

# State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

## **RESEARCH APPENDIX -** **PLEASE DO NOT REMOVE FROM DRAFTING FILE**

Date Transfer Requested: 09/15/2004 (Per: PJK)



☞ The 2003 drafting file for LRB 03-4514

has been transferred to the drafting file for

# **2005 LRB 05-0205**

☞ This cover sheet, the final request sheet, and the final version of the 2003 draft were copied on yellow paper, and returned to the original 2003 drafting file.

☞ The attached 2003 draft was incorporated into the new 2005 draft listed above. For research purposes, this cover sheet and the complete drafting file were transferred, as a separate appendix, to the 2005 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

03-17-2005

**2003 DRAFTING REQUEST**

**Bill**

Received: **04/19/2004**

Received By: **pkahler**

Wanted: **As time permits**

Identical to LRB:

For: **Dean Kaufert (608) 266-5719**

By/Representing: **Matt**

This file may be shown to any legislator: **NO**

Drafter: **pkahler**

May Contact:

Addl. Drafters:

Subject: **Insurance - other insurance**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Kaufert@legis.state.wi.us**

Carbon copy (CC:) to:

**Pre Topic:**

No specific pre topic given

**Topic:**

Environmental insurance

**Instructions:**

See Attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	pkahler 04/19/2004	wjackson 04/20/2004		_____			
/P1	pkahler 04/26/2004	wjackson 04/26/2004	rschluet 04/20/2004	_____	sbasford 04/26/2004		
			jfrantze 04/26/2004	_____			

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P2	pkahler 04/27/2004	wjackson 04/28/2004	rschluet 04/28/2004	_____	Inorthro 04/28/2004		
/P3	pkahler 06/03/2004	wjackson 06/07/2004	pgreensl 06/07/2004	_____	Inorthro 06/07/2004		

FE Sent For:

<END>

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/?	pkahler 04/19/2004	wjackson 04/20/2004		_____			
/P1	pkahler 04/26/2004	wjackson 04/26/2004	rschluet 04/20/2004 jfrantze 04/26/2004	_____ _____ _____	sbasford 04/26/2004		

*Handwritten initials:*  
 Below rschluet: *rs*  
 Below jfrantze: *pk*  
 Below sbasford: *pk*

Vers.      Drafted      Reviewed      Typed      Proofed      Submitted      Jacketed      Required

/P2	pkahler	wjackson	rschluet	_____	Inorthro
	04/27/2004	04/28/2004	04/28/2004	_____	04/28/2004

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/?	pkahler 04/19/2004	wjackson 04/20/2004		_____			
/P1	pkahler 04/26/2004	wjackson 04/26/2004	rschluet 04/20/2004	_____	sbasford 04/26/2004		
		1/p2 4/28 WLJ	jfrantze 04/26/2004	_____			

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04/26/2004 02:54:51 PM

Page 2

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FE Sent For:

**<END>**

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/?	pkahler	/pl WLj 4/20					

FE Sent For:

Handwritten notes and signatures:

- Signature: *pkahler*
- Date: *4/20*
- Signature: *CH*
- Date: *4/20*
- Signature: *Self*
- Date: *4/26*
- Text: **<END>**





# DEAN R. KAUFERT

Memo

WISCONSIN STATE REPRESENTATIVE

**To:** LRB Drafting

**From:** Matt, Rep. Kaufert's Office  
266-5719

---

Please prepare a bill draft using the enclosed language. This is in preparation for next session but we would like to get a draft this summer.

Also, feel free to contact Ron Kuehn, 252-9325, if you have any questions with the language.

Thank you.

**Member, Joint Committee on Finance**

P.O. Box 8952 • State Capitol • Madison, WI 53708-8952 • Telephone: (608) 266-5719  
Toll-Free Legislative Hotline: (800) 362-9472 • Rep.Kaufert@legis.state.wi.us

Printed on recycled paper with soy based ink.



1           632.995 **Environmental claims.** (1) INTERPRETATION. The following rules of  
2 construction shall apply to the interpretation of general liability insurance policies  
3 involving environmental claims in any action between an insured and an insurer to  
4 determine the existence of coverage for the costs of investigating and remediating  
5 environmental contamination, whether in response to governmental demand or pursuant  
6 to a written voluntary agreement, consent decree or consent order, including the existence  
7 of coverage for the costs of defending a suit against the insured for such costs:

8           (a) State law shall be applied in all cases involving environmental claims.  
9 Nothing in this section shall be interpreted to modify common law rules governing choice  
10 of law determinations for sites located outside the state.

11           (b) Any action or agreement by the department of natural resources or the United  
12 States Environmental Protection Agency against or with an insured in which the  
13 department of natural resources or the United States Environmental Protection Agency in  
14 writing, notifies the insured that it considers the insured to be a potentially responsible  
15 party, or directs, requests or agrees that an insured take action with respect to  
16 contamination within the state, is equivalent to a suit or lawsuit as those terms are used in  
17 any general liability insurance policy.

18           (c) Insurance coverage for any reasonable and necessary fees, costs and expenses,  
19 including remedial investigations, feasibility study costs and expenses, incurred by the  
20 insured pursuant to a written voluntary agreement, consent decree or consent order  
21 between the insured and either the department of natural resources or the United States  
22 Environmental Protection Agency, when incurred as a result of a written direction,  
23 request or agreement by the department of natural resources or the United States  
24 Environmental Protection Agency to take action with respect to contamination within the  
25 state, shall not be denied the insured on the ground that such expenses constitute  
26 voluntary payments by the insured.

27           (2) NOTICE AND COSTS. (a) An insurer with a duty to pay defense or indemnity  
28 costs, or both, to an insured for an environmental claim under a general liability insurance  
29 policy that provides that the insurer has a duty to pay all sums arising out of a risk  
30 covered by the policy, must pay all defense or indemnity costs, or both, proximately  
31 arising out of the risk pursuant to the applicable terms of its policy, including its limit of

1 liability, independent and unaffected by other insurance that may provide coverage for  
2 the same claim.

3 (b) If an insured who makes an environmental claim under general liability  
4 insurance policies that provide that an insurer has a duty to pay all sums arising out of a  
5 risk covered by the policy has more than one such general liability insurance policy  
6 insurer, the insured shall provide notice of the claim to all such insurers for whom the  
7 insured has current addresses. If the insured's claim is not fully satisfied, the insured  
8 may elect to file suit on the claim against only one such insurer, notwithstanding ss.  
9 803.03 and 806.04 (11).

