



## INCREASED FTEs AND FEES TO IMPLEMENT CHANGES TO THE PROGRAM

### TYPE OF PROPOSAL – LEGISLATIVE AND REGULATORY

#### BACKGROUND

The VPLE program and accompanying Department review confers an extraordinary benefit on the applicant and successor owners of a property for protection against reopening a previously closed site. The best way to “monetize” that value is to consider the cost of obtaining an environmental insurance policy that would cover government-mandated cleanup cost on a previously closed under the “simple site” Wis. Admin. Code ch. NR 700 closure process. Generally, the cost of such an insurance policy runs in excess of \$100K, is limited to a 5-10 year time policy period and subject to policy limits and deductibles - none of which are applicable to the statutory liability protections from a site reopener afforded an applicant receiving a completion certificate under VPLE (*i.e.*, reopeners for (i) future, more stringent standards; (ii) more extensive contamination, and (iii) remedy failure). Thus, under VPLE the applicant pays its application and hourly fees for Department review and approval and, in exchange, receives liability protections beyond those of an environmental insurance policy.

The VPLE program confers another significant benefit. The Department’s involvement in the VPLE process essentially underwrites the programmatic insurance policy applicable to natural attenuation for hazardous substances in excess of regulatory standards. Although an applicant subject to the programmatic insurance requirement is subject to an additional insurance fee, this is a one-time fee paid at closure.

Because of the time sensitive nature of many development projects, it is expected that a VPLE applicant would be willing to pay an enhanced hourly fee for VPLE Department oversight, especially if that fee includes an expedited review given the higher cost of private insurance for more limited coverage. A VPLE applicant should also be willing to pay increased costs associated with Department actions implementing the various proposals outlined herein, such as negotiating charters and developing timelines and site-specific standards (especially when dealing with emerging contaminants), as these proposals are intended to mitigate against unexpected regulatory delays and investigatory/remedial costs or to address emerging contaminants without regulatory standards that could derail a development project.

#### PROPOSAL

1. *By legislation, provide additional X FTEs in the form of both managers and technical staff to implement these recommended changes to the VPLE program. These FTEs would be dedicated to the VPLE program, responsible for education, and outreach to citizens, prospective applicants and other Department staff. They would also be responsible for consistency in administering the VPLE program among the various regions and projects.*
2. *Amend Wis. Admin. Code ch. NR 750 to provide for additional fees to implement the recommended changes, including fees to negotiate VPLE charters and for Department actions such as expedited review of work plans and review and establishment of site-specific numeric or performance standards.*

## COMMENTS

[Insert]