

Environmental Insurance and Risk Management Tools

Glossary of Terms

The following terms are typically used by the environmental insurance industry, transactional specialists, and other parties involved in using environmental insurance or risk management tools. While many of the terms may have more than one definition (e.g., Amendment and Third Party), only the definition specific to its application to environmental insurance and risk management tools is provided. Italicized words represent words used in the definition of a term that are also defined elsewhere in this glossary.

- A -

Accident – An unexpected event that happens by chance and is not expected in the normal course of events.

Act of God – A sudden and violent act of nature that could not have been foreseen or prevented (e.g., flood, earthquake).

Additional Insured – An individual or entity that is not automatically included as an *insured* under the *policy* of another, but for whom the named insured's *policy* provides a certain degree of protection. The named insured's impetus for providing additional insured status to others may be a desire to protect the other party because of a close relationship with that party (e.g., redevelopment authority serving as an intermediary during the cleanup and redevelopment process) or to comply with a contractual agreement requiring the named *insured* to do so (e.g., customers or owners of property leased by the named *insured*). In most cases, additional insureds are protected only when a *claim* filed against them also is filed against the named *insured*.

Admitted Policy – An *insurance policy* that is written and issued in a specific locale, by an *insurer* authorized to transact business under the confines of the local insurance laws.

Aggregate Limits – Indicates the amount of *coverage* that the *insured* has under the *insurance policy* for a specific period of time, usually the contract period, no matter how many separate *accidents* may occur. Once the aggregate limit has been reached, no more damages can be allocated to that *policy*. For example, a property covered under a *policy* with a \$1 million limit per *occurrence* and a \$2 million aggregate limit will have *coverage* for up to \$1 million per *occurrence* or incident, and *coverage* for up to \$2 million in total damages under the *policy*. Thus, if a *policyholder* had three *claims* in a year for \$750,000 each, the insurance will cover the first \$2 million dollars, at which point the \$2 million aggregate will have been reached, and the remaining \$250,000 will not be covered by the *policy*.

Amendment – A formal document revising the provisions of an *insurance policy*.

As-Is – A risk allocation tool used in property transactions that involves an express statement that the seller makes no *representations or warranties* about the condition of the property. It is intended to preclude buyer from recovering damages from seller for *known or unknown conditions* at time of sale. Also, it is intended to assist enforceability. Specific environmental conditions, including latent defects, should be disclosed to buyer and indemnification should expressly state that the property transfer includes all risks associated with listed federal and state environmental laws.

Assumed Liability – Liability that would not rest upon a person except that he has accepted responsibility by contract, expressed, or implied (a.k.a., a contractual liability).

Assumption, Retention, and Releases Provisions – A risk allocation tool used in property transactions wherein the buyer accepts or seller retains, responsibility for known or unknown environmental conditions and releases the other party from liability for current and future claims arising from the specified conditions.

Attachment Point – Monetary level of expenditures that must be exhausted before payment from an *insurance policy* begins.

- B -

Bodily Injury – Bodily injury, sickness, disease, mental anguish injury, shock, or building-related illness sustained by any person, including death resulting therefrom, caused by pollution *conditions*.

Bodily Injury Liability Insurance – This *coverage* protects an *insured* against legal *liability* for injury to another person arising from pollution *conditions* or an *accident*.

Broker – An independent person or firm who acts on behalf of the *insured* in placing business with the insurance company. Typically, a broker's compensation is on a commission basis.

Brownfields – With certain legal exclusions and additions, the term “brownfield site” means real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.

Brownfields Act of 2002 – The Small Business *Liability* Relief and *Brownfields* Revitalization Act (H.R. 2869) (*Brownfields* Act of 2002) was signed by the President on January 11, 2002. The intent of the act is “to provide certain relief for small businesses from *liability* under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, and to amend such Act to promote the cleanup and reuse of *brownfields*, to provide financial assistance for *brownfields* revitalization, to enhance State response programs, and for other purposes.” Under the law, the purchase of environmental insurance is an eligible activity for grantees.

Business Interruption – Business expenses and *loss* of income resulting from fire or other *insured* peril.

- C -

Cancellation – Termination of an insurance *coverage* during the *policy period* by the voluntary act of the insurance company or *insured*, effected in accordance with provisions in the contract or by mutual agreement.

