

NOTES  
**VPLE Subcommittee Meeting**

March 8, 2019 | 9:00 a.m. – 11:00 a.m.  
Milwaukee - DNR Service Center, Room 139  
2300 N. Dr. Martin Luther King Jr. Drive, Milwaukee

**Attendees:**

In Person

Jennifer Buzacky  
Mark Thimke – Foley & Lardner  
Bruce Keyes – Foley & Lardner  
Laurie Parsons - OBG  
Kenn Anderson – Aon  
Josh Neudorfer – Sigma  
Pam Mylotta – DNR  
Michael Prager - DNR  
Margaret Brunette – DNR  
Christine Haag – DNR  
David Hanson – DNR  
John Antaramian – City of Kenosha  
Ned Witte – Godfrey and Kahn

On Phone

Heidi Woelfel – GZA  
Jeff Steiner – Ayres  
Tauren Beggs – DNR  
Bill Nelson - DNR  
Jason Scott – WEDC  
Janet DiMaggio - DNR  
Dave Misky – City of Milwaukee  
Don Gallo – Axley  
Chris Valcheff – True North

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**INTRODUCTIONS**

**1. What is new with VPLE program – DNR**

Michael P. gave update on VPLE program. Shared slides with the following information:

- Change to definition of “property” and process for changes to property boundaries - Act 70
  - Rule making
    - Process and schedule
    - VPLE issues including rules for financial assurance for sediment sites that want VPLE
- Hazardous substance Certificates of Completion now being provided in part as a result of concerns with PFAS & other emerging contaminants
- Economic Development and Green Environment (EDGE) pilot program – Act 70

Mark T. explained how the program created in Act 70 is being developed for incentives to locate new facilities on VPLE sites if they get Green Tier and need an air permit. Group had presentation by Deloitte about the state’s certified sites development program and what industrial companies are looking for when deciding where to locate. Those are mostly green field sites; Mark suggested maybe there could be a brownfield certified site type program.

Michael P. shared some statistics about VPLE:

- First Certificate of Completion – 1996
- Active sites in program = 79

- Certificates of Completion = 190
- COC with Insurance = 61
- Average number of new applications per year (recent years) – 15
  - 2019 - 3
- Average number of Certificates (recent years) – 10
  - 2019 - 3

## 2. Recap of topics from first subcommittee meeting – Jennifer

Jennifer gave a summary of the big areas that this subgroup will look at based on the feedback at the July subgroup meeting.

These general areas will be looked at by the subgroup:

- Why do participants use/ not use VPLE?
- VPLE eligibility and process,
- Future Risk
- Insurance, how is existing program working and should changes be made. State needs to renew the current VPLE insurance plan soon.
- Scope of Certificate of Completion and what does the exemption cover.

## 3. Update on VPLE activities – Jennifer and Mark

Mark talked about how a small group is working with him on possible legislative changes to VPLE as a result of DNR decision to issue hazardous substance limited Certificates of completion. Ideas could include Green Tier and insurance. Will work with Study Group.

Comment - was told there will be briefing with secretary's office on VPLE PFAS issues. Is decision is permanent or interim?

Christine discussed the RR Program, PFAS technical advisory group and topics they are discussing and actions and actions DNR is taking regarding PFAS, process to create federal and state standards.

PFAS Technical committees will look at that may impact this subcommittee's work — sources (conceptual site model), risk and communication (mostly lead by Dept. of Health) and sampling and analysis (laboratory certification, screening, what contaminants to sample for etc.)

Kenn A. discussed ideas of how insurance could be expanded for sites in VPLE, could cover more than groundwater, maybe 3rd party risk or reopening or emerging contaminants. There could be a pollution prevention aspect if companies were in Green Tier, or other action to mitigate risk of future spills.

Comment- what about self-insurance? years ago local governments banded together to create a group for self-insurance – they essentially created their own insurance company – the Local government property insurance fund (LGPIF).

Reinsurance concept also mentioned. Risk of environmental – losses severe but not frequent; therefore, a hard risk to model.

Could we get insurance to work better if we increased participation in VPLE.

#### 4. Why people choose to use the VPLE program.

Please come prepared with actual examples of why clients have used the VPLE program or what you have heard as to reasons why the program is beneficial. – Group discussion

What makes projects successful? Why do people use or not use VPLE?

Local gov. comment - city has used it; it was successful at the beginning. Recently they have decided not to use it, they also have a pool of old sites that are still in the program, didn't finish.

