



NORTHERN ALBERTA RISK & INSURANCE MANAGEMENT SOCIETY

PRESENTS

**Environmental Liability and Risk
Management Strategies**



Today's Agenda

- Canada's Changing Environmental Liability Landscape
- Common Environmental Exposures and Claims Examples
- Risk Management Strategies
 - Pollution Coverage under the P&C Products
 - Dedicated Environmental Risk Transfer Solutions
- The New Environmental Frontier – Emerging Risks
- Closing Remarks



WHAT'S NEW IN CANADA?

A Changing Landscape....

- **Regulatory Reform & New Legal Precedents**
 - Federal vs Provincial jurisdictions
 - Bill 133 & Reg 511
 - US & Foreign Law
 - Native assemblies
 - Case law precedence (ie Imperial Oil)
- **D&O Accountability**
 - Reverse Onus
 - Position of influence
 - Sentencing and penalties
- **Lender Requirements**
 - Re-financing
 - Capital Improvements
 - Operating loans

A Changing Landscape....

- Unprecedented Contractual Liability
 - Public Private Partnerships
 - Lease agreements
 - Purchase and Sale Agreements
 - Service/Vendor Agreements
- Financial Disclosure Obligations
- Globalization
- Shifts in Corporate Cultures (Sustainability)
- Re-defining what “Environmental Liability” is!



COMMON ENVIRONMENTAL EXPOSURES AND CLAIMS

Common Environmental Exposures - General

- Aboveground/Underground Storage tanks;
- Waste Management (collection, recycling, treatment, disposal);
- Water/wastewater treatment;
- Legacy liability (own property, gifted land, brownfields);
- Fill material of unknown quality or origin;
- Pass-through contamination from adjacent sites;
- Mould and Bacteria;
- Designated Substances such as asbestos and lead based paint;
- Power Gens/Co-Gens;

Common Environmental Exposures - General

- Oil & Gas/Energy including pipeline failure;
- Transported cargo (road, rail, barge, air);
- Illicit Abandonment “Midnight Dumping”;
- Poor housekeeping and building condition (uncontained floor drains/sumps);
- Use and storage on-site of parts washers, lubricants, cutting oils, solvents, hydraulic oils, paints, glues/adhesives, inks, thinners, silk screen wash and other printing chemicals
- Road Maintenance;
- Vehicle/fleet maintenance (fueling, washing, servicing);

Common Environmental Exposures - General

- Bulk Chemical Storage (including loading & unloading areas);
- Fire;
- Storm water management;
- Softer pollutants such as noise, vibration, odour
- Chemical usage by recreational facilities (ice areas, golf courses, pools);
- Pesticide application and grounds maintenance.

Common Environmental Exposures - Construction

- Release of oils/fuels/chemicals from on-site tanks or other usage (weather related, vandalism, rupture);
- Impacting existing or underground infrastructure (utility/sewer/USTs);
- Discovery and/or disruption of pre-existing conditions (site prep/excavation/demo);
- Completed Operations (mould) & Product's liability;
- Surface water run-off;
- Air emissions (dust/fumes).

Liability Streams

- Property owners (past, present and future);
- Adjacent/neighbouring property owners;
- Property managers;
- Tenants;
- General contractors/Project Managers;
- Subcontractors;
- Lenders.



ENVIRONMENTAL RISK MANAGEMENT OPTIONS

Risk Management Strategies

- Risk Avoidance
- Self Insurance
- Risk Control/Engineering
- Contract Management
- Risk Transfer Solutions



RISK TRANSFER SOLUTIONS

Coverage in the P&C Marketplace

- Understanding the scope of coverage under the P&C products is key to making an informed decision on how to effectively manage environmental risk.
- The following policies may contain limited pollution liability coverage:
 - CGL/Umbrella
 - Wrap-Ups
 - Marine Liability
 - Auto
 - Property
 - B&M
 - D&O

CGL: Limited Pollution Liability

- A. Excludes BI/PD arising out of the actual, alleged or threatened discharge, dispersal, release or escape of pollutants:
1. At or from premises owned, rented or occupied by an Insured;
 2. At or from any site used by or for an insured or others for handling, storage, disposal, processing or treatment of waste;
 3. Which are at any time transported, handled, stored, treated, disposed of, or processed as waste by or for an Insured or any party the Insured is legally responsible;
 4. At or from any site or location on which an Insured or any contractors working for an Insured are performing operations:
 - a) If the pollutants are brought on or to the site in connections with such operations;
 - b) If the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize the pollutants
- B. Any loss, cost, or expense arising out of any **GOVERNMENTAL** direction or request that you remediate pollutants **UNLESS CONSEQUENT UPON BODILY INJURY OR PROPERTY DAMAGE ALSO COVERED UNDER THIS POLICY**

CGL: Limited Pollution Liability - Pitfalls

- Scope of Clean-up Costs (no on-site/FP, demands or orders to remediate, no affirmative definition of what “clean-up” includes);
- Definition of “Pollutant” is very broad (odour, or any other irritant or contaminant);
- Specific exclusions for bacteria, silica, lead, asbestos, mold, nuclear material, MTBE;
- Property damage (no DIV, NRD);
- Products;
- Expected or Intended losses;
- Waste exclusions.



