White Paper Outline: rule drafting relating to 2015 Wis. Act 204 requirements for financial responsibility and financial assurance for certain types of contaminated sediment cleanup sites

A. Statutory changes under 2015 Wis. Act 204
   1. Engineering controls and structural impediment removal under Wis. Stat. § 292.12(2)(d)
   2. VPLE approval at contaminated sediment sites under Wis. Stat. § 292.15(2)(af)(3m)
   3. VPLE partial cleanup approval at contaminated sediment sites under Wis. Stat. § 292.15(2)(am)(2m)(c)

B. Rules needed
   1. Engineering controls and structural impediment removal
      a. Plan and compliance schedule
      b. Financial responsibility for cost of complying with an approved plan and schedule
   2. VPLE approval at contaminated sediment sites
      a. Insurance, other forms of financial assurance, and waiver to cover the cost of complying with Wis. Stat. § 292.11(3) with respect to the contaminated sediment if additional remedial action is necessary
   3. VPLE partial cleanup approval at contaminated sediment sites
      a. Agreement to complete cleanup
      b. Financial assurance to cover cost of failure to restore the environment to the extent practicable and minimize the harmful effects from the contaminated sediment on the property or the discharges resulting in contaminated sediment

C. Potential aspects of draft rules
   1. Plan and compliance schedule (relating to engineering controls and structural impediment removal rule only)
      a. Engineering control maintenance
         i. Plan
         ii. Compliance schedule
      b. Structural impediment removal
         i. Plan
         ii. Compliance schedule
   2. Common considerations for all three rules relating to insurance, financial assurance, and financial responsibility
      a. What does the insurance/ FA need to be able to pay for? Further definition needed for each requirement
      b. How to calculate cost/value of coverage
         i. Estimate from consultant
         ii. Risk (navigation hazard, toxicity, ecological and human health, surface water quality, mobility, cost to remove residual sediment and EC materials, contaminant volume and proximity to receptors)
            1. Be mindful of special considerations of sediment
            2. resides in dynamic waterbodies
            3. navigation condition
            4. higher probability of instability subject to normal flooding and catastrophic conditions
            5. contaminants are present in both solid and dissolved phases
            6. carried by water, can spread and transport in long distance
7. diffusive contaminant source
8. directly affect surface water quality and hence ecosystem and human health.
9. Drinking water source
   iii. Contingency
   c. Length of coverage (3 to 5 years, 50 years, longer than 50 years?)
      i. Release trigger
      ii. Coverage renewal
      iii. Evergreen clauses/auto-extensions
      iv. Feasibility (e.g., product availability)
   d. Annual proof submitted to Department
   e. Notice of expiration to DNR
      i. Insolvency
      ii. Receivership
      iii. Bankruptcy
      iv. Change in ownership of RP
   f. Terms of insurance or financial assurance policy or agreement
   g. Inspection costs
   h. Amount adjustments
      i. Interest rate (versus inflation)
      j. Replacement
   k. Forms of financial assurance
      i. Bonds
      ii. Letters of credit / irrevocable
      iii. Insurance
      iv. Escrow
      v. Certificate of deposit
      vi. Irrevocable trust
      vii. Cash deposit with regulator
      viii. Net worth test (caution)
   l. Comparison of forms
      i. Set aside / no set aside
      ii. Administrative burden
      iii. Transparency/monitoring
      iv. Market conditions and external influences
      v. Private versus public sector
   m. What if insurance/financial assurance is not paid?
   n. Enforcement/compliance/penalties
   o. How to get insurance - VPLE
      i. Open to any insurer
      ii. One vendor
      iii. Three approved vendors
      iv. Similarity to natural attenuation policy / state policy for all sites
3. Special considerations for VPLE contaminated sediment cleanup sites (full cleanup rule only) – waiver
   a. Criteria for when FA other than insurance would be acceptable
   b. Waiver criteria