

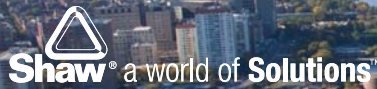
**Breakout 2C – Reinvent: Recovering from our Industrial Past:  
Redeveloping Heavily Contaminated Properties**



Oklahoma Brownfields  
CONFERENCE 2012  
MAY 22-23, 2012

OKLAHOMA BROWNFIELDS CONFERENCE 2012

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**Using Performance-Based Contracting  
for Brownfield Redevelopment**

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# Using Performance-Based Contracting for Brownfield Redevelopment

May 22, 2012

Presented by:  
**James Drought, P.H.**  
Vice President  
Shaw Environmental Liability Solutions, LLC

## Presentation Overview



- ▶ Overview of Program and Applications
- ▶ Features and Benefits
- ▶ Applications
- ▶ Financial Considerations
- ▶ Insurance
- ▶ Case Study
- ▶ Observations and Considerations

## Evolution



- ▶ Clean-up Industry Created in 1980's in Response to CERCLA
- ▶ Driven by Enforcement
- ▶ Industry Grew in Response to Dollars Spent by Liable Parties
- ▶ Encumbered and Slow Clean-up Process



## Evolution (Cont'd)



- ▶ New "Volunteers" Required:
  - Fast
  - Affordable
  - Conclusive
- ▶ Late 1990's – New Client Base:
  - Real Estate Firms
  - Municipalities
  - Small Businesses
- ▶ New Customers Required Clean-up Certainty
  - Cost-Effective
  - Cost-Predictable

## Evolution (Cont'd)



- ▶ Performance Based Contracting Created to Serve “New” Customers
- ▶ Sustainable Alternative to Traditional Clean-up Models
- ▶ Most Risks Contractually Transferred to Provider
- ▶ Typical Elements:
  - Guaranteed Result
  - Fixed Price
  - Result is Remediation, Closure, Redevelopment

## Applications



- ▶ Mergers and Acquisitions
- ▶ Real Estate Transactions
- ▶ Environmental Reserves
- ▶ PRP Group Cash-out
- ▶ Litigation/Dispute Resolution
- ▶ Bankruptcy Settlements
- ▶ Property Redevelopment

## Features



- ▶ True Fixed Price (No Change Orders)
- ▶ Consultant Assumes Responsibility for Project Completion
- ▶ Consultant Guarantee May Cover:
  - Know and Unknown Conditions
  - Undiscovered Contamination
  - Unidentified Site Conditions
  - Regulatory Re-openers
  - Third Party Liability Protection
- ▶ Guarantee Can Be Fully Assignable

## Benefits



- ▶ Continuous Regulatory Compliance
- ▶ Timely Site Closure
  - Milestone-Based Payments Provide Incentive
  - Alignment with Development Plans
- ▶ Mechanism for Meeting Financial Assurance Obligations
- ▶ Mechanism for Retirement of Environmental Liability Reserves
- ▶ Applicable to a Portfolio of Sites, a Single Site, or a Specific AOC

## Insurance



- ▶ Insurance Provides Additional Surety to Both Consultant & Client
- ▶ Remediation Stop Loss (RSL)
- ▶ Pollution Legal Liability (PLL)
- ▶ Fewer AAA-Rated Carriers Today



## Other Liability Considerations

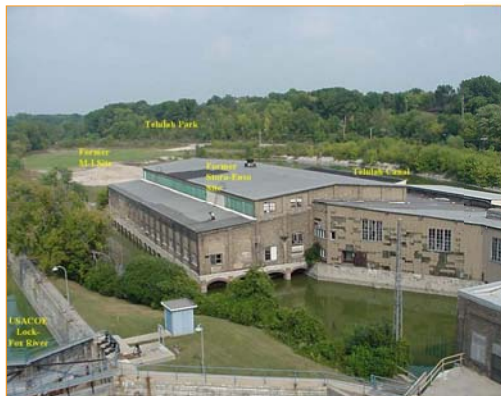


- ▶ Waste Generator Status
- ▶ Responsible Party Status
- ▶ Natural Resource Damages
- ▶ Non-Owned Disposal Sites
- ▶ Changes in Regulations During Remediation