10 (c) If requested by an insurer chosen by an insured under paragraph (b), the  
11 insured shall provide information regarding other general liability insurance policies held  
12 by the insured that would potentially provide coverage for the same environmental claim.

13 (d) An insurer chosen by an insured under paragraph (b) may not be required to  
14 pay defense or indemnity costs in excess of the applicable policy limits, if any, on such  
15 defense or indemnity costs.

16 (e) The court shall award to an insured the sum of the costs, disbursements and  
17 expenses, including accounting fees and reasonable attorney fees, necessary to prepare  
18 for and participate in an action in which an insured successfully litigates a coverage issue  
19 for an environmental claim.

20 **(3) CONTRIBUTION AMONG INSURERS.** An insurer that has paid an environmental  
21 claim may seek contribution from any other insurer that is liable or potentially liable,  
22 subject to s. 631.43.

23 **(4) PRESUMPTIONS.** (a) There is a rebuttable presumption that the costs of  
24 preliminary assessments, remedial investigations, risk assessments or other necessary  
25 investigation, as those terms are defined by rule by the department of natural resources,  
26 are defense costs payable by the insurer, subject to the provisions of the applicable  
27 general liability insurance policy or policies.

28 (b) There is a rebuttable presumption that payment of the costs of removal actions  
29 or feasibility studies, as those terms are defined by rule by the department of natural  
30 resources, are indemnity costs and reduce the insurer's applicable limit of liability on the

1 insurer's indemnity obligations, subject to the provisions of the applicable general  
2 liability insurance policy or policies.

3 **SECTION 4.** 632.997 of the statutes is created to read:

4 **632.997 Lost policies. (1)** In this subsection "policy" means a "general liability  
5 insurance policy" which is subject to an environmental claim.

6 **(2)** If, after a diligent investigation by an insured of the insured's own records,  
7 including computer records and the records of past and present agents of the insured, the  
8 insured is unable to reconstruct a lost policy, the insured may provide a notice of a lost  
9 policy to an insurer.

10 **(3)** An insurer must investigate thoroughly and promptly a notice of a lost policy.  
11 An insurer fails to investigate thoroughly and promptly if the insurer fails to provide all  
12 facts known or discovered during an investigation concerning the issuance and terms of a  
13 policy, including copies of documents establishing the issuance and terms of a policy, to  
14 the insured claiming coverage under a lost policy.

15 **(4)** An insurer and an insured must comply with the following minimum standards  
16 for facilitating reconstruction of a lost policy and determining the terms of a lost policy as  
17 provided in this section:

18 **(a)** Within 30 business days after receipt by the insurer of notice of a lost policy,  
19 the insurer shall commence an investigation into the insurer's records, including  
20 computer records, to determine whether the insurer issued the lost policy. If the insurer  
21 determines that it issued the policy, the insurer shall commence an investigation into the  
22 terms and conditions relevant to any environmental claim made under the policy.

23 **(b)** The insurer and the insured shall cooperate with each other in determining the  
24 terms of a lost policy. The insurer and the insured:

25 **(1)** Shall provide to each other the facts known or discovered during an  
26 investigation, including the identity of any witnesses with knowledge of facts  
27 related to the issuance or existence of a lost policy.

28 **(2)** Shall provide each other with copies of documents establishing facts  
29 related to the lost policy.  
30

1 (c) If the insurer or the insured discovers information tending to show the  
2 existence of an insurance policy applicable to the claim, the insurer or the insured shall  
3 provide an accurate copy of the terms of the policy or a reconstruction of the policy, upon  
4 the request of the insurer or the insured.

5 (d) If the insurer is not able to locate portions of the policy or determine its terms,  
6 conditions or exclusions, the insurer shall provide copies of all insurance policy forms  
7 issued by the insurer during the applicable policy period that are potentially applicable to  
8 the environmental claim. The insurer shall state which of the potentially applicable forms,  
9 if any, is most likely to have been issued by the insurer, or the insurer shall state why it is  
10 unable to identify the forms after a good faith search.

11 (5) If, based on the information discovered in an investigation of a lost policy, the  
12 insured can show by a preponderance of the evidence that a general liability insurance  
13 policy was issued to the insured by the insurer, then if:

14 (a) The insured cannot produce evidence that tends to show the policy limits  
15 applicable to the policy, it shall be assumed that the minimum limits of coverage,  
16 including any exclusions to coverage, offered by the insurer during the period in question  
17 were purchased by the insured.

18 (b) The insured can produce evidence that tends to show the policy limits  
19 applicable to the policy, then the insurer has the burden of proof to show that a different  
20 policy limit, including any exclusions to coverage, should apply.

21 **SECTION 5.** 632.998 of the statutes is created to read:

22 632.998 **Applicability and enforcement.** (1) This subchapter applies to all  
23 claims, whether arising before, on or after the effective date of this subchapter.

24 (2) The commissioner shall enforce this subchapter and any rules adopted by the  
25 office of the commissioner of insurance to implement this subchapter.

26 (3) Violation by an insurer of any provision of this subchapter or any rule adopted  
27 under this subchapter is an unfair claim settlement practice under Wisconsin  
28 administrative code ch. INS 6.11 (3).

29 (4) Any person who is injured as a result of violation by an insurer of this  
30 subchapter may bring an action against the insurer for costs, disbursements and expenses,  
31 including accounting fees and reasonable attorney fees.

2003

Date (time) needed

ASAP

LRB - 4514 / PI

BILL

DJK : WLj :

Use the appropriate components and routines developed for bills.

AN ACT . . . [generate catalog] to repeal . . . ; to renumber . . . ; to consolidate and renumber . . . ; to renumber and amend . . . ; to consolidate, renumber and amend . . . ; to amend . . . ; to repeal and recreate . . . ; and to create . . . of the statutes; relating to: environmental claims under liability insurance.

[NOTE: See section 4.02 (2) (br), Drafting Manual, for specific order of standard phrases.]

