

MARSH

GLOBAL ENVIRONMENTAL PRACTICE



Questions and Answers

About Contractor Pollution Liability Programs

Environmental liabilities can arise from contractor activities that involve environmental work as well as contractor activities that don't directly involve environmental work. In either case, environmental liabilities can generate significant financial uncertainties.

There are generally two major environmental concerns associated with contractor activities. First, the possibility of creating a "pollution condition" at a project site that may result in cleanup costs, bodily injury claims, third-party property damage claims and business interruption claims. Second, the possibility of exacerbating a "known" or "unknown, pre-existing" pollution condition which can also result in cleanup costs, bodily injury claims, third-party property damage claims and business interruption claims. In addition, if a contractor is conducting transportation activities on behalf of a client or disposing of materials either at the project site or away from the project site, the contractor could be brought into a claim involving those materials under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA—or Superfund), regardless of his/her involvement in the creation of the problem.

Q: What are some examples of contractor exposures that can create potential environmental problems?

A1: General Contractor activities present various exposures at project sites. These can include, but are not limited to:

- insufficient contractual language and controls to minimize liability from subcontractors—often, no certificate of environmental insurance is on file from subcontractors conducting environmental work, which results in no review of environmental policies;
- the lack of proper training and certification for staff members and subcontractors performing environmentally-related activities and services;
- dewatering activities which draw contamination from adjacent properties onto the construction site;
- disruptive atmospheric conditions caused by fugitive volatile compounds and dust released during site activities.
- failure to properly locate underground pipelines and utilities;
- failure to identify hazardous wastes that are generated on-site, and disposal of hazardous wastes at landfills that are not designed to hold or handle such hazardous waste products; and
- no stormwater pollution prevention plans for activities which can result in inadequate control of runoff from contracted operations.

A2: Environmental Contractor activities present various exposures at a project site which include the ones mentioned in A.1 (above) and also the following:

- inadequate control of runoff from site activities;
- lack of proper training and certification for staff members and subcontractors performing environmentally related activities and services;
- inadequate recordkeeping of the generation, transportation, and disposal of hazardous wastes and environmental issues;

- transportation of hazardous wastes to the general contractor's facility for short term storage, without proper permitting and insurance for the transportation and storage of hazardous wastes; and
- the contractor assuming "arranger liability" by participating in the selection of the disposal site for hazardous waste.

All of these exposure scenarios can trigger cleanup obligations for contractors or their client and/or result in claims for third-party bodily injury and property damage, including business interruption.

Q: What types of coverages are available in a contractor's pollution liability (CPL) program?

A: The CPL is designed to respond to claims for third-party bodily injury and property damage (including cleanup costs) resulting from pollution conditions that are "unknown" and "unexpected" at nonowned locations. The policies can also incorporate coverage for the transportation and disposal of waste and soft costs associated with the work done at project sites. Included in the program are legal defense costs.

Q: What types of businesses can benefit from CPL programs?

A: Environmental risks can have an impact on nearly every type of business. The following is a sampling of industry classes or situations for which Marsh has helped to find solutions:

- general contractors;
- environmental contractors;
- environmental consultants;
- disposal contractors;
- construction contractors;
- defense contractors;
- trade contractors and subcontractors; and
- waste transporters.

Q: What are the two ways that CPL programs can be structured?

A: CPL programs can be structured in two ways. One is to provide coverage for all activities that contractors perform throughout the year (practice program). Another way that a program can be structured is to provide coverage for a specific project (project-specific).

Q: What about coverage for claims that can be presented years from when a policy has expired?

A: CPL programs can be developed on a claims-made or an occurrence basis. These are the only environmental pollution products that can be purchased on an occurrence basis. The difference between these two types of triggers is that on a claims-made basis, the claim must be made and reported to the insurer during the policy period. On an occurrence-based policy, the pollution condition must have commenced during the policy period and can be presented to the insurer either during the policy period or at any time in the future. In addition, policies can be written so that there is an extended reporting period for any claims that may be presented after the policy has expired (for a designated period of time), as long as the pollution condition occurred during the course of the work that was initially covered under the environmental policy. Also, completed operations coverage can be added onto a CPL policy which is designed to provide coverage for pollution claims related to work that has been completed after a project is done.

Q: Can a CPL policy cover my own locations where I store materials—hazardous and nonhazardous—which may result in a pollution condition?

A: Yes. Oftentimes, the CPL policy can be extended to provide coverage for some of the contractor-owned locations, particularly for maintenance yards and shop operations. Usually, if there are large manufacturing locations where a contractor's equipment is manufactured or labs associated with contractor activities are owned, these locations require a separate pollution legal liability (PLL) policy.

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

A: The maximum policy term (duration) available in the marketplace for a non-project-specific policy (i.e., a master CPL policy) is 3 years. For project-specific policies, the maximum term is 10 years. Completed operations coverage can often be structured for up to 10 years for the CPL portion of the program.

Q: What are the major insurers?

A: AIG Environmental, XL Environmental, Zurich American, ACE Environmental, Chubb Environmental, Arch Specialty, and Liberty Environmental.

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

A: Limits are available from \$1,000,000 up to \$100,000,000 on a per insurer basis. If limits are required above that amount, insurers have been able to structure programs on a combined basis in order to reach limits above these figures.

Q: Can a CPL be combined with other types of insurance programs?

A: Yes. It is quite common to combine CPL programs with an environmental professional or errors and omissions (E&O) liability program into one manuscripted coverage form which is designed to provide coverage for contractor's operations as well as professional services conducted at job sites.

Q: Can these programs be written for international locations?

A: Yes.

Q: Upon what are the underwriting decisions based?

A: The primary factors that underwriters review in determining breadth and cost of coverage include: a review of the scope and nature of work that will be done; and the experience of the contractor and all subcontractors conducting the work. Additional issues that are reviewed include the contractor's claims history and historical and anticipated future revenues.

Q: How long does it take to structure these programs?

A: This depends upon the complexity of the work being done and/or the project being done. After submission of the required materials, a quote may be obtained in one to two weeks. Larger policies or more complicated situations may take a month or longer for the insurer to perform his/her due diligence.

Q: How much do these programs generally cost?

A: The cost for a CPL program varies based on the work that will be conducted by the contractor and subcontractors, the claims history, and the contractor's revenues or project revenues. Typically, CPL programs have minimum premiums of \$15,000.

It is important to understand the environmental solutions that can help protect your company and investments. 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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