WORKSHOP W2

Wednesday, November 11
8:30 a.m.–9:30 a.m.
10:00 a.m.–11:00 a.m.

CONTRACTORS POLLUTION EXPOSURES AND RISK MANAGEMENT SOLUTIONS

Presented by

James F. Blasting
Manager, Environmental and Energy Group
ONEGROUP Bailey & Haskell Insurance

The cost of an environmental impairment encountered during the course of a construction project can exceed $1 million without even considering bodily injury claims that often follow a pollution event. Contractors need to have a clear understanding of their pollution exposures and associated costs in order to make sound risk management decisions. The speaker will use case studies to demonstrate common and not-so-common claim scenarios, show how to evaluate the cost-benefit of this coverage, and present methods to avoid claims and manage risk. Owners, contractors, and insurance representatives will gain an understanding of contractors pollution liability (CPL) insurance, what these products do and do not cover, cost structure, and available markets.

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Mr. Blasting is a professional geologist and licensed commercial insurance broker with 30 years of experience in delivering sustainable, cost-effective solutions to meet the environmental risk management objectives of a diverse client base. Mr. Blasting is a licensed property and casualty broker with ONEGROUP Bailey & Haskell Insurance and also manages the agency’s Environmental and Energy Group. He has strategized, designed, and implemented projects involving large-scale, multinational mergers and acquisitions; complex redevelopment of environmentally distressed properties; environmental compliance programs involving federal, state, and local regulatory requirements; and turnkey site redevelopment under various brownfield cleanup programs. Mr. Blasting has utilized insurance products to finance risk associated with ongoing operations, construction activities, mergers and acquisitions, brownfield restoration, property development, and environmental cleanup.

Mr. Blasting earned a bachelor’s degree in geology from State University of New York Buffalo and a master’s degree in earth sciences (hydrogeology concentration) from SUNY Albany.
Notes
Introduction

Presentation Goals

Why It’s Important

The Opportunity
What is Pollution?

**Pollution Conditions** means the discharge, dispersal, release or escape of any solid, liquid, gaseous or thermal irritant or contaminant, including, but not limited to, smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, medical waste and waste materials into or upon land, or any structure on land, the atmosphere or any watercourse or body of water, including groundwater, provided such conditions are not naturally present in the environment in the amounts or concentrations discovered.

Regulatory Definition

Regulators such as USEPA and state/local agencies have widely-varying definitions for pollution that typically require the presence of a ‘hazardous substance’ at a concentration that exceeds a published standard or ‘poses a threat to human health or the environment’.
What is Risk?

- Miriam-Webster: The possibility that something bad or unpleasant (such as an injury or a loss) will happen.
- IRMI: Uncertainty arising from the possible occurrence of given events.
- USEPA: The chance of harmful effects to human health or to ecological systems resulting from exposure to an environmental stressor. A stressor is any physical, chemical, or biological entity that can induce an adverse response. Stressors may adversely affect specific natural resources or entire ecosystems, including plants and animals, as well as the environment with which they interact.

Risk Factors

Once the risk factors (the WHAT can go wrong) are listed, you need to assign a level of impact (HOW BADLY it affects the achievement of your goal) and a frequency (HOW OFTEN it happens). See diagram.
Risk Management

Components of Risk Management

• Avoid risk
• Quantify risk
• Eliminate or reduce risk to lowest level
• Transfer risk
• Finance risk
• Manage risk (training, monitoring, response planning, communication, etc.)

Risk managers should employ all components of a robust risk management program

Risk Transfer

• Contractual risk transfer utilizing standard language
• Indemnification and hold harmless language
• Insurance requirements
• ‘Duty to defend’
What is CPL

Contractors pollution liability (CPL) is a contractor-based policy, offered on a claims-made or occurrence basis, that provides third-party coverage for bodily injury, property damage, defense, and cleanup as a result of pollution conditions (sudden/accidental and gradual) arising from contracting operations performed by or on behalf of the contractor.

