

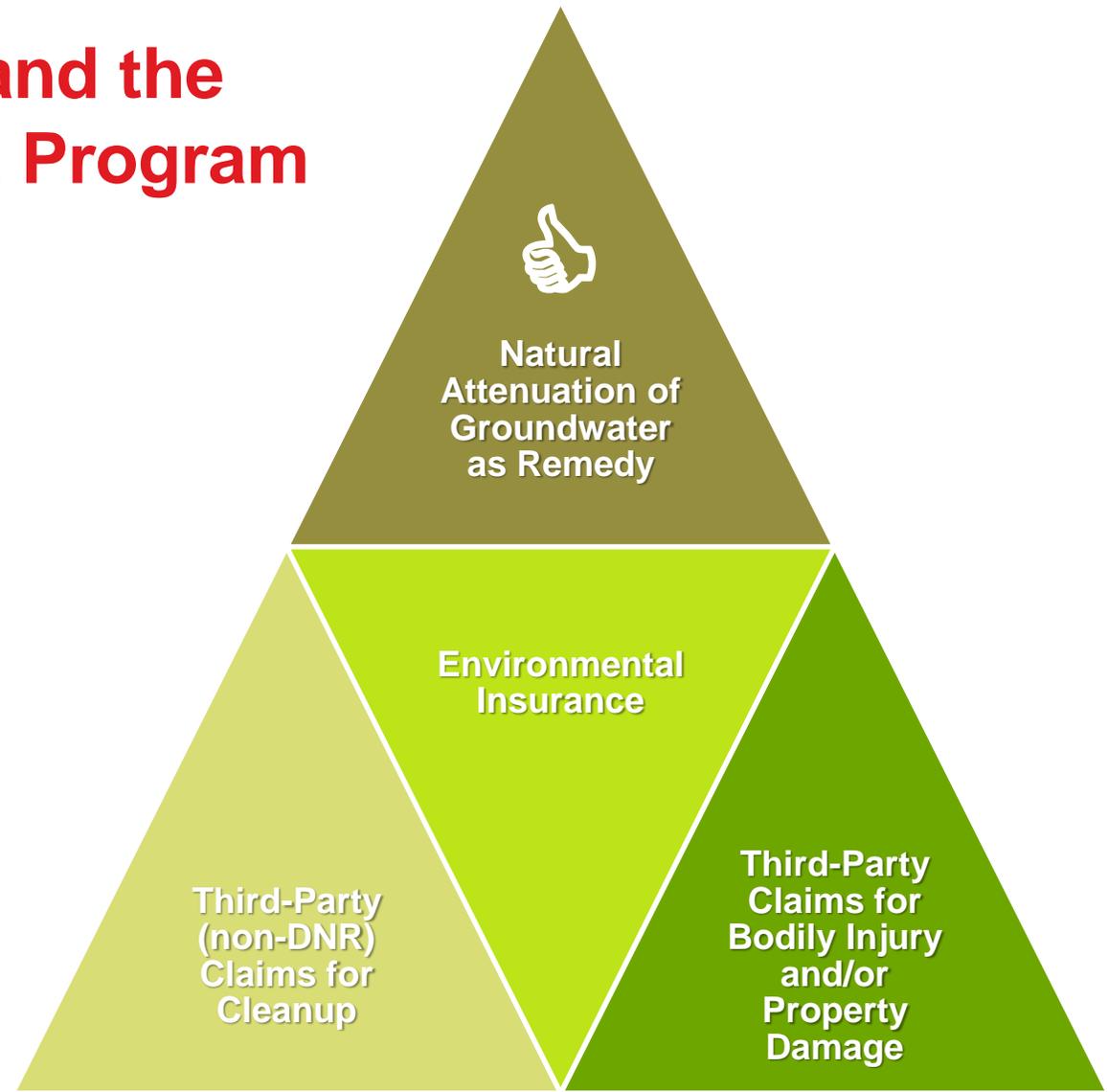
Environmental Insurance and the State of Wisconsin's VPLE Program

Presented by:

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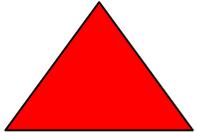
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Disclaimers

