

Wisconsin Brownfields Study Group
VPLE Review Subcommittee
July 25, 2018
Notes of Meeting

Jennifer Buzecky
Mark Thimke – Foley & Lardner
Kenn Anderson – Aon
Jeff Ramey – OBG
Lanette Altenbach – AECOM
Tauren Beggs – DNR
Kristin Kurzka – Sigma
Christine Haag – DNR
Michael Prager – DNR
Jason Scott – WEDC
Mick Skwarok – DNR

Darsi Foss – DNR
Frank Dombrowski – WE Energies
Marita Stollenwek – TRC
John Antaramian – City of Kenosha
Dave Misky – City of Milwaukee
Don Gallo – Axley
Chris Valcheff – True North
Margaret Brunette – DNR
Leah Ziemba – Michael Best
David Hintz

The VPLE Review Subcommittee met for the first time on July 25, 2018 at DNR's GEF 2 location, 101 S. Webster, Madison, Wisconsin.

Jennifer Buzecky began the meeting by explaining the purpose of this review – to comprehensively evaluate the VPLE program looking at pros and cons of the program, opportunities to improve the program, challenges to the program as we go forward, and changes that have occurred to the program. She discussed that the process would be one of listening, evaluating and educating amongst the subcommittee participants. This is part of the BSG's periodic review of the State's brownfield program. The subcommittee is tasked with generating a list of recommendations that, at the end of its evaluation, can be implemented through policy or statutory changes. These recommendations will be submitted to the BSG for evaluation and a decision on the particular recommendations.

Overview of VPLE Program

Michael Prager, DNR, provided an overview of the administrative process and exemptions associated with the VPLE program. **DNR slides are included with meeting materials on BSG webpage.**

Substantive discussion was held on the recent statutory change that added a definition of “property” applicable to the VPLE program. DNR believes this change provides more flexibility in defining the scope of property subject to a VPLE COC and that because of the new definition a redivision or combination of property does not need to be delayed until receipt of a COC.

Question raised whether DNR is finding people asking for a COC at the end of a cleanup rather than entering VPLE at the beginning? DNR says it can be helpful to begin to participate at the beginning of a cleanup rather than toward the end.

Issue raised – how to tell potential voluntary parties what they need to do so that there are no surprises. Example of fill being brought to site for development.

Issue raised – do participants understand the length of time it takes for a COC and the timeframe to go through the entire process? How can the program encourage consistency in the process and with respect to understanding costs? A concern was raised that it is difficult to allocate money to a development project if you do not know the timeline and associated costs.

DNR is going to require survey map prepared by a Wisconsin licensed land surveyor as part of the VPLE application process.

Discussion of stalled sites – frequent ownership changes.

Question also as to why participants drop out of VPLE. DNR to obtain information on this.

VPLE Insurance

Kenneth Anderson, AON, presented on insurance issues. **Kenn's slides are included with meeting materials on BSG webpage.**

Issue raised – what can be done to more clearly outline the VPLE process so that more insurers will compete to provide coverage?

Discussion held on whether insurance could be provided for all sites (VPLE and non-VPLE) – it would cover remedy failure and unknown contaminants, but not changed standards. Could insurance be extended to COC holders, as well as the State?

Anderson presented a proposed structure of a brownfields insurance program for third parties addressing pre-existing conditions on a site. As part of underwriting the insurers would need to understand future use of a site in order to cover future risks.

DNR raised concern that it is not in control of a revenue source sufficient for it to address sites that require more work, but were closed with COCs. It is only receiving about \$2 million per year in its budget for emergencies. The State gets insurance coverage for 10 years for VPLE natural attenuation insurance– after 10 years the State cannot go back against the COC holder.

Substantive discussion whether insurance could be used to mitigate risks associated with certain COC sites (e.g., require coverage for all COC sites so that if one site had a large claim it would not result in insurers wanting to pull out of program.)

