
Tom Kilian – Alderman District 3
133 E Thomas Street
Wausau, WI 54401



TEL: (715) 571-8108

July 21, 2022

Mr. Matt Thompson
Wisconsin Department of Natural Resources
1300 W Clairemont Avenue
Eau Claire, WI 54701

RE: District 3's Disposition on 1300 Cleveland Avenue Soil Cleanup Standards and Remedial Actions

Dear Mr. Thompson,

As the alderperson for District 3 in which 1300 Cleveland Avenue resides, I am writing to communicate my thoughts and concerns regarding soil standards for the future cleanup of the property and the remedial actions that will be used for this cleanup.

Right across the street from this site are numerous residential properties and yards. Due to the extremely close proximity of these residential properties to the site, I feel strongly that stringent non-industrial residual contaminant levels for soil are necessary for the cleanup to protect public health off the site.

I also feel strongly that a future remedial action to address the site's soil exceedances of non-industrial standards that would rely predominantly on capping or controls – rather than a remedial action that would actually facilitate clean soil – would be inappropriate and deleterious in this situation.

Such an option would greatly limit the potential future uses of the site and unjustly undermine this diverse, working class neighborhood's right to meaningfully impact and guide its own future. It would also undermine the right of the neighborhood to have appropriate greenspace if desired, rather than a massive concrete slab.

These rights are central principles of Environmental Justice (EJ). With the department's recent articulated commitment to EJ principles, one would expect that the DNR will support these rights to the fullest extent possible under Wisconsin's current statutory and regulatory framework.

Proximity of Residential Properties and Yards Across the Street from 1300 Cleveland Avenue

Please see the enclosures to note that right across the street from this site are residential homes and a densely populated residential neighborhood. In fact, **the distance from this contaminated site to numerous residential yards -- throughout nearly the entirety of the site's eastern property boundary -- is only roughly 65 feet.**

Potential and Indeterminate Public Health Hazards Exist from Site Contamination Per the DHS Exposure Assessment and Findings in Letter Dated April 23, 2021

Enclosed are excerpts from a letter regarding the site and associated health conclusions from Dr. Kilburg-Basnyat with the Wisconsin Department of Health Services. The letter states that there could be a public health hazard present if very young children are consistently on site due to soil contamination, and the potential for offsite impacts to the neighboring residential areas represents an indeterminate public health hazard due to the lack of sampling data in those areas.

Recommendations in the letter from Dr. Kilburg-Basnyat include, but are not limited to: that gardeners on properties surrounding 1300 Cleveland Avenue use raised bed gardens with store bought soil; that they wear gloves while handling soil; that they avoid tracking soil into the home; and – in general – that steps are taken to ensure that children do not access the site. It also states that any residents that are concerned that they have been exposed to thallium or any other contaminant that may be impacting their health should consult with their medical provider.

It is clear to me from this letter and other materials that this site – in its current state – presents a potential, undefined risk for the residential neighborhood which surrounds it and should be rigorously remediated to the highest standards in order to protect health.

The Site Impacts a Formally Identified Environmental Justice (EJ) Area/Population: Reports, Considerations, and WDNR's Articulated Commitment to, and Focus on, EJ Principles

It is my understanding from its materials that the Wisconsin Department of Natural Resources (DNR) is *committed* to promoting the principles of environmental justice (EJ) and that in its enclosed CERCLA SEC. 128(a) Grant Final Report for Fiscal Year 2020-21, the Remediation & Redevelopment (RR) Program communicated that it is taking steps to address inequity through a *focus* on environmental justice. Apparently, part of that EJ focus was adding 2018 CDC/ASTDR Social Vulnerability Index (SVI) Interactive Map data layers to the RR Sites Map, and there is also currently a link from that map to the EPA EJSCREEN tool, as well.

It is evident from the CDC/ASTDR SVI map and the EPA EJSCREEN report for this geographic area – enclosed – that the cleanup at 1300 Cleveland Avenue intersects with an EJ community.

While the CDC/ASTDR SVI map indicates that the census tract (Tract 6.02) has a score representing moderate to high vulnerability, the EPA EJSCREEN report for this census block group area – which is much higher resolution data – shows that in the immediate vicinity of the site, **46% of residents are low income and 53% of residents are people of color**. Importantly, the EJSCREEN report also indicates that, relative to other areas, a high percentage of residents living around 1300 Cleveland Avenue are very young children. **12% of the adjacent population is under the age of 5 years old**. The area around the site also has a **high percentage of linguistically isolated residents at 16%**. Notably, ***when compared to State or EPA Region 5, the report shows that this census block group area around the site is at or above the 80th percentile on every single index of the 12 EJ Indexes that EJSCREEN incorporates.***

In the same CERCLA SEC. 128(a) Grant Final Report, the RR Program states that it “is committed to ongoing, incremental improvement in public participation efforts – starting with state-lead sites within EJ communities – and will continue evaluating ways to advance EJ within the current statutory and regulatory framework.” Importantly, in this vein, **there has been extensive public participation and input**



from the surrounding neighborhood and community at large regarding 1300 Cleveland Avenue. An overwhelming number of citizens who submitted public input requested that 1) this site be cleaned up to non-industrial standards because it is close to where residents live and recreate; and that 2) the City of Wausau’s zoning error that erroneously changed the property’s zoning from residential to industrial be corrected, so that this site would be cleaned up to non-industrial standards and further industrial expansion in the residential area would cease. I emailed the written input from public participation for the 1300 Cleveland Avenue site to the department in February 2021, but would be happy to provide it again if useful.

As a layperson, it is my understanding that Wisconsin’s “current statutory and regulatory framework” does indeed afford the department with the authority to protect the health of the EJ community surrounding this site by requiring cleanup of 1300 Cleveland Avenue to non-industrial standards regardless of any future industrial zoning or land use scheme for the property that the City of Wausau may embark upon to, in part, attempt to avoid the financial costs of an appropriately rigorous cleanup.

As one example of multiple, the implications of NR 720.05(5)(b)2 suggest that even if a site’s land zoning and use is industrial, the DNR has the authority to require “More stringent non-industrial residual contaminant levels for soil...” if it is “necessary to protect public health on or off the site or facility.” [emphasis added]

It is critical to point out that the example associated with NR 720.05(5)(b)2 in administrative code is identical to the situation of the 1300 Cleveland Avenue site, in terms of the location and proximity of residential homes and yards across the street. Example used in NR 720.05(5)(b)2 Wisconsin Administrative Code from docs.legis.wisconsin.gov:

“Note: Situations where a non-industrial classification would apply include site or facilities which could otherwise be classified as industrial, but where proximity to a non-industrial land use, such as residential housing located across the street, makes a non-industrial classification more appropriate.”

