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Current Trends in Site-Specific Environmental Coverage

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Since 1985, insurance policies for environmental hazards have increasingly focused on specialized policy language that addresses both 1) specific risks faced by particular classes of policyholders and 2) types of risks. The current trends in environmental issues outlined here may inspire new and more specialized environmental products. Policyholders unfortunately may face resistance to payment of significant environmental claims due to an invisible "7 digit" exclusion, but those that need environmental insurance at least should be aware of the different types of products in the market.

Property Transaction Coverage

Environmental liabilities relating to mergers and acquisitions are likely to present continuing issues in the years to come. Because of the often latent and unforeseen nature of environmental liabilities, entities that seek to acquire or purchase property need to protect themselves when nego-

tiating property transactions by considering the property's potential for and history of environmental liabilities. Even if there is no readily identifiable problem with a site involved in a transaction, pollution liability insurance may still be important because of the risks of contamination from adjacent properties and businesses. There are numerous incidents in the case law where companies were forced to litigate coverage for remediation costs resulting from the actions of a predecessor corporation's actions.

Industry-Specific Coverage

While site-specific pollution liability insurance has always targeted environmental facilities, such as landfills, waste recycling or disposal facilities, and manufacturers and industrial plants of all kinds, in recent years insurance companies have increased their marketing efforts toward specific industries. For example, in the spring of 2011, Ironshore's environmental group added to its suite of site-specific insurance products a program to address the specific risks of the education sector, providing coverage for environmental pollutants, including mold, Legionella, drinking water con-

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taminants, and PCB-containing materials, without scheduling specific school properties. Ironshore has similar programs in place for the hospital-ity and health care industries. Under its NextGen Protection product, Chartis advertises coverage targeting specific industries such as health care, higher education, municipal governments, fertiliz-er manufacturers and manufacturers of paints and coatings. ACE Westchester offers a package policy, including pollution legal liability (also known as PLL) coverage for the green energy marketplace, designed to cover particular exposures faced by companies specializing in renewable clean fuel technologies and alternative power generation. Specialized PLL policies also exist for real estate lenders, offering coverage for mortgage impair-ment caused by pollution conditions occurring at a covered location where a borrower has defaulted during the policy period.

Natural Disasters

The natural disasters of the past dozen years, including the BP oil spill and the hurricanes in the Gulf Coast states, have had devastating envi-ronmental effects. Beyond triggering property damage and business interruption claims, these events have also imposed significant environ-mental liabilities on property owners, including losses resulting from tank or storage failures, overflow from waste or treatment facilities, con-tamination as the result of buildings collapsing or

exploding, and contaminant migration from off-site onto an insured's premises and vice versa.

Incentives

In 2002 the Small Business Liability Relief and Brownfields Revitalization Act was signed into law, amending the Comprehensive Environmen-tal Response, Compensation, and Liability Act (commonly known as Superfund) to provide small businesses with funds to assess and clean up brownfields. Other federal brownfield legislation offers tax incentives to encourage development of brownfield sites. Many states also now offer incen-tives for ensuring that environmental insurance is in place to cover cleanup and development costs of hazardous sites, including brownfields. Some local governments, including New York City, offer credits and similar incentives.

Some environmental carriers are also taking steps to actively encourage "green" improve-ments. Chartis operates the Sustain-a-Build Pro-gram that provides policyholders whose buildings are green, i.e., LEED-certified, with a discounted premium for a PLL policy. Additionally, Zurich advertises that its definition of "cleanup costs" can be expanded to include "green remediation costs" and "green standards" as an additional limit of li-ability. The liabilities covered by these expanded definitions include costs for using green cleanup technologies and for replacing damaged property to comply with green standards.▲

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