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Users Guide To Farm Environmental Loss Exposures & Pollution Insurance



Table of Contents

Introduction _____ 1

 Users Guide To Farm Environmental Loss Exposures & Pollution Insurance _ 1

Stakeholders in Farming _____ 1

 Virtually All the Stakeholders in Farming are Uninsured or Severely Underinsured for Environmental Damage Claims _____ 1

 Common Sources of Environmental Risks in Farming _____ 1

 State Right to Farm Laws Are Not Right to Pollute Laws _____ 2

 The Standard Liability Insurance Policies Sold to Farms Exclude Losses Caused by Contamination _____ 3

Environmental Loss Exposures _____ 4

 Farm Package Policies Are Useless Insurance for the Environmental Loss Exposures Faced by Farms _____ 4

 Farms Need Specialized Environmental Impairment Liability Insurance to Provide Coverage for Their Environmental Loss Exposures _____ 6

 Managing the Environmental Risks in Vendor Contracts _____ 7

 Environmental Insurance Policies Are Not All Created Equal _____ 10

ARMR Farm Environmental Insurance Program _____ 12

 Managing the Professional Liability Risks of Insurance Agents and Brokers _ 12

 Managing Environmental Risks in Agricultural Lending _____ 13

Features of the ARMR Insurance Products _____ 14

 Environmental Impairment Liability for Farms _____ 14

 Contractor’s Environmental Liability for Custom Applicators _____ 14

 Contractor’s Environmental & Professional Liability for Certified Crop Advisors and Manure Management Consultants _____ 15

Contact Information _____ 16

Appendix A _____ 17

 Insurance Specifications to Insure a Farm _____ 17

 Insurance Specifications for Custom Applicators _____ 18

 Insurance Specifications for Consultants _____ 20

Appendix B _____ 23

 Applications & Resources _____ 23

Appendix C _____ 25

 Waiver and Release of Liability For the Insurance Agent & Broker You _____ 25

The Farm package insurance programs commonly sold to farmers do NOT provide any effective coverage for claims arising from gradual contamination of soil and water or from odors.

Introduction

Users Guide To Farm Environmental Loss Exposures & Pollution Insurance

Environmental impairment loss exposures are inherent in the operation of a farm; these loss exposures cannot be avoided in the business of farming. ***The Farm package insurance programs commonly sold to farmers do NOT provide any effective coverage for claims arising from gradual contamination of soil and water or from odors.***

Recent court rulings have shown that farmers face pollution related loss exposures – most notably from drinking water supply contamination and odors. Across the country, lawsuits are increasing along with the increasing size of farming operations. The alleged damages being sought by the plaintiffs in some of these lawsuits are in amounts never seen in the agricultural economy.

The vast majority of farms have no insurance at all for the environmental damage claims that may be made against them. Specialized environmental impairment insurance for farms is available through thousands of insurance agents and brokers across the United States.

Unprecedented Uninsured Environmental Damage Amounts

In a recent example of expensive environmental damage claims being made in farming country, the City of Des Moines, Iowa sued the County Board of Supervisors, who served on Water Drainage Districts in the three counties northwest of the city, to recover the city's anticipated costs to construct and operate a new water treatment plant. This new water treatment plant is needed to treat the drinking water supply serving 600,000 residents. The cost to build and operate the water treatment plant is estimated to be as high as \$183,500,000.

The water treatment plant is needed to remove dangerously high levels of nitrates from the water flowing in the Des Moines River and the Raccoon River. These rivers are the city's main sources of drinking water. Both rivers are contaminated with nitrates primarily from farm fields leaching excessive amounts of applied fertilizers into drainage ditches and from the surface runoff from fertilized fields. The County Board of Supervisors serving on the

Water Drainage Districts were targeted as defendants in the lawsuit, because testing showed the Water Drainage Districts had contributed to the high nitrate levels flowing into the two rivers.

A recent Iowa Supreme Court decision ruled that the Water Drainage Districts are protected under governmental immunity granted under state law, much to the relief of the volunteers sitting on the Water Drainage Districts' boards of directors. With that source of recovery impaired, the City still has a \$180,000,000 problem that it did not cause. The logical progression for cost recovery of the \$183 million dollars is for the city to sue the parties responsible for the dangerously high nitrate levels in the rivers under Federal environmental protection laws. Those responsible parties logically will be the individual farms in the three counties upstream of Des Moines and the other stakeholders involved in the fertilizer business, which would include the fertilizer suppliers, applicators, and consultants.

There is at least one example of citizens using federal environmental protection laws to overcome state laws protecting farming operations from nuisance lawsuits. Environmental protection groups in Yakima, Washington successfully sued three industrial-sized dairy farms for groundwater contamination of the drinking water wells serving over 24,000 residents in the valley. The plaintiffs used the Safe Drinking Water Act and Resource Conservation and Recovery Act (RCRA) to force a federal court to hear the case. The lawsuit alleged that manure in the amounts being applied to the fields should be a regulated solid waste rather than a beneficial fertilizer product. The plaintiffs argued that the farms' improper management of manure was equivalent to operating a solid waste disposal operation without a RCRA waste disposal permit. The federal court agreed with this argument.

