Survival with Environmental Insurance

**Weigh the new cost of risk against the new cost of risk management.**

Insurance’s role and effectiveness in recent events has prompted many businesses to reassess the adequacy of their entire insurance portfolios to reassure some financial security under a variety of scenarios.

Until recently, the insurance market had been deemed the most competitive property/casualty insurance market ever, characterized by fierce competition in virtually every segment of the market and intense price cutting of premiums among insurance carriers. In such “soft” markets, businesses benefited from the most reasonable prices for insurance they may have ever seen.

Despite its higher price tag, however, the value of a comprehensive insurance program has grown proportionately as well, as companies seek enhanced protection from the unexpected. The question — what if it happened to us? — is driving businesses to reach new levels of preparedness in this changed world, seeking additional protection for employees, their operations and their financial future. Many businesses that, until now, have chosen, by design or default, to ignore some of their less obvious exposures, will no longer regard such coverages as “discretionary.”

This new attitude is particularly true of environmental impairment (pollution) liability insurance. In the past, many businesses failed to purchase environmental coverage because of a belief that environmental exposures were minimal or even non-existent. Unfortunately, when an environmental incident did occur, those businesses went off to court with their insurance companies to fight for their coverage, due to the “pollution exclusions” found in their commercial general liability policies. Some spent a lot of years and a lot of money trying to get their insurance firms to pay out on an environmental claim. Some companies won. Many did not.

**Expansion of environmental liability**

Environmental liabilities, it seemed, were once synonymous with Superfund. A business’ major environmental concern was being named partly responsible for polluting a site and ended up snarled in years of Superfund litigation. Businesses not involved in some industrial processes, therefore, did not lose sleep over their environmental liabilities.

That was then, however. As compliance with environmental regulations tightened with landmark legislation, like the Clean Water Act (1970), Clean Air Act (1970) and others, concerns about the environmental safety of operations, waste practices and products grew. Concerns were further pushed by a more litigious society that was growing more aware of environmental hazards as well as the cost of cleaning up pollution. Ongoing development of new technologies and products also bring new risks to light. Likewise, court decisions continue to shape and re-shape the definition of what constitutes a pollutant as well as continue to define the language of pollution exclusions and what warrants coverage in any given circumstance. Hence, environmental liabilities are forever changing.

Whether a business manufactures a product or delivers a service, pollution risks are quite real to them now and losses continue to occur with predictable frequency. Environmental liabilities are a bigger concern for a growing number of businesses and public entities. While remediation contractors, waste companies and hazardous waste storage facilities bear obvious vulnerability to environmental risks, manufacturers, general contractors, schools and numerous other businesses and institutions are quickly finding the potential environmental risks inherent in their own operations. In the new reality of today’s risks, by ignoring their environmental exposures a business is, by default, making a decision to self-insure their environmental liabilities and that can be quite expensive. Typical pollution losses can average between $200,000 and $400,000. Therefore, environmental exposures are potential financial losses from which many businesses would find it difficult to recover.

**Today's environmental insurance market**

Historically, business’ reactions to environmental insurance were adverse. Coverage was too expensive. The policies
were too limiting. Many businesses used to scoff at the average premiums of environmental insurance programs. Today, there is a lot less scoffing. The terms and conditions of environmental coverages are also much more customer friendly. Likewise, the availability and affordability of coverages offer businesses more opportunities to fill gaps in insurance programs.

Today’s environmental insurance coverages are more comprehensive than the first policies offered. For example, consider a Pollution & Remediation Legal Liability (PARLL) policy. The PARLL policy provides coverage for preexisting and new pollution conditions. This policy also includes coverage for on-site and off-site remediation expense; third-party coverage for on-site and off-site bodily injury and property damage; legal defense expense; and remediation expense. Additionally, the policy covers third-party bodily injury and property damage claims for sick building syndrome, lead paint, asbestos and naturally-occurring radioactive materials, as well as contingent transportation liability. Businesses can also enhance their policies to cover underground storage tanks.

Other environmental insurance products available today may include business interruption, professional liability, errors and omission, protection for subcontracted activities, and more.

