

**Brownfield Study Group**  
**VPLE Subcommittee Meeting Notes**

October 4, 2019 | 10:00 a.m. – 12:30 p.m.  
Wisconsin DNR Building - GEF 2 | 101 S. Webster St., Room G09  
**Conference Call: 1-855-947-8255 | Passcode: 98631#**

**AGENDA**

**Attendees:**     On phone or in person

Jennifer BuzECKy  
Kenn Anderson – Aon  
Kristin Kurzka – Sigma  
Michael Prager – DNR  
Margaret Brunette – DNR  
Christine Haag – DNR  
Bill Nelson – DNR  
Marita Stollenwerk – TRC  
Laurie Parsons – OBG  
Ned Witte – Godfrey and Kahn  
Dave Misky - MEDC  
Jeff Ramey – TRC  
Erica Lawson – Tetra Tech  
Lane Ruhland – WMC  
Laura Olah – Citizens for Safe Water Around Badger

**Overview**

**Governor’s Executive Order** – Info about order which includes requirement for DNR to modify VPLE program law to protect taxpayers from uncertain and costly liability.

**VPLE Form for Guidance review** - Many RR Guidance documents went out for public comment under Act 369 including a form used by RR for VPLE sites to collect information about possible use of PFAS.

**Next Steps** - BSG Mtg. October 10<sup>th</sup> – This group will report to larger group, want to agree on recommendations

We’ve been told that only a quick fix can move forward quickly through the legislature – no legislative changes until 2021 (legislative window is short)

Issues identified:

- Proposed changes
- Benefit or value to VPLE program
- Anticipated change to COC/insurance

Insurance:

- Benefit of VPLE – site investigation, site by site coverage.
- Need to encourage “look” to see if present – need scope of investigation done right. Help insurers understand DNR process (insurance underwriter evaluating risk)
- Hesitant to use for change in regulation if changes to regulations are expected, example – ‘financial assurance’ for sediment sites. Insurance for emerging contaminants, ‘possible’ process. What would be the process to evaluate risk? More variable price/deductible
- There seems to be a temporary gap – emerging contaminants
  - o Info./site investigation
  - o Tools – existing/new
  - o How to close a site
- Difference between the known, unknown and things that we no nothing about.
- How much time to complete process
- Risk allocation
- Scope of COC

#### Scope of COC- emerging contaminant risks

1. Option 1 - Cover unknown emerging contaminants with insurance. Possible if insurer uses own filter and not likely at the site (insurance probably not likely if test and find (known) contamination)
2. Option 2 - Limit to substances on list – does not encourage extensive scoping/sampling. State list? Process? Benefit could be that this resolves the issue where you don’t need to sample for something because not likely to be present (e.g., mercury). Implementation issues (how to draft list, moving target with regulations changing). Partial statute does not contain as broad exemptions as Full COC provisions.
3. If standard list – could add additional compounds (test for/clean-up)
4. Could include more exemptions
5. Broader COC with demonstrated financial assurance? Obligations transfer with COC
6. Maybe based on risk score – size of site, type of contaminants
7. If detect PFAS – how to close/get COC?
8. Other options? Financial assurance (sediments)

Discussion of a modified VPLE process, a flow chart was drawn on the white board. The process required a kick off meeting at the beginning of the process similar to what is required by the wetland waterway program before getting a permit through the waterway/wetland programs (wetland, stormwater, ch. 30)

#### Step 1 – Submit Info to DNR

- Screen
- Phase I
- 

#### Step 2 – Pre-Application meeting

- Scope of SI
- Timeline
- Emerging contaminants

#### Step 3 – Voluntary Party submits application

Different pathways at this point- distinction between innocent purchaser vs causer, only innocent purchaser could qualify for full COC and impacts negotiated agreement terms? Distinction between Partial and Full in terms of scope of hazardous substances sampled? Applicant chooses path -

- Full COC
- Partial COC

Step 4 – SI

Step 5 – SI Approved

Step 6 – remedy

Step 7- COC

How can we encourage people to look for emerging contaminants?

VPLE can include negotiated agreement with performance standards. Insurance would be back “in” same as now if increased scoping detects substances but site can close with site specific standards. Groundwater without enforcement standards still need evaluation

discussion of normal cleanup process in NR 700 vs site specific performance standards

Committee could come up with ‘template’ for a negotiated agreement to incorporate state enforceable standards

Effort needed to negotiate an agreement would signify seriousness. Agreements would allow more flexibility, out-side the box approaches.

### **Expedited Review to address time VPLE process takes**

How to shorten timeframe between approval of SI to the COC.

Dedicated resources needed to implement changes - Need proposal for more staff – maybe ‘experts’ in the process, higher fees – fees alone probably not sufficient to address.

“Pay to Play” – expedited review, site specific standards.

What insurance options are there for the state? State insurance program? Other forms of financial assurance?

Private sector is scared of risks associated with emerging contaminants and concerns about unknowns, possible changes in statutory requirements and rules, law suites, if people find it what do they do

Option to reopen case against the causal party?

Protection is needed to address changes in standards

### **Other issues:**

GW without ES standard

Third party sign on to COC for continuing obligations

Timelines – requirements for expedited review, completion of SI to COC, need to compress timelines.

Off-site VPLe exemption – by property or plume, adequately investigated off-site, who is responsible for continuing obligations for vapor? 292.13 vs 292.15(2)(ag). VPLe off-site state contemplates an off-site source of contamination migrating onto a VPLe site. The issue discussed was whether the VPLe off-site exemption applies by “property” or “plume.” This issue has arisen in the context of vapor migration impacting off-site properties where the off-site party is concerned that its exemption is not as broad as the VPLe exemption. Further discussion on this issue recommended.

How can we say that plume is adequately investigated? Off-site vapors are more complicated and can be expensive if RP pays for off-site mitigation forever.

Increase DNR fees – menu of fees, extra staffing to help address executive order.

Should changes be made so DNR could assist with preserving CERCLA claim – opportunities to highlight parallels to VPLe, compliance with NCP requires public comment, this could position site for cost recovery?

ASTM Phase I – how does this compare to federal innocent land owner

Full COC or negotiated agreement for innocent owner vs causer?

General support for idea of developing process like the flow chart drawn on the board with pre-application meetings, different options, negotiated agreements.

Summary of this discussion will be shared with the full BSG at the Oct. 10 meeting in Oshkosh.