

# MARSH

## GLOBAL ENVIRONMENTAL PRACTICE



### Non-Owned Disposal Site (NODS) Coverage

Non-owned disposal sites (NODS) are third-party locations where generated waste is shipped for treatment, storage, or disposal. Entities utilizing NODS typically have no ownership interest or control over such facilities. Liabilities associated with NODS can arise from both current *and* historical use of these operations. The primary way liabilities can be imposed is through environmental regulations; within the United States, such liabilities primarily arise under the Comprehensive Environmental Response, Compensation and Environmental Liability Act (CERCLA, or “Superfund”) which was enacted in direct response to releases, or threatened releases, of hazardous substances and petroleum products that may endanger public health or the environment, but they can also arise through violation of a variety of other laws and regulations on both the federal and local government level. Most of these regulations were developed to facilitate environmental cleanups. For example, under CERCLA, the following parties may be held liable for site cleanups:

- the owner or operator of the property from which the release stemmed;
- the owner or operator of the property at the time the pollutants were disposed of;
- the owner who generated the waste, arranged for the disposal or treatment, or arranged with a transporter for transport for disposal or treatment of pollutants; and
- any person who accepted pollutants for transport to disposal or treatment facilities.

These FAQs focus on the entity that arranged for the disposal or treatment of hazardous substances and petroleum products, the environmental claims that may arise from those activities, and the environmental insurance products that are designed to respond to these exposures.

#### **Q: Who are the entities against which NODS claims are usually filed and what are the reasons for these claims?**

- A. NODS claims can be filed against any type of entity—regardless of whether it is in the waste management business, retail, health care, or any other type of business. These types of claims are usually filed against entities that generated or arranged for transport of wastes that were sent to NODS. An office facility, for example, that recycles printer ink cartridges could have a claim made against it for bodily injury, property damage, and/or cleanup costs, if the facility to which it sent the cartridges is involved in a cleanup action.

Most often entities become involved with NODS claims when they are named as a potential responsible party (PRP) for having shipped waste to the NODS. Liability and costs are typically allocated to PRPs depending upon history and a number of technical factors.

#### **Q: Don't I have NODS coverage on my general liability or property policy?**

- A. Most general liability and property policies have pollution exclusions which completely exclude coverage for liability stemming from disposal activities.

**Q: What types of policies will respond to NODS claims?**

- A. NODS coverage is usually provided as an extension to site-specific environmental policies; most commonly, pollution legal liability (PLL) coverage or similar policies, as well as contractor pollution liability (CPL) policies. The coverage extension is designed to respond to claims for bodily injury, property damage, or cleanup costs as a result of pollution conditions at, or emanating from, a NODS. The pollution conditions can be historical (i.e., happened prior to the policy inception date, but discovered and reported during the policy period) or new (i.e., happened during and reported during the policy period).

PLL policies provide coverage for one or more scheduled locations that are owned or leased by the insured. The NODS coverage extension is designed to provide third-party coverage for materials sent from these scheduled location(s) to a NODS by the insured. The NODS locations are typically scheduled onto the PLL policy. In rare circumstances, insurers will provide coverage for NODS without providing other PLL coverages.

In addition, NODS coverage can be endorsed onto a CPL policy. The contractor usually has to schedule the NODS location onto his/her CPL policy. Similar to a PLL policy, in rare circumstances, insurers will provide coverage for NODS without providing other CPL coverages.

**Q: What types of claims are the policies designed to protect insureds against?**

- A. NODS coverage is designed to respond to claims arising from bodily injury, property damage, and cleanup costs at the NODS if a claim is made against the insured. These claims can be a result of pollutants at the NODS, or emanating from the NODS. These claims can stem from historical pollution conditions (that are not known by the insured under the PLL or CPL policies) or they can stem from releases that occur during the policy period of the PLL or the CPL policy and were unknown or unanticipated at the time the policy was put in place.

**Q: What types of claims are these policies not designed to protect insureds against?**

- A. There are three main types of claims that NODS coverage extensions are not designed to respond to:
  - 1) claims that are for known pollution conditions at the NODS;
  - 2) claims made by owners, operators or contractors of the NODS; and
  - 3) claims made against NODS that the insured owns or operates.