Nowhere is the increased attention to environmental liabilities and use of environmental insurance to address them, more prevalent than in the transfer of property. It is a rare case today where a property transaction takes place without addressing possible environmental exposures. Commercial transactions now typically begin with the hiring of an environment consultant to perform, at the very least, a Phase I site assessment to determine the environmental condition of the property in question.

Everyone involved in a property transaction – the seller, the buyer, the hired consultant and even the lending institution – need to manage his or her environmental exposures. To do so, in addition to performing due diligence, many commercial property owners, are also using pollution insurance coverages to protect themselves from exposures posed by the general operation and maintenance of their properties as well as from the liabilities posed by their tenants. Pollution insurance also offers protection from environmental risks such as those associated with indoor air quality or the storage of chemicals on the property. Some non-residential owners are even requiring their tenants to carry pollution protection as part of their leasing agreements.

Holistic approach

In addition to the environmental insurance policies themselves, many environmental insurance providers also offer loss control and claims management services in conjunction with their policies. These services can be extremely valuable to a company’s overall risk management program and critically important, especially in the event of an environmental loss.

A distinct characteristic of any environmental claim is its sense of urgency. Environmental incidents require instant attention. Often, that means sending environmental consultants, remediation contractors, and claims experts to the scene of an environmental incident whether it be a chemical spill on a highway, a ruptured sewer line on a construction site, or the discovery of a leaking storage tank at your own facility. Quick and effective action is not only necessary to contain the incident but to contain a company’s liability and expense.

Handling environmental claims continues to present new and interesting challenges. In the past, far too many companies that suffered an environmental loss enter the situation unprepared to handle the costs, decisions and activities required. They are faced with finding a qualified remediation contractor, choosing the proper clean-up method and action plan, negotiating with state or federal agency or defending a third-party claim in court.

Businesses everywhere are becoming fully engaged in weighing the new cost of risk against the new cost of risk management as they deal with the fiscal consequences of the increasing insurance costs. Risk management has a whole new significance in business these days and across the spectrum of industries, businesses are certainly positioning themselves for better protection against all types of risks. In spite of sharply rising P&C insurance prices, or maybe even because of such rate increases, the value of environmental insurance protection has never been greater.

Environmental Insurance Policies

There are varieties of products available today that respond to government-mandated cleanup costs as well as the costs for first and third party bodily injury, property damage and legal defense. Typically, such policies are designed to cover either locations or operations.

- Consultant’s Environmental Liability (CEL): The Consultant’s Environmental Liability provides coverage for acts,
errors and omissions, as well as pollution conditions arising from professional services rendered by the insured.

- General Contractor’s Pollution Legal Liability (GCPL): The General Contractor’s Pollution Legal Liability policy provides coverage for environmental exposures that would otherwise be excluded under a General Liability policy. GCPL provides sudden and gradual coverage for pollution conditions arising from covered operations performed by or on behalf of the named insured, including third-party bodily injury and property damage, cleanup costs and defenses expenses. Additionally, the policy coverages vicarious liability for pollution conditions arising from subcontracted operations.

- Pollution and Remediation Legal Liability (PARLL): The Pollution and Remediation Legal Liability policy provides coverage for loss, remediation expense and legal defense expense under one policy for sudden and gradual pollution conditions at or from covered locations.

- Pollution Cleanup/Environmental Remediation: The Pollution Cleanup policy provides coverage for first-party cleanup costs arising from pollution conditions on or at covered locations. Cleanup costs, also referred to as remediation expense, are costs incurred for the investigation, removal or treatment of pollution conditions to the extent required by environmental regulations. This policy applies to government-mandated cleanup costs.

- Errors and Omissions Liability: This policy responds to acts, errors and omissions resulting from covered professional services performed by the named insured, including full pollution coverage. Some features of this policy include coverage for prior acts and case-by-case project management coverage.

- Commercial Property Redevelopment Pollution Policy (CPR): The Commercial Property Redevelopment Pollution Policy serves the needs of all parties involved in transfer or redevelopment of contaminated sites. The policy provides both first and third party coverage, as well as Remediation Stop Loss coverage (see description below), to any eligible property located in the United States or Canada. This coverage can be written for an individual site or a portfolio of properties.

- Remediation Stop Loss Programs: Remediation Stop Loss programs provide protection against cost overruns resulting from scheduled remedial activities.