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# Budget Briefs

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## BROWNFIELDS

The biennial state budget act (1999 Wisconsin Act 9), passed by the legislature and signed by Governor Tommy Thompson on October 27, 1999, makes numerous changes to the state's brownfields programs, which are designed to offer incentives to individuals and local governments to redevelop contaminated lands. This brief describes the major revisions.

### BROWNFIELDS SITE ASSESSMENT GRANTS

Act 9 creates a brownfields site assessment grants program, administered by the Department of Natural Resources (DNR). Grants totaling \$1.45 million in 1999-2001 may be awarded to cities, towns, villages, counties, redevelopment authorities, community development authorities, and housing authorities to conduct activities at abandoned, idle, or underused industrial or commercial facilities or sites where redevelopment is retarded by actual or perceived environmental contamination. The grants may cover: 1) investigation of contaminated sites; 2) demolition of structures, buildings, or other improvements; 3) removal of abandoned containers; 4) asbestos abatement activities; and 5) removal of underground storage tank systems that contain hazardous substances or petroleum.

Grants may be used only for sites where the person who caused the contamination is unknown, cannot be located, or is financially unable to pay the cost of the activities covered by the grants. No funding will be awarded, however, if the grant applicant (municipality, county or authority) caused the contamination at the site. Awards will be based on the demonstrated commitment of the applicant to completing environmental remediation at the site, the degree to which the project will have a positive impact on public health and the environment, and any other criteria DNR determines. Applicants must match at least 20% of the grant amount with cash or in-kind contribution, and no single applicant may receive more than 15% of the total amount of the grants awarded in the fiscal year.

### LOCAL GOVERNMENT PROVISIONS

**Liability Exemption.** Act 9 makes available to community development authorities the existing exemptions provided local governments when they acquire brownfields in specified ways or for specified purposes from liability for hazardous substances spills. The act also extends the liability exemption to cover both on-site spills and spills that "migrate" off-site, as well as spills from federally regulated underground storage tanks. It further broadens the list of exempt property types to include: property acquired through escheat (when there is no identifiable heir) or the Warren Knowles-Gaylord Nelson Stewardship Program plus property acquired from another local government through tax delinquency, bankruptcy, or condemnation or for blight elimination or slum clearance.

**Cost Recovery.** Act 9 permits local governments to sue to recover their brownfields remediation costs from persons responsible for the contamination of parcels acquired in specified ways or for specified purposes if the responsible persons are not legally exempt from liability. The governmental unit may recover the reasonable and necessary costs it incurs for: 1) investigation of environmental contamination and planning remediation; 2) remediation activities; and 3) administration of the investigation and remediation phases, plus some of the

fees associated with recovering costs. The local government's recovery under the act is subject to certain limitations. For example, recoverable costs are reduced by the amount of the fair market value of the property after cleanup, and responsible persons are only liable for costs in proportion to the environmental damage that they caused. If the local government receives a recovery award, it must repay to the state a proportionate amount for any state assistance it received for the cleanup. The local government cannot recover costs for any remedial activities it conducted after DNR, the Department of Commerce, or the Department of Agriculture, Trade and Consumer Protection determined that no further remediation was necessary.

## **VOLUNTARY PARTY PROVISIONS**

The act broadens the existing "voluntary party" liability exemption from liability for residual hazardous substances that remain after a cleanup is conducted to provide that the exemption is available to anyone. (Previously, the exemption was available only to persons who had not intentionally or recklessly caused the release of a hazardous substance.) The act limits the exemption to hazardous substances released prior to the date the environmental investigation of the property was approved by DNR.

Act 9 also provides a liability exemption for voluntary parties whose property will be restored to DNR standards in part through natural attenuation (the natural breakdown of hazardous substances through various naturally occurring processes). The exemption would be available only if 1) a DNR-approved investigation of the property is conducted; 2) hazardous substances on the property not subject to natural attenuation are cleaned up; 3) DNR has certified that the cleanup has been completed; 4) the owner has obtained insurance as DNR requires; 5) the owner monitors property as required by DNR; 6) the owner refrains from activities inconsistent with the maintenance of the property; and 7) DNR certification is not obtained through fraudulent methods.

## **OTHER PROVISIONS**

**Lender Liability Exemption.** Under Act 9, to qualify for a liability exemption a lender who comes into possession of contaminated lands based on enforcement of a security interest must permit DNR or the parties responsible for the hazardous substance or its discharge to enter the property to respond to the discharge. The lender must avoid interference with response action, agree to the conditions DNR finds necessary to facilitate adequate response to the discharge, and refrain from doing anything that worsens the discharge. Act 9 also expands the current environmental liability exemption for lenders to cover leaks from federally regulated underground storage tanks.

**Urban Development Zone Program.** DNR is required to develop and administer a pilot program promoting the use of financial incentives to clean up brownfields in certain cities. During the 1999-2001 biennium, \$2,450,000 will be available for the following cities: Milwaukee (\$1,000,000), Green Bay (\$500,000), La Crosse (\$500,000), Oshkosh (\$250,000), and Beloit (\$200,000). The program, which must begin no later than January 1, 2001, will provide funding for the investigation of environmental contamination and the cleanup of brownfields.

## **CONTACT**

For more information about 1999 Wisconsin Act 9 changes to the brownfields programs, contact Mark F. Giesfeldt at DNR's Bureau for Remediation and Redevelopment at (608) 267-7561.