WISCONSIN LEGISLATIVE COUNCIL
ACT MEMO

2005 Wisconsin Act 418 [2005 Senate Bill 546]	Brownfields Laws Update

2005 Wisconsin Act 418 (the Act) revises the laws that relate to the remediation or clean up of contaminated property, often known as brownfields. The Act does the following:

- Amends the statute on environmental remediation tax incremental financing.
- Establishes a policy on sites with residual contamination.
- Amends the statute on voluntary party remediation and exemption from liability.
- Creates an exemption from solid waste laws for certain properties acquired by a local governmental unit.
- Amends the statute on environmental repair.

Environmental Remediation Tax Incremental Financing

Prior law authorizes a city, village, town, or county (a political subdivision) to use an environmental remediation tax increment to fund the remediation of environmental pollution on property that is located within the political subdivision.

The Act modifies or creates a number of the definitions in this statute. Expanded monitoring costs and the cost of canceling delinquent taxes are included in "eligible costs." "Taxable property" is defined and used to identify the parcels located in an "environmental remediation tax incremental district," or ERTI district (as defined in the Act), that is the subject of this form of remediation financing. The determination of the "environmental remediation tax incremental base," or ERTI base, is modified to be based upon the creation of the applicable ERTI district. The "period of certification" of an ERTI base by the Department of Revenue (DOR) is extended from 16 to 23 years.

The Act specifies a process for a governing body of a political subdivision to create an ERTI district and the effective date of the district based upon when the governing body adopts the required resolution. The Act clarifies that property that can be remediated includes contiguous parcels of property in the ERTI district.

This memo provides a brief description of the Act. For more detailed information,
consult the text of the law and related legislative documents at the Legislature's Web site at: http://www.legis.state.wi.us/.

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The Act requires two new reports. A political subdivision using this financing must: (1) prepare and make available to the public a report after the last expenditure is made on the status of the remediation funded under this financing, including an independent certified audit of the project; and (2) after the district terminates, provide the DOR the specified financial information. If the political subdivision does not submit the latter report within the required time period, the DOR may not certify the ERTI base of the district until the required form is sent to the department.

The Act specifies the criteria for the termination of an ERTI district and the effective date of this termination. The Act also authorizes the DOR to impose a fee of $1,000 on a political subdivision to determine or redetermine an ERTI base of an ERTI district. The Act includes changes in the laws governing general property taxes to make the treatment of this financing more consistent with recent changes in laws governing general tax incremental districts.

Sites With Remedial Contamination

The Act authorizes a state agency with administrative authority over remedial action at a specific site to do any of the following as a condition of approving remedial action or issuing a case closure letter if remedial contamination remains on the site after the conclusion of remedial action at the site:

- Require maintenance of an "engineering control" on the site.
- Require an investigation of the extent of residual contamination and the performance of any additional remedial action, if a structural impediment was removed that prevented complete investigation or remedial action at the site.
- Impose limitations, in accordance with DNR's rules, to ensure that public health, safety, welfare and the environment are protected and, as applicable, economic development is promoted.

Under state brownfields law, the three agencies with this administrative authority are the Department of Agriculture, Trade and Consumer Protection, the Department of Commerce, and the Department of Natural Resources (DNR).

The Act directs the DNR to maintain a public database listing sites for which remedial action has been approved or a case closure letter has been issued and that have residual contamination and for which DNR has directed the appropriate local governmental unit or corporation to take action necessary to reduce to acceptable levels any substantial threat to public health or safety when the property is developed or put to its intended use following remediation. An agency with administrative authority must require the affected person, local governmental unit, or corporation to provide the information necessary for the listing in this data base and to pay a fee established by DNR for the listing.

A person who owns or occupies property listed in this database must comply with the applicable requirements specified by the agency with administrative authority without regard to when the person obtained or occupied the property, unless another person has a legally enforceable responsibility to comply with the requirements. Such a person may request the agency with administrative authority to change or eliminate a requirement applicable to the site and to change the listing in the database.

Under the Act, before a person applies for case closure for a site that includes any property that has residual contamination and is not owned by the person, the person must provide written notification of the contamination to the owner of the property.

Voluntary Party Remediation and Exemption From Liability

Part of the prior law on voluntary party remediation and exemption from liability exempts a voluntary party from the liability under specified statutes when the DNR determines that natural attenuation will restore

groundwater quality in accordance with its rules. The Act adds a condition for this exemption to be that the voluntary party, if the party owns or controls the property, allows the DNR and other specified persons to enter the property to determination whether natural attenuation has failed and to take action to respond to the discharge if the natural attenuation has failed. In addition, if the voluntary party does not own or control the property, and the person who does own or control the property fails to allow entry to the property for these purposes, then the voluntary party exemption continues to apply.

The Act repeals the provisions in the voluntary party exemption statute relating to discharges discovered after environmental investigations. The Act also expands the exception to this statute for solid waste facilities so that the voluntary party exemption statute does not apply to any licensed solid waste facility, or any solid waste facility or waste site at which active remedial operation or treatment is required, including a site or facility where methane or groundwater monitoring or gas, leachate, or groundwater collection or treatment is required.

Local Government Exemption From Solid Waste Law

The Act specifies that a local governmental unit is exempt from state solid waste management standards in s. 289.05, Stats., and DNR's rules promulgated under that section, with respect to property acquired by the unit before, on, or after June 3, 2006 if the unit acquired the property through tax delinquency precedings, condemnation, for the purpose of blight elimination, through escheat, or other specified means. As used in this exemption, a "local governmental unit" means a municipality, designated redevelopment authority, public body designated by a municipality working on an urban renewal project, community development authority, or a housing authority.

This exemption only applies if the local governmental unit agrees to allow the DNR and other specified persons to enter the property to take action to respond to the environmental pollution or discharge and, if the local governmental unit complies with any health or safety related requirements imposed by the DNR before the unit acquired the property, such as the maintenance of a leachate collection system, a cap over waste on the property, or a groundwater monitoring system.

The Act specifies a number of conditions under which the exemption does not apply, including if the local governmental unit's action or inaction causes environmental pollution or discharge of a hazardous substance or the local governmental unit operated a solid waste facility or waste site on the property.

The Act specifies that the exemption does not exempt a local governmental unit from land use restrictions required by DNR, including those that are necessary to prevent damage to a cap over waste on the property or to otherwise prevent uses of the property that may cause a threat to public health or safety.

Environmental Repair

Prior law details procedures and requirements for the conduct of environmental repair of contaminated properties. The Act replaces the previous requirement that DNR prepare an inventory of sites or facilities which may cause or threaten to cause environmental pollution with a requirement to compile, maintain, and make available to the public a database of all sites and facilities at which the discharge of a hazardous substance or other environmental pollution has been reported to the DNR. The Act also repeals the requirement for DNR to rank the sites and facilities in the inventory by hazard. The Act repeals a prior provision in this statute on municipal incinerator ash testing by DNR between June 30, 1986 and January 30, 1988.

Effective Date: In general, the Act takes effect on June 3, 2006 except that the provisions relating to the ERTI financing program take effect on October 1, 2006 and apply to an ERTI district that is in existence, or created on, October 1, 2006.

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