## Case Study – Appleton, Wisconsin



- ▶ M-I/Consolidated Papers
- ▶ Former Paper Mill and Drilling Mud Facility



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## Site Background



- ▶ 16-Acre Site Located Adjacent to Fox River
- ▶ Paper Manufacturing Operations – 1850's to 1980's
- ▶ Drilling Fluid Additive Operations – 1959 to 2000
- ▶ Sulfate, Chromium, Metals, and PAHs in Soil and Groundwater
- ▶ Site Investigation Activities – 1998 through 2007

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## Project Objectives



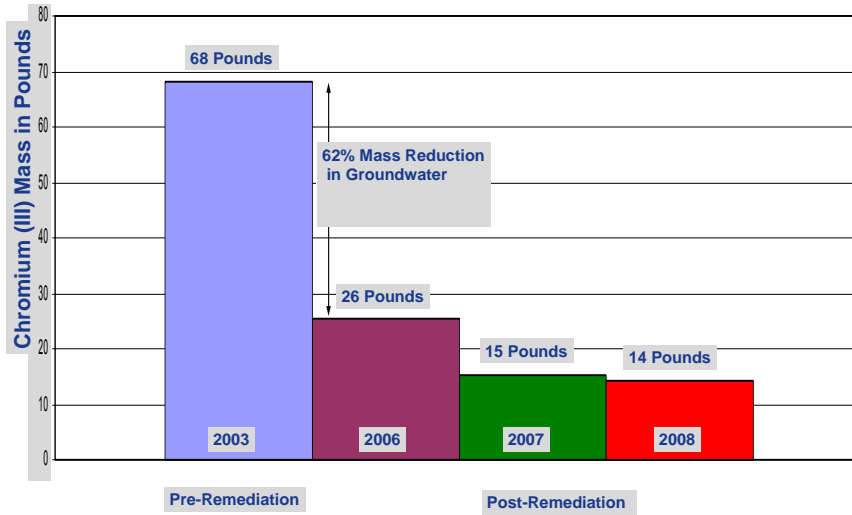
- ▶ Performance-Based Contract:
  - Dispute Resolution Tool
  - Facilitate Property Transfer and Redevelopment
  
- ▶ Cost Certainty and Liability Protection for Former and Future Owners
  
- ▶ Transfer Responsibility and Liability With Comprehensive Remedial Strategy
  
- ▶ Project Completion: VPLE CoC
  
- ▶ Performance-Based Milestone Payments

## Paper Mill: 1890

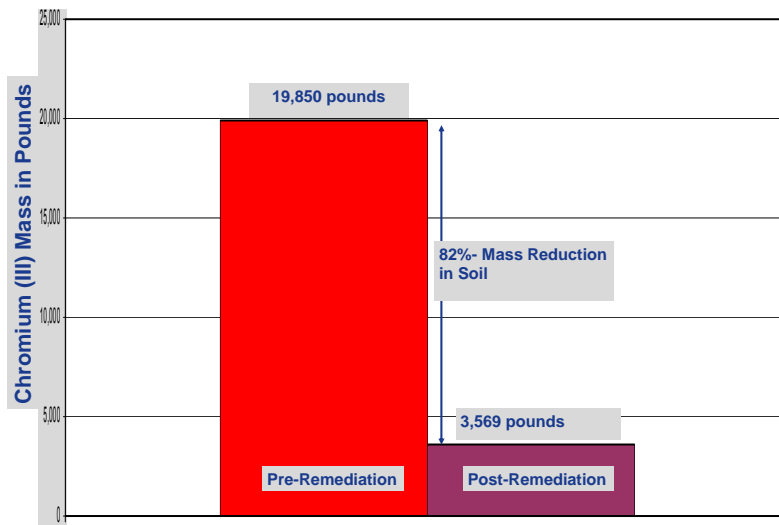




# Mass Reduction in Groundwater



# Mass Reduction in Soil



# WDNR Closure Letter



September 1, 2009

JIM DROUGHT  
 SHAW ENVIRONMENTAL LIABILITY SOLUTIONS LLC  
 111 W PLEASANT ST STE 105  
 MILWAUKEE WI 53212-3939

SUBJECT: Final Case Closure with Continuing Obligations  
**WDNR Site Name: M-I, LLC, 1130 Banta Court (formerly John St.), Appleton, WI**  
**WDNR BRRTS Activity #: 02-45-181585**