In this situation, it seems that EJ principles and an EJ focus would demand that regulators exercise their appropriate discretion and authority provided to them in Wisconsin administrative code to require a stringent cleanup of the site to non-industrial standards, irrespective of any present or future zoning or land use for the site, due to its extreme proximity to residential properties.

Cumulative Impact Considerations and a History of Rights Violations by the Responsible Party (City of Wausau) in the Site’s Surrounding Neighborhood

As the department is likely aware, both the EPA and Governor Evers’s recent executive order related to Environmental Justice (Executive Order #161) stress the critical importance of recognizing “cumulative impacts” or “cumulative exposures” to affected populations over time. These impacts and exposures include both chemical and non-chemical stressors.

In January 2022, the United States Environmental Protection Agency Office of Research and Development defined “cumulative impacts” accordingly:

“Cumulative Impacts refers to the total burden – positive, neutral, or negative – from chemical and non-chemical stressors and their interactions that affect the health, well-being, and quality of life of an individual, community, or population at a given point in time or over a period of time. Cumulative impacts include contemporary exposures in various environments where individuals spend time and past exposures that have lingering effects. Total burden encompasses direct health effects and indirect effects to people through impacts on resources and the environment that affect human health and well-being. Cumulative impacts provide context for characterizing the potential state of vulnerability or resilience of the community, i.e., their ability to withstand or recover from additional exposures under consideration.”

It would seem impossible to be committed to EJ principles, or to focus on them, without recognizing the importance of cumulative impacts or incorporating these considerations into regulatory decisions.

For the sake of efficiency, I will forego recounting the details of the multiple DNR-regulated sites in this census block group area, as they are quite well-known by the department. As you are aware, contamination impacts the neighborhood’s groundwater and sewer system, the soils in the neighborhood park, and contaminated groundwater discharges into the Wisconsin River off of the park.

These elements do not take into account 3M Company’s series of air violations over the years in the neighborhood (incidentally, EPA ECHO currently notes a “High Priority” Clean Air Act (CAA) violation at this facility). I have enclosed an EJSCREEN map screenshot showing that, when compared to State, this neighborhood – and census tract – is at the 95-100 percentile when it comes to 2017 Air Toxics Respiratory HI.

Also, in terms of non-chemical stressors, one should not discount the egregious violation of federal law and rights (Uniform Act) by the City of Wausau when it improperly acquired a large section of homes in this same neighborhood and census block area for its road project and attempted gentrification scheme.

I have enclosed the 2012 letters from the Wisconsin Department of Transportation (WisDOT) and Federal Highway Administration (FHWA) to the former Wausau mayor noting the magnitude of non-compliance. Consequently, the project became ineligible for federal funding and the City was put on a federal probation list through which it would be closely monitored.

The WisDOT letter states, “...this project has not incorporated an Environmental Justice analysis...There are concerns that irreversible adverse impacts to the minority or low income populations may have already occurred as part of the early real estate acquisition process.”

In short, from an EJ perspective, the cumulative impacts over time for this area and neighborhood from both chemical and non-chemical stressors are both evident and serious.

From my perspective, it is the department’s responsibility (and within both its current discretion and statutory authority), along with other state agencies, to ensure that – whether through acts of omission



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or commission – further unnecessary, disproportionate harm does not come to the residents immediately surrounding this site. In this vein, should any unknowns exist in regard to possible risk, it would be expected that the DNR follow and exercise The Precautionary Principle.

Thank you for your consideration.

Sincerely,

Tom Kilian
Alderman, District 3

Enclosures

CC: David Rozeboom



Example: View from Site Boundary/Entrance Looking East --
Approximate Distance to Residential Yards is 65 Feet



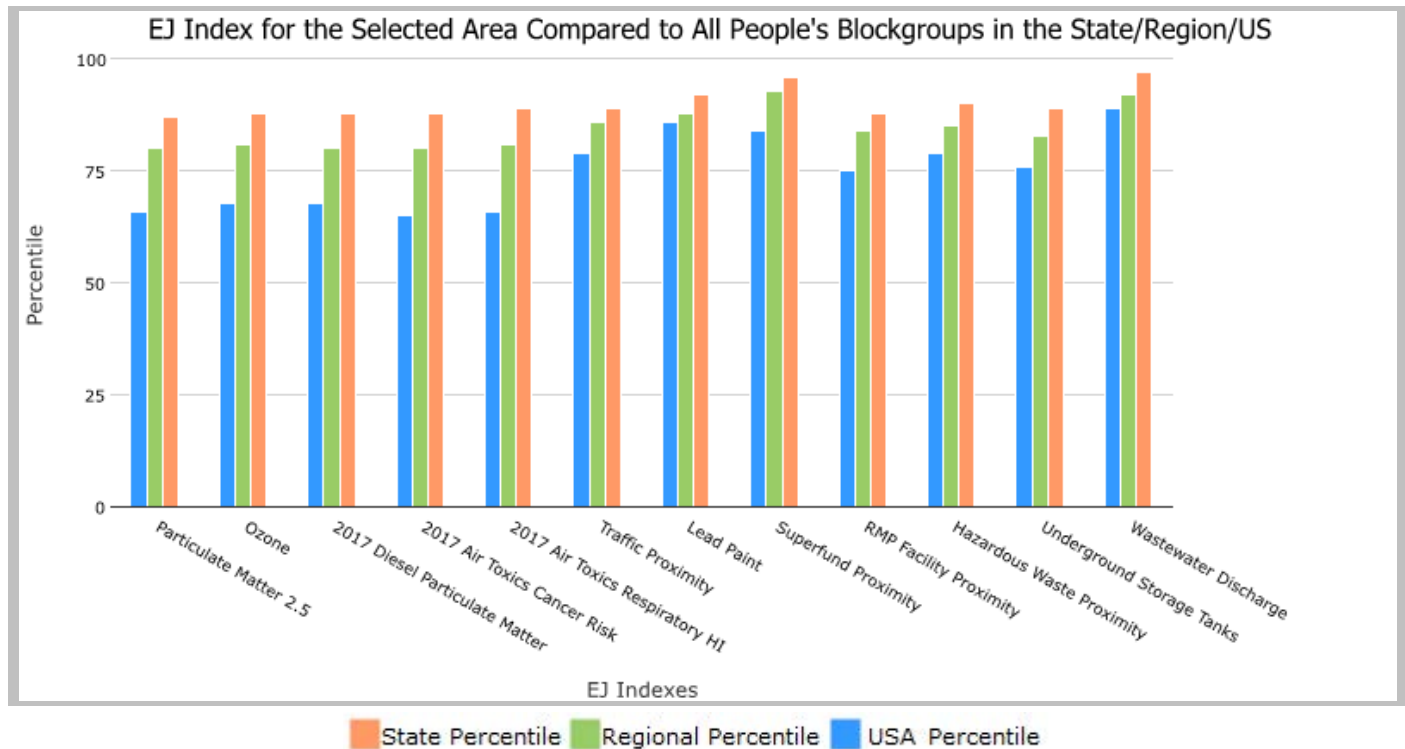
EJScreen Report (Version 2.0)

