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STATE REPRESENTATIVE • 25TH ASSEMBLY DISTRICT

Assembly Committee on Environment and Forestry
Assembly Bill 701 Testimony
January 20, 2016

First of all, I would like to thank you, Chairman Mursau, and committee members, for allowing me to testify before you today on Assembly Bill 701.

In 1994, the legislature created the Voluntary Party Liability Exemption (VPLE) program. That program includes a process by which an entity, in conjunction with the DNR, can voluntarily conduct an environmental investigation and cleanup of a property and then be eligible to receive a certificate of completion that limits future liability.

To date, the program has largely been used for brownfield cleanups. Certain landfills and groundwater remediation projects are also eligible for the VPLE program.

AB 701 would allow sediment cleanups to qualify for the VPLE program if certain standards are met. The DNR would work closely with the entity carefully monitoring the project from start to finish. The DNR would issue a certificate of completion only if the department is satisfied that the threat from the contamination has been removed. The certificate would exempt the entity from further liability. Finally, the certificate could be assigned to whoever purchases the property.

Properties that would benefit from these changes to the VPLE program would include former manufactured gas plants, manufacturers, foundries and wood treatment facilities located near waterways. There is a limited amount of waterfront property, and development of it can yield the highest taxable use for that property, increasing the overall tax base for the community.

I want to stress a couple of points about this bill. First, this program is voluntary. No entity is required to use it. However, it is available for those who wish to use it.

Second, this program is important because it helps communities deal with a situation we have all seen. A waterfront property lies empty for years because of a contamination issue. Nobody wants to develop it, and nobody is willing to buy it. People in the community are tired of looking at it in its vacant condition.

The local tax base suffers because a property which would otherwise be prime real estate sits idle. For example, a very desirable waterfront location may remain vacant and slowly deteriorate over time.

VPLE enables local communities to grow the tax base, because it increases the likelihood that these properties will be developed and increasing in value rather than unused and deteriorating further. That result is good for conservationists, hunting and fishing enthusiasts, local communities, taxpayers and business alike.

Thank you for hearing this bill today. I would be happy to address any questions you may have.

STANDING COMMITTEES:
Natural Resources & Energy, Chair
Transportation & Veterans Affairs



JOINT COMMITTEES
Audit Committee, Co-Chair
Information Policy and Technology

**Assembly Committee on Environment and Forestry
January 20, 2016
300 NE - State Capitol**

Testimony on Assembly Bill 701 by Senator Cowles

Thank you for the opportunity to testify today on AB 701 relating to adding sediment remediation to the voluntary party liability exemption (VPLE) for cleanup and redevelopment of contaminated properties in Wisconsin.

VPLE is a voluntary program created by the legislature in 1994. This highly successful program encourages a more thorough investigation and remediation of contaminated properties. Site cleanup includes multiple environmental site assessments, a full site investigation and a remediation plan reviewed and approved by the DNR.

Originally created to remediate upland brownfields sites, expanding the VPLE program will encourage a greater potential for waterfront redevelopment of contaminated sites most of which are unused industrial properties. Allowing contaminated sediment parcels eligibility in the voluntary program will foster a very thorough remediation of industrial waterfront areas. By requiring the actual removal of contaminated sediment instead of in-water capping with engineering controls we will better ensure the future health and safety of these properties.

Once DNR approves a completed cleanup the voluntary party will receive a Certificate of Completion which provides a liability exemption assuring that all the contamination on the property has been remediated to the state's satisfaction. The liability exemption is transferable to future owners of the property to promote economic development of previously blighted properties.

Thank you very much.



STATE OF WISCONSIN LEGISLATURE
BEFORE THE
ASSEMBLY COMMITTEE ON ENVIRONMENT AND FORESTRY

Information-only testimony presented in the matter of
Assembly Bill 701
January 20, 2016

Introduction

Good morning Chairman Mursau and Committee members. The Department of Natural Resources (DNR) appreciates the opportunity to provide the committee information on and answer any questions you may have pertaining to AB 701. Over the last 20 plus years, together we have made significant progress in cleaning up and redeveloping thousands of brownfields sites in this state.

