCA.

**Inclusion of Contaminant Vapors in the Identified Release.** Historically, the MPCA has not included compounds identified solely in vapor phase as part of the Identified Release referenced in No Action and No Association Determinations. If compounds in contaminant vapors are also identified in soil or groundwater they have been described in these letters as part of the soil or groundwater release. There remains an interest in including compounds identified solely in vapors explicitly within the Identified Release. The MPCA VIC Program recently determined that contaminants in vapors can be considered as a MERLA release and has been developing the conditions and requirements needed for a party to seek and obtain these assurances. Complications include a) sites with identified contaminant vapors for which a source cannot be determine and may be from offsite, b) whether to include all compounds reported from the Method TO-15 full-scan list or just the compounds of concern at the property as supported by subsurface investigations, and c) reaching a consistent position on what level of investigation and risk management actions are needed by the voluntary party in order to be eligible for liability assurances for these vapor-media only compounds. The VIC Program anticipates reaching a resolution on this new policy in the near future.

**Investigation/Data Interpretation.** Challenges related to the complexity of vapor intrusion site investigations, obtaining representative data and interpreting the data were discussed. Contaminant vapor concentrations have a more transient character with more spatial and temporal variations than say soil or groundwater concentrations. There was discussion about restricting indoor air sampling to only the COC based on the subsurface investigation rather than reporting all the compounds on the Method TO-15 analyte list (or the Minnesota Soil Gas List). This has been discussed at the MPCA but due to the need for consistency throughout all remediation programs for now, the full TO-15 list (actually the full Minnesota Soil Gas List) will be continued to be required.

MPCA noted that area-wide vapor problems specific to the compound 1,3-Butadiene has become an issue at several sites in the metro. This compound has a very low intrusion screening value ( $0.3 \mu\text{g}/\text{m}^3$ ), typically the source of this compound when identified is not clearly understood, however, the potential risks must be evaluated.

**Institutional Controls (ICs).** In the past the MPCA VIC Program utilized Environmental Covenants as a tool to require the long term operation and maintenance (O&M) of a vapor mitigation system. Recently there has been an acknowledgement at the MPCA that there is a difference between risk mitigation systems in a building and remedial systems conducted to address contaminant source contamination. Based on recent internal program discussions, the MPCA will no longer be requiring or recommending Environmental Covenants only for the purpose of requiring the long term O&M of vapor mitigation systems in buildings. This requirement will be communicated through other means such as conditions of assurance letters and other means having less formality and rigidity than Environmental Covenants.

## **Emerging Legal Issues and Redevelopment**

**Group Participants:** Jeff Sepesi, Jon Blaha, Richard Mansur, Tim Lenway, Andrew Nichols, Robert Devolve, Mike Wardwell

### **Soil Reuse:**

Liability Issue, need for guidance

Contractual shift (developer to contractor) creates issues. Contractor happy with ownership until contamination is found.

PH's of unknown origin (asphalt?) MPCA is too restrictive

Illinois is potentially allowing for export of marginally contaminated fill to former quarry sites. Is this coming to MN?

### **Means of Managing Liability**

Ground leases

Better model for agency cleanup programs?

IL model (regulation and guidance) potentially better model for agency assurance

MI Model - Liability assurance by statute?

Bonafide Prospective Purchaser statute?

Ashly II case - potentially scary case for BFPPs out of North Carolina. 1st case that goes through requirements for BFPPs.

Ct evaluates claim of BFPP

re-awakens fears that one can still be liable despite brownfield amendments

Negative precedent - potentially creates uncertainty

Positive precedent - "substantial compliance" Phase I assessment does not have to be completed perfectly to ASTM standards, court says close enough here with ASTM / EPA "AAI"

### **Vapor Intrusion**

EPA is going to start considering vapor intrusion?

What is the framework of assessing liability for vapor intrusion?

Examples of proactive mitigation in new construction in CA

Potential requirements for new assurances?

Need to find source before assurance with vapor intrusion - sometimes this can be very difficult.

If a no action determination is issued for soil and groundwater - potential to go back for vapor evaluation

MPCA wont issue a new no action letter until site is evaluated for vapor even if nothing has changed --- No redevelopment -- "data is dangerous"

Goes back to the need for clear liability assurance NOT just guidance.

