



WISCONSIN BROWNFIELDS

STEPS TO A SUCCESSFUL REDEVELOPMENT PROJECT



MANAGING YOUR RISK: LIABILITY PROTECTIONS

Michael Prager

RR Program Land Recycling Team Leader

michael.prager@wisconsin.gov, 608-261-4927



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Voluntary Party Liability
Exemption

VPLE



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Voluntary Party Liability Exemption:

- Overview
- Why be a Voluntary Party?
- Who can be a Voluntary Party?
- Future Liability
- Fees
- Basic Steps
- Helpful Hints





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Overview: What Is VPLE?

- VPLE allows a property owner to work with DNR to clean up a site.
- When completed, it gives the owner a reprieve from future liability.





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Why Enter the VPLE Program?

- Provides active project management
- Deals with the entire property
- Addresses past and present contamination
- Limits future liability for past contamination
- Is transferable
- Is a real PLUS+ for future development
- Required by some buyers & lenders



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VPLE Example

Outpost Natural Foods Wauwatosa



Before:

- Vacant former chemical supplier



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VPLE Example

Outpost Natural Foods Wauwatosa



After:

- \$3.2 Million -
14,000 sq. ft.
“green” grocery
store



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Who can enter the VPLE Process?

- Any person who submits application and pays fees.
- A person may be an individual, business, developers, or government unit including RPs
- Must have contaminant release
- Landfills OK but *licensed* landfills not eligible





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What Must a Voluntary Party Do?

VP is required to:

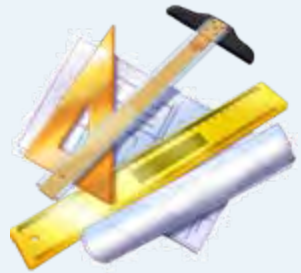
- Investigate property & discharges that migrate off-site
- Remediate discharges
- Maintain property as required





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What is reward at end of VPLE process?

Certificate of Completion:

- Awarded once DNR approves site investigation and cleanup.
- Provides “finality” to person’s liability.
- Exempt from spill law and certain provisions in other state laws.

Note: **88 Certificates issued so far.**



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Helpful Hints



- Need to investigate release, even if it migrated off the property
- Submit one application per legally described property
- Request a kick-off meeting with DNR
- If groundwater above ES, insurance required
- Keep reminding yourself: “it isn’t quick, but it is worth it”



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Resources

- S. 292.15, Wis. Stats.
- Fact Sheet #2, “*Voluntary Party Remediation and Exemption From Liability*”, Pub # RR-506
- DNR Regional Land Recycling Contacts





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INSURANCE PROGRAM

WBIP



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WI Brownfields Insurance Program (WBIP)

- Control risks associated with brownfield cleanup and redevelopment
- Private insurance for businesses and local governments
- Optional Tool
- Encourage brownfield developments

Risk Management



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Why the Need?

Developers, Attorneys, Local Governments:

“State liability exemption useful but...”

“We still face additional risks.”

“Individual insurance policies cost too much, take too much time to negotiate.”

“Individual policies are not worth it for small and medium sites.”

“Worried about risk between investigation and Certificate of Completion”



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WBIP Benefits



- Lower premiums
- Pre-negotiated menu of coverage
- Streamlined underwriting and negotiating policy terms
- Minimal Need for insurer to conduct individual site technical review



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WBIP - More Information

- Sites in VPLE or closure process
- Phase 1 and Phase 2 Environmental Assessment – VPLE or VPLE equivalent
- Private Program – minimal DNR Role

