



WISCONSIN CIVIL JUSTICE COUNCIL, INC.

*Promoting Fairness and Equity in Wisconsin's Civil Justice System*



Wisconsin Insurance Alliance

**Sent Via Email**

September 19, 2014

Wisconsin Department of Natural Resources  
Michael Prager  
101 S. Webster Street  
Madison, WI 53707

**Re: Opposition to the Brownfields Study Group's Proposal to Include a Private Cost of Recovery Action under Wis. Stat. § 292.11**

Dear Mr. Prager:

Wisconsin Manufacturers & Commerce (WMC), Wisconsin Insurance Alliance (WIA), and Wisconsin Civil Justice Council (WCJC) appreciate the opportunity to provide comments to the Brownfields Study Group's proposal to amend the Wisconsin Statutes by including a private right of action under Wis. Stat. § 292.11.

WMC is a statewide, not-for-profit, business association with more than 3,500 members engaged in a wide variety of industrial and commercial ventures, including large and small manufacturers, service companies, local chambers of commerce, and specialized trade associations. Nearly one-quarter of the private sector employees in Wisconsin are employed by WMC members. WMC's mission is to work toward making Wisconsin the most competitive state in the nation to do business. WMC has provided a voice for business and promoted a healthy business climate in Wisconsin since 1911.

WIA is a state trade association of property and casualty insurance companies. WIA's membership ranges from some of the largest property and casualty insurers in the country to some of the smaller Wisconsin town mutual insurance companies.

WCJC was formed to represent Wisconsin business interests on civil litigation issues before the Wisconsin Legislature and the Wisconsin courts. Its goal is to achieve fairness and equity, reduce costs, and enhance Wisconsin's image as a place to live and work. WCJC's members include

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numerous Wisconsin trade associations representing business, large and small, throughout Wisconsin.

WMC, WIA, and WCJC oppose the proposed private cost recovery action and will actively lobby against the measure if it's introduced as legislation in the Wisconsin Legislature.

**WMC, WIA, and WCJC Oppose Adding a New Private Cause of Action to Wis. Stat. § 292.11**

WMC, WIA, and WCJC oppose any efforts to expand liability by adding a new private cause of action. This is particularly the case when a remedy exists under the federal Comprehensive Environmental Response, Compensation, and Liability Act. Moreover, plaintiffs already can file lawsuits under existing state law using the legal theories of trespass, nuisance, and negligence, to name a few.

The proposal also is very vague and does not limit the new private cause of action to just brownfields. Based on the open-ended language, the proposal could expand the new private cause of action to all pollution or contamination events in Wisconsin no matter the location.

Furthermore, contrary to what is stated in the subgroup's proposal, adding a private cause of action will not help with the cleanup of hazardous substances. Instead, it will do the opposite. By incorporating plaintiffs' lawyers and litigation into the process, it will inevitably slow down the cleanup process and add unneeded costs that will go towards paying attorneys' fees and court costs.

In addition, enacting a private cause of action would infuse a confrontational aspect into the process. This will lead to businesses and insurance companies fighting among one another, further adding uncertainty.

Nowhere in the subgroup's proposal does it cite to empirical evidence demonstrating the benefits to businesses or the environment in those few states that have added private causes of action. Indeed, the proposal is extremely light on how adding litigation has benefited businesses or the environment in those states that have enacted a private cause of action.

**Conclusion**

WMC, WIA, and WCJC oppose the Brownfields Study Group's proposal to add a private cost of recovery and plan to lobby against any legislation introduced by the Wisconsin Legislature containing this type of language. In short, the proposal benefits trial attorneys at the expense of Wisconsin businesses and the environment.

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Sincerely,



Eric Bott  
Wisconsin Manufacturers & Commerce



Andrew Franken  
Wisconsin Insurance Alliance



Bill G. Smith  
Wisconsin Civil Justice Council

Cc: Cathy Stepp, Secretary, Department of Natural Resources  
Matt Moroney, Deputy Secretary, Department of Natural Resources  
Eric Schutt, Chief of Staff, Office of Gov. Scott Walker  
Rich Zipperer, Deputy Chief of Staff, Office of Gov. Scott Walker  
Eileen Schoenfeldt, Senior Policy Advisor, Office of Gov. Scott Walker