Blockgroup: 55073006021, WISCONSIN, EPA Region 5

Approximate Population: 992

Input Area (sq. miles): 0.26

Selected Variables	State Percentile	EPA Region Percentile	USA Percentile
Environmental Justice Indexes			
EJ Index for Particulate Matter 2.5	87	80	66
EJ Index for Ozone	88	81	68
EJ Index for 2017 Diesel Particulate Matter*	88	80	68
EJ Index for 2017 Air Toxics Cancer Risk*	88	80	65
EJ Index for 2017 Air Toxics Respiratory HI*	89	81	66
EJ Index for Traffic Proximity	89	86	79
EJ Index for Lead Paint	92	88	86
EJ Index for Superfund Proximity	96	93	84
EJ Index for RMP Facility Proximity	88	84	75
EJ Index for Hazardous Waste Proximity	90	85	79
EJ Index for Underground Storage Tanks	89	83	76
EJ Index for Wastewater Discharge	97	92	89

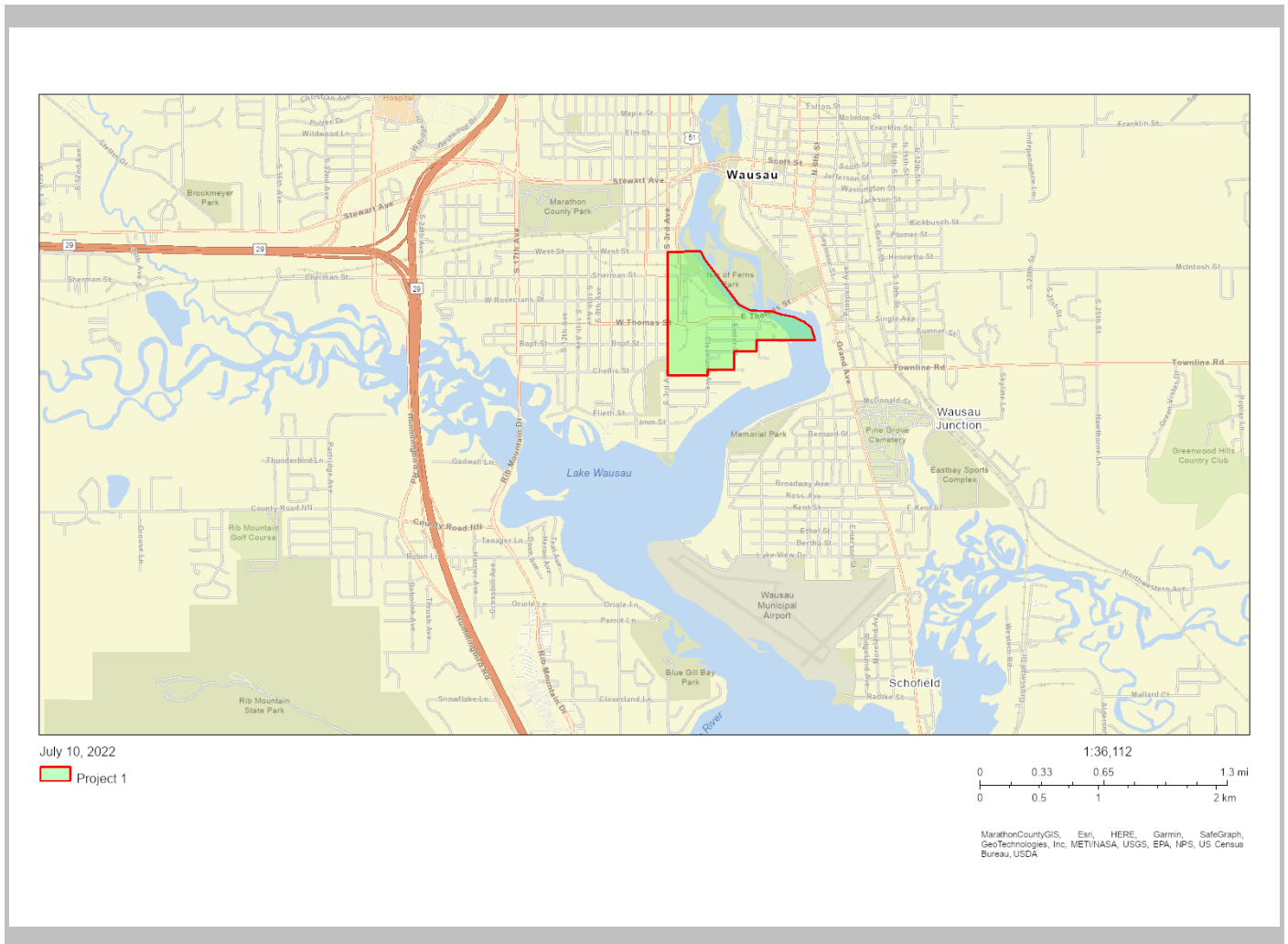


This report shows the values for environmental and demographic indicators and EJSCEEN indexes. It shows environmental and demographic raw data (e.g., the estimated concentration of ozone in the air), and also shows what percentile each raw data value represents. These percentiles provide perspective on how the selected block group or buffer area compares to the entire state, EPA region, or nation. For example, if a given location is at the 95th percentile nationwide, this means that only 5 percent of the US population has a higher block group value than the average person in the location being analyzed. The years for which the data are available, and the methods used, vary across these indicators. Important caveats and uncertainties apply to this screening-level information, so it is essential to understand the limitations on appropriate interpretations and applications of these indicators. Please see EJSCEEN documentation for discussion of these issues before using reports.

