

**Brownfield Study Group
VPLE Subcommittee Meeting Notes**

July 23, 2019 | 2:00 to 4:00 PM
Wisconsin DNR Building - GEF 2 | 101 S. Webster St., Room G09
Conference Call: 1-855-947-8255 | Passcode: 98631#

AGENDA

Attendees:	<u>In Person</u>	<u>By Phone</u>
	Jennifer Buzecky	Kenn Anderson – Aon
	Ned Witte – Godfrey and Kahn	Bruce Keyes – Foley & Lardner
	Lanette Altenbach - AECOM	Kristin Kurzka – Sigma
	Michael Prager – DNR	Jennifer Borski - DNR
	Bill Nelson – DNR	Don Gallo – Axley
	Art Harrington – Godfrey & Kahn	Tauren Beggs – DNR
	Marita Stollenwerk – TRC	
	Christine Haag – DNR	

1. Welcome, Introductions and Agenda Repair

Jennifer – goal of group is to take a wholistic look at VPLE program. Look at emerging contaminants and insurance but also eligibility, process once the application is submitted. Also, look at continuing obligations down the road.

2. Discussion on Eligibility and Process

- Address why VPLE Used/Not Used in context of process
- Types of VPLE Sites
- Time and Costs of Process
- Lessons learned?
- DNR perspective on process
- Timing of COC with Respect to Approval of Site Investigation
- Municipalities

We have heard some say that one reason people don't use VPLE is a perception that it takes too long and that it can be too costly.

VPLE program doesn't usually attract low hanging fruit, easy sites, VPLE sites can be complicated projects with multiple parties involved.

Do we have metrics on how long it takes, etc. ? Metrics can be hard to compare sites because each one is unique and affected by variety of factors.

DNR can provide some of this information.

Worked on project where most of the work was done at the site but the new buyer wanted VPLE and it worked quickly.

People tend to undervalue services provided by DNR review. People would pay more for expedited review. One community official who has used VPLE has said in the past he'd pay higher fees. Program is of tremendous value – better than insurance.

Perception issues on higher fees for expedited review: pay to play

Could be difficult for DNR to accomplish with workload allocation

Discussion about value proposition, why people pay fees and some don't. Recent review found that only 28% of sites have a fee with the SI submittal. Do people value the DNR reviews? Affects on timing and cost of a project.

Fees are valuable in VPLE – paying for DNR review gives you certainty. Driver for VPLE – time and money (how much time will it take and how much will it cost)

Getting a review for everything is valuable, provides certainty going forward. Some clients don't want liability release. Texas has different system, no responsible party in program. WI is a unique program, (why?) Clients are often scared of responses they'd get from DNR review.

NR 700 vs VPLE, all sites submit fee expedites process. Better to be proactive.

Closure committee and peer review more often in VPLE than NR 700

DNR staff doing best we can, hard to spend time on reports without fees submitted. DNR staff need to spend lot of time on putting out fires. Fee review and VPLE are priorities. Trying to balance priorities. Not sure how DNR could expedite further? DNR would need more people, and those new people would need to be trained which takes a while. Additional fees would need to be very high.

3. Follow-up on Insurance Questions from Last Meeting – Kenn Anderson

Could we get natural attenuation insurance if there is not an NR 140 enforcement standard? Insurers reluctant to offer blanket, programmatic coverage.

Discussion of issue paper on emerging contaminants shared at last subgroup meeting. Kenn got input from insurance companies about risk issues. They would be reluctant to provide blanket coverage for changed regulations when there are situations where DNR might change cleanup regulations (e.g., used

example of DNR letter to wastewater treatment plants). Insurance good at insuring what no one is thinking about versus situations where standards are coming in the future.

Options exist for coverage for individual sites for specific issues where the Site Investigation is complete – case-by-case basis. Not necessarily automatic coverage for a certain premium or deductible.

Alternatives to VPLE – privatization option and how to merge with program

Discussion on site investigation addressing issues/insurance and DNR sign off

Challenge is that since RP who gets VPLE would not be liable they wouldn't get request from DNR to cleanup site which is what triggers a claim usually.

Programmatic policy like natural attenuation for VPLE would be hard, sites would need to be individually underwritten. Case by case maybe.

Could get wrap around policy

Cost for insurance would likely be 6 figures at least

Insurance could cover 3rd party liability

Insurers know VPLE is better than closure – the Site Investigation process of VPLE would make a better insurance price and coverage. How to put a value proposition on this program and use insurance to monetize value of VPLE

In this interim period, there is large amount of uncertainty

Do you want to test for emerging contaminants? Having standards would be useful.

Option, consider interim approach, the way we deal with PFAS is being developed. We don't know what is coming in the future. The regulatory landscape will look different in 2 years.

Discussion of options on issue paper.

The recent letter from DNR to wastewater treatment plants that was in the news would cause insurance companies to notice – the regulatory track here is unknown. Similar to how several years ago when some states like NJ reopened large groups of sites to look at vapor intrusion, insurance companies would have concerns.

4. Continuing Obligations & Off-Site Issues

- Challenges with sites with on-site or off-site vapor intrusion issues when active VI mitigation system is required
- Other issues

Described example of site in Waukesha county. Plume moved off-site and active mitigation appeared likely needed in off-site building. Challenge with agreement to operate and maintain the system long term, very costly for RP, how would that affect VPLE. As it turns out, a separate source of contamination was identified and plume appears to not be impacting off-site property so RP doesn't need to address issue for this case but the example is useful to consider how off-site exemption and VPLE and VI requirements work together.

DNR learning that there are challenges with VI systems from audits that have been conducted, owners and future owners sometimes not aware of VI system or conducting maintenance requirements. Should discuss potential for mitigation earlier in the process.

Some discussion about how this should work, how insurance fits in, options for addressing these types of situations. Could changes be made that would encourage more VPLE cleanups? Could someone other than the owner have responsibility for VI system? Local government with special assessment? Could this be like a building code violation? The traditional model of owner being responsible may not work for some projects, residential townhomes for example. How could this mitigate 3rd party claims. Could there be some sort of negotiated agreement between the parties? Performance bond? How does insurance protect state if breach? Mechanism could be to issue COC as negotiated agreement so that other parties can sign and allocate liability for maintenance.

Discussed differences between 292.13 (off-site exemption) and 292.15 (VPLE); not consistent and how they allow for responsibility for the off-site issues. VPLE – plume or contaminant specific; off-site exemption specific plume. How to extend off-site protection in COC context of off-site exemption.

5. Timing of reviews and steps in cleanup process.

Discussed timing and schedule for VPLE sites. Could voluntary party and DNR sit down and develop timeline, what are DNR's concerns. Could be similar to Air permit or wetland waterway permit process. Goal is to prevent lags in the timing of the COC with respect to approval of the site investigation.

6. Sediments- Clarify process to get closure and Certificate of Completion for sites with sediment contamination in the "transition zone" (between ordinary high and water's edge)

– Not discussed, will be discussed at future meeting.

Will capture the ideas from the meeting and prepare a paper with recommendations to share with subgroup using and will use parts of the issue paper.

Next Meeting: October 4.