Analysis by the Legislative Reference Bureau

If titles are needed in the analysis, in the component bar:

For the main heading, execute: create -> anal: -> title: -> head

For the subheading, execute: create -> anal: -> title: -> sub

For the sub-subheading, execute: create -> anal: -> title: -> sub-sub

For the analysis text, in the component bar:

For the text paragraph, execute: create -> anal: -> text

This is a preliminary draft. An analysis will be provided in a later version.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION #



SECTION # CR. 632.28<sup>v</sup>

(B)

632.28 Liability insurance environmental

claims (B) (1) DEFINITIONS (CS) in this section: ^  
= = = = =





### Wisconsin Environmental Insurance Allocation Legislation

The following amendments to the Wisconsin insurance code address how environmental claims are handled in the State of Wisconsin. Specifically, this bill addresses issues of allocation, lost policies, categorization of costs and the requirement of a suit to trigger a duty to defend. It applies to all primary, excess and umbrella general liability insurance policies issued to insureds who have property located in Wisconsin.

1 **SECTION 1.** Chap. 632, SUBCHAPTER IX of the statutes is created to read:

2 SUBCHAPTER IX.

3 LIABILITY INSURANCE ENVIRONMENTAL CLAIMS

4 **SECTION 2.** 632.993 of the statutes is created to read:

5 632.993 **Definition.** In this subchapter:

6 (a) ~~(b)~~ "Environmental claim" means a claim for defense or indemnity submitted  
7 under a general liability insurance policy by an insured facing, or allegedly facing,  
8 potential liability for bodily injury or property damage arising from a release of pollutants  
9 onto or into land, air or water in the state.

10 (b) ~~(c)~~ "General liability insurance policy" means any contract of insurance that  
11 provides coverage for the obligations at law or in equity of an insured for bodily injury,  
12 property damage or personal injury to others. "General liability insurance policy"  
13 includes but is not limited to a pollution liability insurance policy, a commercial general  
14 liability insurance policy, a comprehensive general liability policy, an excess liability  
15 policy, an umbrella liability insurance policy or any other kind of policy covering the  
16 liability of an insured for the claims of <sup>3rd</sup> ~~third~~ parties.

17 (c) ~~(d)~~ "Lost policy" means any part or all of a general liability insurance policy that  
18 is alleged to be ruined, destroyed, misplaced or otherwise no longer possessed by the  
19 insured.

20 (d) ~~(e)~~ "Notice of a lost policy" means written notice of the lost policy in sufficient  
21 detail to identify the person or entity claiming coverage, including information  
22 concerning the name of the alleged policyholder, if known, and material facts concerning  
23 the lost policy known to the alleged policyholder.

24 **SECTION 3.** 632.995 is created to read:

(B) (2) ✓ (CS) not (B) ✓ (a) (T)

1 ~~632.995~~ Environmental claims. INTERPRETATION. The following rules of  
2 construction shall apply to the interpretation of general liability insurance policies  
3 involving environmental claims in any action between an insured and an insurer to  
4 determine the existence of coverage for the costs of investigating and remediating  
5 environmental contamination, whether in response to governmental demand or pursuant  
6 to a written voluntary agreement, consent decree or consent order, including the existence  
7 of coverage for the costs of defending a suit against the insured for such costs:  
8 10 ~~10~~ State law shall be applied in all cases involving environmental claims.  
9 Nothing in this section shall be interpreted to modify common law rules governing choice  
10 of law determinations for sites located outside the state.  
11 20 ~~20~~ Any action or agreement by the department of natural resources or the United  
12 States Environmental Protection Agency against or with an insured in which the  
13 Federal department of natural resources or the United States Environmental Protection Agency in  
14 writing, notifies the insured that it considers the insured to be a potentially responsible  
15 party, or directs, requests or agrees that an insured take action with respect to  
16 contamination within the state, is equivalent to a suit or lawsuit as those terms are used in  
17 any general liability insurance policy.  
18 30 ~~30~~ Insurance coverage for any reasonable and necessary fees, costs and expenses,  
19 including remedial investigations, feasibility study costs and expenses, incurred by the  
20 insured pursuant to a written voluntary agreement, consent decree or consent order  
21 between the insured and either the department of natural resources or the United States  
22 Federal Environmental Protection Agency, when incurred as a result of a written direction,  
23 request or agreement by the department of natural resources or the United States  
24 Federal Environmental Protection Agency to take action with respect to contamination within the  
25 state, shall not be denied the insured on the ground that such expenses constitute  
26 voluntary payments by the insured.  
27 (b) ~~10~~ NOTICE AND COSTS. ~~10~~ An insurer with a duty to pay defense or indemnity  
28 costs, or both, to an insured for an environmental claim under a general liability insurance  
29 policy that provides that the insurer has a duty to pay all sums arising out of a risk  
30 covered by the policy must pay all defense or indemnity costs, or both, proximately  
31 arising out of the risk pursuant to the applicable terms of its policy, including its limit of

1 liability, independent and unaffected by other insurance that may provide coverage for  
2 the same claim.

3 20~~(b)~~ If an insured who makes an environmental claim under general liability  
4 insurance policies that provide that an insurer has a duty to pay all sums arising out of a  
5 risk covered by the policy has more than one such general liability insurance policy  
6 insurer, the insured shall provide notice of the claim to all such insurers for whom the  
7 insured has current addresses. If the insured's claim is not fully satisfied, the insured  
8 may elect to file suit on the claim against only one such insurer, notwithstanding ss.  
9 803.03 and 806.04 (11).

10 30~~(b)~~ If requested by an insurer chosen by an insured under <sup>subd. 2.</sup> paragraph (b), the  
11 insured shall provide information regarding other general liability insurance policies held  
12 by the insured that would potentially provide coverage for the same environmental claim.

13 40~~(b)~~ An insurer chosen by an insured under <sup>subd. 2.</sup> paragraph (b) may not be required to  
14 pay defense or indemnity costs in excess of the applicable policy limits, if any, on such  
15 defense or indemnity costs.

16 50~~(b)~~ The court shall award to an insured the sum of the costs, disbursements and  
17 expenses, including accounting fees and reasonable attorney fees, necessary to prepare  
18 for and participate in an action in which an insured successfully litigates a coverage issue  
19 for an environmental claim.

20 (c) ~~(b)~~ CONTRIBUTION AMONG INSURERS. An insurer that has paid an environmental  
21 claim may seek contribution from any other insurer that is liable or potentially liable,  
22 subject to s. 631.43.

23 (d) ~~(b)~~ PRESUMPTIONS. ~~(a)~~ There is a rebuttable presumption that the costs of  
24 preliminary assessments, remedial investigations, risk assessments or other necessary  
25 investigation, as those terms are defined by rule by the department of natural resources,  
26 are defense costs payable by the insurer, subject to the provisions of the applicable  
27 general liability insurance policy or policies.