In a settlement, the farms were ordered by the court to provide bottled drinking water to all residents for at least two years or until nitrate levels in the groundwater returned to safe levels. Also, the farms were responsible for the replacement, cleanup, and monitoring costs of their manure storage structures and compost areas from the time of the settlement and into the future.

The loss costs from this "settlement," which is not complete, will be measured in eight figures if any groundwater remediation is needed. The legal matter is likely to take decades to resolve. Interestingly, the farms were not fined \$50,000 per day per violation for operating a solid waste disposal site without a permit, which is the fine for doing so under RCRA. A standard farm Package insurance policy would provide no coverage for any part of these lawsuits or the legal costs incurred by the farms.

Stakeholders in Farming

Virtually All the Stakeholders in Farming are Uninsured or Severely Underinsured for Environmental Damage Claims

If the city of Des Moines pursues the farmers and other interested parties in the fertilizer business in court, the vast majority of these parties will be uninsured for the alleged damages, unless the farmer has purchased customized environmental impairment insurance, which specifically covers preexisting nitrate contamination.

For the few farms that have purchased environmental insurance today, only a small subset of those purchased insurance policies will provide coverage for nitrate contamination existing before the policy was purchased. Custom-designed environmental insurance policies which correct for this common insurance coverage glitch are available through American Risk Management Resources Network, LLC ([ARMR.Network Farm Environmental Insurance Program](#)). Like buying property insurance on a burning building, retroactive environmental insurance coverage would be difficult to obtain in areas of the active litigation like in the three counties northwest of Des Moines. Hard to do, but not impossible.

Originally introduced into the insurance marketplace in 2015, ARMR-designed Farm Environmental Impairment Liability insurance policies are available through hundreds of thousands of insurance agents in the United States.

Common Sources of Environmental Risks in Farming

Below are a few of the common environmental loss exposures associated with farming:

- Groundwater contamination
- Surface water contamination
- Crop overspray*
- Odors
- Reduction of neighboring property values
- Public nuisance

As with all other standard liability and property insurance policies, the insurance policies sold to farms contain at least one pollution exclusion.

- Trespass
- Operating or participating in manure digesters
- Damage to natural resources
- Bodily injury from exposure to bacteria
- Groundwater contamination and remediation
- Fuel storage tanks
- Fertilizer spills/releases
- Custom farming operations
- Transportation risks (e.g. manure hauling)
- Storage and application of pesticides & herbicides

*Insured under the average Farm Package insurance policy

State Right to Farm Laws Are Not Right to Pollute Laws

Despite previous liability protections provided through state Right to Farm laws and exceptions to federal environmental protection laws for traditional farming operations, these statutes do not grant farmers the right to pollute. Almost all the laws were written before the development of factory-sized farms and confined animal feeding operations (CAFOs). The laws have not kept up with changes in the farming community.

Society has moved past accepting the “it is just a consequence of farming” explanation for soil and water contamination on an unprecedented scale. Citizen action committees are pursuing farms for contaminating natural resources much the same way manufacturers and chemical companies were held accountable for industrial-based pollution in the 1980s. State Right to Farm laws will not overrule federal environmental protection laws when the clean-up of an aquifer becomes necessary.

Environmental loss exposures are unavoidable in the business of farming. Given changes in agricultural practices over the last few decades, the conditions necessary to cause significant environmental harm and resulting liabilities already exist. The evolution in farming to larger operations has created new liability loss exposures of unprecedented magnitude in the farming community and the need for environmental insurance on farms.

The Standard Liability Insurance Policies Sold to Farms Exclude Losses Caused by Contamination

The liability insurance provided in the typical Farm Package insurance policy works fine for the everyday operations of a farm except when it comes to environmental-related loss exposures. The most common loss on the General Liability insurance policies sold to farms is a car hits a tractor; tractors hitting cars does not happen as often. In either case, the damages from the collisions are never measured in the tens of millions of dollars. In contrast, environmental damage to aquifers is routinely measured in the tens of millions of dollars in the industrial sector even for non-waste. Farm insurance policies were not designed to deal with environmental losses. In fact, Farm Package insurance policies will totally exclude any claim involving damages from contamination of any kind with the single exception of crop over spray.

As with all other standard liability and property insurance policies, the insurance policies sold to farms contain at least one pollution exclusion. The most common pollution exclusion eliminates coverage for “bodily injury or property damage arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of *pollutants*.” *Pollutants* is defined as “any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.”