Blockgroup: 550730006021, WISCONSIN, EPA Region 5

Approximate Population: 992

Input Area (sq. miles): 0.26



Sites reporting to EPA	
Superfund NPL	0
Hazardous Waste Treatment, Storage, and Disposal Facilities (TSDF)	0

EJScreen Report (Version 2.0)



Blockgroup: 550730006021, WISCONSIN, EPA Region 5

Approximate Population: 992

Input Area (sq. miles): 0.26


Selected Variables	Value	State Avg.	%ile in State	EPA Region Avg.	%ile in EPA Region	USA Avg.	%ile in USA
Pollution and Sources							
Particulate Matter 2.5 ($\mu\text{g}/\text{m}^3$)	6.78	7.83	11	8.96	4	8.74	10
Ozone (ppb)	38.7	41.6	13	43.5	10	42.6	25
2017 Diesel Particulate Matter* ($\mu\text{g}/\text{m}^3$)	0.217	0.185	65	0.279	<50th	0.295	<50th
2017 Air Toxics Cancer Risk* (lifetime risk per million)	20	20	98	24	60-70th	29	<50th
2017 Air Toxics Respiratory HI*	0.3	0.24	98	0.3	70-80th	0.36	<50th
Traffic Proximity (daily traffic count/distance to road)	940	560	82	610	82	710	81
Lead Paint (% Pre-1960 Housing)	0.85	0.36	93	0.37	92	0.28	95
Superfund Proximity (site count/km distance)	0.31	0.12	92	0.13	92	0.13	91
RMP Facility Proximity (facility count/km distance)	0.82	0.89	65	0.83	67	0.75	71
Hazardous Waste Proximity (facility count/km distance)	3.1	1.6	81	1.8	81	2.2	79
Underground Storage Tanks (count/km ²)	3.7	2.7	77	4.8	67	3.9	72
Wastewater Discharge (toxicity-weighted concentration/m distance)	0.065	0.31	94	9	79	12	82
Socioeconomic Indicators							
Demographic Index	49%	23%	90	28%	83	36%	73
People of Color	53%	19%	90	26%	83	40%	67
Low Income	46%	27%	85	29%	79	31%	76
Unemployment Rate	7%	4%	86	5%	75	5%	72
Linguistically Isolated	16%	2%	98	2%	96	5%	90
Less Than High School Education	27%	8%	96	10%	94	12%	88
Under Age 5	12%	6%	95	6%	94	6%	93
Over Age 64	8%	16%	11	16%	14	16%	17

*Diesel particulate matter, air toxics cancer risk, and air toxics respiratory hazard index are from the EPA's 2017 Air Toxics Data Update, which is the Agency's ongoing, comprehensive evaluation of air toxics in the United States. This effort aims to prioritize air toxics, emission sources, and locations of interest for further study. It is important to remember that the air toxics data presented here provide broad estimates of health risks over geographic areas of the country, not definitive risks to specific individuals or locations. Cancer risks and hazard indices from the Air Toxics Data Update are reported to one significant figure and any additional significant figures here are due to rounding. More information on the Air Toxics Data Update can be found at: <https://www.epa.gov/haps/air-toxics-data-update>.

For additional information, see: www.epa.gov/environmentaljustice

EJScreen is a screening tool for pre-decisional use only. It can help identify areas that may warrant additional consideration, analysis, or outreach. It does not provide a basis for decision-making, but it may help identify potential areas of EJ concern. Users should keep in mind that screening tools are subject to substantial uncertainty in their demographic and environmental data, particularly when looking at small geographic areas. Important caveats and uncertainties apply to this screening-level information, so it is essential to understand the limitations on appropriate interpretations and applications of these indicators. Please see EJScreen documentation for discussion of these issues before using reports. This screening tool does not provide data on every environmental impact and demographic factor that may be relevant to a particular location. EJScreen outputs should be supplemented with additional information and local knowledge before taking any action to address potential EJ concerns.

