Voluntary Party Liability Exemption – PFAS/Emerging Chemicals

Mark A. Thimke
September 28, 2018
Assessment of VPLE Program

- Background on VPLE program
  - Passed in 1998; revisions to scope/coverage
    - Innocent purchasers to “reckless/intentional” to all parties
    - Voluntary party exempted various cleanup statutes
    - Protected against changing rules/standards
    - Failure to fully “restore”
    - More extensive contamination
    - Runs with property
  - Groundwater natural attenuation addressed
  - Sediment
  - Partial cleanup
  - Older landfills

- Wisconsin VPLE program – one of broadest in country in terms of protection
Emerging Chemical Issue

- PFAS – example
- Not addressed in prior remedial investigations where COC granted
- Potential financial risk to state
- Department’s current action on VPLE “open” sites
Discussion

- Retain or adjust the VPLE program
  - Limit protection to hazardous substances found/addressed
  - Limit time of exemption
  - Limit transferability of exemption
  - Charge fees to holders of certificate to pay for future cleanups
  - Require insurance for certificate holder

- Eliminate VPLE; only provide case closure with reopener
Questions?

Mark A. Thimke
mthimke@foley.com
414-297-5832