Brownfield Study Group

VPLE SUBCOMMITTEE MEETING

JUNE 5, 2019

Note: This presentation was prepared by Brownfields Study Group members and does not represent Department of Natural Resources guidance or policy.
VPLE SUBCOMMITTEE

Status of Legislative Efforts/Timing to Address VPLE Scope Issues

- Quick turn-a-round on legislation - August deadline for Scope of Coverage
- Two meetings
- DNR Proposals for consideration
- Insurance status
- Long-term Solution VPLE
- BSG process for final recommendations
VPLE SUBCOMMITTEE - Recap

JULY 25, 2018 – DEVELOPED LIST OF TOPICS TO ADDRESS AS PART OF REVIEW

- WHY IS VPLE USED/NOT USED
- VPLE ELIGIBILITY AND PROCESS
- FUTURE RISK – INSURANCE (will be integrated into other discussions)
- SCOPE OF COC AND LIABILITY EXEMPTION
VPLE SUBCOMMITTEE - Recap

MARCH 8, 2019 MEETING

USE OF VPLE

- RESIDENTIAL/COMMERCIAL USE
- NATIONAL DEBT/EQUITY FINANCING – MITIGATE RISK
- OUT OF STATE, NATIONAL/MULTI-NATIONAL COMPANIES
- MUNICIPALITIES
- HEAVILY CONTAMINATED SITES
- POLICY DECISION IN FAVOR OF DEVELOPMENT
- ADDRESSED RISKS OF CHANGED REGULATIONS, MORE EXTENSIVE CONTAMINATION, REMEDY FAILURE (KNOWN CONTAMINANTS)
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NOT USE VPLE

- TIME AND COSTS (INCREASE IN BOTH OVER TIME AND UNCERTAINTIES IN FIXING)
- REGULATORY PROCESS
- UNCERTAINTIES WITH IMPORTED FILL
- WI-COMFORT WITH CLOSURE LETTERS
- MUNICIPALITIES POSSIBLY LESS USE THAN IN PAST
- PROJECTS WITH SHORT TIMELINES
CHALLENGES TO MUNICIPALITIES

- Less staff to learn regulations/coordinate efforts
- Economic benefits to communities from development extend beyond projects, e.g., tax base
- Costs in the absence of redevelopment - gangs, fires, fencing, health and safety, negative impacts to property values
- Being asked to take risk of development project
- Is cost-benefit a valid way to look at redevelopment?
- Informal municipal poll
VPLE SUBCOMMITTEE-Recap

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AREAS OF UNCERTAINTY

◦ Vapor (Off-site and O&M)
◦ Insurance
◦ Known contaminants without standards
◦ Unknown contaminants
◦ Length of time to complete VPLE
◦ Costs (how to fix on front end)
◦ Unknown future regulations/standards
◦ Sediments
◦ Older COCs (written without clear legal descriptions)
VPLE PROPOSALS (see Issue Paper)

OPTION 1 –

Cover Emerging Contaminants with Insurance

OPTION 2 –

Liability Exemption for all Substances on a State List – whether or not sampled (IL and MN Voluntary Cleanups)
DNR VPLE ISSUES FOR CONSIDERATION

- Timing of Site Investigation and Certificate of Completion
- Insurance and COC for Sites with GW contamination for substances without Enforcement Standard
- Sediment VPLE law changes to clarify cleanup requirements
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Status of Insurance

- Coverage for Unknown versus Known Contaminants
- Impact on DNR Proposals
- Impact of final use
- Risk allocation between DNR/Applicant
VPLE SUBCOMMITTEE – Long Term Solution – Scope Issues

- Full coverage (current legislation) versus Limited (substance specific)
- What risks assumed by State/Applicant/Municipalities
- What will be Insurance’s roll?
- Who gets liability exemption – innocent, causer, property owner?
- Impact of final use – residential/commercial versus manufacturing
- Scope of protection (changed regulations, more extensive contamination, remedy failure)?
- Policy issues
NEXT STEPS

- Next meeting of subgroup
- Future action to develop and evaluate options
- Prepare recommendation for next Study Group meeting