1. *I am not an attorney.*
2. *I do not work for any insurance company.*
3. *I am a risk management and insurance brokerage professional with 30 years of environmental risk management and insurance experience.*



4. *Nothing I say can be held against me in a court of law... ;-)*

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This document is furnished to you as a matter of information for your convenience. It only summarizes certain insurance coverages and is to be used for informational purposes. This document does not reflect all the terms and conditions or exclusions of the insurance policies. Moreover, the information contained in this document reflects proposed coverage as of the effective date(s) of the policy(ies) and does not include subsequent changes. This document is not an insurance policy and does not amend, alter or extend the coverage afforded by the listed proposed policy(ies). The insurance afforded by the listed proposed policy(ies) is subject to all the terms, exclusions and conditions of such policy(ies).

Aon Overview

- Largest Risk Advisor and Insurance Brokerage Firm in the World
 - North American Headquarters in Chicago
 - Heart in Wisconsin
 - Founder and Former Chairman from Milwaukee and so am I
 - Predecessor company to Aon started in Milwaukee
- Risk Management Advisor and Insurance Broker to the State of Wisconsin for over 20 Years
- Architect and Chief Negotiator for the State of Wisconsin and WDNR on the Wisconsin Brownfields Insurance Program (WBIP)



Background – VPLE and Insurance

- Voluntary Party Liability Exemption (VPLE)
- Elective Environmental Cleanup Program
 - “Voluntary party”
 - submits an application
 - Pays all the necessary fees.
 - ♦ WDNR oversight
 - ♦ Insurance costs for natural attenuation of groundwater
 - Can be the entity that owned/operated a facility or new purchaser.
 - Some sites ineligible (TSDFs)
- WDNR Oversight of Site Investigation and Remedial Actions
 - Remediation can include natural attenuation of groundwater (NAG)
- Certificates of Completion
 - Covenant not to pursue/sue Issued by WDNR to Certificate Holder
 - Transferable
 - Covers entire site for all past events.
- Risks Facing WDNR with NAG
 - Ineffectiveness long term
 - Financial consequences of future cleanup
 - “We still drink groundwater in Wisconsin.”
- Utilization of Insurance
 - Cover the financial risks facing WDNR

Background – VPLE and Insurance (continued)

- Environmental Liability Insurance First Placed in 2001
 - 9 month brokerage effort amongst all prospective environmental insurers
- Address the risk facing WDNR
 - WDNR and the State of WI are the Named Insureds
 - Certificate of completion issued with natural attenuation of groundwater
 - Covers costs for WDNR to reopen and readdress the groundwater issue
- AIG was the Insurer for First 4 policies
 - 10-year policy term plus 3 years extended reporting periods
- Ironshore policy placed in 2017
 - 3-year policy term plus 7 years extended reporting period



VPLE Current Program Snapshot

- 59 Total Sites Insured Since 2001
- \$13,841.42 Average Premium
- State of Wisconsin and Department of Natural Resources are Named Insureds
- Current Program
 - Insurer: Ironshore
 - Limits: \$1,000,000 each incident and site and \$10,000,000 policy aggregate
 - Premium and Deductible Structure

Primary Previous Use of Site	Policy Limit - Each Loss	Policy Limit - Aggregate	Deductible each Occurrence	Premiums	
				0 to 4.99 Acres	5 Acres or More
Residential	\$1,000,000	\$10,000,000	\$10,000	\$4,938	\$5,678
Agricultural	\$1,000,000	\$10,000,000	\$10,000	\$8,734	\$10,044
Commercial	\$1,000,000	\$10,000,000	\$15,000	\$9,287	\$10,681
Light Industrial	\$1,000,000	\$10,000,000	\$20,000	\$11,310	\$13,005
Heavy Industrial	\$1,000,000	\$10,000,000	\$25,000	\$14,928	\$17,166

Current VPLE Groundwater Insurance Fee

Primary Previous Use of Site	Total Acreage of Property	
	0 to 4.99 Acres	5 Acres or More
Residential	\$5,438	\$6,178
Agricultural	\$9,234	\$10,544
Commercial	\$9,987	\$11,381
Light Industrial	\$12,210	\$13,905
Heavy Industrial	\$16,028	\$18,266