To many people, this exclusion may not seem like a big deal for farms. Farms do not handle “pollutants”; a pollutant must be hazardous waste, right? That assumption would be totally wrong. In fact, pollution exclusions have been used by an insurance company to exclude a claim arising from bacteria-contaminated sandwiches. Pollution exclusions spell dangerous news for farms as they eliminate insurance coverage for damages resulting from drinking water wells contaminated with nitrates from manure. In Iowa, it was chemical-based fertilizers. A slowly leaking storage lagoon much smaller than a typical CAFO manure lagoon used for storing salt brine water has led to a documented environmental damage assessment of \$50,000,000 to \$60,000,000 to remediate the aquifer. Like manure, salt brine is not regulated as a hazardous material. If a salt brine lagoon can create a \$50,000,000 clean up problem for an aquifer, so can a manure storage lagoon.



This is not a new idea. What is new is farms being challenged to pay for the environmental damages caused by farming operations. Some of the first lawsuits are for eye-popping amounts.

Environmental Loss Exposures

Farm Package Policies Are Useless Insurance for the Environmental Loss Exposures Faced by Farms

The restrictive coverage in Farm liability insurance policies became clear in December 2014 when the Wisconsin Supreme Court ruled the bacteria contained in cow manure was a “pollutant.” The case, *Wilson Mutual Insurance Company v. Falk*, involved the Falk dairy farm. The Falks, like every other dairy farmer, used manure to fertilize their fields or they may have been using fields to dispose of manure, depending on the perspective of the observer. Neighboring property owners sued the Falks, alleging that the application of manure to their farm fields had polluted a local aquifer and contaminated water wells. Ultimately, a neighbor’s child ended up in the hospital from drinking bacteria-contaminated groundwater. The neighbors sued the Falks for the damages they suffered from the bacteria in their well.

When the Falk’s filed a claim on their farm liability insurance policy with Wilson Mutual Insurance Company, the claim was denied. The insurance company denied coverage because cow manure is a pollutant excluded from coverage by the Farm policy’s pollution exclusion. After appeals, the case was presented to the Wisconsin Supreme Court, which upheld that cow manure is a pollutant when the bacteria which caused the damage to the plaintiffs enters a well. Coverage for the claim was precluded by the pollution exclusion because the well was “contaminated.” The Wisconsin Supreme Court ruled that a reasonable insured may not consider manure safely applied to a field a “pollutant,” but a reasonable insured would consider bacteria contamination in a well to be a “pollutant.” Therefore, the Farm Liability insurance provided no coverage at all for bacteria contamination of an aquifer per the Supreme Court of Wisconsin. Other states are likely to follow the Wisconsin precedence on this matter.

In another case also brought to the Wisconsin Supreme Court, the Court concluded that nitrates released by decomposing septage leaching into a water supply is a “contaminant” and, therefore, a “pollutant” as defined by standard general liability policies. Claims arising from nitrate contamination of an aquifer was determined to be excluded by the standard Farm policies’ pollution exclusion. In the case, *Preisler v. General Casualty Insurance Company*, the Preislers operated a dairy farm as did their neighbors, the Kuettels, who

also ran a septic service operation at the same location. The Kuettels spread septage waste on their fields at a rate set by the Wisconsin DNR and contracted with the Preislers to spread septic tank waste on their fields as well. In 2008, the Preisler's cattle began to die at an alarming rate; testing showed that the Preisler's well water contained elevated levels of nitrates, which is a by-product of decomposing septage among other things related to fertilizers. The Preislers filed a suit against the Kuettels for contamination of their water well and the loss of their cattle.

The two liability policies held by the Kuettels, a homeowner's policy and a Commercial General Liability policy, both contained similar pollution exclusions and specifically referenced "contaminant" in the definition of a pollutant. General Casualty Insurance Company reasoned that if a water well is contaminated with nitrates from decomposing septage, then septage must be a "contaminant." If it is a "contaminant", then it is a "pollutant", so nitrates in water are an excluded cause of loss. Despite appeals all the way to the Supreme Court by the Preislers and Kuettels arguing that a septage is not a "pollutant," the Wisconsin Supreme Court ruled in favor of General Casualty Insurance Company and concluded that the word "contaminant" should have provided clear notice to a reasonable insured that their policies would not cover claims involving septage seeping nitrates into water supplies.

With common substances used by farmers, such as manure being deemed a "pollutant," pollution exclusions found in the liability insurance policies sold to farmers have real and dangerous exclusions in them for potentially very expensive liability claims. Given recent court cases, the standard insurance policies farmers purchase does not provide any adequate insurance coverage for the environmental loss exposures associated with farming. One Wisconsin Supreme Court Justice in the Preisler v. General Casualty Insurance Company case went as far as to call standard farm liability insurance policies "useless insurance" for a dairy, which must dispose of manure as part of its everyday operations. The same Justice questioned the advice insurance agents had been giving farmers on the subject of having insurance coverage for manure disposal, but that matter was not before the court in December of 2014.