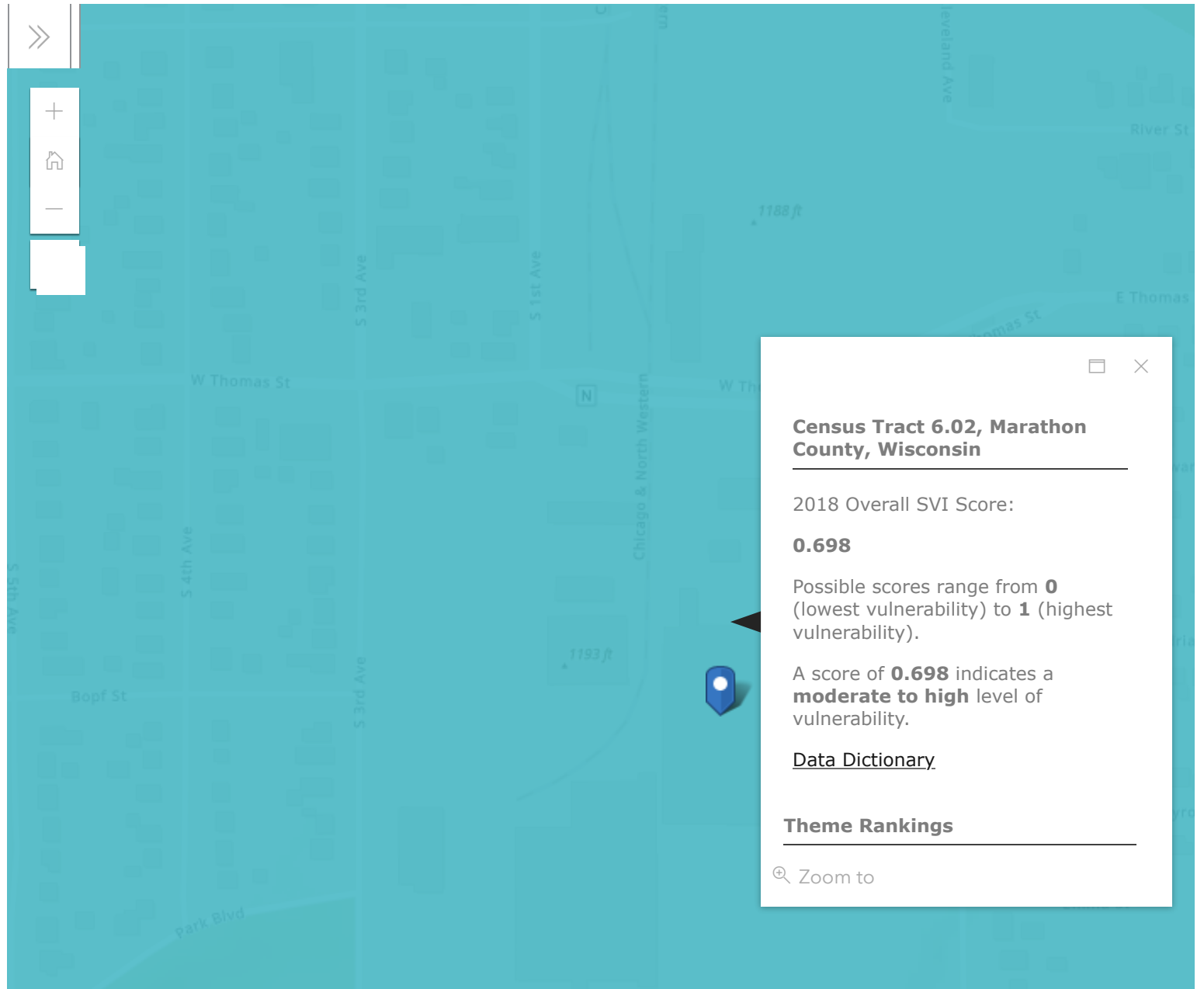
SVI Interactive Map

Click the  symbol in the upper left of the map to display the Map Details and Legend. Click the Details tab to display Map Tips, which explain how to explore the map. Click the Map Legend tab to display and interact with the layers comprising the map for the selected year.

Link to previous interactive [SVI Map \(map.aspx\)](#).

SVI Year

2018



Census Tract 6.02, Marathon County, Wisconsin

2018 Overall SVI Score:

0.698

Possible scores range from **0** (lowest vulnerability) to **1** (highest vulnerability).

A score of **0.698** indicates a **moderate to high** level of vulnerability.

[Data Dictionary](#)

Theme Rankings

 Zoom to

Tony Evers
Governor

Karen E. Timberlake
Secretary



State of Wisconsin
Department of Health Services

DIVISION OF PUBLIC HEALTH

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April 23, 2021

Patrick Peckham, Alderman
City of Wausau

Subject: Phase II data review of soil and groundwater contaminants at 1300 Cleveland Ave in Wausau, WI

Dear Alderman Peckham,

Thank you for contacting the Wisconsin Department of Health Services with your concern about thallium and other contaminants on the 1300 Cleveland Avenue site. I am writing to provide you with our public health conclusions regarding the onsite contaminants and neighboring residential areas based on soil and groundwater samples taken in October 2020. To summarize our findings, the results indicate the following:

- **There could be a public health hazard present if very young children are consistently on site due to thallium levels found in soil onsite.** Taking steps to minimize trespassing would be protective against these exposures as well as physical hazards expected at an industrial property.
- **The potential for offsite impacts to the neighboring residential areas represents an indeterminate public health hazard due to the lack of sampling data in those areas.** Following standard gardening practices for urban areas is expected to be protective against any possible chemical exposure.

Background

The 1300 Cleveland Ave. site is currently developed with a storage building that is being leased by a sewer and water utility contractor, loading docks that were associated with a former larger industrial building that was razed and removed in 2019, and areas of concrete and asphalt pavement associated with the former industrial building. The City uses a portion of the site for log and wood chip storage and the utility contractor uses a portion of the site for staging of sewer and water piping. Historically, the site was associated with a larger area of land and had been developed for manufacturing and/or commercial purposes since the 1950's.¹ As part of the Phase II investigation, 44 soil samples of varying depths were taken from 22 soil borings and were analyzed for a variety of contaminants, including for metals and polycyclic aromatic hydrocarbons (PAHs) (see Appendix Figure 1). Groundwater samples were taken at three locations at depths ranging from 25 to 33 feet below the surface.

Exposure Assessment

An evaluation of exposure pathways is performed to determine if an exposure or potential exposure to the contaminants were possible (Appendix Table 1). In order for any contaminant to be a health concern, a completed exposure pathway must exist and the contaminant must be at a

¹ Phase 2 Subsurface Assessment, City of Wausau, Marathon County, WI. GEI Consulting Engineers and Scientists, January 22, 2021

Physical Hazards

Hazards on the industrial property are expected to include physical hazards such as trains, railroad tracks, heavy machinery, vehicles including trucks and cars, and other equipment that may be used on site that would create a potentially hazardous environment for a child. Children should not be trespassing onsite alone and, if on site, should be with an adult and under their supervision.

Limitations

- All detectable thallium values were considered to be estimates.
- Soil data is only available for the 1300 Cleveland Ave. site
- It is unknown if or to what extent trespassing is occurring onto the site

Conclusions

Based on the assessment described above, DHS concludes that:

- Exposure to PAHs among individuals trespassing on site does not constitute a public health hazard.
- Thallium levels potentially pose a public health hazard only for very young children that consistently trespass onsite (175 days per year).
- Site-related chemical contamination of the neighboring residential area represents an indeterminate public health hazard since no samples have been taken offsite.

Recommendations

- Steps should be considered to ensure children cannot access the site to minimize potential exposures to any physical hazards and elevated levels of thallium present.
- PAH and thallium levels off-site in the residential neighborhood are unknown. However, implementing appropriate urban gardening practices¹⁰ will reduce exposure to any soil contaminants present. Gardeners should:
 - Create a raised bed garden with store-bought soil, topsoil, or clean fill from ‘certified soil sources’,¹¹
 - wear gloves while gardening or handling soil,
 - wash hands to prevent hand-to-mouth exposure,
 - wash produce thoroughly before eating,
 - peel vegetables, especially, root vegetables,
 - remove outer leaves of leafy vegetables,
 - avoid tracking soil into the home,
 - and supervise children when in the garden to make sure they are also using proper gardening techniques.
- Any residents that are concerned that they’ve been exposed to thallium or any other contaminant that may be impacting their health should consult with their medical provider.

¹⁰ https://www.epa.gov/sites/production/files/2014-03/documents/urban_gardening_fina_fact_sheet.pdf

¹¹ <https://cdn.shopify.com/s/files/1/0145/8808/4272/files/A3905-04.pdf> and https://www.epa.gov/sites/production/files/2015-09/documents/bf_urban_ag.pdf?_sm_a_u=iVVSPFr17j4T15VsBLQtvk7BJGKjp

Improving brownfields work in vulnerable communities: environmental justice and rural prosperity

The DNR's RR Program is taking steps to address inequity through a focus on environmental justice (EJ) and promoting rural prosperity. Initial efforts to address EJ include a program-wide evaluation of existing brownfields, site investigation and cleanup processes to identify potential points of application.

