

SUBGROUP: Funding Sustainability

Remediation and Redevelopment External Advisory Group



Meeting Notes

Remediation and Redevelopment External Advisory Group – Funding Sustainability

March 3, 2023

10:15 –12:15 p.m.

Rm. G09, State Natural Resources Building (GEF 2)

101 S. Webster St. Madison, WI 53703

Action items/assignments for next meeting

- **ALL:** **AD HOC Group Opportunity** - Develop draft white paper for the Multi-Site Legacy Residual Contamination Sites Revolving Fund Program proposal (Ned Witte, Godfrey & Kahn; Dave Misky, Redevelopment Authority of the City of Milwaukee)
 - To participate email Michael.Prager@wisconsin.gov to express interest.
- **DNR:** Review *The Financial Resource Guide for Cleanup & Redevelopment* (RR-539) to pull out the relevant information for reference in future funding sustainability subgroup discussions.
- **ALL:** Subscribe to the RR EAG listserv to receive information about future meeting dates, agendas, resources, and other EAG-relevant items. Zoom attendees are automatically added to the listserv; if you would like to opt out, please email Jody.Irland@wisconsin.gov

Introductions

In-person attendees

- Mark Rutkowski, Shannon & Wilson
- Bill Nelson, Godfrey & Kahn
- Jodie Peotter, DNR
- Jenna Soyer, DNR
- Gena Larson, DNR
- Molly Schmidt, DNR
- Jody Irland, DNR

Zoom attendees

- Jenna Weigman, Westwood Professional Services
- Judy Fassbender, DNR
- Michael Prager, DNR
- Bill Scott, WPS Law

- Sheldon Johnson, Northwest Regional Planning Commission
- Ned Witte, Godfrey & Kahn
- Lanette Altenbach, Aecom Technical Services,
- Tom Coogan, DNR
- Jennifer Borski, DNR
- Barry Ashenfelter, DNR
- Miranda Braatz, R3 Elevated
- Rob Hoverman, DNR
- Ted Warpinski, Halling & Cayo
- Adam Roder, The Sigma Group
- Donna Volk, Ramboll
- Dave Misky, Redevelopment Authority of the City of Milwaukee

Review takeaways from last meeting

- [Fri. Dec. 9, 2022, Meeting notes and materials](#)

Recommendations/proposals (agenda repair)

Multi-Site Legacy Residual Contamination Sites Revolving Fund Program (Ned Witte, Godfrey & Kahn; Dave Misky, Redevelopment Authority of the City of Milwaukee). Clarifications/questions, feedback on proposal, and next steps

- Fact finding discussion held with DNR staff on February 10, 2023, found that most of the elements in the proposal already exist but it needs to be marketed as a cohesive program, including incentivization for participating. Funding mechanisms; however, would need significant legislative involvement.
 - Email Michael.Prager@wisconsin.gov to express interest in participating in future ad hoc discussions on the proposal.

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- Challenges identified are creating a sustainable funding source and the statutory changes needed for such funding sources. Preventing a zeroing of the fund requires an annual appropriation or set floor for replenishment. LGU capacity to recovery funds could be a barrier; cost recovery is not guaranteed, only the authority to do so.
- Strategy for moving forward could include a pilot program to bring greater awareness to LGUs about existing cost recovery authority. LGUs have the potential for more efficient cost recovery mechanisms compared to the DNR. Information from a pilot program, or identification of existing examples, could be used for creating a recommendation for making statutory changes. A recommendation would need to include:
 - Entities that would support the promulgation of the proposal
 - Create a diagram to outline what this process would look like and where funding is needed, spent, and recovered
 - Identify which remedial actions would meet funding requirements
 - Basic program concept and resources such as funding sources, statutory changes for funding, DNR resource needs to implement such a program, and any statutory changes to existing LGU authority.

Funding gaps as identified by DNR

Dry Cleaner Environmental Repair Fund (DERF/DERP) – Reimbursement program for investigation and cleanup for former and current dry cleaner properties. Program is structurally deficient due to declining revenue from dry cleaner fees. Debt will continue to be built unless a fix is implemented.

Other acute risk vapor sites – TCE is a high priority focus for DNR due to acute health effects. There is limited federal funding for investigation only. An increasing amount of DNR staff time is spent on these sites. Statewide map, “Open and Closed Sites in Wisconsin with TCE,” reflects about half of the identified closed sites and open sites—locations still being added to map.

Stalled petroleum sites – Petroleum Environmental Cleanup Fund Award (PEFCA) reimbursed site owners for investigation and cleanup of leaking underground storage tanks until the program sunset in June 2020. Many of the former PECFA sites have stalled without a funding source.

Innocent landowners - Eligible for little to no funding because they are considered liable for contamination under state and federal law.

PFAS - Statewide issue where the RR program is tasked with enforcing and coordinating associated activities. Discovering a growing number of sites with a large portion of RR’s funding going to temporary emergency water.

Programmatic funding gaps – An area of challenge is the steep jump in the number of complex cases. DNR staff currently work heavy caseload.

Governor’s FY23-25 budget – Revitalize Wisconsin is a comprehensive grant program that would be impactful on several funding gap areas, including as a fix for DERF and as an available for resource for innocent landowners. Budget drafting is several months away.