28 20~~(b)~~ There is a rebuttable presumption that payment of the costs of removal actions  
29 or feasibility studies, as those terms are defined by rule by the department of natural  
30 resources, are indemnity costs and reduce the insurer's applicable limit of liability on the

1 insurer's indemnity obligations, subject to the provisions of the applicable general  
2 liability insurance policy or policies.

3 ~~SECTION 4. 632.997~~ of the statutes is created to read:

4 (3) ~~632.997~~ Lost policies. (a) In this subsection, "policy" means a general liability  
5 insurance policy <sup>that</sup> which is subject to an environmental claim.

6 (b) ~~(b)~~ If, after a diligent investigation by an insured of the insured's own records,  
7 including computer records and the records of past and present agents of the insured, the  
8 insured is unable to reconstruct a lost policy, the insured may provide a notice of a lost  
9 policy to an insurer.

10 (c) ~~(c)~~ An insurer must investigate thoroughly and promptly a notice of a lost policy.  
11 An insurer fails to investigate thoroughly and promptly if the insurer fails to provide all  
12 facts known or discovered during an investigation concerning the issuance and terms of a  
13 policy, including copies of documents establishing the issuance and terms of a policy, to  
14 the insured claiming coverage under a lost policy.

15 (d) ~~(d)~~ An insurer and an insured must comply with the following minimum standards  
16 for facilitating reconstruction of a lost policy and determining the terms of a lost policy as  
17 provided in this section:

18 (a) ~~(a)~~ Within 30 business days after receipt by the insurer of notice of a lost policy,  
19 the insurer shall commence an investigation into the insurer's records, including  
20 computer records, to determine whether the insurer issued the lost policy. If the insurer  
21 determines that it issued the policy, the insurer shall commence an investigation into the  
22 terms and conditions relevant to any environmental claim made under the policy.

23 (b) ~~(b)~~ The insurer and the insured shall cooperate with each other in determining the  
24 terms of a lost policy. The insurer and the insured <sup>shall</sup>

25 (1) ~~(1)~~ Shall provide to each other the facts known or discovered during an  
26 investigation, including the identity of any witnesses with knowledge of facts  
27 related to the issuance or existence of a lost policy.

28 (2) ~~(2)~~ Shall provide each other with copies of documents establishing facts  
29 related to the lost policy.

30

1 ~~30~~ If the insurer or the insured discovers information tending to show the  
2 existence of an insurance policy applicable to the claim, the insurer or the insured shall  
3 provide an accurate copy of the terms of the policy or a reconstruction of the policy, upon  
4 the request of the insurer or the insured.

5 ~~40~~ If the insurer is not able to locate portions of the policy or determine its terms,  
6 conditions or exclusions, the insurer shall provide copies of all insurance policy forms  
7 issued by the insurer during the applicable policy period that are potentially applicable to  
8 the environmental claim. The insurer shall state which of the potentially applicable forms,  
9 if any, is most likely to have been issued by the insurer, or the insurer shall state why it is  
10 unable to identify the forms after a good faith search.

11 (e) ~~5~~ If, based on the information discovered in an investigation of a lost policy, the  
12 insured can show by a preponderance of the evidence that a general liability insurance  
13 policy was issued to the insured by the insurer, then if:

14 ~~6~~ If the insured cannot produce evidence that tends to show the policy limits  
15 applicable to the policy, it shall be assumed that the minimum limits of coverage,  
16 including any exclusions to coverage, offered by the insurer during the period in question  
17 were purchased by the insured.

18 ~~20~~ If the insured can produce evidence that tends to show the policy limits  
19 applicable to the policy, then the insurer has the burden of proof to show that a different  
20 policy limit, including any exclusions to coverage, should apply.

21 ~~3~~ SECTION 5. 632.998 of the statutes is created to read:

22 (4) ~~632.998~~ Applicability and enforcement. ~~This subchapter~~ applies to all sub  
23 claims, whether arising before, on or after the effective date of this subchapter. section

24 (b) ~~2~~ The commissioner shall enforce this subchapter and any rules adopted by the  
25 office of the commissioner of insurance to implement this subchapter. section

26 (c) ~~3~~ Violation by an insurer of any provision of this subchapter or any rule adopted  
27 under this subchapter is an unfair claim settlement practice under Wisconsin  
28 administrative code ch. INS 6.11 (3) ~~6~~ Wis. Adm. Code section

29 (d) ~~4~~ Any person who is injured as a result of violation by an insurer of this  
30 subchapter may bring an action against the insurer for costs, disbursements and expenses,  
31 including accounting fees and reasonable attorney fees. section

(END)



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1     **AN ACT to create 632.28 of the statutes; relating to: environmental claims**  
2     under liability insurance.

---

*Analysis by the Legislative Reference Bureau*

This is a preliminary draft. An analysis will be provided in a later version.

---

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

3     **SECTION 1.** 632.28 of the statutes is created to read:

4     **632.28 Liability insurance environmental claims. (1) DEFINITIONS.** In  
5     this section:

6     (a) "Environmental claim" means a claim for defense or indemnity submitted  
7     under a general liability insurance policy by an insured facing, or allegedly facing,  
8     potential liability for bodily injury or property damage arising from a release of  
9     pollutants onto or into land, air, or water in the state.

10     (b) "General liability insurance policy" means any contract of insurance that  
11     provides coverage for the obligations at law or in equity of an insured for bodily

1 injury, property damage, or personal injury to others. "General liability insurance  
2 policy" includes a pollution liability insurance policy, a commercial general liability  
3 insurance policy, a comprehensive general liability policy, an excess liability policy,  
4 an umbrella insurance policy, or any other kind of policy covering the liability of an  
5 insured for the claims of 3rd parties.

6 (c) "Lost policy" means any part or all of a general liability insurance policy that  
7 is alleged to be ruined, destroyed, misplaced, or otherwise no longer possessed by the  
8 insured.

9 (d) "Notice of a lost policy" means written notice of the lost policy in sufficient  
10 detail to identify the person or entity claiming coverage, including information  
11 concerning the name of the alleged policyholder, if known, and material facts  
12 concerning the lost policy known to the alleged policyholder.