In defense of the insurance companies and agents selling farm package insurance policies, liability insurance policies have contained pollution exclusions since 1970. This is not a new idea. What is new is farms being challenged to pay for the environmental



It should be noted that endorsements added to a **General Liability or standard farm insurance policy, which make exceptions to the “absolute” pollution exclusions in those policies are not the same as true environmental insurance coverage.**

damages caused by farming operations. Some of the first lawsuits are for eye-popping amounts.

Farms Need Specialized Environmental Impairment Liability Insurance to Provide Coverage for Their Environmental Loss Exposures

So, what is the solution to the cover gaps created by the pollution exclusions in Farm policies? The solution to pollution exclusions is specialized Environmental Impairment Liability insurance products, which are specifically designed to fill the gaps created by the pollution exclusions on standard farm package insurance policies.

The following facts are clear:

- Farms have environmental and pollution-related exposures, most notably related to groundwater contamination from applying manure and fertilizers, and these exposures cannot be avoided. Lawsuits alleging that farms have polluted the environment like the ones in Des Moines, Iowa and the one in Yakima Valley, Washington are prime examples of the environmental loss exposures that farms face.
- Standard Farm package insurance policies sold to farmers do not provide coverage for losses arising from contamination or pollution. The pollution exclusions in these policies leave farmers uninsured for environmental claims. Basically, only crop overspray of herbicides is covered under the typical farm package insurance policy. Some insurance agents errantly refer to the overspray coverage as “environmental insurance”; they are dead wrong.

It should be noted that endorsements added to a General Liability or standard farm insurance policy, which make exceptions to the “absolute” pollution exclusions in those policies are not the same as true environmental insurance coverage. In the best of circumstances, these endorsements provide very restrictive coverage for pollution events; they may offer coverage only for pollution incidents involving farm chemicals, or the coverage will only be offered for Sudden and Accidental contamination events occurring in time frames measured in hours. A farm’s most onerous environmental loss exposures

occur over an extended period of time (i.e. gradually) and involve substances such as manure, which are not considered “farm chemicals.”

Applying manure and fertilizers to the same field the farmer's grandfather used these materials to is not sudden and accidental, nor is it an unexpected or unintended activity.

Given this reality, farms need to purchase a specialized environmental insurance policy to pick up coverage for their pollution-related exposures. Environmental insurance policies are designed to fill the gap in coverage created by pollution exclusions on the standard farm liability and property insurance packages. American Risk Management Resources Network, LLC has pioneered the development of the best environmental insurance policies available to farms. Genuine environmental insurance policies are readily available for all types of farms today.

Managing the Environmental Risks in Vendor Contracts

A farm can off-load potential liability arising from the services of providers simply by requiring the vendor to carry insurance for the damages they may cause. This is routinely done with the insurance specifications and indemnity provisions in procurement contracts. However, there is a massive void caused by pollution exclusions in these types of insurance policies:

- General Liability
- Automobile Liability
- Professional Liability

Coverage to fill the gap in coverage created by pollution exclusions is readily available in the insurance marketplace today. To be indemnified and insured for the operations and services provided by the farm's vendors, all that is needed is an effective insurance requirement in procurement contracts.

Farms utilize many different services; therefore, there are different types of procurement contracts necessary. These are, therefore, general guidelines for the types of environmental insurance needed by the various vendors of services.

- If the service is an operation, the vendor needs to procure a Contractors Pollution Liability (CPL) insurance policy. The policy should specifically cover odor and

manure as defined pollutants. The Farm needs to be named as an Additional Insured on the vendors General Liability (GL) and Contractors Pollution Liability insurance policy, Both the GL and CPL policies need to be primary and non-contributory insurance to the Farm's insurance and there needs to be a Waiver of Subrogation provision in the GL and CPL policies.

- If the services involve the operation of an automobile or truck, there should be a CPL insurance requirement in the procurement contract. The CPL needs the coverage extensions mentioned above plus the policies must specifically insure the operation of the truck.
 - It will not be sufficient to insure only spills from the vehicle if the service includes any application of materials to land. A CA 99-48 endorsement does not adequately fill the coverage gap created by the pollution exclusion on the Automobile Liability policy
- If the vendor is a consultant, the consultant should purchase Professional Liability insurance providing coverage for the services they provide. The Professional Liability insurance policy cannot have a pollution exclusion.

To effectively transfer risk to the insurance policies carried by the farm's vendors, the insurance specifications need to have detailed requirements. It is never sufficient to simply specify "Pollution Insurance" in a procurement contract; nobody knows what "pollution insurance" means. There are over 100 different genuine environmental insurance policies available for sale in the U.S. marketplace. Almost all of them do not work very well either for the farm risk or the risks of vendors working for the farm.

Some common environmental insurance policy forms can inadvertently exclude virtually all the environmental risks for which insurance is needed. Therefore, a management oversight system needs to be put into place to monitor the vendor's compliance with the insurance requirements. There is enormous variation in the quality of the environmental insurance policies sold into the farming community. The premiums paid for the policies are not commensurate with the differences in coverage. In some cases, the very best coverage option is also the lowest cost.