- They don't use it now because of concerns with cost and time.
- Rules are not advantageous.
- With more rules and regulations, it has become more difficult for municipalities due to lack of staff.
- Need to hire out to figure out changes to process which impacts budgeting and contracting.
- Bringing fill on site has been an issue – testing increases costs.

Consultant comment - has many sites in program. Comment — there are few industrial to industrial projects.

Most are mixed-use redevelopments.

- They often use it because developments are using national debt and equity financing and those companies and their attorneys want the comfort that comes with VPLE.
- The cost to import fill is high now with VPLE.
- Large development and cleanup projects need to conform to cost expectations in the proforma, unexpected extra costs are a problem and a moving target is a not good.
- Number 1 surprise for a site — fill. The requirement to evaluate fill on and off site is difficult to fix in a proforma.

Discussion about whether a hazardous substance COC affects the value of VPLE.

What will DNR ask you to sample for?

Discussion on limited COC — Once site is being closed out and testing is completed, concern with risk of emerging contaminants. How much of a risk is this in terms of risk management?

Comment — Historical perspective, 20 years of stable history, low likelihood of reopeners. What is risk to the state, to promote redevelopment, program should re-trench back. Back when program started, value of program was a policy decision made that it was more beneficial to get property back into use.

Comment — The great unknown when program started was regulatory issues; program worked well at first.

- The benefit of VPLE was primarily no additional work needed if there is a change in standards.
- Limited COC VPLE program is comparable to IL Comprehensive NFR letter from IEPA (grants a release for what you investigated).

Now value of program is less.

- Outside of Wisconsin probably more value.
- Most clients now, do not see added value in light of expense.

- For local transactions, people are comfortable without VPLE, but people from outside of state, he had French client who liked comfort of VPLE.

Discussion - Limits uncertainty for redevelopment, some national companies like certainty of VPLE program. Helps to facilitate a development plan. Performance can be developed, clear costs. Sophisticated developers like it. She has seen some inconsistency with VPLE, which rocks to flip, rule and interpretative changes and pace is slower. You need the luxury of time for this to work.

Cities used VPLE and liked it, but for some industry cleanups, is it necessary to look at everything or could you look at pathways and exposure.

Old vs new program.

- The program was very successful, but landscape has now changed. If there is luxury of time it could work and seller and buyer can discuss what to sample for, but in an emergency or quick project, won't work.
- Environmental insurance takes a lot of time and normally cannot fit into a deal. Examples from Ned, one—the buyer wanted comfort about possibility of PFAS; they requested indemnification forever.
- Another site, there was off-site vapor issue, system needed and ongoing O&M. It doesn't work well if seller wants clean break but the VI system needs to stay running.

Time and cost are too much, very different than when started.

- Value is with heavily contaminated sites.
- More beneficial to municipal entities than to private development.
- Fear was worst part. In some cases, program is a good starting point but sometimes people end up dropping out.
- Also, for some old VPLE sites, he has found situations when the boundaries of the old COC isn't that clear and what risks are covered are also not clear.
- It is better for local government.

One client would not have allowed residential on property without VPLE, but under the new system **of haz. substance limited COCs**, they wouldn't have done the project.

John A. — For Chrysler plant, it isn't in VPLE and without it they will have to lease the property out because no one will buy the site because of the risks and the City needs to control. If the City had not taken the site it would have only been able to address emergencies. The problem of brownfields extends beyond economic benefits of the project itself – but to the community as a whole and harm to the local neighborhood. At the Brass site, there were gangs, police calls, harm to surrounding neighborhood. Discussed getting Local governmental perspective on why VPLE helps them.

What is the value of redevelopment?

- Starting to see cities being asked to take the risk of development projects.
- \$90 million Harbor Park Kenosha.
- Is cost-benefit a valid way to look at redevelopment – cities are incurring costs now in the absence of redevelopment.
- The costs to not redeveloping — raze orders, health and safety, games, fencing, fires.

- Cannot determine the costs to the municipality if cannot redevelop because redevelopment and lack thereof impacts housing valuations.

Discussion about new DNR secretary considering revised COCs, it is important to understand the economic value of VPLE for the state, redevelopment benefits. consider the risk vs benefits. How much would it cost if state had to pay for big PFAS cleanup, vs economic benefits.

Group should have another meeting after the April PFAS technical meeting.