Captive Insurer – A bona fide insurance or *reinsurance* company that is established and owned by a parent company or group of companies (who are non-insurance companies) to insure their own risks. Captive insurance is a form of *self-insurance*.

Carrier – The insurance company or the one who agrees to pay the losses. The carrier may be organized as a stock or mutual company, a reciprocal exchange, an association of *underwriters*, or a state fund.

Claim (on an *insurer*) – A request for payment for a *loss* that may come under the terms of an insurance contract. There are two types of claims: *first party* and *third party*.

Claim (on a *policyholder*) – The assertion of a legal right alleging *liability* or responsibility on the part of the *insured*, arising out of pollution *conditions* (e.g., lawsuits, regulatory actions).

Claims Made Based Coverage – The trigger of *coverage* is a *claim* being made and reported during the *policy period*; therefore, insurance *coverage* is applicable only if the *insured* files a *claim* with the *insurer* during the period expressed in the *policy*.

Clause – A term used to identify a particular part of a *policy* or *endorsement*.

Co-insurance – Co-participation that involves the payment by the *insured* of a predetermined proportion of all costs above the amount at which the insurance begins to pay.

Comprehensive General Liability (CGL) Insurance – This *policy* provides broad *protection* against situations in which a business must defend itself against lawsuits or pay damages for *bodily injury* or *property damage* from *third party claims*. CGL contracts are enforced and interpreted based on state law. CGL insurance has become more restrictive over time; therefore, it rarely covers environmental liabilities.

Conditions – Provisions of an *insurance policy* that state the rights and duties of the *insured* and *insurer*.

Covenants – A risk allocation tool used in property transactions which may involve a promise or agreement by seller or buyer to do, or refrain from doing, an act. For example, a covenant may allocate responsibility for tasks, particularly elements of the cleanup, transferring permits, continued operations of assets, and compliance with environmental laws.

Coverage – The scope of the *protection* provided under a contract of an *insurance policy*.

- D -

Declarations – A term used in insurance for the portion of the contract (a.k.a., Dec Sheet or Dec Page) that contains information such as the name and address of the *insured*, the property *insured*, its location and description, the *policy period*, the amount of insurance *coverage*, applicable *premiums*, and supplemental representations by the *insured*.

Deductible – A threshold on a policy basis that the *insured* must pay for damages (i.e., *insured loss*) before an *insurer* will provide *coverage*. In other words, whether the policy covers one year or 10 years, the deductible applies to the entire *policy period*; therefore, a deductible needs only to be met once during that *policy period*, not on an annual basis (unless otherwise stipulated in the *insurance policy*).

Defense Clause – A provision in a casualty *insurance policy* that provides additional *coverage* for *defense costs*.

Defense Costs – Legal costs, charges, and expenses incurred in the investigation, defense, or the adjustment of a *claim*.

Defined Excluded Liabilities – A risk allocation tool used in property transactions that identifies and allocates between seller and buyer particular risks associated with the business and some or all of the assets and liabilities and specifies whether they are included in or excluded from the risks allocated in the transaction.

De Minimis – This is a Latin phrase which means “the law does not care about very small matters.” In other words, the issue of concern is unlikely to have substantial impact, is immaterial, or is insignificant.

Due Diligence – Due Diligence is a term of art in the business community that refers to the combination of procedures and investigation undertaken before a business transaction (e.g., acquisition of real property or granting a loan in order to assess potential liabilities and problems). In particular, information is gathered to gauge the level of environmental risks associated with the proposed transaction so that parties may mitigate or allocate such risks, as well as qualify for any special liability relief available (e.g., innocent landowner defense, secured creditor protection). In order to qualify for any special liability relief, a party must often meet a test called “all appropriate inquiry,” which is a standard that is normally consistent with good commercial practices that a person exercises for his own protection.

- E -

Effective Date – The date on which an *insurance policy* goes into effect.

Endorsement – An addition, not a part of the original contract, which cites certain terms and which becomes a legal part of that *insurance* contract. Typically, it is an *amendment* to the *policy* used to add or delete *coverage*. It is also referred to as a “*rider*.”

Entity – Property owners, property purchasers, developers, investors, municipalities, and other groups that may have a financial stake in a property and/or *insurance policy*.

Environmental Impairment Liability (EIL) Policies – Insurance policies introduced in the early 1990s designed to cover environmental liabilities. Due to high *premiums* and limited *coverage*, EIL policies were soon discontinued.