**Q: What are the types of businesses that can benefit from these types of policies?**

- A. NODS liability can have an impact on many business types—not just businesses that have hazardous and petroleum products treated, stored, or disposed. The following is a sampling of industry classes / types of entities for which Marsh has helped to find solutions:

Contractors	Higher Education	Property Management & Development
Engineers	Mining	Real Estate
Forest Products	Office/Administrative	Retail
Governmental & Public Entities	Oil & Gas	Utilities
High Technology	Owners & Developers	Waste Disposal

**Q: Can you get NODS coverage for multiple locations?**

- A. Yes, NODS coverage can be obtained for one location or multiple locations. Usually, these locations have to be scheduled onto the PLL or CPL policies and the information that is scheduled usually consists of the name of a NODS, its address, and its EPA (or similar) ID number.

**Q: Can you get “blanket” NODS coverage?**

- A. Although there have been instances where insurers have agreed to provide “blanket” NODS coverage (i.e., the insurer provides coverage for any disposal site the insured is using, or has used without directly endorsing the NODS location onto the policy), this only happens in rare instances. In those cases where such coverage is provided on a blanket basis, 1) the insurer is typically familiar with the NODS and its operator; 2) the NODS had no historical claims activity; and 3) the insured’s NODS locations are typically limited to a specified geographic area.

**Q: Are these policies claims-made and reported, or can I get occurrence coverage for NODS?**

- A. This coverage is typically provided on a claims-made and reported basis.

**Q: What is the maximum policy term available in the marketplace?**

- A. Since this coverage is typically an extension of coverage to PLL and CPL policies, the maximum policy term (i.e., duration) available in the marketplace is concurrent with the maximum policy terms provided by the insurer. The maximum policy term for PLL policies is typically 10 years. There are two general types of CPL policies. One provides coverage to an insured for all the activities for which coverage is requested (i.e., a practice policy); and one provides coverage for a specific project (i.e., a project policy). The maximum policy term for CPL practice policies is typically three years, whereas the maximum term for CPL project policies is 10 years. Completed operations coverage can often be structured for up to 10 years for the CPL portion of the program, which may also extend coverage for NODS.

**Q: What are the maximum limits available in the marketplace?**

- A. Individual insurers can usually provide maximum limits of between \$25 and \$50 million. Additional limits can be provided by either stacking insurers or obtaining facultative reinsurance through an individual insurer’s various reinsurers. It is possible to design programs with limits well in excess of \$100 million, but this is rare. CPL limits are available from \$1 million up to \$100 million on a per insurer basis.

**Q: Who are the major insurers that provide this coverage?**

- A. ACE, AIG Environmental, Arch, Chubb, Liberty, XL Environmental, and Zurich are the primary insurers involved in this type of business.

**Q: Can this coverage be obtained for my international locations?**

- A. Yes.

**Q: Upon what are the underwriting decisions based?**

- A. Insurers usually have a database that they have developed over the years with information about NODS on a domestic and international basis. This information usually consists of the name, address, EPA (or similar) ID number, and public records information such as regulatory and environmental

Web sites. News organizations files may also be utilized. Underwriters review these databases, as well as the information that the insured has provided (such as environmental studies, assessments, characterization reports (e.g., Phase I & II site assessments and environmental audit reports, and similar documents), regulatory correspondence (No Further Action letters, clearance letters, and related documents). Underwriters then combine this information with contracts that the insured has entered into with the NODS, as well as other site-specific or transaction-specific information.

**Q: How long does it take to structure a program for NODS?**

- A. This depends upon the number of and complexity levels of the NODS and the types of coverages that have been chosen. After submission of the required materials, a quote is typically obtainable within one to two weeks. Larger policies, or situations that are more complicated, may take much longer for the insurer to perform its due diligence.

**Q: How much do these programs generally cost?**

- A. The cost for NODS coverage extensions varies based upon the number of locations, the nature of the potential exposures, the limits, and deductibles requested. Call your Marsh broker to discuss conceptual program structure and conceptual pricing.

*The information contained in this document provides only a general overview of subjects covered, is not intended to be taken as advice regarding any individual situation, and should not be relied upon as such. Insureds should consult their insurance and legal advisors regarding specific coverage issues.*

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