Almost all environmental insurance policies were created for sale to the industrial sector of the economy decades ago; off-the-shelf, these policies do not work very well for the

Insurance policies originally developed to insure hazardous waste operations 30 years ago are being used to insure family farms and their vendors today. Like using pliers instead of a wrench to remove a ¾ inch nut, many of the environmental insurance policies are not well suited for the purpose for which they are being used.

environmental risks of farming. Only a handful of environmental insurance policies have been adopted to address the agricultural sector as of this writing.

Although environmental insurance is available to meet any educated insurance requirement at reasonable cost, without a tight insurance specification and verification system in place, there is more than a 75% chance that the insurance policies sold to the vendors will contain avoidable gaps in coverage. In defense of the insurance agents and brokers selling the insurance policies to the farms' vendors, insuring the environmental risks of farms is out on the rough cutting-edge of innovation in the environmental insurance business.

Insurance policies originally developed to insure hazardous waste operations 30 years ago are being used to insure family farms and their vendors today. Like using pliers instead of a wrench to remove a ¾ inch nut, many of the environmental insurance policies are not well suited for the purpose for which they are being used. This is because the insurance policies themselves were never designed or intended to insure farms. Another very real constraint in insuring the environmental risks of farms is agents and brokers have received zero training in the subject matter. To date, insurance agent licensing exams and continuing education classes are devoid of information on the effects of pollution exclusions and environmental insurance in general. Farms present environmental risk management challenges that are unique to farming. With no education on the general topic as a basis, it is not possible for even the most well-intentioned insurance agent or broker to know if an environmental insurance policy will be appropriate for a customer in the farming sector of the economy. Even if an insurance agent endeavors to educate themselves on environmental risk management in the farm sector, there are only very limited venues in which to do so. To overcome these constraints, a risk management strategy reliably shift risk to vendors in other rough cutting-edge areas of environmental insurance innovation.

To emphasize the importance of the verification process, ARMR.Network has a customer that sends an insurance specification out to its vendors that is 12 pages long. These vendors are fire and water damage restoration contractors who also perform mold and bacteria-laden water clean-ups among other services. The insurance specifications require the basic insurance for what the vendors do for a living, nothing fancy. Each vendor must provide a certificate of insurance to our risk management consulting

customer, or the contractor cannot work for our client. Upon the actual review of the certificates of insurance compared to the issued insurance policies, 9 out of 10 do not meet the insurance specification. Virtually none of the insurance agents issuing the bogus insurance certificates are aware of their errors, which gets back to the absence of training venues for them. The noncompliance rate to an insurance requirement for farms should not be as inherently high as fire and water restoration contractors, but it will be unacceptably high nonetheless. Therefore, a specify and verify strategy needs the verification compliance component to provide reliable underlying insurance.

It should be noted that the cost to insure a farm is less if the vendors who provide services to the farm are properly insured and make the farm an Additional Insured on the vendors' insurance policies.

ARMR.Network provides risk management consulting services, including writing insurance specifications, for incorporation into procurement contracts. We also provide verification services including certificate of insurance reviews for clients.

A sample set of insurance specifications designed for farm use is included in Appendix A of this document.

Disclaimer

The sample insurance specifications are for information purposes only; they should not be used without the coordination of the overall procurement contracts for services or without review of the overall insurance program of a farm.

Environmental Insurance Policies Are Not All Created Equal

Environmental insurance policies are written on an Excess and Surplus Lines (E&S) basis. That status means that the insurance companies selling environmental insurance policies do not have to file their policy forms or the rates they charge with the state insurance commissioner for approval.

While the E&S status of a policy offers insurance companies greater flexibility in designing coverage, it also means that there is no regulatory oversight in the insurance policy design or the coverage provided by the policy.

Environmental insurance policies can vary drastically from one insurance company to another. Without regulatory oversight in the insurance commissioner's office, it is imperative that the right environmental insurance policy is paired with a particular insurance buyer or there is an excellent chance that the farmer and the vendors will be uninsured for what they do for a living. If there was the equivalent of the wild-wild west in the insurance business, insuring farms with environmental insurance policies that were originally designed thirty years ago to insure hazardous waste landfills and the vendors that worked at those sites would be the wild-wild west of the insurance business.

As an example of an inherent and common coverage flaw with EIL-type policies sold to farms, every environmental insurance policy contains a known preexisting pollution condition exclusion. This exclusion operates to eliminate coverage for a pollution condition that is known by the insured to exist before the policy was purchased.

In farming country, nitrates at some level are already present in groundwater. Everybody already knows that nitrates are already in the wells in farm country. The state water well regulators have this information on file going back decades. If a farm is sold an off-the-shelf environmental insurance product, they would be wholly uninsured for any loss resulting from nitrates in the groundwater, because of the known preexisting pollution condition exclusion. Almost all the environmental insurance policies sold to farms for the last 20 years have this fundamental coverage defect. Only one policy has corrected for this fundamental coverage flaw as of this writing. ARMR.Network has the policy available in most states for dairy and cash crop farms.

