

MARSH

GLOBAL ENVIRONMENTAL PRACTICE

Questions and Answers About
Cleanup Cost-Cap Policies



Environmental cleanups may be expensive. Moreover, these cleanups have a history of exceeding their original estimates. A Cleanup Cost Cap (CCC) policy is a financial tool that allows companies to limit the costs related to the cleanup of contaminated sites. Below are answers to the most frequently asked questions about CCC policies that may help your company address its specific environmental issues.

Q: What are some of the factors driving companies to utilize insurance products to address their environmental concerns?

A: The Securities and Exchange Commission (SEC) is scrutinizing financial statements and pressuring companies for further disclosure of environmental liabilities. Following the SEC's lead, FASB, and the AICPA, the two leading financial accounting authorities, have released guidelines to help companies comply with the SEC's directives. As a result, it is common now to see accruals for environmental contingencies on balance sheets, with further details in the financial statement notes.

Q: Why would an environmental cleanup exceed its original cost estimate?

A: Environmental cleanups have a history of exceeding projected cost estimates. Cost overruns can occur due to several reasons, which include, but are not limited to, the unforeseen performance failure of the selected technology, the identification of additional contamination, the increase of cleanup requirements by regulators, and the underestimation of time for project completion.

Q: How does the CCC program work?

A: A typical cleanup requires a remedial action plan (RAP) that details the delineation of the contamination (as provided in a Phase II Report) being remediated, the methods to be used to complete the cleanup, and the cost estimates for the project. The remediation contractor that oversees the project provides a RAP. The actual cost detailed in the RAP is a known liability, and therefore must be retained by the insured. The risk-transfer layer provided by the CCC policy responds to cost overruns in excess of the known liability and a negotiated buffer layer. This buffer layer is often 10 % of the total cleanup cost. In addition, a finite risk mechanism can be incorporated into the program to fund for known third-party liabilities.

Q: What are the benefits of a CCC?

A: A CCC can eliminate future unexpected expenses associated with cost overruns from cleanups of contaminated properties. It can be especially helpful in mergers and acquisitions by eliminating the financial uncertainties associated with environmental liabilities.

Q: Who needs CCC policies?

A: This program is designed specifically for companies that face liability for cleaning up contaminated sites. It can be used to cap a company's cleanup costs at locations such as landfills, mines, or industrial sites. These locations can be designated as either EPA and state Superfund sites or RCRA Corrective Action sites. It can also benefit real estate investors and developers of contaminated properties known as "Brownfields" by allowing them to develop firm cost estimates for cleanups. This, in turn, helps them to more accurately evaluate their total investment costs and, ultimately, their expected profitability.

Q: Can such a program be structured for potentially responsible party (PRP) groups for Superfund sites?

A: A program can be structured for an entire PRP group, some of the PRPs, or just one company.

Q: Can this program be written for contractors performing the cleanup as well as the companies—PRPs—that are paying for it?

A: Yes, contractors often are interested in this program when they have to bid jobs at a fixed price. In that case, the program is not bound until the contractors are awarded the project.

Q: Can a program be written for a project already in progress?

A: Yes, programs can be written for individual phases of the project that have not yet started.

Q: Can a CCC cover multiple locations?

A: Aggregate coverage can be crafted for a single site or multiple sites under one policy form.

Q: Can a CCC be combined with an Environmental Impairment Liability (EIL) policy?

A: Yes, it is quite common to combine the CCC and EIL programs into one manuscripted coverage form to provide coverage for the "known" and "unknown" issues associated with a site or multiple sites.

Q: What limits of liability are available in the environmental insurance marketplace?

A: Marsh has structured CCC programs with \$800,000,000 in limits for a single site, and more than \$800,000,000 in limits for multiple site cleanups.

Q: What are the major insurers?

A: AIG Environmental, XL Environmental, ACE Environmental and Zurich American.

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

A: The maximum policy term (duration) available in the marketplace is 30 years. However, these policies are generally purchased with 5-year to 10-year terms.

Q: Is the coverage claims-made or occurrence?

A: Claims-made.

Q: Can these programs be written for international cleanups?

A: Yes.

Q: What information is needed to launch this program?

A: The program usually is based upon a remedial action plan that has been approved by the appropriate regulatory agency. However, certain programs have been structured without such information.

Q: What about "voluntary" and "semi-voluntary" cleanups, where there are no approved remedial action plans?

A: With many companies being proactive about their contaminated locations, many cleanups do not have direct regulatory oversight and approval. This does not pose a problem in the underwriting process. What is important is that a description of the remediation plan, a cost estimate, and a project schedule exist.

Q: How long does it take to develop one of these programs?

A: For straight risk transfer, a preliminary cost indication can sometimes be obtained within 48 hours as long as sufficient information is available. If the client decides to pursue the program, due diligence must be performed before the proposal can be finalized. Depending upon the number and the complexity levels of these sites, this process may require 3 to 10 weeks. For a single site, the due diligence process could be completed in less than 3 weeks. For international cleanups, the process generally will require more time.

Q: How much do these programs generally cost?

A: The typical cost of a CCC is between 7 percent and 12 percent of the estimated cleanup cost for a limit of insurance equal to the estimated cleanup cost. The program usually includes a 5 percent to 10 percent buffer (deductible).

It is important to understand the environmental solutions that can help protect your investment. Please contact your local Marsh representative to discuss these issues in greater detail.

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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