



WISCONSIN LEGISLATIVE COUNCIL INFORMATION MEMORANDUM

Clean Up of Leaking Closed Municipal Solid Waste Landfills

Closed landfills cause environmental contamination. State programs exist that govern how publicly owned facilities must address clean up or remediation of groundwater when they close such a facility.

In addition to the state programs described in this memorandum, the Department of Natural Resources (DNR) also cooperates with, and coordinates the implementation of the state programs with, the U.S. Environmental Protection Agency in the implementation of the federal "Superfund" program under the Federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. ss. 9601 to 9675.

SCOPE OF THE PROBLEM

The statewide information that is available on waste sites and contamination from them is set forth in three lists maintained by the DNR. These three lists are:

- *Registry of Waste Disposal Sites in Wisconsin* (Publication #RR-108). The DNR describes the registry as a "broad category of sites or facilities that had some record of solid waste activity. The list includes: active and inactive licensed landfills; licensed and unlicensed one-time disposal sites; demolition debris sites; old burn pits; and deer pits and other sites such as old brush piles that were perceived as a nuisance at the time and were regulated

wastes. The registry, however, is not a list of contaminated sites, nor is it a complete listing of all waste sites in the state." At present, the *Registry* includes 4,299 sites.

- *Wisconsin Remedial Response Site Evaluation Report* (Publication #SW-504). This report contains three lists, The Inventory of Sites Which May Cause or Threaten to Cause Environmental Pollution, the High Priority Hazardous Substances Spill List and the High and Medium Priority Leaking Underground Storage Tank List.
- *Hazardous Ranking List* (Publication #SW-501). This list identifies sites that may cause or threaten to cause environmental pollution along with the DNR's risk criteria and final ranking scores based upon the DNR's hazard ranking system. Sites listed on this list pose a "substantial danger" to the public health and welfare or to the environment. Sites on this list are eligible for state clean up funds if the "responsible parties," as described below, are not available.

In addition to the above state lists, 17 of the 39 Superfund sites in Wisconsin are closed municipal solid waste landfills. (See Superfund Sites in Wisconsin (Publication #RR-0005).)

Staff at the DNR note that the cost for cleaning up a leaking landfill varies depending upon a number of parameters including the extent and

type of contamination. These clean up costs range between \$1.5 to \$6 million per site with an average being \$1.5 to \$2 million.

A few years ago, the DNR initiated a federally funded five-year systematic review of the potential for contamination from the sites in the *Registry of Waste Disposal Sites in Wisconsin*. This review included site inspections. With the early withdrawal last year of federal funding for the review, the DNR has significantly reduced its efforts on the review.

Since it is not presently known which of the closed municipal solid waste landfills listed in the *Registry of Waste Disposal Sites in Wisconsin* may be causing unidentified environmental contamination (that is, they are not on the *Wisconsin Remedial Response Site Evaluation Report* or the *Hazardous Ranking List* and are not a Superfund site), it is not possible to estimate the extent of environmental contamination from closed municipal solid waste landfills in Wisconsin and the magnitude of expenses to remediate that contamination.

STATE CLEAN UP PROGRAMS

REGULATIONS

The state's comprehensive program for cleaning up discharges of hazardous substances to the environment is set forth in chs. 160 and 292, Stats. The DNR's rules implementing these statutes are contained in chs. NR 140 and 700 to 754, Wis. Adm. Code.

In general, the remediation of leaking closed municipal solid waste landfills is not subject to separate policies and regulations but is regulated as are other sites or facilities that may be discharging hazardous substances, such as abandoned manufacturing facilities. These regulations establish a process to plan and execute a remediation that is appropriate for the known or suspected contamination at a specific site based on the following steps:

- Determine if immediate or interim action is necessary and, if so, conduct the action.
- Determine if additional action is appropriate and, if so, conduct a detailed site investigation.
- Evaluate remedial options.
- Select remedial options.
- Design and implement selected remediation pursuant to state groundwater and soil clean up standards.
- Secure case closure from DNR that no further action at the site is necessary.

State laws assign the responsibility for taking the remedial actions necessary to restore the environment and minimize the harmful effects from discharges of hazardous substances, in general, to persons who possess or control the substance which is discharged or who caused the discharge. (See, in particular, ss. 291.11 (3) and 292.31 (8), Stats., for the statutes that impose this liability and adjoining statutes that either create exemptions or otherwise limit the liability of persons under specified conditions.) The DNR refers to persons with these clean up responsibilities as "responsible parties" in its rules.