<https://dnr.wi.gov/files/PDF/pubs/rr/RR661.pdf>

The Pollution Exclusions on Traditional Insurance Policies



Commercial General Liability (CGL) Pollution Exclusion

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f. Pollution

- (1) "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":
- (a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured. However, this subparagraph does not apply to:
 - (i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;
 - (ii) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or
 - (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";
 - (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
 - (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:
 - (i) Any insured; or
 - (ii) Any person or organization for whom you may be legally responsible; or
 - (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:
 - (i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;
 - (ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
 - (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire".
 - (e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".
- (2) Any loss, cost or expense arising out of any:
- (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
 - (b) Claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

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CGL's Pollution Exclusion (continued)

- Comes in 2 Parts
 - (1) Bodily injury (BI) and Property damage (PD) claims to third-parties **and**
 - (2) Costs to investigate, mitigate, neutralize, cleanup
- CGL Pollution “Give-Backs” Inadequate
 - Only addresses Part 1 of the exclusion, **NOT** Part 2
 - Limited to specific perils and often accompanied by time-element restrictions
 - Often reads as; Event beginning and ending within 24 hours, known to the insured within 7 days and reported to the insurer within 21 days of first beginning.

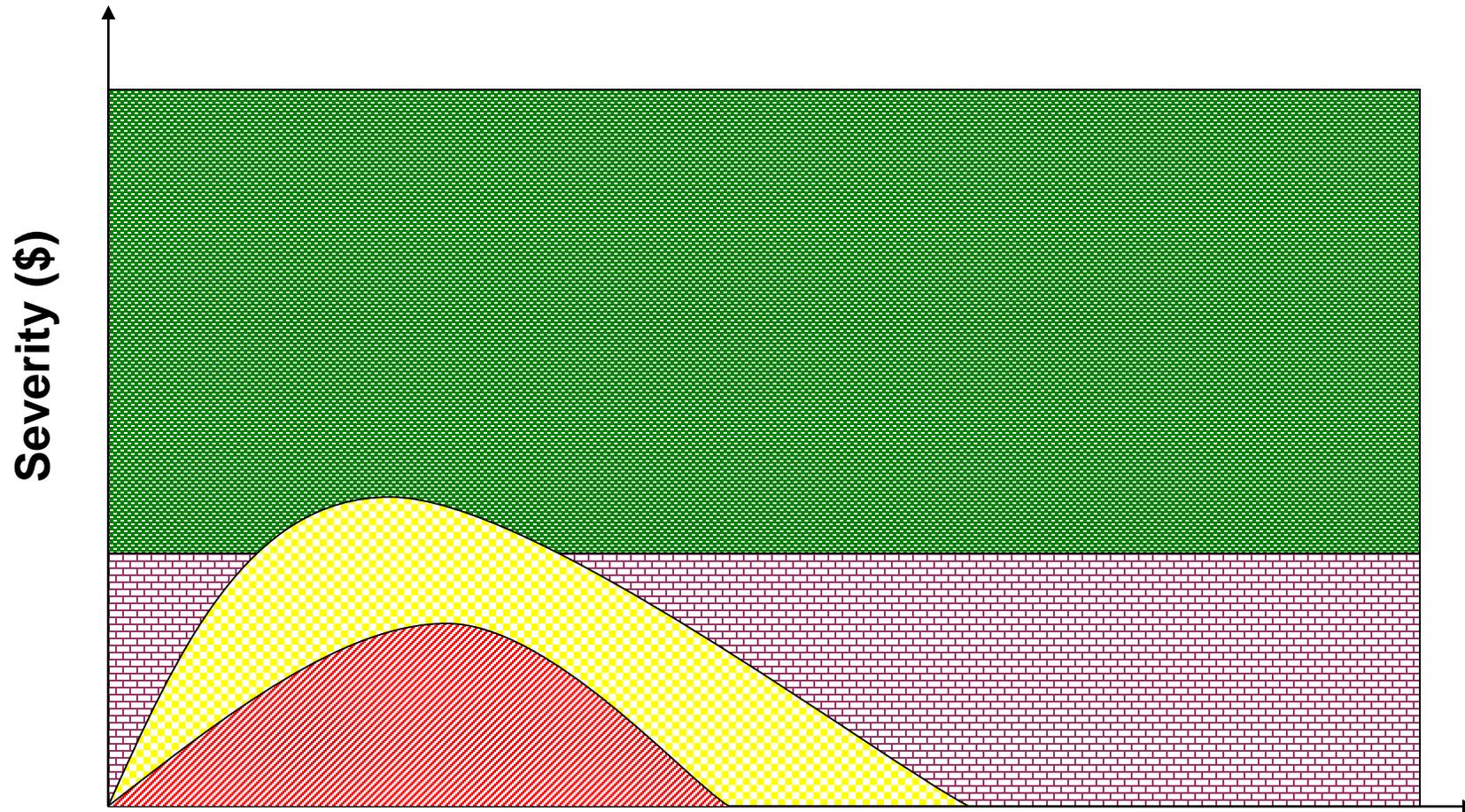
Fixing The Pollution Exclusion



The Environmental Liability Insurance Market

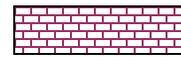
- Major Insurers Providing Environmental Coverage
 - Over 30 total in U.S.
 - Zurich, XL Catlin, Ironshore, Liberty, Chubb, Navigators, Allied World Assurance, Beazley, Axis, Arch
- Competitive Pricing and Terms
 - Schizophrenia exists
- Underwriting Expertise with Environmental Risks
 - Understand the language they speak and use that language
- Premiums are Approximately \$2 Billion Annually
 - Over 30% related to property transaction/developments