dnr.wi.gov/org/aw/rr/rbrownfields/wbip.htm



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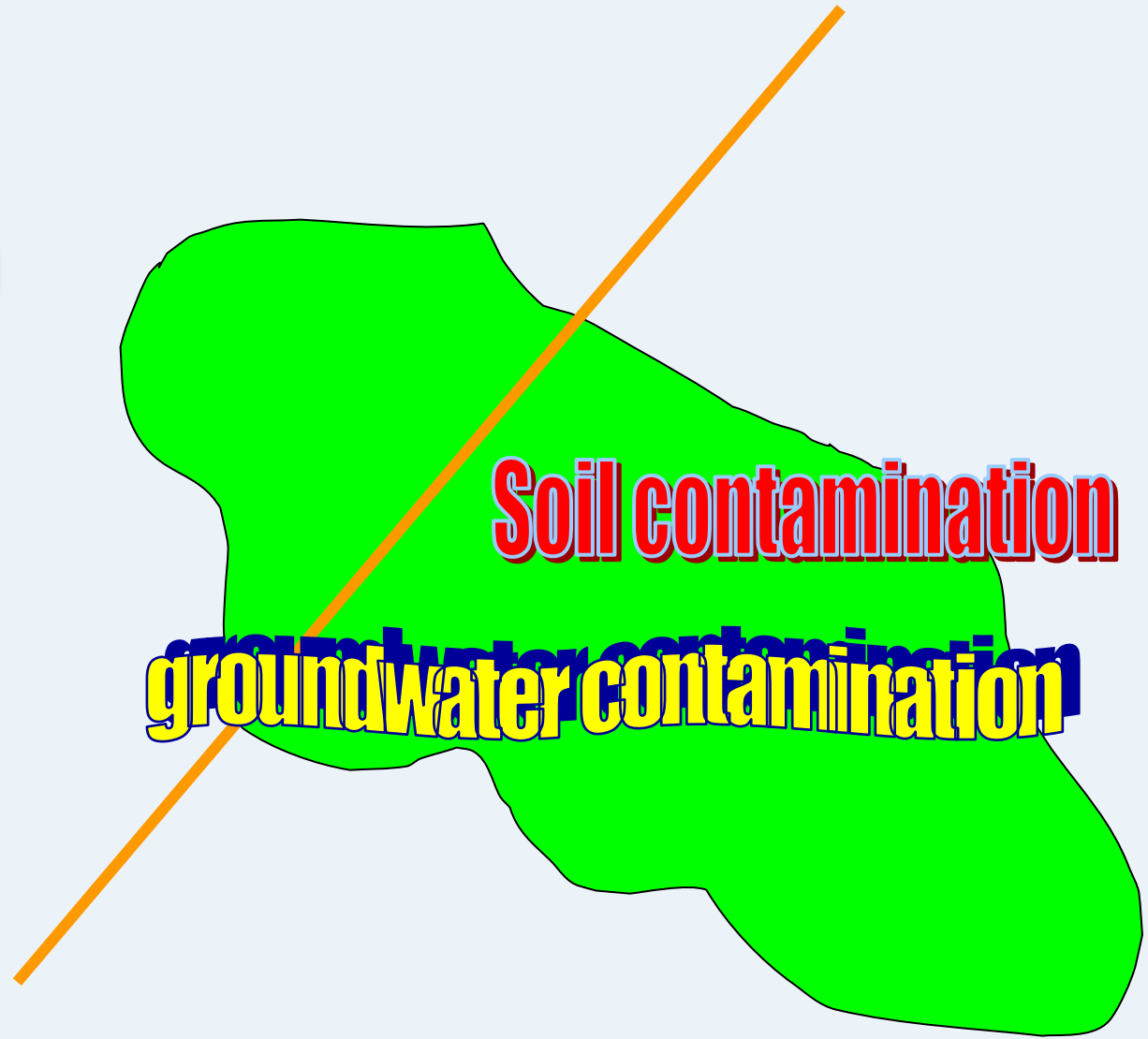


OFF-SITE LIABILITY EXEMPTION



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Soil contamination

groundwater contamination



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Off-Site Contamination



Property owners are not responsible if contamination is migrating onto their property from off site.

- Applies to soil and groundwater
- Must provide DNR information supporting claim of impact by off-site source
- DNR can issue letter exempting property from liability for neighbor's contamination



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Helpful Hints



- Sites with complex history need more information
- Will likely need GW data
- Need to demonstrate no on-site source



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LENDER LIABILITY EXEMPTION



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Lenders and Representatives



- Liability exemption from certain provisions in Spill Law
- Intended to encourage lenders to finance brownfield projects



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Lender and Representatives

Exemption applies under these conditions:

- normal lending
- being a representative
- inspecting property
- enforcing a security interest (personal property or fixtures)
- and acquiring property (foreclosure)



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Lender Exemption: Hints

- Lender forecloses on property:
normal lending
- lender assessment must be completed during the year preceding acquisition, or within 90 days after.
- special requirements for assessment that is older than 1 year
- lender assessment different than standard Phase 1 & 2, must be submitted to DNR
- clarification letter available





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GENERAL LIABILITY CLARIFICATION LETTERS



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General Liability Clarification Letters

- Provide comfort and clear explanation for buyers, sellers, lessees, others
- Does DNR agree that contamination is minor & no further investigation/ cleanup is necessary?
- Sites with complex issues - closures, spills, etc., what additional work is necessary?
- If seller agrees to finish cleanup, what is responsibility of buyer?



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Managing Your Risk: Liability Protections

- Understand and manage responsibility
- Practical solutions to help get the deal done
- Contact DNR RR staff for help identifying which tool is best for you

