POTENTIAL EXPOSURES

- COMPANIES WITH A FOOTPRINT
  - Operational (new) liabilities
  - Legacy liabilities (pre)

- REMEDIATION PROJECTS

- CONSTRUCTION PROJECTS
Resiliency is the capacity to absorb external stresses imposed by long-term climate change and short-term extreme weather events.

- How does the insurance market and products take resiliency into consideration?
- Does it make a difference in the risk profile of a remediation project?
- Are there insurance products which cover risks associated with GHG effects?
STATE OF THE ENVIRONMENTAL MARKET
Approximately 30 markets now offer Pollution Liability products

- AIG exiting North America, and the Chubb-ACE merging
- Capacity remains abundant, with upwards of $500MM available
- Tailored and flexible policy forms and manuscripted endorsements

Rates

- Relatively steady, though some markets will push for flat to single-digit increases upon renewal
- Transactional exposures will vary in scope for limits, policy terms, and coverage spectrum

Policy Coverage and Enhancements

- Stand-alone carriers offer limits up to $50MM each incident, $50MM aggregate
  - Excess limits are available up to $500MM if requested
- Policy terms of up to 10 years for pre-existing (historical) and new conditions
- Excess of indemnity-structure is available from a handful of A-rated markets
- Tiered retentions, in addition to aggregate and maintenance, are recommended based on severity of exposure
- Policies can be assigned to property purchasers, although not recommended; instead, we would suggest new buyers be added to the policy as additional insureds
Some traditional markets have taken a step back from certain risks

- Redevelopment, particularly Brownfields
- Heavy industrial property use
- USTs greater than 20 years old
- Policy term greater than 3-years
- “New” entrants into the market have filled this gap

Recent Trends and Emerging Risks

- Vapor Intrusion
- Drinking Water Quality
- Named storm peril
- Virus and bacteria (i.e. Ebola, Norovirus)
- Bedbugs
- Biological Agents / Substances, Medical Waste
- Bioterrorism
- Nanotechnology
- Cyber threat (pollution controls)
- Licensed Environmental Professional / State Voluntary Cleanup Programs
2 ENVIRONMENTAL INSURANCE SOLUTIONS
1. POLLUTION LEGAL LIABILITY / ENVIRONMENTAL IMPAIRMENT LIABILITY

2. COST CAP INSURANCE

3. CONTRACTOR’S POLLUTION
POLLUTION LEGAL LIABILITY

- Clean-up costs for any onsite or offsite contamination
- Third-party liability claims including:
  - Property damage
  - Bodily injury
  - Natural resource damages
  - Business interruption and loss of rental income due to pollution conditions
- Defense costs are included within the limit of liability
- Non-owned disposal sites where hazardous materials and wastes from the site are taken
- Transportation (first and third-party) of materials to and from the insured property
POLLUTION LEGAL LIABILITY (CONT.)

- Mold Coverage
  - Remediation costs and third-party liability coverage
  - Lead-based paint and asbestos-containing materials and cleanup in soil and groundwater

- Illicit abandonment (aka “midnight dumping”)

- Emergency response

- Crisis response management costs – public relations management costs
• Cost Cap coverage is offered by AXIS and Beazley

• AXIS’s program is designed primarily for owners
  – Coverage also includes a Protective Professional Indemnity coverage enhancement, in addition to the cost overrun protection, i.e. negligence of client’s contractor or consultants for 1st/3rd party claims

• Coverage for cost overruns associated with an approved Remedial Action Work Plan; coverage to remediate known pollutants and newly identified pollutant

• Beazley’s program is focused on contractors, for a Guaranteed Fixed Price Remediation (GFPR) contract.
  – Coverage includes: indemnification for cost overruns associated with an approved remedial action workplan, and will address scheduled activities for the workplan regarding;
    – increased constituents,
    – greater length of time to address constituents,
    – greater volumes discovered of the known constituents;
  – coverage will not exceed ten (10) years
CONTRACTOR’S POLLUTION LIABILITY

• Costs associated with third-party liability claims alleging damages from client’s contracted / covered operations at the site that in turn result in pollution incidents / events. This would include:
  − Remediation expenses / cleanup costs
  − Property damage
  − Bodily injury
  − Natural resource damages
• Defense costs are included within the limit of liability
• Non-owned disposal sites where hazardous materials and wastes from the site are taken

• Coverage for claims arising out of spills during transportation (first and third-party) of materials to and from the job site
• Mold / legionella pneumophila, etc. as a result of contracting operations are included
• Can include Errors & Omissions, as well as Protective Indemnity
2012 – Ontario Ministry Of Environment (MOE) issued remediation orders to Northstar Aerospace; however, because of concerns about Northstar’s ability to reimburse the MOE for cleanup costs

October 28, 2013 – 12 former directors and officers of bankrupt Northstar Aerospace agreed to pay $4.75MM to environmental regulators to remediate contamination

Standard D&O insurance excludes coverage for all loss “arising out of” the actual or alleged discharge of pollutants, with limited giveback for securities and shareholders claims as well as defense costs under Insuring Agreement A; this does not cover for remediation expenses on-site or off-site

Given the severity of some losses, potential for bankruptcy and public opinion, there will likely be an increase in frequency of actions against D&O’s in the future with respect to pollution liabilities

Freedom Industries case developing in US courts
Greg is a specialist in environmental risk transfer and mitigation, and has provided environmental risk consulting for clients for the last 29 years. He works with clients with a wide range of backgrounds from real estate owners and developers to Private Equity firms providing with innovative solutions to assist in the development, and acquisition and/or disposition of assets. He is a pioneer in the structuring of long term liability management solutions utilizing trusts and annuity products. Greg placed one of the first at its time EPP programs (finite/funded cost cap insurance programs). He went on to place at least 50 cost cap policies along with over 2000 PLL polices in his career, all focused on environmental insurance. Greg received a B.S. in Business Administration from San Francisco State.

Gregory Schilz
Executive Vice President

Gregory.Schilz@jltus.com
415.819.6585