Public participation and notification requirements for both responsible parties and the DNR, found in Wisconsin Administrative (Wis. Admin.) Code ch. NR 714, were identified as potential steps in the cleanup process where EJ communities are directly involved and could benefit from process improvements, with a goal of meaningful participation. The RR program is committed to ongoing, incremental improvement in public participation efforts – starting with state-lead sites within EJ communities – and will continue evaluating ways to advance EJ within the current statutory and regulatory framework.

To improve identification of areas where cleanup projects intersect with EJ communities, the 2018 CDC/ASTDR Social Vulnerability Index (SVI) Interactive Map data layers were added to the RR Sites Map geographic mapping tool. This allows for easy, visual identification of cleanup projects in vulnerable communities.

Program staff are also participating in the newly formed Diversity, Equity and Inclusion Team. This Environmental Management Division team is responsible for providing direction for efforts to create recommendations and implement strategies to increase the diversity, inclusivity and non-discrimination practices both internally and externally. The team is a resource to inform strategic action items and will provide strategies that address EJ issues within the division and RR program.

In addition, staff are participating in a department-wide team, Promoting Outdoor Recreation and Rural Prosperity. One of the team initiatives is a systematic evaluation of all grant and loan programs in the DNR to determine how they could be better aligned to serve rural communities, many of which lack capacity and/or expertise to seek funding for projects, including brownfield cleanups, that would improve the quality of life for rural residents. The team is working closely with the new Office of Rural Prosperity, housed in the Wisconsin Economic Development Corporation (WEDC), with guidance from the directives of the Governor's Blue Ribbon Commission on Rural Prosperity. ■

NR 700–799 rulemaking update: new permanent rule changes are in effect

Following recent legislative changes to the state's cleanup program in January 2019, the DNR began drafting revisions to Wis. Admin. Code chs. NR 700–799, *Environmental Protection – Investigation and Remediation of Environmental Contamination*. The code revisions, which consisted of creation of two new chapters, aimed to maintain consistency between code and statute and provide procedures for two sets of new statutory requirements relating to financial assurance for remedies at certain contaminated sediment sites.

The state's permanent rulemaking process typically spans about three years. To form a new rule, the DNR is required to seek approval of the scope of the rule prior to drafting. Following drafting, the DNR must provide an estimate of economic impacts of the rule and hold public hearings. Prior to completing the rulemaking process, the Wisconsin Natural Resources Board (NRB) must adopt the rule, the governor must approve the rule, certain legislative committees must review the rule, and the rule must eventually be signed by the DNR Secretary and published in the Wisconsin Administrative Register.

In 2021, the DNR completed the final steps of this three-year rule-making process. In April 2021, the NRB adopted a proposed rule from the DNR. Wisconsin Governor Tony Evers then approved the rule and legislative committees completed review of the rule in August 2021. Following the DNR Secretary's signature in August 2021, the DNR submitted the rule to be published in the Wisconsin Administrative Register. Following publication, the two new rule chapters became effective on Oct. 1, 2021.

Following the conclusion of the rulemaking process, the DNR is continuing to seek public input on implementation of the rule. During the final months of 2020, following the public hearing for the rule, the DNR began working with the Contaminated Sediments External Advisory Group (CSEAG) to gain consensus on guidance for certain portions of the rule. The DNR will continue to work with CSEAG and any interested external stakeholders to finalize guidance on the rule. ■

GREEN TEAM ASSISTANCE FOR CONTAMINATED PROPERTIES



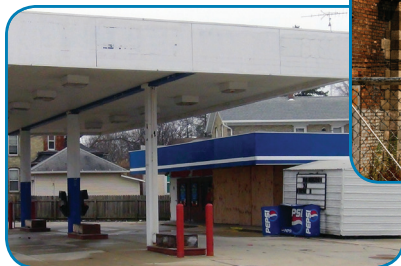
Almost every Wisconsin community has a former commercial or industrial property that no one wants to buy because they are worried about environmental contamination and the cost of cleaning it up. These properties can remain idle for years, causing blight and impeding productive reuse.

These types of properties are commonly referred to as **brownfields**.

Brownfields are abandoned, idle or underused commercial or industrial properties, where reuse is hindered by real or perceived contamination.

Brownfields vary in size, location, age and past use. They can be anything from a former 500-acre automobile assembly plant to an abandoned gas station. And they may present public health threats, along with economic, environmental and social challenges to the communities where they are located.

Local government involvement is often needed to revitalize brownfields.



DNR'S GREEN TEAM CAN HELP

The Wisconsin Department of Natural Resources (DNR) can help local government officials navigate the challenges brownfields present and make progress towards redevelopment. If one or more past uses of a property involved petroleum or other hazardous substances, then environmental contamination is possible and should be assessed.

Potentially contaminated land raises questions about liability, funding assistance, the investigation and cleanup processes, and other issues. An effective way to learn about brownfield properties in your community — and what can be done to improve them — is to schedule a Green Team meeting with the DNR.

GREEN TEAM MEETINGS — A COLLABORATIVE APPROACH

Green Team meetings are an effective and efficient way for local governments to evaluate options, plan for and work through a brownfield project. The DNR can be a valuable partner in this effort and is eager to provide the assistance you need.

A DNR Green Team meeting brings key parties together to discuss issues, answer questions and help everyone better understand the property and potential reuse scenarios. DNR staff are available to answer questions about liability protections, the cleanup process and financial assistance opportunities, including state and federal funding sources that may be available.

TYPICAL GREEN TEAM TOPICS

- Funding options
- Liability exemptions
- Property acquisition and redevelopment planning
- Site investigation and cleanup processes

SCHEDULE A GREEN TEAM MEETING

Go to dnr.wi.gov and search “brownfield contacts” for the Green Team specialist in your region.

Additional Brownfield Resources

- *Brownfields Redevelopment in Wisconsin: Essential steps and resources for successful redevelopment of brownfields* (RR-933)*
- *Financial Resource Guide for Cleanup and Redevelopment* (RR-539)*
- *Brownfields Funding Matrix* (RR-932)*
- *Local Government Environmental Liability Exemption* (RR-055)*
- dnr.wi.gov/topic/Brownfields/Financial.html
- dnr.wi.gov/topic/Brownfields/GreenTeam.html

*RR publication numbers begin with “RR-” and can be found by going to dnr.wi.gov and searching for that number.

