



*Managing Consultant and Contractor Risk &
Environmental Insurance*



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Managing Consultant and Contractor Risk & Environmental Insurance

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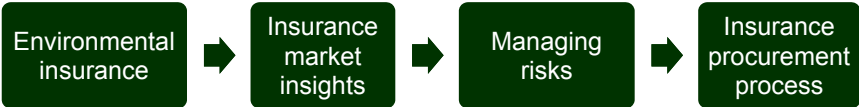


“Never lie in bed at night
asking yourself questions
you can’t answer”

Charles M. Schulz



AGENDA



Environmental Insurance

Contractor and Consultant Environmental Insurance

Many names: CPL, PPP, CEL, COPE...

Many purposes

UNREGULATED



Environmental Insurance – Insuring Agreement

Pay on behalf of the INSURED for LOSS/CLEANUP, resulting from a POLLUTION CONDITION that arises out of COV. OPS. and:

1. ***DISCOVERED during the POLICY PERIOD***; or
2. Results in a CLAIM made during the POLICY PERIOD.



Environmental Insurance – Insuring Agreement

Pay on behalf of the INSURED for PROFESSIONAL COSTS, resulting from a WRONGFUL ACT provided that:

1. ***INSURED provides notice and a RECTIFICATION PLAN***; or
2. WRONGFUL ACT results in a CLAIM.



Environmental Insurance – Insuring Agreement

Policy can also cover:

- Disposal of waste and construction materials;
- Transportation of waste and construction materials
- Owned/Leased Sites (yards, transfer stations, warehouses)



Insurance Market Insights

Professional / Errors and Omissions Cover:

- Canadian marketplace has experienced a ~10% deterioration (i.e., increase in claims) over the past decade
 - Alarming rise of “funded litigation” making its way into Canada
 - Social Inflation
- Majority of E&O cover is placed with Lloyds (London) as opposed to local (or even NA) insurance carriers



Insurance Market Insights – Grey Areas



Labs

- Env., L.Sc., Food
- Logistics
- Reporting
- Storage
- Online Payment



Excess Soil

- Waste?
- Yes = transport and disposal are covered
- No = ??????



Managing Risk

Contract -
limitation of
liabilities

Contract –
direct vs. indirect
losses

Payment

Communication



Managing Risk

Contract - limitation of liabilities

Do not: restrict liability in ways deemed "offensive" or "unfair"

Do: provide a reasonable limit of liability (e.g., \$1million)

Do not: hide limitation language

Do: exclude indirect costs

Do: limit liability to your negligence



Managing Risk

Failure to identify a REC

Direct

vs.

In-direct

cleanup costs

costs to re-design plans

loss of tenant rents

loss of opportunity
financing/
interest costs



Managing Risk

Payment Terms = 2nd most common source of Claims

Be prepared / organized when issuing a demand for payment

Do track your client's payment history
(tools: D&B report, financials)

Be reasonable when enforcing late payment penalties

Do issue interim or installment invoices



Managing Risk

Failure to issue disengagement letter

Failure to attend Site Meetings

Communication Breakdown = root cause of ~70% of Claims

Promising or Guaranteeing Performance

Failure to update timeline estimates



Managing Risk – Case Study

ABC Env. is hired to complete a Phase II ESA

↳ *123 Drilling* is hired by *ABC Env.* re: BHs/MWs
123 Drilling labels soil samples incorrectly

REAL Co. buys property based on Phase II ESA.

***ABC Env. discovers labeling error and determines
cleanup cost estimate provided in Phase II ESA
increases 3X.***



Managing Risk – Case Study

Outcome:

ABC Env. informs carrier of issue.

Carrier reviews *ABC Env.*'s rectification plan
Carrier offers payment to Real Co.

No Claim brought by Real Co. against *ABC Env.*



Insurance Procurement Process

1. Meet with your Underwriter
2. Disclose Documents (financials, CVs, contracts)
3. Obtain Firm Indications/Quotes
4. Complete Application

