



# Environmental Liability

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## Historical Perspective

- Sudden & Accidental Exclusions (1970 – 1985)
- “Absolute” Pollution Exclusion (1985 – 1990)
- Stand-alone Pollution Market (early – mid 1980’s)
- “Total” Pollution Exclusion (1990 – 1995)
- GL Pollution Coverage Give-backs (mid-1990’s to present)
  - sudden & accidental
  - time element
  - named peril



# US EIL Market

## ■ Environmental market

- includes pollution coverages as well as GL, auto, WC, umbrella
- wide variety of insureds:
  - environmental contractors, consultants and engineers, general/trade contractors
  - manufacturing, commercial and educational facilities

## ■ Environmental exposure

- arises from Pollution Conditions



# Most Common Environmental Coverages

- Environmental Impairment Liability (EIL) aka Pollution Legal Liability (PLL) etc.
- Contractor's Pollution Liability (CPL)
- Professional liability (separate from the Architects & Engineers market)
- Storage tanks
- Transportation



## Other Environmental Coverages

- **Cost Cap/Remediation Stop Loss**
  - financial guarantee for the cost of cleanup
  
- **Secured creditor/lender's liability**
  - protects a lender's mortgage interest
  
- **Closure/post-closure**
  - for waste disposal facilities, as per regulatory requirements



# Pollution Coverage Conditions

- loss must arise from a Pollution Condition
- basic coverage provided:
  - bodily injury
  - property damage
  - legal defense
- third party exposure
- clean-up standards are defined by government regulation



# Pollution Coverage Conditions

## ■ Pollution Legal Liability (PLL):

- typical insureds include industrial, commercial, medical, educational, etc.
- pollution conditions on, at, under or emanating from the covered location
- claims-made and reported
- scheduled locations
- may use a retroactive date and/or known conditions exclusions to preclude coverage for historical events
- extensive due diligence infrastructure is needed to provide underwriting information



# Pollution Coverage Conditions

## ■ Contractors Pollution Liability (CPL):

- can cover a wide variety of contractors, consultants and engineers
- claims-made or occurrence
- may be combined with claims-made professional liability coverage
- exposure defined by scope of Covered Operations and/or Professional Services





## Coverage Conditions – Other Issues to Consider

- legal and regulatory developments
- new chemicals of concern (perchlorate, endocrine disruptors, etc.)
- ecological issues/natural resource damages
- transactional issues
  - contractual liability
  - indemnifications
- manuscript policy language



## Key & Emerging Issues

- Policy terms and rates (monitoring + adequacy)
- Environmental vs. non-environmental E&O
- Mold/indoor air quality
- Natural resource damages
- Silica
- Asbestos
- International
- Integration with casualty operations



# Future Outlook

- Focus on:
  - emphasize core products and execution
  - terms and conditions
  - continue to develop actuarial database
  - international aspects
  - distribution management and education