RR-0128
March 2022

dnr.wi.gov
search “green team”

This document is intended solely as guidance and does not contain any mandatory requirements except where requirements found in statute or administrative rule are referenced. Any regulatory decisions made by the Department of Natural Resources in any matter addressed by this guidance will be made by applying the governing statutes and administrative rules to the relevant facts.

The Wisconsin Department of Natural Resources (DNR) is committed to promoting diversity, fairness, equity and the principles of environmental justice. We ensure that we do not discriminate in employment, programs, decisions, actions or delivery of services. If you have questions or to request information in an alternative format (large print, Braille, audio tape, etc.), please contact us at 888-936-7463 or <https://dnr.wisconsin.gov/About/Nondiscrimination>

Compare to US Compare to State

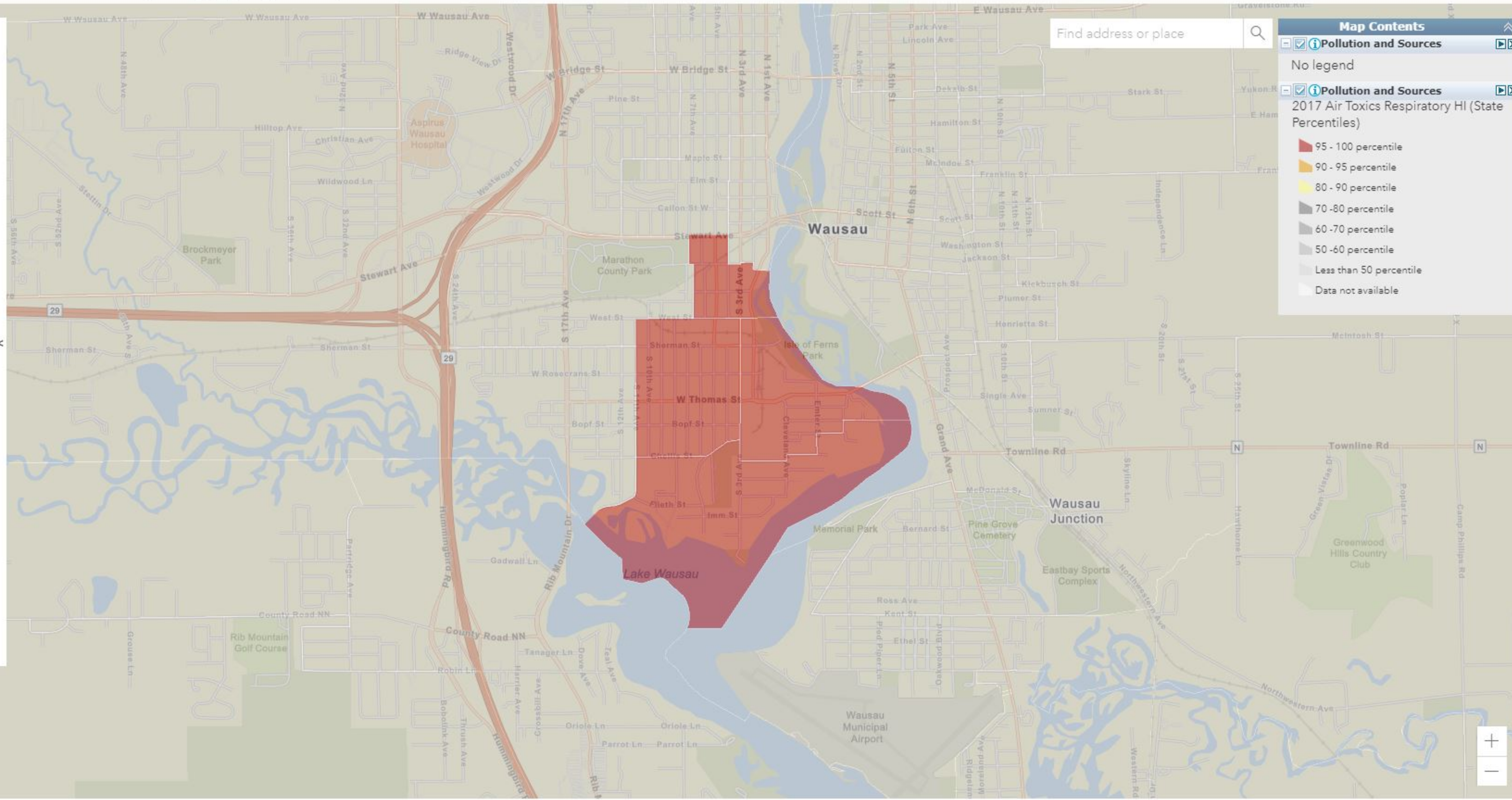
Environmental Justice Indexes

Pollution and Sources

- Particulate Matter 2.5
- Ozone
- 2017 Diesel Particulate Matter
- 2017 Air Toxics Cancer Risk
- 2017 Air Toxics Respiratory HI**
- Traffic Proximity
- Lead Paint
- Superfund Proximity
- RMP Facility Proximity
- Hazardous Waste Proximity
- Underground Storage Tanks
- Wastewater Discharge

Socioeconomic Indicators

- Health Disparities
- Climate Change Data
- Critical Service Gaps
- More Demographics



Map Contents

- Pollution and Sources**
- No legend
- Pollution and Sources**
- 2017 Air Toxics Respiratory HI (State Percentiles)
- 95 - 100 percentile
- 90 - 95 percentile
- 80 - 90 percentile
- 70 - 80 percentile
- 60 - 70 percentile
- 50 - 60 percentile
- Less than 50 percentile
- Data not available



Wisconsin Department of Transportation

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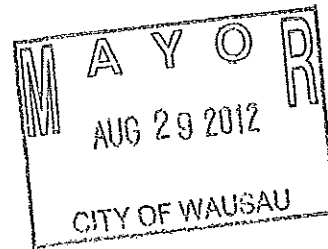
Scott Walker
Governor

Mark Gottlieb, P.E.
Secretary

Division of Transportation
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August 27, 2012

JAMES TIPPLE, MAYOR
CITY OF WAUSAU
407 GRANT STREET
WAUSAU, WI 54403



RE: Thomas Street Project Funding

Subject: Project 6999-12-00
Thomas Street, City of Wausau
17th Avenue – Wisconsin River Bridge
Local Street
Marathon County

Dear Mayor Tipple:

It is the joint responsibility of the Wisconsin Department of Transportation (WisDOT) and the Federal Highway Administration (FHWA) to ensure that transportation funds are spent in a wise and prudent manner, such that the citizens of our government are treated justly, and with respect, when transportation projects are developed. State and Federal regulations require that citizens are notified of their rights when dealing with government agencies during the real estate acquisition stage of all transportation projects.

