



*Managing Consultant and Contractor Risk &  
Environmental Insurance*



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# Managing Consultant and Contractor Risk & Environmental Insurance

SMART Remediation 2019  
Edmonton, AB

Katrine Nielsen – Berkley Canada



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

Charles M. Schulz



## AGENDA



## Environmental Insurance

### Contractor and Consultant Environmental Insurance

UNREGULATED

Many purposes

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



## Environmental Insurance – Contractors Pollution

***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 – Errors & Omissions

***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 – More Cover

- Project Pollution Cover
- Scheduled Operational Cover (yards, warehouses, commercial properties)
- Non-Owned Sites (landfills)
- Transportation of waste and construction materials
- Directors & Officers



## Insurance Market Insights - Claims

### Professional / Errors and Omissions Cover:

- ~10% increase in claims over the past decade
  - Alarming rise of “funded litigation” making its way into Canada
  - Social Inflation
- Top source of claims
  - Communication breakdown
  - Failure to pay



## Insurance Market Insights – Grey Areas

Labs (Env., L.Sc., Food)

Logistics, reporting, storage

Professional exposure, operational exposure

Excess Soil, is it 'Waste'?

Yes = transport and disposal are covered

No = ??????



## Managing Risk

Contract -  
limitation of  
liabilities

Contract –  
direct vs. indirect  
losses

Payment Terms

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: limit liability to your negligence



## Managing Risk

### Exclude Indirect Costs

#### Failure to identify 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

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

promising or guaranteeing performance

failure to update timeline estimates





## Environmental Insurance – Case Study

*ABC Env.* is hired by Real Co. to complete a Phase II  
II:SA



*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.***



## Environmental Insurance – 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

What are the steps to an environmental policy?

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



## In Conclusion...

A well placed Environmental Insurance Policy plays a vital role for consultants and contractors in helping to manage and reduce the financial uncertainties faced during regular course of business.

