



AMEND THE VPLE STATUTE TO ADDRESS THE UNCERTAINTY REGARDING THE TIMING AND COSTS OF INVESTIGATIVE/REMEDIAL REQUIREMENTS

TYPE OF PROPOSAL – LEGISLATIVE

BACKGROUND

The VPLE program requires the Department to approve the site investigation associated with the “Property” that is the subject of the VPLE application. *See e.g.*, Wis. Stat. § 292.15(2)(a). Although Voluntary Parties (“VP”) in the VPLE program follow the general timing requirements in Wis. Admin. Code chs. NR 700 *et. al.* for various investigative and remedial submittals, VPs may need to wait for an unidentified time period for Department review to ensure that the Department has “approved” the VPs work prior to moving onto the next phase of project work

The Brownfields Study Group 2015 Report, “Investing in Wisconsin, Reducing Risk, Maximizing Return” (“Report”), recommended updating the Department’s VPLE guidance to address uncertainties surrounding how the timing of a proposed development would align with the completion of key NR 700/VPLE milestones. It was noted that this uncertainty could increase the time and expense of an overall development or result in parties not using the program. The Report specifically proposed requiring a project kick off meeting between the Department and applicant to provide project-specific regulatory and technical information and to develop a project-specific timeline.

According to the VPLE Subcommittee’s present evaluation, the uncertainties regarding the timing and costs of investigative/remedial/administrative VPLE requirements continue to act as a deterrent to certain parties or projects using the VPLE program, specifically, to municipalities, projects with longer timeframes and sites with extensive, unknown uses. The uncertain time to process a VPLE application (completing Department-approved site investigation, remediation and obtaining a final Certificate of Completion) and the uncertain costs/fees associated with such efforts were given as a primary reason why some persons do not use VPLE.

These concerns may be an even greater impact to use of the VPLE program in the context of emerging contaminants (hazardous substances for which a generally-applicable regulatory cleanup standard may not yet be developed or for which the scientific basis for determining cleanup to the extent practicable is evolving). While the NR 700 requirements provide a framework for the entirety of cleanup in Wisconsin, they often do not provide specific detail as to the application of the rules to a specific project enrolled in the VPLE program or how the VPLE and NR 700 requirements will align. For example, an applicant may need to discuss with the Department the application of the NR 700 requirements to an investigation of a property with extensive, unknown uses, the subsequent timing for the Department’s approval of such VPLE investigation and the appropriate methodology for establishing a remedial action or performance standard to address emerging contaminants, all within the context of the specific VPLE project’s development plans. Inconsistent application of the rules or changed administrative processes when a project is underway can negatively impact timing and costs.

The VPLE Subcommittee believes that early project-specific discussions with the Department and the development of project-specific charters may help applicants to better quantify the timing associated with a specific VPLE project. Providing more certainty with respect to timing and costs

could potentially assist with funding and private insurance associated with such projects, as well as lessen the risks for additional investigative activities once the Department has approved the site investigation.

PROPOSAL

1. *Revise Wis. Stat. § 292.15 to require a meeting with the Department after submission of a VPLE application, prior to the Department confirming eligibility.*

Require VPLE applicants to meet with the Department after submission of the VPLE application prior to the Department determining eligibility (allow option for applicant to voluntarily meet with the Department prior to submission of the application). This meeting could be modeled off of the pre-application meeting required for obtaining wetland/waterway permits. The purpose of this meeting would be for the applicant to submit to the Department information concerning known or potential issues of environmental concern at the property and to discuss the intended redevelopment project and/or remediation. The Department would provide the applicant information concerning the expected investigation requirements, cleanup standards, and remedial requirements (e.g., imported fill sampling) in light of the expected project. In addition, the Department would explain the investigation, remediation and closure requirements associated with emerging contaminants (e.g., whether numerical standards exist or site-specific performance standards could be utilized for closure). The Department should utilize this meeting as a way to evaluate:

- The seriousness of the applicant's commitment to the VPLE requirements.
 - Potential Department staffing requirements.
 - The potential future risks to the state associated with any hazardous substances that remain post-development (e.g., if a certain contaminant is expected to be associated with the property, but the Department does not yet have sufficient scientific information to issue a closure without a reopener).
2. *Revise Wis. Stat § 292.15 to provide the Department authority to develop VPLE charters with applicants to address the timing of various submissions and overall project and substantive requirements.*

Revise the statute to provide the authority for the Department and applicant to enter into a VPLE charter outlining specifics of the project. At a minimum, the charter would address (i) investigative requirements in light of specific conditions, (ii) the timing associated with applicant submissions, and (iii) Department review. This charter may also outline consequences of failure to meet timing requirements (e.g., loss of expedited review), conditions for withdrawal from the VPLE program, and responsibility for certain components of investigation/remediation (e.g., use of grant funds for certain remedial tasks, municipal involvement, and allocation of remedial tasks among parties, etc.).

In its approval of this proposal, the BSG requested that consideration be given to the following issues in the development of VPLE Charters:

- The Department and municipalities often spend considerable time and resources on brownfield development projects. Some of the projects do not proceed. How to utilize the concept of the Charter to ensure that the Department/municipalities can be made whole?
- Applicants often just track a “release” and not the entire property. This then becomes an issue when an applicant enters VPLE “late” (*e.g.*, after an applicant has remediated a specific release). Becomes a “chutes and ladders” game with WDNR review and work. Charters could be used to negotiate Department review and work plan/investigation process.
- Third parties, including municipalities, should be able to sign on to a Charter.
- Charter should be easy to obtain, very flexible and used for purposes consistent with and useful to an individual project (*e.g.*, some projects may benefit from timelines to guide applicant submittals and WDNR review, whereas others may benefit from outlining contribution of various grants/municipal involvement toward the final site uses or cleanup).
 - Allow for separate charters to address separate issues (*e.g.*, timing of review versus final development).
 - Model after Green Tier program – easy to get out of, flexible, no penalty. Charters should not be legally binding.
 - Consider use of Charter for addressing concerns with buildings (*e.g.*, demolition), coordination of permit issuance and for renovation associated with a project
 - Charter should outline requirements for withdrawal from program, including payment to Department of all owed fees

COMMENTS

At BSG meeting, discussion about having Department meeting when most appropriate, rather than restricting initial meeting to time when entering program. This approach, however, does not address the Department’s concerns about applicants entering program late in the game and needing to perform more investigation.