Dear Mr. Drought:

On August 14, 2009, the Northeast Region Closure Committee reviewed the above referenced case at 1130 Banta Court in Appleton, Wisconsin ("the Property") for closure. This committee reviews environmental remediation cases for compliance with state laws and standards to maintain consistency in the closure of these cases.

Based on the correspondence and data provided, it appears that this case meets the closure requirements in ch. NR 726, Wisconsin Administrative Code. The Department considers this case closed and no further investigation or remediation is required at this time; however, current and future property owners must comply with certain continuing obligations as explained in this letter.

The Department appreciates your efforts to restore the environment at this site. If you have any questions regarding this closure decision or anything outlined in this letter, please contact Jennifer Borski at (608) 424-7887.

Sincerely,

Bruce Urban, Team Supervisor  
 Northeast Remediation & Redevelopment Program

# Assignment of Liability



April 2, 2010

Mr. James C. Webster  
 Vice President, Secretary, and General Counsel  
 M-I SWACO  
 Houston, Texas 77072

Subject: Assignment of Voluntary Party Liability Exemption  
 Former M-I, LLC Property

**Liability Determination**

As described in the draft assignment affidavit, SHLS intends to assign the liability exemption in s. 292.15, Wis. Stats., to the following companies:

- M-I, LLC
- Kaukauna Utilities
- RiverHeath LLC
- Stora Enso North America Corporation ("SENA")
- DII, LLC
- Smith International, Inc.
- Halliburton Company
- Halliburton Energy Services, Inc.
- SENAs' insurers.

The Department believes that the delivery of a signed affidavit, like the one you prepared, with a copy of the Certificate is the most effective method of ensuring that the Certificate is transferred in a manner consistent with the requirements of s. 292.15(3), Wis. Stats. Section 292.15(3), Wis. Stats. requires each assignee to comply with the applicable sections of s. 292.15(2)(a) 3m, 4, 5, and 7 (for this Property); these requirements are recognized in the draft assignment document.

## Proposed Development



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## Financial Considerations



- ▶ \$84MM Mixed Use Development
- ▶ Developer-Financed TIF
- ▶ FDIC Requirements – Challenges to Commercial Lending
- ▶ Construction in Progress

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## Observations and Considerations



- ▶ Agency “Ambassadors”
  
- ▶ Stakeholder “Certainty”
  - Financial Providers
  - Insurance Carriers
  - Bond Markets
  
- ▶ VPLE Challenges
  - Initial and Post-Remediation Investments
  - Time and Financial Considerations
  - NR 700 Regulatory Changes

## Observations and Considerations



- ▶ Loss of Agency Expertise
  - Modeling
  - Geochemistry
  - In-situ Remediation
  
- ▶ Successful Closure – Predicated on:
  - Understanding of CSM and Regulations
  - Mass Removal
  - Performance Monitoring
  - Redevelopment as Part of Remediation

## Observations and Considerations



- ▶ Regulatory Changes
  - RCRA Contained-Out
  - Vapor Intrusion
  
- ▶ WI Closure Protocol Study: 2009
  - Closure Decisions: 1999-2000
  - Protective of Human Health and Environment?
  - Use of Natural Attenuation as Sole Remedy?

## Contact Information



### **James F. Drought, P.H**

Vice President/Principal Hydrogeologist  
Shaw Environmental Liability Solutions  
111 West Pleasant Street, Suite 102  
Milwaukee, Wisconsin 53212  
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james.drought@shawgrp.com





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