Funding gaps and needs- Group discussion

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- A barrier for redevelopment is that environmental concerns can be prioritized under other concerns. Developers use word-of-mouth to avoid certain sites with environmental stigmas; developers depend on environmental consultants to site details about environmental concerns. A cross-industry campaign about how to find and use financial assistance to promote profitable and timely redevelopment could help remove the stigma around some sites.
- WAM/Ready for Reuse could potentially provide more channels for more effective leveraging of existing funds
- Wisconsin lacks an active petroleum marketer association which affects actions on stalled petroleum sites. Other obstacles include lack of *bona fide protective purchaser* (BFPP) protection and statutory right of contribution.
- The only funding for VI sites, outside of DERF, is the Environmental Repair Fund (ERP). The ERP is typically only used with emergency or high-risk sites and is limited in available funding.

Open topics and additional agenda items

Next steps and topics for next meetings

Adjourn

MEMORANDUM

TO: Jodie Peotter, Wisconsin Department of Natural Resources
CC: Bill Nelson
FROM: Ned Witte, Dave Misky
DATE: September 22, 2022
RE: RREAG Additional Agenda Item for September 23, 2022

Thank you for the opportunity to propose additional agenda items for this Friday's Remediation and Redevelopment External Advisory Group.

Multi-Site Legacy Residual Contamination Sites Revolving Fund Program

Issues

- Facilities like former gas stations and former dry-cleaning properties remain open issues in many communities.
- The larger entities in such industries have addressed their issues (e.g., Kwik Trip; Klinke's) while the small businesses, including many in environmental justice communities, merely went out of business and the problems remain.
- Contamination remaining in the environment is often worse than after the initial discharge.
- Human health impacts for VOC vapor intrusion are acute and increasingly understood to be worse than previously understood.
- Environmental justice communities may not have the resources to address single remedial action sites or Brownfields sites.
- The optimal end use of a remedial action site may not be a lucrative redevelopment opportunity but rather a park or community space; again, this concern hits environmental justice and smaller communities harder than "high profile," larger municipalities with desirable redevelopment sites.

Barriers

- Cleanups can be expensive undertakings - PECFA has sunset; DERF is underfunded and upside down due to funding tied to phased out products.

- Wisconsin has a mature pipeline of sites suitable for redevelopment – the sites remaining may not have an immediately associated viable responsible party (e.g. a seller who is also the RP) to address the issues or may be complicated by other variables.
- DNR RR staff bandwidth may not permit proactive attention to the sites that are priorities for LGUs
- Changes to Wis. Stat. ch. 227 has made Administrative Rulemaking a 30-month endeavor rife with challenges.
- Faster to promulgate a statute than an administrative rule.
- “Juice is not worth the squeeze” for many communities where the cost to define the unknown with no potential ability to recover costs is a barrier, or no funding is available at all
- DNR receipt of site-specific cost recovery funds are inflexible/directed to general fund.

Opportunities

- LGU programs (e.g. liability exempt status) have been very successful in achieving favorable outcomes and incentivizing investment in remedial action sites
- LGUs have certain cost recovery tools (i.e. 292.33 and 292.35) that have not been fully leveraged but which could complement DNR directed cleanup and redevelopment
- May lead to cleanups in EJ communities that have been overlooked.

Proposed Solution

- A new fund and program for LGUs – municipalities, counties, tribes
- Fund to address multiple sites at once
- Reuse of property not driven solely by redevelopment opportunity to maximize profit, but to maximize outcomes including utility of contaminated or perceived contaminated properties for multiple community uses.
- Conceptual approach:
 - Applicant LGU identifies 3-5 sites which meet certain criteria developed by subgroup (consideration: include preference for EJ-related sites).
 - Applicant LGU conducts PRP search and explores cost recovery options (292.33; 292.35)
 - Upon receipt of LGU proposal including the foregoing criteria and funding request, DNR evaluates application of 3-5 sites with Green Team meeting to identify funding opportunities
 - DNR oversight/approval of eligible costs
 - Create an appropriation where (a) the legislature may direct specific funds; and (b) any recovered costs owed to DNR secured through the LGU cost recovery options may feed back into the grant program rather than go to GPR.
- Objectives of program:
 - 3-5 cleanup sites within a community (in case of municipal applicant) or series of communities (in case of county applicant) across state of Wisconsin (not just major municipalities)
 - Cost recovery success for some of the applicants with percentage of cost recovery shared with DNR to continue program
 - Attention to smaller communities and EJ sites

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Remediation & Redevelopment External Advisory Group Funding Sustainability Subgroup