Today, we are discussing changes to two existing provisions in the state's Spill Law. These provisions were enacted to provide the DNR with better ways to promote the cleanup and reuse of contaminated properties. Over time, the DNR has worked with its customers – particularly the Brownfields Study Group – to identify ways to improve the options we have available to further promote cleanups.

Proposed Changes

Sites with residual contamination after cleanup. This bill makes changes to an existing provision in the Spill Law that applies to owners of properties where residual contamination remains after a hazardous substance cleanup is completed. Current law requires the property owner maintain, repair and replace any type of engineering control or other long-term safeguard placed on the property if not all the contamination is removed at the end of the cleanup. This provision in the Spill law, enacted in 2006, replaced the use of deed restrictions placed on properties to enforce those safeguards.

When the Wis. Stat. §292.12 was first passed, it only applied to sites with *groundwater or soil* contamination. This bill expands existing law to include sites with contaminated *sediments*. Where a cleanup involves using an engineering control to address residual contaminated sediment (e.g., a cap used in a river to anchor the sediment in place), the party undertaking the response action would be responsible for maintaining the engineering control after the cleanup is approved, even if they are not the property owner.

It also allows DNR or DATCP to request the responsible party to provide: 1) a plan and schedule for how they will maintain and monitor the engineering control; and 2) financial assurance in the event that the engineering control would fail and the responsible party is no longer able or available to address the situation. These changes should help clarify for developers, responsible parties and state agency staff how to address long-term safeguards at contaminated sediment sites.

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Voluntary party liability exemption for contaminated sediment cleanup. Similar to the changes just discussed, this part of the bill modifies and expands existing law. In 1994, the legislature created the Voluntary Party Liability Exemption (VPLE), under Wis. Stats. § 292.15 of the Spill Law. The VPLE is a process by which a person – including a local government – can voluntarily conduct an environmental investigation and cleanup of an *entire* property and, at the conclusion of the approved cleanup, receive limits on their future liability for past contamination on a property.

This differs from the standard cleanup process; in the VPLE program a person volunteers to look for *all* the possible contamination on their property, rather than just address the *known* concerns. In return, at the completion of the VPLE cleanup they receive a liability exemption that protects them if the remedy fails, standards change, and more contamination is discovered. One hundred sixty properties have received a certificate of completion (COC) since 1994. Some of the major VPLE sites have been: the Kenosha Lakefront; Holtz-Krause Landfill in Wausau; Domtar Papermill in Port Edwards; Farmers Coop in De Pere; and former Glatfelter Papermill in Neenah.

In 1999, the VPLE law was expanded to allow cleanups into the VPLE program that rely on natural attenuation of groundwater if there was environmental insurance coverage in the event that the remedy failed. Presently, DNR has a master insurance policy that covers such sites and the participants in the program pay a fee to cover the cost of the state's insurance premium. To date, DNR has not filed any insurance claims to activate the coverage of this policy – in other words, no natural attenuation remedies have failed. Further, the DNR has not had to respond to any of the 160 sites given a COC because the remedy failed or more contamination was discovered.

This bill would expand the VPLE program to include *sediment cleanups* along with groundwater and soil cleanups. A VPLE sediment cleanup generally would need to meet the same type of procedural and technical requirements as a soil and groundwater cleanup would. Additionally, DNR could require the voluntary party to obtain insurance or a form of financial assurance to address concerns about future concerns at a sediment cleanup. This bill provides DNR an option to waive the insurance/financial assurance for sediment contamination sites.

This bill also does the following:

- Expands the list of sites that are not eligible for the VPLE program to include sites on or proposed to the Superfund National Priorities List and sites where an engineering control would be used as the final remedy to address contaminated sediments.
- Prohibits the Department of Justice from initiating an action under federal law against a voluntary party that has received a liability exemption to recover natural resource damage claims.
- Prohibits the DNR from requiring a voluntary party that has received an exemption from taking further action if a federally approved total maximum daily load (TMDL) is established for that body of water at some future point in time.