The regulations in ch. 292, Stats., contain a few provisions that directly relate to the clean up of closed municipal solid waste landfills, including:

- A process for a municipality to apply to the DNR for an exemption from liability for cleaning up property that contains a closed landfill that is acquired by the municipality if specified conditions are met, including that the landfill was privately owned while it was in operation. [s. 292.16, Stats.]

- The establishment of a cost recovery cause of action for local governments that investigate environmental contamination or conduct remedial activities on property obtained through various specified mechanisms, including tax delinquency proceedings, an order by a bankruptcy court or for the purpose of slum clearance or blight elimination. [s. 292.33, Stats.]
- The creation of a process to identify responsible parties and negotiate costs of remedial action for landfills and other waste sites owned by a local governmental unit. [s. 292.35, Stats.]

FINANCIAL ASSISTANCE

The DNR and the Department of Commerce have jointly prepared a guide to 41 different state or federal programs that provide financial assistance for “brownfields”^{*} clean up and redevelopment. This report is *The Financial Resource Guide for Cleanup and Redevelopment* (Publication #RR-539). The programs identified in the guide provide grants other direct reimbursements, loans, loan guarantees, tax credits and tax incentives for one or more of the stages of assessment, clean up and subsequent redevelopment of contaminated sites. The eligibility requirements and uses of the provided assistance vary by program. In general, responsible parties are not eligible for financial assistance under listed programs. In some programs, a responsible party is eligible if the party is financially unable to pay for the associated remediation or development costs.

In addition, the DNR currently receives an appropriation of \$3.3 million per fiscal year that it can use to clean up contaminated sites, spills and abandoned containers and pay the state’s share of federal Superfund activities in Wisconsin where there is no responsible party or the responsible parties have insufficient financial resources to pay the cost of remediation. This appropriation is also used to

fund the DNR’s reimbursement of certain monitoring costs at closed “nonapproved facilities” that are owned or operated by a municipality under ss. 289.30 (7) and 292.31 (4), Stats. Nonapproved facilities include older landfills which were licensed by the DNR prior to May 1978 under less-stringent requirements than those presently imposed on landfill owners and operators.

ISSUES AND CONCERNS

During the preparation of this memorandum, Legislative Council staff identified or were presented with a number of issues or concerns that contribute to the difficulty in cleaning up contaminated closed municipal solid waste landfills that were operated by a municipality or owned by a municipality during their active life. These issues and concerns are discussed below.

If a municipality owned or operated a landfill that subsequently contaminates the environment, then the municipality has the responsibility to clean up the contamination. Many municipalities, however, do not have sufficient resources to finance the clean up on their own and there is not a state program to provide financial assistance for this clean up.

The DNR encourages municipalities with a contaminated landfill to work with waste generators, who may share legal responsibility for the clean up of the contamination. However, many municipalities did not keep accurate records of the waste generators that use the landfill. Where waste generators are known, often they are major employers in or near the municipality. If the municipality threatens legal action to force the financial support of these employers, they risk the employer either moving its operations from the municipality or threatening to do so.

In addition, there is often an “orphan” portion of the waste disposed at a landfill which cannot be attributed to a particular generator. Currently,

the municipality must pay for this share of the remediation expenses caused by these orphan wastes, which increases the municipality's clean up expenses.

Finally, if the landfill was closed more than 10 years ago the closed landfill often lacks the proper leachate and gas collection system and may have an inadequate cap (which keeps rainwater out of the landfill) or no cap at all. These deficiencies may contribute to the closed landfill causing additional contamination and additional clean up expense.

ADDITIONAL INFORMATION

Copies of the state statutes and administrative code cited in this memorandum and either copies of or order forms for DNR publications relating to the clean up of contaminated sites identified in this memorandum are available at the following Internet sites:

- State statute and administrative code: www.legis.state.wi.us
- DNR's remediation and redevelopment program: www.dnr.state.wi.us/org/aw/rr/index.htm

This memorandum, was prepared on March 19, 2002, by John Stolzenberg, Chief of Research Services. The Information Memorandum is not a policy statement of the Joint Legislative Council or its staff.

*A "brownfield" is an abandoned or idle commercial facility or site whose expansion or redevelopment is adversely affected by actual or perceived environmental contamination.