

Liability Subgroup**Meeting #3 Agenda****May 1, 2014 – 9:00 to Noon****Whyte Hirschboeck Dudek S.C.****555 East Wells Street, Suite 1900 (19th Floor). Milwaukee, WI****ATTENDEES**

Michael Prager – DNR

Dan Kolberg – DNR (on phone)

Mark Thimke- Foley

Margaret Brunette (on phone)

Jennifer Drury Buzecky - Whyte Hirschboeck Dudek

Kathryn West - Whyte Hirschboeck Dudek

Ted A. Warpinski - Friebert, Finerty & St. John

Buck Sweeney - Axley Brynelson (on phone)

Roy Wittenberg – Natural Resource Technology

Mark Miller - Investors Community Bank (ICB)

AGENDA ITEM: Lender Liability Exemption

Relevant Attachments:**Discussion:**

Dan K. talked about how DNR has received several requests from lenders for liability clarification letters when lender set up LLC to acquire title to property. In each case, DNR denied request because LLC was not lender and not engaged in lending as defined in statute. Dan explained several other issues related to the lender exemption that have also come up recently.

The group also talked about how it would be good to get input from others in lending community on this issue, Wisconsin Bankers Association and Wisconsin Community Bankers Association.

Mark M. talked for a while about why his bank uses LLC often to hold foreclosed property. Some of reasons relate to recent banking regulations and reporting requirements (FDIC). They use a wholly owned LLC which holds all the properties for the bank together. One reason is that some are operating businesses and bank doesn't want liability associated with use of the property (hotel pool, etc.). Other reasons were described about why they use LLCs not related to environmental liability. A receiver may have to be appointed in some cases if a bank doesn't put property in LLC. DFI approval was necessary for a bank to set this up.

Group talked about how it would be good to allow for LLC set up by lenders like Mark was describing should qualify for Lender Exemption if they meet the requirements in the law (292.21).

Dan K. – other banks use single property LLCs.

Michael P. – banks often use lender exemption for clean properties without environmental issues just in case

Group agreed to get input from other banks/ associations, Mark M – banks now have chief risk officers, they would be good contacts.

Michael P. described case when bank did not foreclose but still took in rent and tried to cleanup site but claimed they were not liable but they did not meet requirements of lender exemption for foreclosure.

Assignments	Timeframe	Person(s) Responsible
Prepare issue paper on LLC issue and bring it back to the subgroup	Soon	Jennifer B with help from Mark M.
Get input on issue from others in lender community		Jennifer will work with Michael, Mark M. and others to reach out on this issue

AGENDA ITEM: Private Cost Recovery

Discussion: Discussed issue paper prepared by Ted W. about creating private cost recovery law in WI. They researched several other state laws including MA, MI and MN. MI was similar to CERCLA cost recovery process which is complicated/ hard to use. Talked about having a simple process. Because other states have these and there is case law using CERCLA cost recovery, it should be fairly understood how to address issues like cost allocation, orphan shares, the process, what costs could you recover, etc. Group discussed situations when this could help get more brownfields cleaned up.

Group discussed that this law should use the existing spill law in terms of who is responsible and who can get exemptions from liability.

Mark T. – if you are complying with a negotiated agreement or consent agreement, you should have shield (similar to what is currently in Local gov. cost recovery law).

Law would be good tool to encourage other RPs to sit down and negotiate.

Buck S. when there are multiple RPs at a site, DNR tools are limited to bring different parties together.

Assignments	Timeframe	Person(s) Responsible
Refine and edit the Issue paper	For next meeting	Ted W.

AGENDA ITEM: VPLE Improvements

Discussion: Jennifer B. discussed issue paper she prepared with help from Josh N. and Kathryn W.

Also discussed email from Josh N. (who was not at the meeting). Points in there time and money are important concerns on VPLE sites. Also, a lot of money has been spent on insurance. Josh asked if somehow that money could go toward covering insurance for some sites.

Michael P. – there is only a fairly small amount in the account DNR keeps for future deductibles if there was a claim (\$25 - \$40K), most of the insurance payments have gone to cover premiums.

Talked about issue of timing of DNR reviews for VPLE sites. Developers are often under tight timeframe. When DNR project manager need to go to committee that can make process take longer. Michael and Margaret talked some about workload and how committee process works for VPLE sites. Margaret mentioned that the SER VPLE committee can meet as needed. DNR goal in RR is to review all submittals with a fee within 60 days.

Group discussed idea that there be a kick off meeting when a new VPLE application is submitted and that there be a project agreement with timeframes/ schedule for reviews and submittals. Formal process. You should get better service from DNR on VPLE site than normal closure/ 60 days may not be soon enough.

Jennifer B. explained issue of how DNR defined a “property” for VPLE and how it should be modified to make sale and development easier of sites in VPLE program. If you must create new VPLE site for each new property, some properties could be ineligible for VPLE if they were carved off of larger property. Jennifer recommended that the property boundaries would be locked in after the DNR approves the site investigation and not changed even if property changes before Certificate of completion is issued.

NEXT MEETING

Date: May 16

Time: AM

Location or Call-in Info: Madison