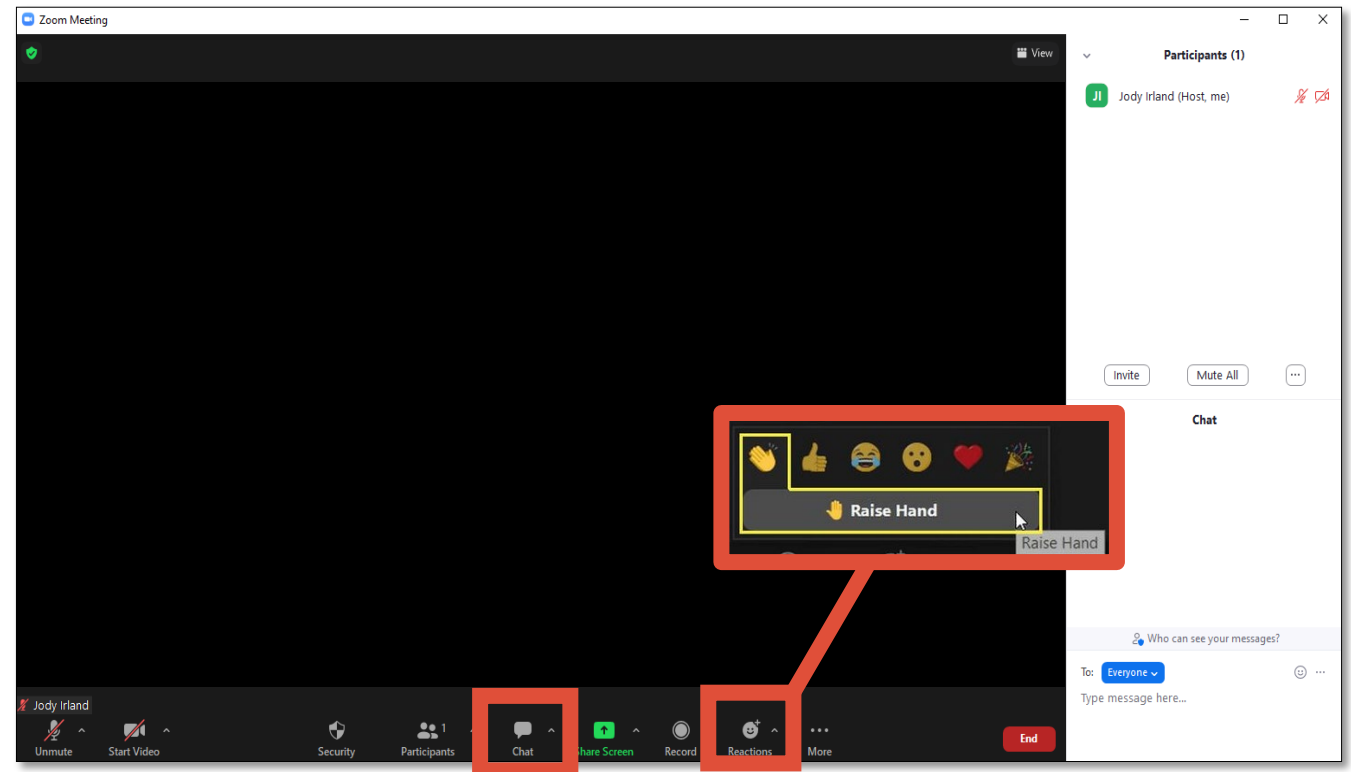
March 3, 2023



Welcome

Zoom Meeting Logistics

- Attendees can unmute themselves
- Speak freely, use chat, or raise hand
 - Zoom host will read chat and respond to raised hands
- Mute when not speaking
- Identify yourself before speaking