13 (2) ENVIRONMENTAL CLAIMS. (a) *Interpretation.* The following rules of  
14 construction shall apply to the interpretation of general liability insurance policies  
15 involving environmental claims in any action between an insured and an insurer to  
16 determine the existence of coverage for the costs of investigating and remediating  
17 environmental contamination, whether in response to governmental demand or  
18 pursuant to a written voluntary agreement, consent decree or consent order,  
19 including the existence of coverage for the costs of defending a suit against the  
20 insured for such costs:

21 1. State law shall be applied in all cases involving environmental claims.  
22 Nothing in this section shall be interpreted to modify common law rules governing  
23 choice of law determinations for sites located outside the state.

24 2. Any action or agreement by the department of natural resources or the  
25 federal environmental protection agency against or with an insured in which the

1 department of natural resources or the federal environmental protection agency, in  
2 writing, notifies the insured that is considers the insured to be a potentially  
3 responsible party, or directs, requests, or agrees that an insured take action with  
4 respect to contamination within the state, is equivalent to a suit or lawsuit as those  
5 terms are used in any general liability insurance policy.

6 3. Insurance coverage for any reasonable and necessary fees, costs, and  
7 expenses, including remedial investigations, feasibility study costs and expenses,  
8 incurred by the insured pursuant to a written voluntary agreement, consent decree,  
9 or consent order between the insured and either the department of natural resources  
10 or the federal environmental protection agency, when incurred as a result of a  
11 written direction, request, or agreement by the department of natural resources or  
12 the federal environmental protection agency to take action with respect to  
13 contamination within the state, shall not be denied the insured on the ground that  
14 such expenses constitute voluntary payments by the insured.

15 (b) *Notice and costs.* 1. An insurer with a duty to pay defense or indemnity  
16 costs, or both, to an insured for an environmental claim under a general liability  
17 insurance policy that provides that the insurer has a duty to pay all sums arising out  
18 of a risk covered by the policy must pay all defense or indemnity costs, or both,  
19 proximately arising out of the risk pursuant to the applicable terms of its policy,  
20 including its limit of liability, independent and unaffected by other insurance that  
21 may provide coverage for the same claim.

22 2. If an insured who makes an environmental claim under general liability  
23 insurance policies that provide that an insurer has a duty to pay all sums arising out  
24 of a risk covered by the policy has more than one such general liability insurance  
25 policy insurer, the insured shall provide notice of the claim to all such insurers for



1 whom the insured has current addresses. If the insured's claim is not fully satisfied,  
2 the insured may elect to file suit on the claim against only one such insurer,  
3 notwithstanding ss. 803.03 and 806.04 (11).

4 3. If requested by an insurer chosen by an insured under subd. 2., the insured  
5 shall provide information regarding other general liability insurance policies held by  
6 the insured that would potentially provide coverage for the same environmental  
7 claim.

8 4. An insurer chosen by an insured under subd. 2. may not be required to pay  
9 defense or indemnity costs in excess of the applicable policy limits, if any, on such  
10 defense or indemnity costs.

11 5. The court shall award to an insured the sum of the costs, disbursements, and  
12 expenses, including accounting fees and reasonable attorney fees, necessary to  
13 prepare for and participate in an action in which an insured successfully litigates a  
14 coverage issue for an environmental claim.

15 (c) *Contribution among insurers.* An insurer that has paid an environmental  
16 claim may seek contribution from any other insurer that is liable or potentially  
17 liable, subject to s. 631.43.

18 (d) *Presumptions.* 1. There is a rebuttable presumption that the costs of  
19 preliminary assessments, remedial investigations, risk assessments, or other  
20 necessary investigation, as those terms are defined by rule by the department of  
21 natural resources, are defense costs payable by the insurer, subject to the provisions  
22 of the applicable general liability insurance policy or policies.

23 2. There is a rebuttable presumption that payment of the costs of removal  
24 actions or feasibility studies, as those terms are defined by rule by the department  
25 of natural resources, are indemnity costs and reduce the insurer's applicable limit

1 of liability on the insurer's indemnity obligations, subject to the provisions of the  
2 applicable general liability insurance policy or policies.

3 (3) LOST POLICIES. (a) In this subsection, "policy" means a general liability  
4 insurance policy that is subject to an environmental claim.

5 (b) If, after a diligent investigation by an insured of the insured's own records,  
6 including computer records and the records of past and present agents of the insured,  
7 the insured is unable to reconstruct a lost policy, the insured may provide a notice  
8 of a lost policy to an insurer.

9 (c) An insurer must investigate thoroughly and promptly a notice of a lost  
10 policy. An insurer fails to investigate thoroughly and promptly if the insurer fails to  
11 provide all facts known or discovered during an investigation concerning the  
12 issuance and terms of a policy, including copies of documents establishing the  
13 issuance and terms of a policy, to the insured claiming coverage under a lost policy.

14 (d) An insurer and an insured must comply with the following minimum  
15 standards for facilitating reconstruction of a lost policy and determining the terms  
16 of a lost policy as provided in this section:

17 1. Within 30 business days after receipt by the insurer of notice of a lost policy,  
18 the insurer shall commence an investigation into the insurer's records, including  
19 computer records, to determine whether the insurer issued the lost policy. If the  
20 insurer determines that it issued the policy, the insurer shall commence an  
21 investigation into the terms and conditions relevant to any environmental claim  
22 made under the policy.

23 2. The insurer and the insured shall cooperate with each other in determining  
24 the terms of a lost policy. The insurer and the insured shall:

1           a. Provide to each other the facts known or discovered during an investigation,  
2 including the identity of any witnesses with knowledge of facts related to the  
3 issuance or existence of a lost policy.

4           b. Provide each other with copies of documents establishing facts related to the  
5 lost policy.

6           3. If the insurer or the insured discovers information tending to show the  
7 existence of an insurance policy applicable to the claim, the insurer or the insured  
8 shall provide an accurate copy of the terms of the policy or a reconstruction of the  
9 policy, upon the request of the insurer or the insured.

10           4. If the insurer is not able to locate portions of the policy or determine its terms,  
11 conditions, or exclusions, the insurer shall provide copies of all insurance policy  
12 forms issued by the insurer during the applicable policy period that are potentially  
13 applicable to the environmental claim. The insurer shall state which of the  
14 potentially applicable forms, if any, is most likely to have been issued by the insurer,  
15 or the insurer shall state why it is unable to identify the forms after a good faith  
16 search.

17           (e) If, based on the information discovered in an investigation of a lost policy,  
18 the insured can show by a preponderance of the evidence that a general liability  
19 insurance policy was issued to the insured by the insurer:

20           1. If the insured cannot produce evidence that tends to show the policy limits  
21 applicable to the policy, it shall be assumed that the minimum limits of coverage,  
22 including any exclusions to coverage, offered by the insurer during the period in  
23 question were purchased by the insured.