As would be expected, the insurance policy that covers claims arising from nitrates in ground water is a little more expensive than a policy that basically excludes all claims arising from nitrates in groundwater due to the known pollution conditions exclusion. Nitrate contamination in rivers is what the \$180,000,000 City of Des Moines lawsuit is all about. It is very important to have insurance for the nitrate contamination risk in farming. But not all farms can qualify for this coverage today.

ARMR Farm Environmental Insurance Program

The ARMR Farm Environmental Insurance program is specifically designed to address the common loss exposures in farming. These customized insurance policies cover:

- Bodily injury and property damage, and on-site and off-site cleanup costs resulting from a pollution condition at, on, or emanating from a covered location(s) or operations in the case of CPL insurance.
- Legal costs associated with defense against these claims are covered under the policy, but do erode the aggregate limit of liability. This should be considered when selecting the limits of liability on the policy.
- Pollution losses arising from groundwater and surface water contamination, odors, over-application manure or herbicides and pesticides, and the exacerbation of the levels of nitrates in groundwater or wells in addition to the coverage.
- Professional Liability if consultants actually purchase this specialized insurance. This policy should include coverage for the preparation of 590 Nutrient Management plans. This coverage can be incorporated into the environment insurance coverage for a Co-op which would include coverage for underground storage tanks and storage of ag chemicals. A General Liability insurance policy is not the same as a Professional Liability insurance policy.

Managing the Professional Liability Risks of Insurance

Agents and Brokers

As with any form of commonly excluded loss exposures where optional insurance must be purchased to fill the coverage gaps created by the exclusion, insurance agents will reasonably want to avoid having their customers experience an unintentionally uninsured loss that could have been insured.

This users guide provides information on the types of environmental insurance that are currently available to farms. If the insurance agent's customer has decided to be uninsured for environmental impairment loss exposure, the agent may seek that decision memorialized with the **Waiver and Release of Liability** document attached in Appendix C.

Managing Environmental Risks in Agricultural Lending

Lenders routinely require borrowers to maintain property and liability insurance. The typical insurance requirements in loan covenants do not address the environment loss exposures of the stakeholders in farming. Appendix B (separate attachment) contains A Lenders Guide to Environmental Insurance on Farms. Using a Lender as a Loss Payee endorsement on a farm's Environmental Impairment Liability insurance policy, a lender can protect their security interest in a farm.

Features of the ARMR Insurance Products

For Farming Risks

Environmental Impairment Liability for Farms

- Provides environmental coverage for owned or leased land and facilities.
- Limits from \$1million to \$10million available.
- Standard deductible is \$10,000. Higher deductible amounts are available. A \$5,000 deductible option is also available.
- No audits and no inspections of the farm. (An independently-prepared 590 Nutrient Management Plan for the farmed acres is required.)
- Underwritten by Crum & Forster (AM Best Rating: A XII).
- For \$1million/\$1million limits of site pollution liability coverage, the cost is \$3,500* plus applicable taxes & fees.
- Simple application process.

**This assumes a farm operation: 400 animal units or 1,000 acres.*

Contractor's Environmental Liability for Custom Applicators

- Provides environmental coverage for losses resulting from operations of the contractor.
- Multiple limit options available.
- Standard deductible is \$10,000. Higher deductible amounts are available. A \$5,000 deductible option is also available.
- Underwritten by Crum & Forster (AM Best Rating: A XII).
- For \$1million/\$1million limits of Contractor's Environmental Liability coverage, the cost is \$1,750* plus applicable taxes & fees.
- Simple application process.

**This assumes gross revenue from operations: \$500,000.*

Contractor's Environmental & Professional Liability for Certified Crop Advisors and Manure Management Consultants

- Provides environmental liability as well as professional liability coverage resulting from operations of the contractor and their errors and omissions.
- Multiple limit options available.
- Standard deductible is \$10,000. Higher deductible amounts are available. A \$5,000 deductible option is also available.
- Underwritten by Crum & Forster (AM Best Rating: A XII).
- For \$1million/\$1million limits of Contractor's Environmental and Professional Liability coverage, the cost is \$3,500* plus applicable taxes & fees.
- Simple application process.

**This assumes gross revenue from operations: \$500,000.*

Contact Information

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Appendix A

Insurance Specifications to Insure a Farm

Minimum Scope of Insurance for Farmer. Coverage shall be at least as broad as:

- I. Commercial General Liability provided under the Insurance Services Office Form Number CG 00 01 12 04 or the most recently approved State version of this form, covering General Liability, including coverage for the insureds Premises, Operations, Products Liability, Completed Operations and Contractual Liability. This policy or this coverage part of a package policy should be written on an Occurrence basis
 - A. The policy shall Primary and Non-Contributory and provide a Waiver of Subrogation in favor of the following parties:
 - i. Site owner;
 - B. Products and Completed Operations coverage shall be maintained through the purchase of renewal policies to protect the insured and additional insured for at least 2 years after the services are complete or this contract is terminated.
- II. Environmental Impairment Liability or an equivalent coverage part within the General Liability policy. (Farm Chemicals Limited Liability endorsements and similar coverage extensions which eliminate parts of a pollution exclusion on another required insurance coverage in these covenants will not fulfill this requirement.)
 - A. This policy shall provide coverage for:
 - i. Bodily injury, sickness, disease, sustained by any person, including death;
 - ii. Property damage, including physical injury to or destruction of tangible property including the resulting loss of use thereof; cleanup costs and the loss of use of tangible property that has

not been physically injured or destroyed including diminution of value and Natural Resources damages.