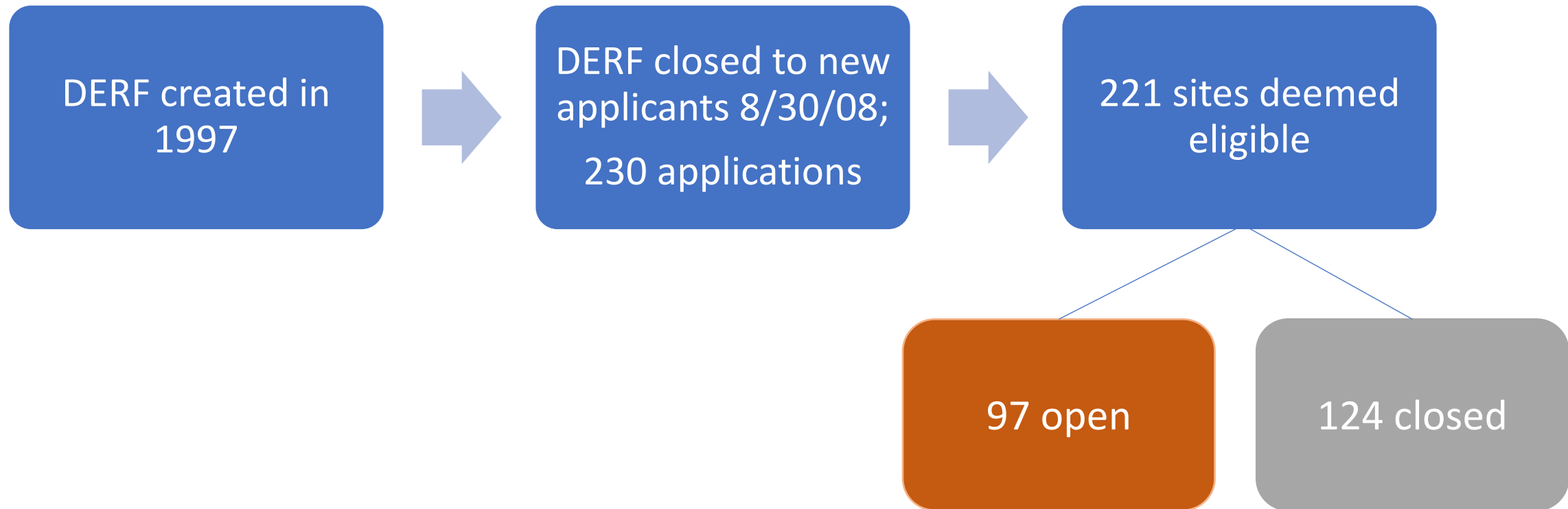
Funding Gaps

As identified by the DNR

Funding Areas

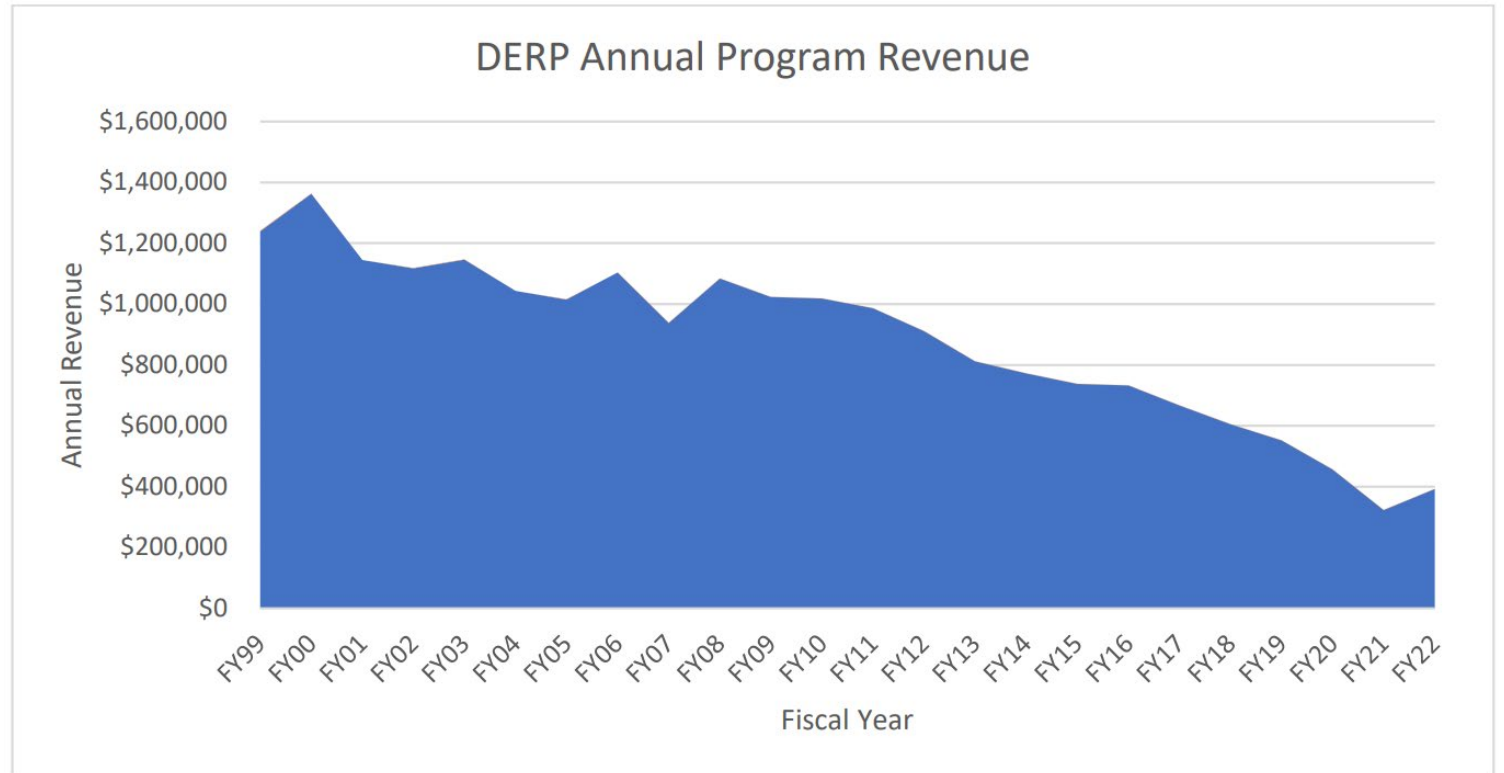
- Dry Cleaner Environmental Response Fund (DERF)
- Acute vapor risk
- Stalled petroleum sites
- Innocent landowners
- PFAS
- Programmatic funding

Dry Cleaner Environmental Repair Fund



Dry Cleaner Environmental Repair Fund

- ~ 350 dry cleaning sites with known contamination across the state; only 221 sites are eligible for DERF
- DNR estimates that over 5,000 historical dry-cleaning sites have yet to be investigated



DERF is supported by revenue from dry cleaning fees which has been in a steady decline for years