- Historical and Future Contamination Insurable
- Multi-Year Policies Available

Environmental Loss Exposures at Brownfields



Time

 Known/expected losses (e.g. cleanup)
 Cost overruns of known losses

 Discovering or creating new contamination
 Third-party claims (e.g. bodily injuries and/or property damage)

Environmental Insurance Coverage

What it does well



- Assist Parties to Transact/Redevelop Contaminated Properties
- Reduce Uncertainty
 - Unknown contamination
 - Third-party claims caused by pollution
- Support Indemnities
 - Buyers and/or sellers
- Support Due Diligence
- Firm Sale Price
 - May even enhance it

Environmental Insurance Coverage

What it may not do well

- Eliminate All Uncertainty
 - Reduce yes, eliminate no
- Replace Indemnities
- Replace Due Diligence
- Automatically Enhance Sale Price



Proposed Structure of a Wisconsin Brownfields Insurance Program for Third Parties

- Eligible for Any VPLE Certificate of Completion Holder
- Coverage for claims caused by pre-existing pollution conditions resulting in:
 - Third-party for bodily injuries
 - Third-party property damage
 - Including business interruption and extra expense
 - Cleanup costs
 - First-party (e.g. discovery) and third-party claims
 - Natural resource damages
 - Defense of claims and investigation of pollution conditions.
- Coverage for New Conditions available as well

Proposed Structure of a Wisconsin Brownfields Insurance Program for Third Parties (continued)

Primary Previous Use of Site	Policy Limit each Loss and Policy Aggregate	Policy Term	Deductible each Occurrence	Insured Property Size	
				0 to 4.99 Acres	5 Acres or More
Residential	\$1,000,000	3-years	\$10,000	\$6,173	\$7,098
Agricultural	\$1,000,000	3-years	\$10,000	\$10,918	\$12,555
Commercial	\$1,000,000	3-years	\$15,000	\$11,609	\$13,351
Light Industrial	\$1,000,000	3-years	\$20,000	\$14,138	\$16,256
Heavy Industrial	\$1,000,000	3-years	\$25,000	\$18,660	\$21,395

Primary Previous Use of Site	Policy Limit each Loss and Policy Aggregate	Policy Term	Deductible each Occurrence	Insured Property Size	
				0 to 4.99 Acres	5 Acres or More
Residential	\$3,000,000	3-years	\$10,000	\$9,259	\$10,646
Agricultural	\$3,000,000	3-years	\$10,000	\$16,376	\$18,833
Commercial	\$3,000,000	3-years	\$15,000	\$17,413	\$20,027
Light Industrial	\$3,000,000	3-years	\$20,000	\$21,206	\$24,384
Heavy Industrial	\$3,000,000	3-years	\$25,000	\$27,990	\$32,093

Questions and Discussion



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