As soon as possible, please -  
Thank you!

LRB Number: 4514 171

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## Nonsubmittal Form

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**LPSes: DO NOT FORWARD THIS DRAFT FOR SUBMITTAL, UNLESS INSTRUCTED TO DO SO BY THE DRAFTING ATTORNEY.**

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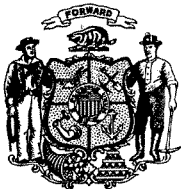
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State of Wisconsin  
2003 - 2004 LEGISLATURE

4514  
LRB-4517/P1  
PJKwlj:jf  
stays  
Use  
4517  
to  
replace  
4514.

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

D - vote ✓

1 AN ACT to amend subchapter III (title) of chapter 632 [precedes 632.22]; and to  
2 create 632.28 of the statutes; relating to: environmental claims under general  
3 liability insurance policies.

---

*Analysis by the Legislative Reference Bureau*

This is a preliminary draft. An analysis will be provided in a later version.

---

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

4 SECTION 1. Subchapter III (title) of chapter 632 [precedes 632.22] of the  
5 statutes is amended to read:

6 CHAPTER 632

7 SUBCHAPTER III

8 LIABILITY GENERAL LIABILITY INSURANCE IN GENERAL

9 SECTION 2. 632.28 of the statutes is created to read:

10 632.28 Environmental claims under liability insurance policies. (1)

11 DEFINITION. In this section, "environmental claim" means a claim for defense or

1 indemnity that is submitted under a general liability insurance policy by an insured  
2 and that is based on the insured's liability or potential liability for bodily injury or  
3 property damage arising from a release of pollutants onto land, or into air or water,  
4 in the state.

5 (2) RULES OF CONSTRUCTION OF POLICY UNDER WHICH CLAIM IS MADE. For  
6 interpreting a general liability insurance policy under which an environmental  
7 claim is made in any action between the insured and the insurer to determine the  
8 existence of coverage under the policy for the costs of investigating and remediating  
9 environmental contamination, whether in response to governmental demand or  
10 under a voluntary written agreement, consent decree, or consent order, including the  
11 existence of coverage for the costs of defending a suit against the insured for  
12 investigation and remediation costs, the following rules apply:

13 (a) State law shall be applied in all cases involving environmental claims.  
14 Nothing in this section shall be interpreted to modify common law rules governing  
15 choice of law determinations for sites located outside this state.

16 (b) Any action or agreement by the department of natural resources or the  
17 federal environmental protection agency against or with an insured in which the  
18 department of natural resources or the federal environmental protection agency, in  
19 writing, notifies the insured that it considers the insured to be a potentially  
20 responsible party, or directs, requests, or agrees that the insured take action with  
21 respect to contamination within this state, is equivalent to a suit or lawsuit as those  
22 terms are used in the general liability insurance policy.

23 (c) The insurer may not deny coverage for any reasonable and necessary fees,  
24 costs, and expenses, including costs and expenses of remedial investigations and  
25 feasibility studies, that are incurred by the insured under a voluntary written



1 agreement, consent decree, or consent order between the insured and the  
2 department of natural resources or the federal environmental protection agency and  
3 as a result of a written direction, request, or agreement by the department of natural  
4 resources or the federal environmental protection agency to take action with respect  
5 to contamination within the state, on the ground that those expenses constitute  
6 voluntary payments by the insured.

7 (3) INSURER'S PAYMENT DUTY; INSURED'S NOTICE DUTY. (a) An insurer with a duty  
8 to pay defense or indemnity costs, or both, to an insured for an environmental claim  
9 under a general liability insurance policy that provides that the insurer has a duty  
10 to pay all sums arising out of a risk covered by the policy must pay all defense or  
11 indemnity costs, or both, proximately arising out of the risk in accordance with the  
12 applicable terms of its policy, including its limit of liability, independent of and  
13 unaffected by any other insurance that may provide coverage for the same claim.

14 (b) 1. If an insured who makes an environmental claim under a general liability  
15 insurance policy that provides that the insurer has a duty to pay all sums arising out  
16 of a risk covered by the policy has more than one such general liability insurance  
17 policy insurer, the insured shall provide notice of the claim to every such insurer for  
18 whom the insured has a current address.

19 2. If the insured's claim is not fully satisfied under par. (a), the insured may  
20 elect to file suit on the remainder of the claim against only one insurer under subd.  
21 1., notwithstanding ss. 803.03 and 806.04 (11).

22 3. If requested by an insurer against which the insured files suit under subd.  
23 2., the insured shall provide information regarding other general liability insurance  
24 policies held by the insured that would potentially provide coverage for the same  
25 environmental claim.

1           4. An insurer against which the insured files suit under subd. 2. may not be  
2 required to pay defense or indemnity costs in excess of the applicable policy limits,  
3 if any, on such defense or indemnity costs.

4           (4) COSTS TO BE AWARDED TO INSURED. The court shall award to an insured the  
5 sum of the costs, disbursements, and expenses, including accounting fees and  
6 reasonable attorney fees, necessary to prepare for and participate in an action in  
7 which the insured successfully litigates a coverage issue for an environmental claim.

8           (5) CONTRIBUTION AMONG INSURERS. An insurer that pays an environmental  
9 claim may seek contribution from any other insurer that is liable or potentially liable  
10 for the claim, subject to s. 631.43.

11           (6) PRESUMPTIONS. (a) There is a rebuttable presumption that the costs of  
12 preliminary assessments, remedial investigations, risk assessments, or other  
13 necessary investigation, as those terms are defined by rule by the department of  
14 natural resources, are defense costs payable by the insurer, subject to the provisions  
15 of the general liability insurance policy under which there is coverage for the costs.

16           (b) There is a rebuttable presumption that the costs of removal actions or  
17 feasibility studies, as those terms are defined by rule by the department of natural  
18 resources, are indemnity costs and that payment of those costs by the insurer reduces  
19 the insurer's applicable limit of liability on the insurer's indemnity obligations,  
20 subject to the provisions of the general liability insurance policy under which there  
21 is coverage for the costs.

22           (7) LOST POLICY. (a) In this subsection, "lost policy" means all or any part of a  
23 general liability insurance policy that is subject to an environmental claim and that  
24 is ruined, destroyed, misplaced, or otherwise no longer possessed by the insured.