Dry Cleaner Environmental Repair Fund

\$4.3 M

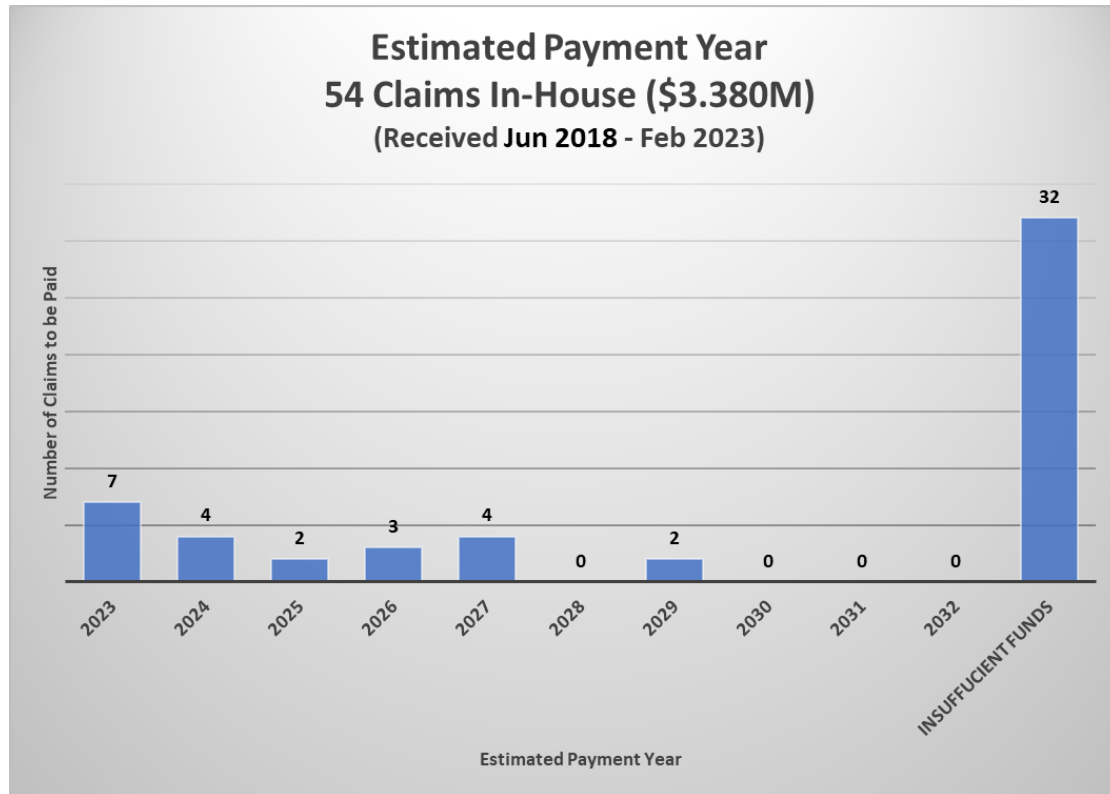
- Applicant/agent submit work proposal to DNR
- DNR reviews and authorizes work and reimbursable expenses

- Applicant completes approved work
- Applicant/agent prepares and submits claim for reimbursement