- iii. Defense costs including costs, charges and expenses incurred in the investigation, adjustment or defense of claims;
- iv. The policy must insure loss arising from pollutants including but not limited to asbestos, lead, silica, odors, bacteria, nitrates and manure.

Minimum Limits of Insurance. Borrower shall maintain limits of insurance no less than:

- I. Site Specific Environmental Impairment Liability coverage:

- a. \$1,000,000 per loss;

\$1,000,000 aggregate

Insurance Specifications for Custom Applicators

Minimum Scope of Insurance for Farming Operators. Coverage shall be at least as broad as:

- I. Commercial General Liability provided under the Insurance Services Office Form Number CG 00 01 12 04 or the most recently approved State version of this form, covering General Liability, including coverage for the insureds Premises, Operations, Products Liability, Completed Operations and Contractual Liability. This policy or this coverage part of a package policy should be written on an Occurrence basis
 - A. The policy shall Primary and Non-Contributory and provide a Waiver of Subrogation in favor of the following parties:
 - i. Site owner;
 - B. Products and Completed Operations coverage shall be maintained through the purchase of renewal policies to protect the insured and additional insured for at least 2 years after the services are complete or this contract is terminated.

- II. Contractors Environmental Liability or an equivalent coverage part within the General Liability policy. (Job site pollution coverage extensions to General Liability policies will not fulfill this requirement. Farm Chemicals Limited Liability endorsements and similar coverage extensions which eliminate parts of a pollution exclusion on another required insurance coverage in these covenants will not fulfill this requirement.)
 - A. This policy shall provide coverage for:
 - i. Bodily injury, sickness, disease, sustained by any person, including death;
 - ii. Property damage, including physical injury to or destruction of tangible property including the resulting loss of use thereof; cleanup costs and the loss of use of tangible property that has not been physically injured or destroyed including diminution of value and Natural Resources damages.
 - iii. Defense costs including costs, charges and expenses incurred in the investigation, adjustment or defense of claims;
 - iv. The policy must insure contractual liability, be Primary and Non-Contributory and name Site owner as an Additional Insured.
 - v. The full scope of the named insured's operations as described within the scope of work for this contract.
 - vi. The policy must provide coverage for claims arising from owned and non- owned disposal sites utilized in the performance of this contract.
 - vii. The policy must insure loss arising from pollutants including but not limited to asbestos, lead, silica, odors, bacteria, nitrates and mold.

Minimum Limits of Insurance. Borrower shall maintain limits no less than:

- I. Contractor's Environmental Liability coverage:
 - A. \$1,000,000 per loss;
 - B. \$1,000,000 aggregate

Insurance Specifications for Consultants

Minimum Scope of Insurance for consultants. Coverage shall be at least as broad as:

- I. Commercial General Liability provided under the Insurance Services Office Form Number CG 00 01 12 04 or the most recently approved State version of this form, covering General Liability, including coverage for the insureds Premises, Operations, Products Liability, Completed Operations and Contractual Liability. This policy or this coverage part of a package policy should be written on an Occurrence basis
 - A. The policy shall Primary and Non-Contributory and provide a Waiver of Subrogation in favor of the following parties:
 - i. Site owner;
 - B. Products and Completed Operations coverage shall be maintained through the purchase of renewal policies to protect the insured and additional insured for at least 2 years after the services are complete or this contract is terminated.
- II. Contractors Environmental Liability or an equivalent coverage part within the General Liability policy. (Job site pollution coverage extensions to General Liability policies will not fulfill this requirement. Farm Chemicals Limited Liability endorsements and similar coverage extensions which eliminate parts of a pollution exclusion on another required insurance coverage in these covenants will not fulfill this requirement.)
 - A. This policy shall provide coverage for:
 - i. Bodily injury, sickness, disease, sustained by any person, including death;

- ii. Property damage, including physical injury to or destruction of tangible property including the resulting loss of use thereof; cleanup costs and the loss of use of tangible property that has not been physically injured or destroyed including diminution of value and Natural Resources damages.
 - iii. Defense costs including costs, charges and expenses incurred in the investigation, adjustment or defense of claims;
 - iv. The policy must insure contractual liability, be Primary and Non-Contributory and name Site owner as an Additional Insured.
 - v. The full scope of the named insured's operations as described within the scope of work for this contract.
 - vi. The policy must provide coverage for claims arising from owned and non- owned disposal sites utilized in the performance of this contract.
 - vii. The policy must insure loss arising from pollutants including but not limited to asbestos, lead, silica, odors, bacteria, nitrates and mold.
- III. Professional Liability Insurance for Professional Farming Consultants or an equivalent coverage part within the General Liability Policy. This policy can be combined with a Contractors Environmental Liability insurance policy.
- A. The policy shall provide coverage for:
 - i. Claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees as professionals.
 - ii. The policy must not contain a Contractual Liability Exclusion for the contractual risk transfer between the insured and its subcontractors and or additional insureds.