1 (b) If, after a diligent investigation by an insured of the insured's own records,  
2 including computer records and the records of past and present agents of the insured,  
3 the insured is unable to reconstruct a lost policy, the insured may provide notice of  
4 the lost policy to the insurer that the insured believes issued the policy. The notice  
5 must be in writing and in sufficient detail to identify the person or entity claiming  
6 coverage, including the name of the alleged policyholder, if known, and any other  
7 material facts concerning the lost policy known to the person providing the notice.

8 (c) An insurer must thoroughly and promptly investigate a notice of a lost policy  
9 and must provide to the insured claiming coverage under the lost policy all facts  
10 known or discovered during the investigation concerning the issuance and terms of  
11 the policy, including copies of documents establishing the issuance and terms of the  
12 policy.

13 (d) For facilitating reconstruction, and determining the terms, of a lost policy,  
14 the insurer and the insured must comply with the following minimum standards:

15 1. Within 30 business days after receipt by the insurer of notice of a lost policy,  
16 the insurer shall commence an investigation into the insurer's records, including  
17 computer records, to determine whether the insurer issued the lost policy. If the  
18 insurer determines that it issued the policy, the insurer shall commence an  
19 investigation into the terms and conditions relevant to any environmental claim  
20 made under the policy.

21 2. The insurer and the insured shall cooperate with each other in determining  
22 the terms of a lost policy. The insurer and the insured shall provide to each other the  
23 facts known or discovered during an investigation, including the identity of any  
24 witnesses with knowledge of facts related to the issuance or existence of the lost

1 policy, and shall provide each other with copies of any documents establishing facts  
2 related to the lost policy.

3 3. If the insurer or insured discovers information tending to show the existence  
4 of an insurance policy that applies to the claim, the insurer or insured shall provide  
5 an accurate copy of the terms of the policy or a reconstruction of the policy, upon the  
6 request of the insurer or the insured.

7 4. If the insurer is not able to locate portions of the policy or determine its terms,  
8 conditions, or exclusions, the insurer shall provide copies of all insurance policy  
9 forms issued by the insurer during the applicable policy period that potentially apply  
10 to the environmental claim. The insurer shall identify which of the potentially  
11 applicable forms, if any, is most likely to have been issued by the insurer to the  
12 insured, or the insurer shall state why it is unable to identify the forms after a good  
13 faith search.

14 (e) If, based on information discovered in the investigation of a lost policy, the  
15 insured can show by a preponderance of the evidence that a general liability  
16 insurance policy was issued to the insured by the insurer but cannot produce  
17 evidence that tends to show the policy limits applicable to the policy, it shall be  
18 assumed that the minimum limits of coverage, including any exclusions to coverage,  
19 that the insurer offered during the period in question under such policies apply to  
20 the policy purchased by the insured. If, however, the insured produces evidence that  
21 tends to show the policy limits applicable to the policy, the insurer has the burden  
22 of proof to show that a different policy limit, including any exclusions to coverage,  
23 apply to the policy purchased by the insured.

24 **SECTION 3. Initial applicability.**

1           (1) This act first applies to environmental claims made on the effective date of  
2 this subsection.

3   (END)

*D - vote*

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-4517/P1dn  
PJK:wlj:jf

April 26, 2004

1. I have made numerous changes in the language that was submitted for this draft. Please review the new language very carefully to make sure that I have not inadvertently changed the intended meaning.
2. I eliminated the definition for "general liability insurance policy" because I don't think it is needed or that the one provided adds anything to the commonly understood meaning for the term. In addition, the one given was too broad because it would include such policies as automobile insurance policies. I also eliminated the definition for "notice of a lost policy" because the one provided was too substantive. I included the substantive parts in proposed s. 632.28 (7) (b).
3. Note proposed s. 632.28 (3). The way in which it is structured and the language in proposed par. (b) 2. that says, "If the insured's claim is not fully satisfied," seem to make a distinction between the insurer under par. (a) and all other insurers under par. (b). Is the insurer under par. (a) actually one of the insurers under par. (b)? Should par. (a) be the principle that applies to payment of a claim by any insurer against whom suit is filed under par. (b) 2.? Also, is it really the intention that the insured may elect to file suit against only one insurer, or should the requirement be that the insured may elect to file suit against one or more insurers but is not required to file suit against all insurers? Would it be more accurate if what is now par. (a) came after what is now par. (b) 2. and the clause, "If the insured's claim is not fully satisfied," were left out?
4. Are the presumptions in proposed s. 632.28 (6) meant to apply only in a lawsuit?
5. May the liability insurance policy specifically exclude coverage for the costs itemized in proposed s. 632.28 (6) (a)?
6. Is it reasonable to require the insured or insurer to "provide an accurate copy of the terms of the [lost] policy" if they discover information that only *tends* to show the *existence* of an insurance policy? (See proposed s. 632.28 (7) (d) 3.)
7. I changed the first paragraph of the "Applicability and Enforcement" subsection of the submitted materials to a nonstatutory initial applicability section and did not include the other three paragraphs because they aren't necessary. The new provisions cannot apply retroactively to claims already processed. Perhaps some or all of the new provisions could apply to some or all claims that are already in process, but it is better to treat them all in a consistent manner. Therefore, I made the new provisions first

apply to claims made on the effective date. Might the requirements in this bill possibly impair contract provisions of a liability insurance policy? Do we need to fashion an exception to the initial applicability provision for that possibility?

Pamela J. Kahler  
Senior Legislative Attorney  
Phone: (608) 266-2682  
E-mail: [pam.kahler@legis.state.wi.us](mailto:pam.kahler@legis.state.wi.us)

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-4514/P1dn  
PJK:wlj:jf

April 26, 2004

1. I have made numerous changes in the language that was submitted for this draft. Please review the new language very carefully to make sure that I have not inadvertently changed the intended meaning.
2. I eliminated the definition for "general liability insurance policy" because I don't think it is needed or that the one provided adds anything to the commonly understood meaning for the term. In addition, the one given was too broad because it would include such policies as automobile insurance policies. I also eliminated the definition for "notice of a lost policy" because the one provided was too substantive. I included the substantive parts in proposed s. 632.28 (7) (b).
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6. Is it reasonable to require the insured or insurer to "provide an accurate copy of the terms of the [lost] policy" if they discover information that only *tends* to show the *existence* of an insurance policy? (See proposed s. 632.28 (7) (d) 3.)
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Pamela J. Kahler  
Senior Legislative Attorney  
Phone: (608) 266-2682  
E-mail: [pam.kahler@legis.state.wi.us](mailto:pam.kahler@legis.state.wi.us)