Conclusion

In closing, this bill provides the DNR with more tools to promote the cleanup and reuse of contaminated waterfront and waterways in Wisconsin. A recent study (available at <http://www.uww.edu/news/archive/2015-11-brownfields>) commissioned by the Brownfields Study Group, and conducted by the University of Wisconsin – Whitewater, has concluded that Wisconsin's efforts to invest in the cleanup and reuse of brownfields have resulted in:

- \$1.77 billion in direct state revenues due to the state grant programs and other financial investments;
- \$27.25 in total funds leveraged for every state dollar invested;
- 53,800 direct and indirect jobs created or retained;
- \$88.5 million gain by local governments in annual tax revenue; and
- 14 fold return on investment by the state.

While DNR could not be at the committee personally for the public hearing, we remain committed to answering any questions the chairman or committee members have before an executive session.



Wisconsin Public Service

Please support AB 701 (SB 545): Allowing sediment cleanups to be eligible to participate in the successful Voluntary Party Liability Exemption (VPLE)

What the bill does: Assembly Bill 701 (Senate Bill 545) allows sediment cleanup sites to be eligible for the successful Voluntary Party Liability Exemption (VPLE) program that is run by the Wisconsin Department of Natural Resources (DNR). Assembly Bill 701 (Senate Bill 545) also contains provisions that clarify existing law related to long-term care of environmental remedies to ensure responsible parties, and not the taxpayers, are meeting obligations on contaminated sites.

How does the VPLE program work?

First created by the Legislature in 1994, the VPLE program allows a party, in conjunction with the DNR, to voluntarily conduct an environmental investigation and cleanup of a contaminated property and then be eligible to receive a certificate of completion that limits future liability. In exchange for the liability limitations, the cleanup tends to be much more thorough (and, thereby, costly) than what is required under a more traditional remediation path.

VPLE incentivizes better cleanups that allow developers, local governments and business owners the ability to redevelop formerly contaminated properties without threat of future liability – which is often an impediment to cleanup and development. **The end result is a cleaner environment and a property that is now usable for development or recreation.**

What do the non-VPLE sections of the bill do?

The bill also makes technical clarifications and corrections of existing law related to long-term care of environment remedies to protect taxpayers. Changes include:

- ✓ Defining sediment as the area below the ordinary high water mark, which is consistent with the Wisconsin public trust law.
- ✓ Defining the term sediment cover.
- ✓ Requiring agreements between parties on responsibility for conducting long-term care be included in the state's GIS registry.
- ✓ Requiring cleanups that use engineering controls to submit a plan for long-term compliance and proof of financial responsibility to pay for implementing the plan.

Who supports the bill?

The bill has bi-partisan authors and co-sponsors led by Representative Tittl (R-Manitowoc), Representative Genrich (D-Green Bay), Senator Cowles (R-Green Bay) and Senator Lassa (D-Stevens Point). Besides WPS, other supporters include the Wisconsin Economic Development Association, Wisconsin Manufacturers and Commerce, Alliant Energy and the Wisconsin Utilities Association. Clean Wisconsin is neutral.

What is WPS's interest in the bill?

While the bill would allow for the possibility of any sediment remediation project to be eligible for consideration for the VPLE program, WPS has a specific interest in potentially pursuing a VPLE for its manufactured gas plant (MGP) sites. WPS is working with the EPA and DNR on the cleanup of contaminated sediments left behind at seven legacy MGPs.

What is an MGP?

In the mid-1800s and early 1900s, before natural gas was readily available as an energy source, MGPs existed throughout Wisconsin and the United States. MGPs heated coal to produce gas. The plants were mostly shut down by the 1950s as other methods of producing and transporting gas became more cost effective. However, the production of manufactured gas created wastes, some of which may still remain at former MGP sites and are being cleaned up both in Wisconsin and across the country today.