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Wisconsin Municipal Cost Recovery and Umpire Process
Wis. Stats. 292.35

Edward (Ned) B. Witte
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Umpire Process Wis. Stats. 292.35

- Introduction
- Overview of “umpire” process
- Case studies
- Best Practices

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Introduction

- LGU “Toolbox”
 - Liability protection/exemption
 - Access to funding/grants from WDNR, WEDC and U.S.EPA
 - Cost recovery authorities
 - for property acquired via 292.11(9)(e)1m, under 292.33
 - or
 - for property that an LGU owns under 292.35

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Overview of “umpire” process

- Wis. Stats. §292.35
“Local Government Unit Negotiation and Cost Recovery”
 - Applies to:
 - A “Site” or “Facility” owned by an LGU
 - For a non owned Site or Facility, the LGU commits to paying >50% of non funded costs of investigation and remediation

Overview of “umpire” process

- LGU must:
 - Identify “Responsible Parties” (292.11 plus generators, transporters, owner/operators)
 - Develop Remedial Action Plan
 - Notify RPs, providing public hearing for RAP
 - Allow RP and public comment for 30 days
 - Submit RAP plus any comments to WDNR
 - Upon receiving WDNR approval, serve “offer to settle” on RPs re contribution of investigation and remedial costs

Overview of “umpire” process

- WDNR then proposes/appoints an “umpire”
 - Procedures for objection and for “tiebreaker”
- After approval, umpire presides over expedited negotiation
 - 60 days for negotiation between LGU and RPs
 - Umpire makes recommendation, 20 days after negotiation session ends, on:
 - design and implementation of the remedial action plan
 - contribution of funds for investigation and remedial action

Overview of “umpire” process

- Outcomes:
 - Agreement in negotiation (LGU plus one or more parties)
 - Umpire recommended allocation
 - LGU may reject umpire recommendation as to any one RP
 - Contribution protection (WDNR/USEPA MOU)

Overview of “umpire” process

- Outcomes - Litigation/Cost Recovery:
 - 292.35 empowers LGUs to use cost recovery litigation
 - LGU can recover litigation expenses and interest if:
 - LGU accepts/RP rejects umpire’s allocation and LGU secures judgment greater than umpire’s allocation, or
 - LGU/RP reach agreement in negotiation or accept allocation, RP breaches commitment and LGU secures judgment
 - RP can recover litigation expenses (not interest) if RP accepts/LGU rejects allocation and RP secures judgment for its liability less than umpire’s allocation

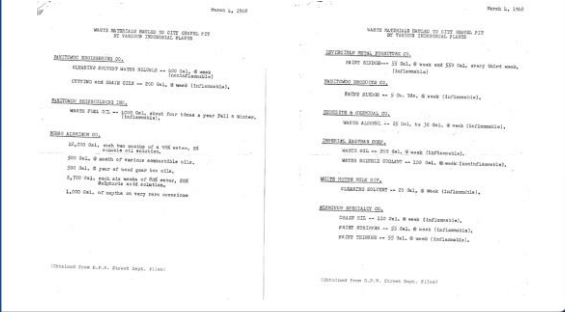
Case studies

- Ashwaubenon High School/Klipstine Park
 - Site of high school constructed in early 1960’s
 - Ashwaubenon School District/Village of Ashwaubenon (LGU) recovered ~\$1.9 million from RP
 - Total costs were approximately \$3.3 million
 - Pre-1963 disposal of paper sludge containing PCBs
 - Two umpired negotiation sessions
 - Settled via “agreement in negotiation” (early 2017)

Case studies

- City of Manitowoc – Former Newton Gravel Pit
 - City owned gravel pit used by nine local businesses for disposal between 1962 and 1974
 - 1996 Settlement on ~\$70,000 remedial costs
 - 1968 memo on waste materials hauled to site
 - 2015-18: City of Manitowoc (LGU) plus ~4 RPs
 - Two umpired negotiation sessions (late 2017)
 - Three settlements via “agreement”
 - Umpire recommendation addresses one RP
 - Total costs: ~\$4.1 million, to date
 - Total costs recovered: ~\$683,000, with \$3.4 million outstanding
 - City conceptually agreed to 32.5% share/\$1.3 million

Case studies



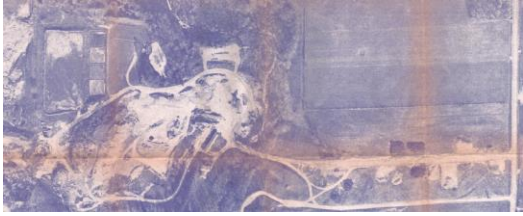
Case studies

- City of Manitowoc – Former Newton Gravel Pit



Case studies

- City of Manitowoc – Former Newton Gravel Pit



Lessons learned

- §292.35 provides substantial leverage to LGU
- Potential conflict/awkward context if LGU is pursuing current local RPs/employers
- Development of historical evidence is challenging
- “Public Hearing” creates favorable presumption
- Absence of NCP compliance is a benefit
- O/O share for LGU must be addressed
- Once umpire is approved, process moves very quickly

Thank You

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