*the environmental chapters use "consent order" but not "consent decree" but federal Superfund law uses "consent decree"*

*I have avoided "remediating", I suggest "remedying" or "cleaning up"*

1 632.995 **Environmental claims. (1) INTERPRETATION.** The following rules of  
2 construction shall apply to the interpretation of general liability insurance policies  
3 involving environmental claims in any action between an insured and an insurer to  
4 determine the existence of coverage for the costs of investigating and remediating  
5 environmental contamination, whether in response to governmental demand or pursuant  
6 to a written voluntary agreement, consent decree or consent order, including the existence  
7 of coverage for the costs of defending a suit against the insured for such costs:

8 (a) State law shall be applied in all cases involving environmental claims.  
9 Nothing in this section shall be interpreted to modify common law rules governing choice  
10 of law determinations for sites located outside the state.

*prement  
OUR  
EPA*

11 (b) Any action or agreement by the department of natural resources or the United  
12 States Environmental Protection Agency against or with an insured in which the  
13 department of natural resources or the United States Environmental Protection Agency in  
14 writing, notifies the insured that it considers the insured to be a potentially responsible  
15 party, or directs, requests or agrees that an insured take action with respect to  
16 contamination within the state, is equivalent to a suit or lawsuit as those terms are used in  
17 any general liability insurance policy.

*? I'm not sure that this gets what they want \* Federal*

18 (c) Insurance coverage for any reasonable and necessary fees, costs and expenses,  
19 including remedial investigations, feasibility study costs and expenses, incurred by the  
20 insured pursuant to a written voluntary agreement, consent decree or consent order  
21 between the insured and either the department of natural resources or the United States  
22 Environmental Protection Agency, when incurred as a result of a written direction,  
23 request or agreement by the department of natural resources or the United States  
24 Environmental Protection Agency to take action with respect to contamination within the  
25 state, shall not be denied the insured on the ground that such expenses constitute  
26 voluntary payments by the insured.

27 (2) NOTICE AND COSTS. (a) An insurer with a duty to pay defense or indemnity  
28 costs, or both, to an insured for an environmental claim under a general liability insurance  
29 policy that provides that the insurer has a duty to pay all sums arising out of a risk  
30 covered by the policy, must pay all defense or indemnity costs, or both, proximately  
31 arising out of the risk pursuant to the applicable terms of its policy, including its limit of

*Maybe if it said "action taken by" it would help.*

*\* "action" in this context might be interpreted to mean "court case" which is narrower than I think they want.*

*\*\* "responsible party" is used in some of the environmental laws, but I'm not sure it's a good idea to use it here without definition. Might be better to say "to be potentially liable for a release of pollutants"*

↑ (see attached)

\*\*\* Under the Superfund law, a "remedial investigation and feasibility study" is conducted for each site. State law does ~~not~~ use this exact terminology. The two options I see here are making the changes I have written in or trying to use a more generic description of the costs they are referring to: eg  
costs of investigating contamination and developing and evaluating alternative actions to remedy the contamination



## U.S. Environmental Protection Agency

### Superfund

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## Remedial Investigation/Feasibility Study

After a site is listed on the NPL, a remedial investigation/feasibility study (RI/FS) is performed at the site. The remedial investigation serves as the mechanism for collecting data to:

- characterize site conditions;
- determine the nature of the waste;
- assess risk to human health and the environment; and
- conduct treatability testing to evaluate the potential performance and cost of the treatment technologies that are being considered.

The FS is the mechanism for the development, screening, and detailed evaluation of alternative remedial actions.

The RI and FS are conducted concurrently — data collected in the RI influence the development of remedial alternatives in the FS, which in turn affect the data needs and scope of treatability studies and additional field investigations. This phased approach encourages the continual scoping of the site characterization effort, which minimizes the collection of unnecessary data and maximizes data quality.

The RI/FS process includes these phases:

- [Scoping](#);
- [Site Characterization](#);
- [Development and Screening of Alternatives](#);
- [Treatability Investigations](#); and
- [Detailed Analysis](#).

For more information, please consult the [RI/FS and Treatability Studies Overview](#).

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1 liability, independent and unaffected by other insurance that may provide coverage for  
2 the same claim.

3 (b) If an insured who makes an environmental claim under general liability  
4 insurance policies that provide that an insurer has a duty to pay all sums arising out of a  
5 risk covered by the policy has more than one such general liability insurance policy  
6 insurer, the insured shall provide notice of the claim to all such insurers for whom the  
7 insured has current addresses. If the insured's claim is not fully satisfied, the insured  
8 may elect to file suit on the claim against only one such insurer, notwithstanding ss.  
9 803.03 and 806.04 (11).

10 (c) If requested by an insurer chosen by an insured under paragraph (b), the  
11 insured shall provide information regarding other general liability insurance policies held  
12 by the insured that would potentially provide coverage for the same environmental claim.

13 (d) An insurer chosen by an insured under paragraph (b) may not be required to  
14 pay defense or indemnity costs in excess of the applicable policy limits, if any, on such  
15 defense or indemnity costs.

16 (e) The court shall award to an insured the sum of the costs, disbursements and  
17 expenses, including accounting fees and reasonable attorney fees, necessary to prepare  
18 for and participate in an action in which an insured successfully litigates a coverage issue  
19 for an environmental claim.

20 (3) CONTRIBUTION AMONG INSURERS. An insurer that has paid an environmental  
21 claim may seek contribution from any other insurer that is liable or potentially liable,  
22 subject to s. 631.43.

23 (4) PRESUMPTIONS. (a) There is a rebuttable presumption that the costs of  
24 preliminary assessments, remedial investigations, risk assessments or other necessary  
25 investigation, as those terms are defined by rule by the department of natural resources,  
26 are defense costs payable by the insurer, subject to the provisions of the applicable  
27 general liability insurance policy or policies.

28 (b) There is a rebuttable presumption that payment of the costs of removal actions  
29 or feasibility studies, as those terms are defined by rule by the department of natural  
30 resources, are indemnity costs and reduce the insurer's applicable limit of liability on the

*Rescind a rule?*

*I guess so. I  
don't see any  
existing def. of  
"preliminary assessment"  
& there are several defs. of  
"investigation" in other  
rules.*