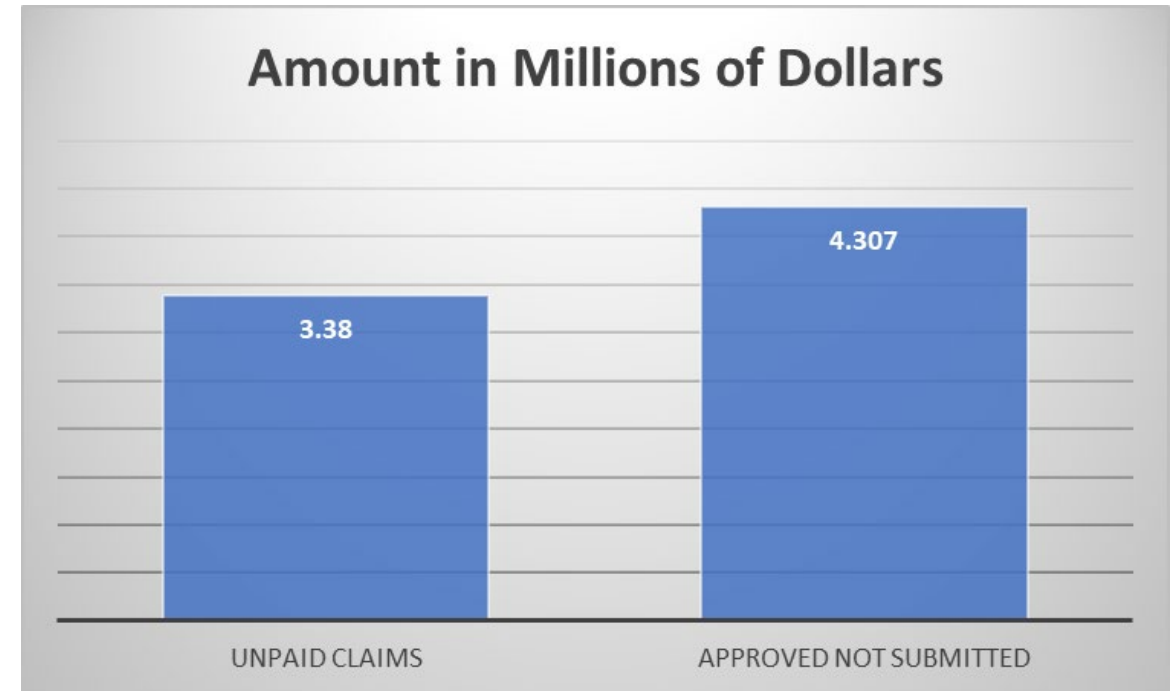
\$3.38 M

- DNR audits claim
- Claim goes in queue for payment

Dry Cleaner Environmental Repair Fund



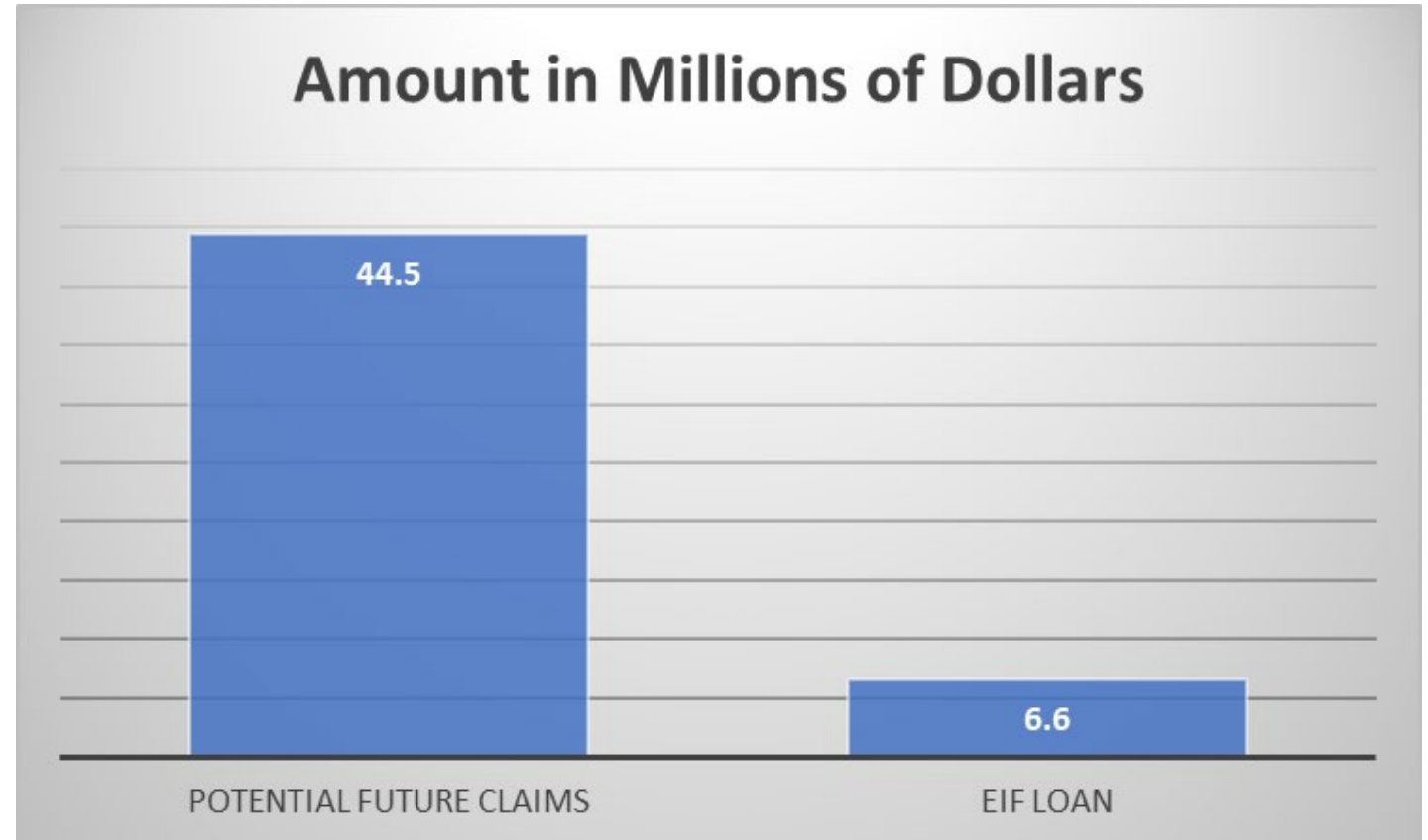
32 (\$2.18 M) of the 54 unpaid claims (\$3.38 M) and all future claims projected to not receive reimbursement



Total outstanding DERF costs approved and not yet submitted to DNR for reimbursement total \$4.307 M

Dry Cleaner Environmental Repair Fund

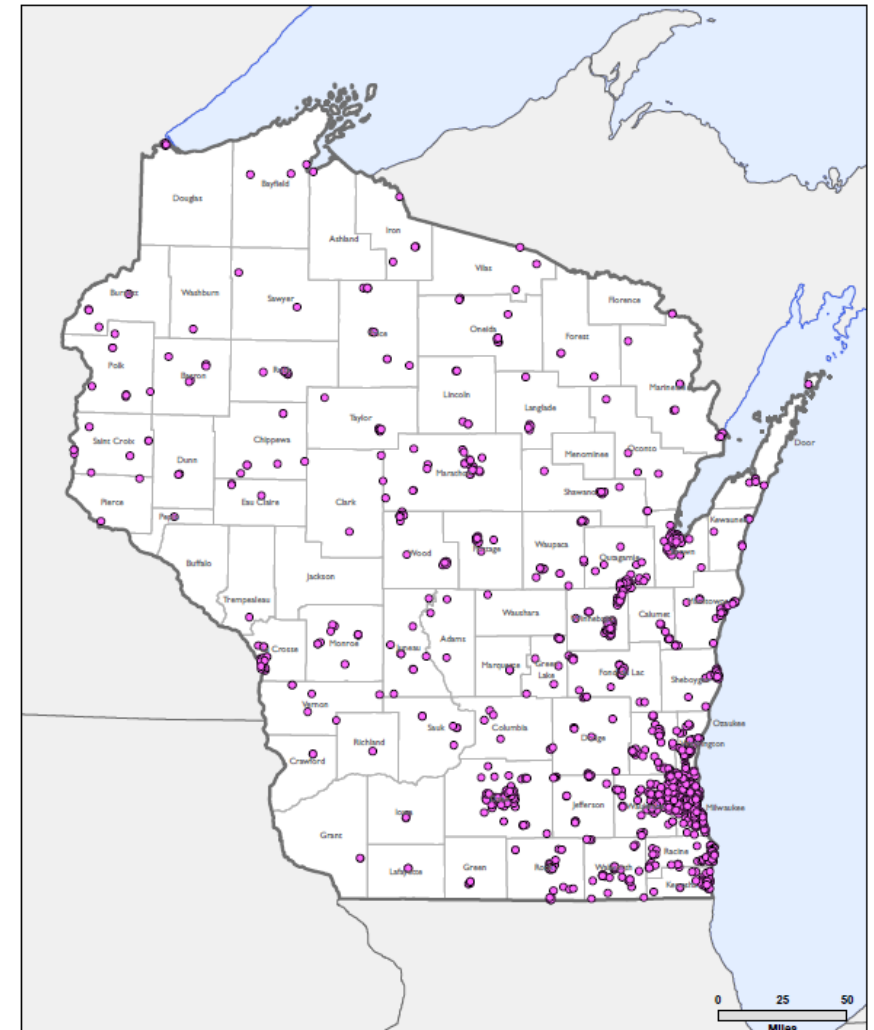
- Total fund liability may approach \$51.1 M through 2032, including \$44.5 M in potential future claims and \$6.6 M for EIF loan.
- Potential future claims is the difference between the claim cap (\$500,000) of each the 97 remaining DERF sites minus what has already spent. The remainder is the potential amount that could still be claimed.