- iii. The policy must not contain a pollution exclusion for the professional services provided under contract.

Minimum Limits of Insurance. Borrower shall maintain limits no less than:

- I. Contractor's Environmental Liability coverage:
 - A. \$1,000,000 per loss;
 - B. \$1,000,000 aggregate
- II. Professional Liability coverage:
 - A. \$1,000,000 per loss;
 - B. \$1,000,000 aggregate

Disclaimer

The sample insurance specifications are for information purposes only. They should not be used without the coordination of the over-all procurement contracts for services or without review of the overall insurance program of a farm.

Appendix B

Applications & Resources

- Environmental Insurance Application For a Farm: <http://www.armr.net/wp-content/uploads/2016/09/Wisconsin-Farm-Environmental-Insurance-Application.pdf>
- Insurance Application for Contractors Pollution Liability Insurance on Agricultural Services: <http://www.cfins.com/wp-content/uploads/2016/03/App-Service-Providers-2016-0721.pdf>
- Insurance Application for Agricultural Professional Services: <http://www.armr.net/wp-content/uploads/2016/10/CCA-Professional-Application-2015.pdf>

Other available environmental risk management resources

1. **Lenders Guide to Pollution Exclusions on Farms:** <http://www.armr.net/wp-content/uploads/2017/03/Lenders-Guide-to-Pollution-exclusions-2-25-15.pdf>
2. **Farm Claims Examples:** <http://www.armr.net/wp-content/uploads/2017/01/Farm-Claims-Examples.pdf>
3. **Farm Users Guide to Pollution Exclusions By: David Dybdahl:** <http://www.armr.net/farm-users-guide-pollution-exclusions/>
4. **A Users Guide to Environmental Insurance:** <http://new.armr.net/wp-content/uploads/2017/01/Users-Guide-to-environmental-insurance-Booklet.pdf>
5. **Changing environmental risk picture changes dairy liability insurance needs:** <http://www.armr.net/wp-content/uploads/2017/01/Changing-environmental-risk-picture-changes-dairy-liability-insurance-needs-0516PD.pdf>
6. **Wilson Mutal Manure Case:** <http://www.armr.net/wp-content/uploads/2017/01/Wilson-Mutal-Manure-Case.pdf>
7. **Farm CCA Environmental Risks:** <http://www.armr.net/wp-content/uploads/2017/01/Farm-CCA-article.pdf>

8. **Good To Know: 5 Key Things to Know About Farm Environmental Insurance and the Converging Trends-** http://www.armr.net/wp-content/uploads/2017/01/Good-To-Know-Flyer_Farm-Edition_Oct2016.pdf
9. **Environmental Risk Management and CCA's:** <http://www.armr.net/wp-content/uploads/2017/03/Farm-CCA-article.pdf>
10. **Pollution Exclusions Hit the Family Farm:**
<http://www.iamagazine.com/markets/read/2015/02/09/pollution-exclusions-hit-the-family-farm>
11. **State Supreme Court Changes the Game on Pollution Exclusions and Environmental Insurance:** <https://www.irmi.com/articles/expert-commentary/state-supreme-court-changes-the-game-on-pollution-exclusions-and-environmental-insurance>
12. **American Agronomy Association :** <https://www.agronomy.org/>

More at www.armr.net/farms

Appendix C

Waiver and Release of Liability For the Insurance Agent & Broker

You are encouraged to carefully review the information found in the User's Guide to Farm Environmental Loss Exposures & Pollution Insurance.

This document is intended to explain the environmental loss exposures that farms face and to explain why pollution losses are completely excluded or simply not covered by the standard liability insurance policies sold to farms.

Given this information, I recommend the purchase of a specialized environmental insurance policy to fill the insurance coverage gaps in the farm policy for pollution-related claims.

If you choose not to purchase the recommended environmental insurance coverage, I ask that you sign this Waiver and Release of Liability.

By signing below, you acknowledge the following:

- You have been presented with the option to purchase separate environmental insurance coverage that would fill the coverage gaps created by pollution exclusions in the standard farm insurance policy.
- You hereby decline to purchase the presented environmental insurance coverage.

Signature of client

Date

Printed name of client

Date

Name of business



Honesty | Integrity | Knowledge | Excellence | Accountability

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