For this project, several parcels were purchased prior to the completion of the environmental process. Although early acquisition is acceptable in some situations, this project has not incorporated an Environmental Justice analysis of the potential impacts of the project on minority and low income populations. There are concerns that irreversible adverse impacts to the minority or low income populations may have already occurred as part of the early real estate acquisition process.

WisDOT and FHWA have reviewed the City of Wausau files regarding the early acquisition of the 10 parcels on Thomas Street. We have determined that the appropriate process was not followed during the purchase of these properties. It was found that the City did not comply with 49 CFR Part 24 (Uniform Act). This action makes the project ineligible for federal funding. A letter from FHWA to WisDOT addressing this concern is attached.

If you believe that you have additional information regarding the real estate process that was not reviewed by WisDOT local program staff, please provide the information to the North Central Region for evaluation.

The Thomas Street Project's ineligibility does not affect future projects and their ability to be eligible for federal funds provided the following conditions are met:

- WisDOT will provide FHWA prior notice of, and approval for, any proposed decision by WisDOT to provide federal funds to the City of Wausau. This does not mean that the City is not eligible for Federal funding. However, it does mean that for the next three years, FHWA will actively review and approve any such proposed funding.
- City personnel will attend training on complying with Federal requirements. Training will include Real Estate acquisition, Title VI/Nondiscrimination and the NEPA project development process, including a

subsection in Environmental Justice. WisDOT is committed to continued training and will ensure training opportunities will be available.

- WisDOT recommends the City develop a written real estate purchase process. This should include compliance with 49 CFR Part 24 (Uniform Act). WisDOT has on-line manuals and resource material which can be referred to in the City's real estate process.

If you have any questions, please contact our North Central Region - Project Development Chief, Jeff Hess at (715) 365-5730. Jeff can provide you with further assistance regarding this decision.

Sincerely;



Daniel Grasser, P.E.
WisDOT DTSD Administrator

Enclosure:
FHWA letter

Cc: Brad Marquardt, Wausau Public Works Director
Brad Lenz, Wausau, City Planner
Greg Wolfe, Cedar Corp
Mark Gottlieb, WisDOT Secretary
Don Miller, WisDOT
David Simon, WisDOT
Russ Habeck, WisDOT, NC Regions
Lynn Saeger, WisDOT, NC Region
Jeff Hess, WisDOT, NC Region
George Poirier, FHWA
Kirk Fredrichs, FHWA



U.S. Department
of Transportation
**Federal Highway
Administration**

Wisconsin Division Office

August 27, 2012

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www.fhwa.dot.gov/widiv/

In Reply Refer To:
HDA-WI

Daniel Grasser
Wisconsin Department of Transportation
4802 Sheboygan Ave., Room 933
Madison, WI 53707-7965

Dear Mr. Grasser:

This letter is a follow up to the August 23, 2012 meeting between WisDOT and FHWA to discuss the Thomas Street expansion project in Wausau. Based on WisDOT's review of the City's parcel files and independent verification performed by the FHWA, we find that the City did not comply with the Uniform Act in acquiring Right of Way for this project.

The purpose of the Uniform Act is to ensure that people are treated fairly and equitably when they are impacted by federally funded projects. The role of a government entity is to protect these individuals and make sure they are receiving all considerations they are entitled to under the law.

A critical area of non-compliance that is consistent throughout all ten acquired parcels is the lack of just compensation based on an approved appraisal. According to 49 CFR §24.102(d), the amount of just compensation "shall not be less than the approved appraisal of the fair market value of the property." There is no evidence that an appraisal was completed for any of the properties acquired. Because all the properties have been razed it is unfeasible for the City to go back and appraise the properties in accordance with any acceptable appraisal standards to determine if property owners received just compensation.

Another critical aspect of the Uniform Act requires that property owners and tenants be advised of their rights and entitlements to relocation and their rights to appeal. On most parcels our review found no documentation that the City had advised property owners and tenants accordingly. Further, there is no documentation that relocation assistance was offered or provided. FHWA is also concerned about the potential impacts of the proposed project and acquisitions on minority and low income populations in the context of environmental justice.

Given the magnitude of non-compliance and lack of acceptable means to remedy these issues, FHWA cannot authorize use of federal-aid highway funding for any aspect of this project.

Due to the critical nature of the issues associated with the Thomas Street project, FHWA will monitor Federally funded projects in the City of Wausau for the next three years. The monitoring will be done to ensure that programming and project development and implementation for

federally funded projects to ensure the City is successful in implementing Federal-aid requirements.

The next steps and monitoring requirements agreed to are as follows:

1. WisDOT will write a letter to the City documenting the findings from both agencies and explaining the resulting monitoring requirements.
2. FHWA would need to be provided prior notice of, and approval for, any proposed decision by WisDOT to provide federal funds to the City of Wausau. This does not mean that the City is not eligible for Federal funding. However, it does mean that for the next three years, FHWA will actively review and approve any such proposed funding.
3. WisDOT will provide training to the City regarding compliance with Federal requirements. In particular, the training will need to include Real Estate acquisition, Title VI/Nondiscrimination and the NEPA project development process. The NEPA training will need to include Environment Justice. WisDOT is free to add any other topics that the Department believes are appropriate.

If you have any questions on this matter, you may contact me at (608) 829-7500, or you may contact Kirk Fredrichs at (608) 829-7506.

Sincerely,



George R. Poirier, P.E.
Division Administrator

Enclosure

ecc: Don Miller, WisDOT
Tanace Matthiesen, WisDOT
Dave Simon, WisDOT
Cindy Michalski, WisDOT
Lynn Saeger, WisDOT
Kirk Fredrichs, FHWA
Dwight McComb, FHWA
Bill Stark, FHWA
Bethaney Bacher-Gresock, FHWA

Dan Scudder, WisDOT
Aggo Akyea, WisDOT
Kerry Paruleski, WisDOT
Jay Waldschmidt, WisDOT
Jeff Hess, WisDOT
Pete Garcia, FHWA
Lindsey Svendsen, FHWA
John Berg, FHWA