Other Acute Risk Vapor Sites

- Currently, 33 open dry-cleaning sites with Trichloroethene (TCE) not eligible for DERF (program was closed to new applicants in 2008 under statute)
- 508 open non-dry cleaning sites with TCE
- 31 open high priority sites (based on several risk factors) at a total estimated cost for vapor investigation and mitigation of \$4,455,000
- Sites closed with TCE prior to ~2012 likely not investigated for vapor intrusion

Open and Closed Sites in Wisconsin with TCE
(Includes Environmental Repair Program (ERP) and Leaking Underground Storage Tank (LUST) Sites)



Legend

- Open or Closed Site with TCE Indicated as a Substance (1,736 as of 2/15/2023)

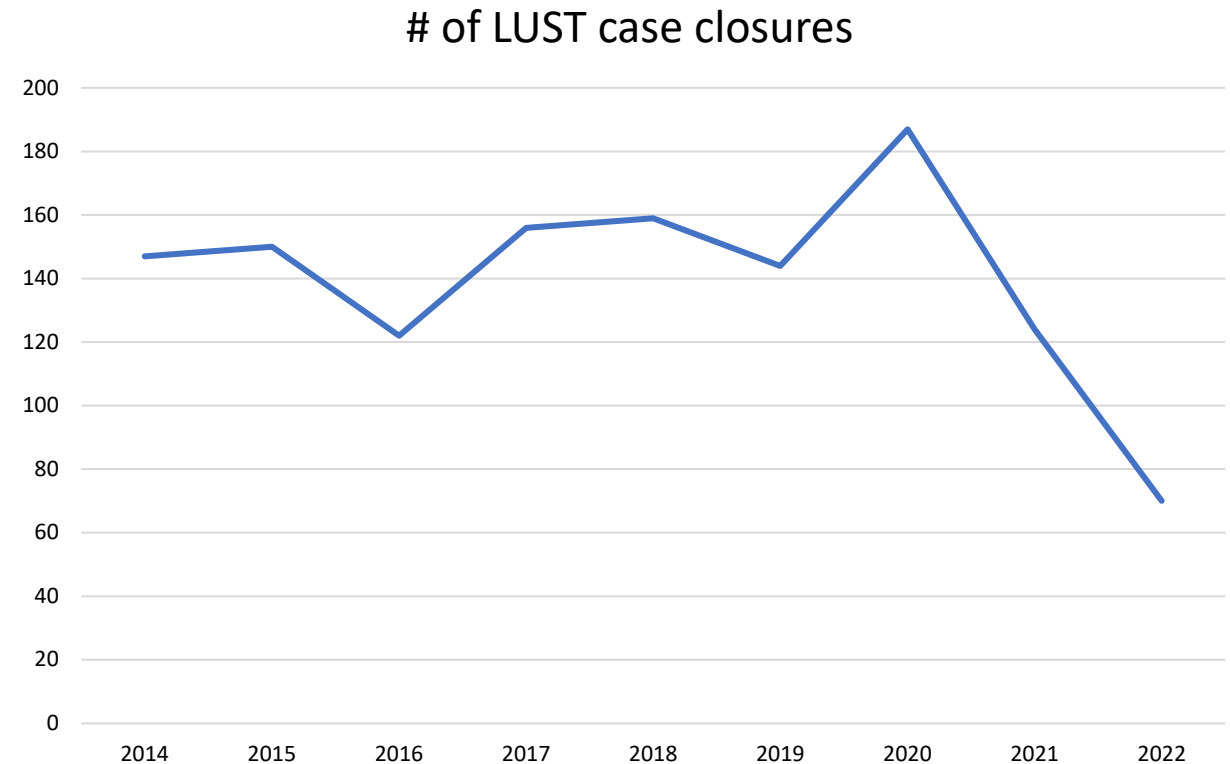


Feb 15, 2023

Remediation & Redevelopment Program
RSS

Stalled Petroleum Sites

- LUST is a federal EPA program that provides funding for RR staff (10-14 FTE). DNR must meet LUST targets, including # of case closures, to earn funding.
- Closures of LUST cases has dramatically dropped due to the sunset of PECFA on June 30, 2020
 - WI is now just one of a few states without a petroleum cleanup fund
- DNR is working on identifying high priority, stalled petro sites