(definition from “Contractors Pollution Liability Update,” Expert Commentary by Jeff Slivka, IRMI.com, October 2007)

The CPL Market

- Approximately 40 insurance carriers offer some form of CPL (New Day Market update 2014)
- Approximately $1 billion market
- Limits as high as $50 million
- Blanket coverage mostly annual policies (some multi-year offerings are available)
- Project policies tend to extend 10 to 15 years
- Specifications requiring CPL coverage remain the biggest buying motivator
**Coverage Summary**

- Bodily Injury, Property Damage or Environmental Damage (including Natural Resource Damage) resulting from a Pollution Condition caused by Covered Operations (nonte-sudden or occurring over time)
- Emergency response expenses (i.e. costs to prevent further damage)
- Claims associated with transportation, either by or on behalf of the named policyholder.
- Pollution as a result of disposal at off-site facilities
- Pollution coverage associated with the named policyholder’s owned/leased locations, such as maintenance facilities, offices and warehouses
- Mold, microbial matter, or bacteria (including Legionella)
- Crisis management expense
- Litigation and subpoena expense including loss of earnings
- Green building materials

**Coverage Details**

- Minimum Premium: $5000 (Environmental Small Business: $2,500)
- Minimum Deductible $2,500
- Limits as low as $300K and as high as $50M
- Claims-made or occurrence basis
- Project or blanket coverage available
- Worldwide coverage available
- Covers completed operations
Combined Forms

Combined GL/CPL
Add Contractors Professional
Other packages evolving

Eligible Classes

Construction:
- Construction Managers
- General Contractors
- Home Builders
- Demolition
- Street & Road
- Sewer and Utility
- Marine
- Disaster Restoration

Environmental:
- Lead/ Mold/ Asbestos Abatement
- Site Restoration
- Emergency Spill Response
- Hazardous/ Non-Hazardous Site Cleanup
- Aboveground Storage Tanks/USTs

Operators & Maintenance:
- Airport Fueling/ FBOs
- Water/Waste Water Plant Operations

#IRMI2015
Contractor Environmental Exposures

- Misuse of product
- Mold due to construction defects
- Tanks (carried on site or existing)

Site Management
- Waste stream management
- Soil Management

Subcontractor’s negligence
- Disturb asbestos in walls, disturb lead-based paint
- Storage

Cause of Loss

- Failure to identify & control contamination
- Inadequate ventilation
- Release from fuel tanks
- Transport and disposal of hazardous materials
- Mixing incompatible materials
- Release of noxious fumes from building materials
- Exacerbation of unknown contamination
- Damage to structure, utilities, etc.
Common Hurdles

“I don’t have a pollution exposure”
Many insureds do have an exposure but don’t realize how it can affect their business.

“I’ve never had a pollution loss.”
A pollution loss is typically a severity loss – not a frequency loss.

I’m not worried because my GL policy will cover the loss.”
Broad pollution exclusions typically attached to most policies

“Environmental Insurance is just too expensive - I can handle this on my own!”
No, you can’t

Why It’s Important

Professional E&O
Not if…. When
Education of buyer
Differentiator
Claim Examples

**Flooring Contractor**
- Suit alleges that the insured’s wood stripping and refinishing activities emitted fumes, which caused bodily injury and property damage.
- *Estimated resulting loss is $138,102*

**Pipeline Contractor**
- Employee punctured a benzene pipeline with the backhoe resulting in 8400 gallons of benzene being released into the soil. Even though all of the lines had been previously marked, the operator still punctured the line.
- *Resulting loss $993,316*

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**Claims (cont.)**

**Roadway Striping / Painting Contractor**
- Applied primer to road and it rained.
- Rainwater washed some chemicals into sewer system, shutting it down.
- $74,364 paid to cleanup & restock anaerobic bacteria at waste water treatment plant.

**Concrete Contractor**
- Applying epoxy sealant in a building released fumes to other portions of the building.
- Evacuation & business interruption claim of $190,100.
Claims (cont.)

**Residential Contractor**
- Contractor disposed of sealants and solvents containing toluene in a covered dumpster.
- Two 10-year-old children entered the dumpster, were overcome by fumes and died.
- $2,000,000 claim filed against the contractor for illegal disposal, etc.

**Bridge Maintenance**
- Sandblasting operation resulted in lead paint residue on residential properties.
- Cleanup and settlement costs exceeded $350,000.

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**HVAC Contractor**
- Installed HVAC system in new commercial office building.
- After three years, mold and mildew cause release of bacteria.
- BI and property damage responsibility of claim exceeded $500,000; contractor required to remedy the situation.

**Site Contractor**
- Site contractor utilized topsoil at six separate job sites.
- Subsequent testing discovered PCBs in the soil.
- Site remediation/restoration costs exceeded $180,000; actions pending.
Wrap Up

Questions?
Thank you!

Contact information

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W2. Contractors Pollution Exposures and Risk Management Solutions

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**James F. Blasting**

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