### **Changing Regulations / Cleanup Standards**

CA dramatic reduction of drinking water standard for chromium - effect on cleanup standard of groundwater.

Effect on previous cleanups?

## New Financing Ideas including MN Legacy Amendment

- Legacy Amendment potential source for some BF sites. Grant programs for others
- Tax Credits
- New twist to reimbursement
- Not just for public financing – other private interests
- Sources that pay for things other than currently possible – types that current fund: Public facilities, parkspace, non-profit uses
- Other states real estate companies take on liabilities and costs (MN need to mitigate risk) & pass it on – private investment – recovery through sale or lease.
- Cost to cure exceeds value of land in marketplace.
- Tax credits – investors help finance project --specific to brownfield projects – induce user group to put \$ into deal
- Sacrifice revenues for jobs? Tax abatement
- Income tax options
- Foundations – Ford Foundation to MPCA
- Leverage for projects or pilot/replicable
- Create legal entity (501c3 something) to attract investment
- Brownfield Foundation
- Legacy Amendment: Wagenius – green space in Twin Cities. Have to apply with government sponsor.

**Stormwater Management on Brownfield Sites**

## **Technical Issues: Innovative Investigation Techniques, Green Remediation, and Soil Cleanup Goals**

- Required by MPCA & granting entities
- Definition
- Lowering carbon footprint
- Soil-reuse issue
- Waste of grant \$
- Filling limited landfill space
- Ongoing liability issue -- challenge to statute
- Standardization of areas for soil reuse and buffer zones
- Granting entities and asking for “green remediation”
- Death to DRO?!
- Guidance for what constitutes acceptable statistical assessment of “naturally occurring” and urban background” concentrations
- Solar & wind power for remediation systems

### **Investigation**

For large excavations and/or sites with no specific impacts but widely distributed contaminated fill material, a grid system with vertical profiling is useful to characterize the site. More up front data (investigation) is recommended for better focused response action plans and more accurate cleanup cost estimating. Sufficient sampling delineating hot spot removal areas may eliminate the need for confirmation sampling and speed up RAP implementation in the field.

### **Green Remediation**

General considered an add-on. Property owners are motivated by cost savings; if green can save the project money it is more likely to be embraced. Green remediation techniques such as bioremediation can take too much time for an economic development projection (may work better for green space projects). Other green techniques such as solar powered remediation equipment generally are more effective at large sites. On-site management of contaminated soils and soil reuse may be the best, most cost effective green remediation techniques available (landfill space and truck emissions).

### **Cleanup Goals**

There is a need to better define/standardize background (i.e., naturally occurring) metal concentrations in soils. Site specific cleanup goals allow more flexibility for on-site soil management.

## **Transit, TOD & Brownfields**

Good policies for development along transit-ways. Consider: land use policies, financial incentives

- Sophisticated developers working on TOD are aware of contamination
- Residents may not be aware
- Different development (mix of uses), goals differ by development line
- Gentrification concerns, issue of equitable development, potential tool: use of inclusionary zoning ordinance
- Potential for changes to requirements in transit-ways in next update to city comprehensive plans
- Consider how to get buy-in for transit oriented development
- Demonstrate job growth potential
- Finding the right name for a TOD marketing/branding program that explains benefits
- Ways to get private developers to support TOD in the Legislature.
- Minnesota cities don't want to take on risks of purchasing land, need some entity to help with land assembly, e.g., use of land banks
- Concern with how to pay for demolition needed to infill sites that are often part of TOD sites, (development costs associated with infill)
- Potential for new transit riders to see the benefits of transit once a line is running (e.g., transit to go to ball park)
- Need more universal benefits to get support from rural areas for spending for urban transit – challenge of differing acceptance, urban/suburban/rural
- Benefit of living in Greater Minnesota, but proximity to cities (1 ½ hour drive)

### **Challenges:**

- Education on value/subsidies
- Gentrification/equitable development
- Site assembly, risk-averse public & private entities
- Development costs, demo, acquisition, infrastructure
- Acceptance – urban/suburban/rural, different needs

### **Solutions:**

- Demonstrate job growth potential
- Private sector support/advocacy
- Financial incentives
- Creative zoning
- Marketing/branding explaining benefits
- Success stories- tax base, job creation