Innocent Landowners

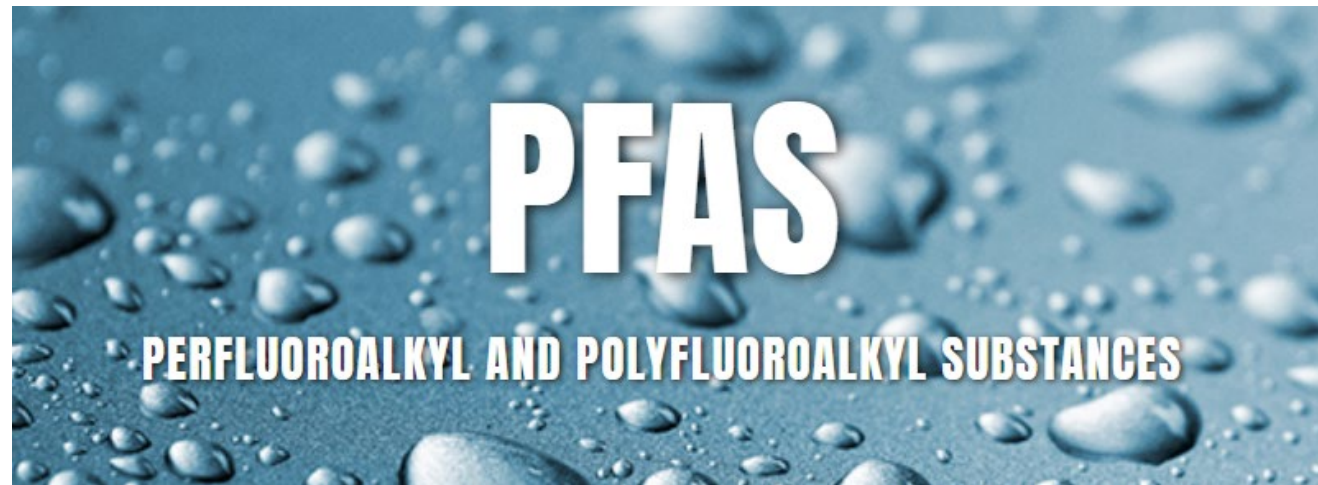
Those who did not cause or exacerbate the contamination but:

- may be considered a possessor - responsible party under Wis. Stat. 292 and are required to cleanup the site under state law; and/or
- may be considered liable under CERCLA (having not met Bona Fide Prospective Purchaser) and therefore not eligible for federal funding.



PFAS

- DNR is expecting to spend ~\$1.2M on PFAS in FY23 and annually thereafter
 - Technical Assistance - \$361,000
 - Temporary Water - \$500,000
 - Lawsuits - \$306,000
- Approximately 50% of annual state funded response/spill response allocation



Programmatic/Service Funding Gaps

- 41.75 FTE hydros dedicated to site work
 - current workload of 73 sites/hydro (goal is 60 sites/hydro)
 - To reach this goal, RR would need an additional 9 FTE hydros (\$940,000/year)
- 2,617 open cases
- Case load consists of complex sites, sites without viable RP and redevelopment of closed sites with continuing obligations and/or contaminants of emerging concern



Programmatic/Service Funding Gaps



Select 2022 redevelopment assistance provided

- 49 post closure modifications
- 47 historic fill exemptions
- 95 general liability clarification letters
- 19 off-site exemption letters
- 40 Phase IIs/TSSAs requiring additional work

Increase in complex cases

- 56 open PFAS BRRTS cases prior to January 2019 (mostly DOD sites)
- 93 open PFAS BRRTS cases as of 2/17/2023



Governor's FY23-25 Budget

Revitalize Wisconsin

- \$3M per year
- Sunsets DERF
- Sets aside \$1M per year for payment of backlogged DERF claims until all claims are paid, then \$450,000 per year for DERF-eligible projects until all DERF-eligible sites have been closed
- Remaining funds provided in grants and direct services for other sites including relief for innocent landowners and off-site properties

Other Budget Proposals

- PFAS Municipal Grant Program
- PFAS Emergency Funding
- Additional Contaminated Sediment Bonding Authority
- FTE dedicated to DOT work
- FTE dedicated to PFAS work

Funding Gaps and Needs – group discussion

Financial Assistance Gaps

Are there sites or situations when financial assistance is needed but currently isn't available?

Programmatic/Service Funding Gaps

WAM and Ready for Reuse

Ideas for more effective leveraging of existing funds

Programmatic/Service Funding Gaps

Services and Support from DNR

Services and support from DNR that could be provided (improved or new) with additional resources

Recommendations/Proposals

Multi-Site Legacy Residual Contamination Sites Revolving Fund

Draft document found on dnr.wisconsin.gov/topic/brownfields/rreag under Upcoming Meetings, Agenda

- Clarifications/ questions
- Feedback on proposal
- Next steps



Open Topics and Next Steps



Adjourn

CONNECT WITH US

Thank You!

DNR RR Program Contacts:

dnr.wi.gov/topic/Brownfields/Contact.html



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"WILD WISCONSIN:
OFF THE RECORD"