DEDICATED ENVIRONMENTAL POLICIES

The Environmental Marketplace

- Numerous environmental insurers including:
 - Chartis, XL, ACE, Liberty, Chubb, Zurich, ESR, Encon, GAIC, Ironshore, SUM, Premier, AWAC, Aspen, Navigators, Philadelphia, Berkley, Beazley, Catlin, Arch and more!
- All time high capacity;
- Streamlined underwriting process;
- New innovative coverages;
- Very competitive pricing.

1. Fixed Site Pollution Liability

- Coverage Overview
 - Also known as PLL, EIL, ESL, PPL;
 - Claims made policy insuring loss arising from pollution conditions on, at, under, migrating to and from the Insured site;
 - Greater flexibility with regards to scheduling Insured sites;
 - First Named Insured is the property owner/lessee however multiple stakeholders can be added to protect their respective interests (tenants, lenders, government, contractors);
 - Multi-year terms are available upwards of ten (10) years;

1. Fixed Site Pollution Liability

- Coverage Overview
 - Insurable pollution conditions include:
 - New conditions commencing after inception;
 - Pre-existing conditions commencing prior to inception (but discovery during the policy);
 - Known conditions (historically excluded however many carriers are providing limited coverage if contamination is well documented and delineated).

1. Fixed Site Pollution Liability

- Core Coverage
 - Clean-up/Remediation Costs:
 - On-site & Off-site;
 - First Party Discovery Triggers;
 - Restoration/Replacement Costs.
 - Third Party Bodily Injury & Property Damage including:
 - Natural Resource Damages
 - Loss of Use
 - Diminution in Value
 - Defense expense and legal costs

1. Fixed Site Pollution Liability

- Coverage Enhancements
 - Transported Cargo (First and Third Party);
 - Non Owned Disposal Sites;
 - Indoor Air Quality concerns (i.e. mould & bacteria);
 - Asbestos and Lead Based Paint;
 - First Party & Contingent Business Interruption/Extra Expenses;
 - Punitive Damages, Civil & Administrative fines/penalties;
 - Acts of Terrorism;

1. Fixed Site Pollution Liability

- Coverage Enhancements
 - Contractors' Pollution Liability;
 - Products Liability;
 - Illicit Abandonment;
 - First Party DIV.

2. Storage Tank Programs

- Core Coverage
 - Corrective Action/Remediation Costs due to a confirmed release from schedule aboveground (AST) or underground (UST);
 - Third Party claims for Bodily Injury and Property Damage;
 - Can be used to satisfy regulatory Financial Assurance requirements.

3. Contractors Pollution Liability (CPL)

- Coverage Overview
 - Covers contractor for Third Party claims for Bodily Injury, Property Damage, Clean-up costs and related legal defense resulting from pollution conditions created or exacerbated by covered operations;
 - Any and all contracting services are insurable (general contracting, mechanical, environmental, demolition, waste haulers);
 - The “owner” is both an insured under the policy and a Third Party;
 - Coverage is available on claims-made and occurrence forms;
 - Contractor controlled or Owner Controlled programs;
 - Practice or project specific policies are available;
 - Multi-year terms are available (ten years plus);
 - Coverage enhancements similar to Fixed Site PL policies.

4. Professional Liability (E&O)

- Coverage Overview
 - Insures Third Party claims for financial loss arising from an Insured's rendering, or failure to render, professional services under hire. It protects against risks associated with the consequences of a negligent act, error or omission;
 - Scope of professional services must be majority "environmentally" related but coverage is NOT limited to damages arising from environmental/pollution events;
 - Can be purchased on a combined form with CPL.

5. Remediation Stop Loss/Clean-up Cost Cap

- Coverage Overview
 - This policy helps eliminate financial uncertainty from environmental cleanup projects by providing a “cap” for costs the insured would pay for cleanup activities associated with “Known Conditions”;
 - Insurers would underwrite a remedial plan and offer limits in excess of the anticipated budget PLUS a buffer layer (often times co-insurance is also introduced to limit moral hazards);
 - Historically carriers such as ACE, Chartis, Zurich and XL offered cost cap programs;
 - Poor loss experience has forced most insurers to exit the market;
 - As of August 2011, there is very limited market appetite for this product.

6. Closure/Post Closure

- Coverage Overview
 - This policy is used to comply with the state/province and federal financial responsibility requirements for closure and post-closure environmental obligations, typically for waste disposal facilities, landfills and impoundments etc.;
 - Available for both planned closure or closure ordered by the government;
 - Coverage may be on a “fronted”, “blended” risk-transfer / finite basis or risk-transfer only, with financial collateral likely required.



EMERGING ISSUES!

What's on the Horizon?

- Broader bacteria and viruses (bed bugs?)
- Product's Liability
- Cyber Risks & E-waste
- Natural Disasters and Climate Change
- Broader First Party coverage
- Increased appetite for "Known Conditions" coverage
- New damages....."biodiversity"
- Merging products (PLL and CPL)
- Alternative Energy Projects and Emerging Technology



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NORTHERN ALBERTA RISK & INSURANCE SOCIETY SESSION #

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