Wisconsin is a unique state in the Region 5 states with respect to the scope of its COC exemptions.

Anderson explained that the benefit of the COC is that it flows and transfers, but it only addresses backwards looking issues and only DNR directed cleanup.

Question as to whether DOA could be worked with to create a coverage schedule that distinguishes between natural attenuation and non-natural attenuation so more sites are pulled into insurance requirement.

Risks associated with need to perform more work at COC sites – first 5 years greatest risk of remedy failure/redevelopment issues and new contaminants.

Recent Statutory Changes

Mark Thimke discussed recent statutory changes to the VPLE program and that the subcommittee should address these changes as part of its evaluation.

Thimke asked that the subcommittee look at the following:

Sediments – why is insurance not being used for sediments?

Waterfront redevelopment – how does the definition of “property” play with soil/sediment/scope of VPLE exemptions? How will the OHWM play with respect to the scope of a COC “property”?

Will DNR treat a Wis. Stat. § 292.15 and § 292.11(3) cleanup differently because its terms are different?

Emerging Contaminants

Darsi Foss, DNR, spoke about a recent Region 5 brownfields conference in which emerging contaminants were discussed. The specific contaminants receiving a lot of attention were PFOS and PFOA.

In Minnesota, there is a situation with 3M and the Twin Cities’ municipal wells – 3M gave a grant of \$800 million to the Twin Cities to address the problem

In Michigan – emerging contaminants are showing up in landfills; however, the source is not all firefighting and DOD PFOS – shoes (scotch guard).

Contaminants such as PFOS and PFOA are very mobile and they bio accumulate. One site in New England had an open-air pathway for these contaminants.

EPA's health advisory is 70 ppt (4 drops in an Olympic swimming pool). Discussion at that meeting that this might not be strict enough.

Sources of these contaminants – Teflon, fire training, water resistant fabric, non-stick cookware.

Sampling for PFOS or PFOA has not yet been part of the standard DNR sampling protocol for purposes of VPLE COCs.

The Department of Health has been asked to provide recommendations to DNR for a Wis. Admin. Code ch. NR 140 standard. DNR has a direct contact for PFOS in soil in a table; however, needs to establish a standard for groundwater, surface water etc.

DNR raised the concern that it needs to protect taxpayer dollars while implementing VPLE. Because there are so many of these types of contaminants (PFOS and PFOA are only 2 of about 4000 of these types of contaminants), DNR is evaluating what to ask for in terms of site investigations.

Issue raised as to whether in light of these emerging contaminants VPLE is so important that we keep the program, limit VPLE to current science etc. Other Region 5 states do not provide as broad a scope of coverage/exemptions from cleanup liability as WI's VPLE program does.

Summary of Issues Identified:

The meeting ended with this summary of initial issues:

1. VPLE eligibility and process – scope of and process of investigation, amount of time to complete, why do participants drop out, perceptions versus reality of process, do the voluntary parties understand the process, appropriate level of DNR involvement, how to make program implementation consistent, how to plan

to provide for DNR review time, how to address post COC changes to property (risks associated with post closure activities)?

2. Future risk – how to fund such that the State can meet its obligations concerning future risks at COC sites, how to address unknown risks, and how to implement the new changes regarding sediments and other statutory changes, as well as address concerns specific to waterfront development.

4. Insurance – should insurance coverage be extended to all holders of COCs in addition to State, should insurance coverage include third party coverage and coverage of new, unknown and pre-existing conditions, should coverage address all unknowns, how to address the State’s unknown risks (e.g., emerging contaminants), should insurance extend to VPLE and non-VPLE sites, can something be done with a policy to address the fact that that the risk to the state is the biggest in the first 5 years, can insurance associated with a COC site be transferrable and assignable?

5. Scope of COC – should coverage be as broad as it is now?

6. Why do participants use/not use VPLE?

Future emails will provide dates for additional meetings with specific, assigned topics to allow for additional participation from interested parties and the public.