Excess Limits Coverage – Provides *coverage* against losses in excess of a specified dollar limit or *attachment point*.

Expiration Date – The date (often shown on the *Declarations Page* of the *policy*) when *coverage* will stop. It may be a specific date or a statement that *coverage* is continuous until

cancelled.

Exposure – Degree of *hazard* threatening a risk because of physical *conditions* (external or internal). In the insurance field, this term may have several meanings: 1) possibility of *loss*; 2) possibility of a *loss* to a risk caused by its surroundings; or 3) extent of risk (e.g., one car *insured* for one year).

Extended Reporting Period – Lengthens the period in which a *claim* may be made against the *insured* and reported to the *insurer*, however *claims* must arise out of pollution conditions that commenced prior to the end of the *policy period*.

- F -

First Party Claim – A *claim* made by the *policyholder* for reimbursement by his or her insurance company.

- H -

Hazard – A specific situation that increases the probability of the *occurrence* of *loss* arising from a peril, or that may influence the extent of the *loss*. For example, *accident*, sickness, fire, flood, *liability*, burglary, and explosion are perils. Slippery floors, unsanitary *conditions*, shingled roofs, congested traffic, unguarded *premises*, and uninspected boilers are also hazards.

- I -

Indemnification – A risk allocation tool used in property transactions which typically involves an agreement that provides for one party to bear the costs, either directly or by reimbursement, for damages or losses incurred by a second party. Typical costs may include costs of investigations and cleanup actions, *third party* personal injury claims, etc.

Indemnify – To restore the victim of a *loss*, in whole or in part, by payment, repair, or replacement.

Indemnity – In general, means the reimbursement for a *loss*, but also can be used to mean a benefit provided by a *policy*.

Indirect Loss (or Damage) – *Loss* resulting from a peril but not caused directly and immediately thereby. For example, *loss* of property due to fire is a direct *loss*, while the *loss* of rental income as the result of the fire would be an indirect *loss*.

Insurability – Acceptability of an applicant for insurance by an insurance company.

Insurance Archeology – The reconstruction of an organization's *insurance policy* history (e.g., *CGL policies*) for the purpose of filing *claims* based on those policies.

Insurance Policy – Legal document issued to the *insured* setting out the terms of the contract of insurance in order to transfer the risks from *insured* to *insurer*.

Insured – The person or persons (a.k.a., the *policyholder(s)*) whose risk of financial *loss* from a peril covered by the *insurance policy* is protected by an *insurance policy*.

Insurer – The insurance company offering insurance *coverage*.

- K -

Known Conditions – Conditions existing (e.g., on a property) prior to the inception of an *insurance policy*.

- L -

Legal Defense Costs – See *Defense Costs*

Liability – Broadly, this is any legally enforceable obligation to another party (e.g., legal responsibility, duty, or obligation). This liability may arise from contracts either expressed or implied or in consequence of *torts* committed.

Liability Limits – The sum or sums beyond which an insurance company does not protect the *insured* on a particular *policy* (i.e., the maximum amount a *policy* will pay).

Litigation – The process of a lawsuit.

Loss – An *occurrence* that is the basis for submission and/or payment of a *claim*. Losses can be covered, limited, or excluded from *coverage*, depending on the terms of the *policy*.

- M -

Manuscript – To individually tailor policies to suit each *insured*. Unlike “boilerplate” policies for vehicle or workers’ compensation coverage, environmental insurance policies are generally always manuscripted.

Moral hazard – 1) Relates to an increased probability of a *loss* through moral lapse of the owner (e.g., an *insured* previously convicted of arson, “Burn down the house to collect the insurance.”). 2) Relates to an increased probability of a *loss* arising from an apathetic *insured* or an *insured* who is indifferent to *loss* because of the existence of insurance to cover the *loss* (e.g., “Let it burn because it is insured”, failure to repair faulty wiring which is considered more expensive than insurance premiums to cover the risk).

- N -

Named Insured – The person (or persons) in whose names the *insurance policy* is issued.

Negligence – Failure to use the degree of care which an ordinary person of reasonable prudence would use under the given circumstances.

Non-Admitted Policy – An *insurance policy* that does not require the *insurer* to transact business under the confines of local insurance laws, allowing the *insurer* greater flexibility in the design of the policy and the *coverage*.

- O -

Occurrence – An event that results in an *insured loss*.

Occurrence Based Coverage – The trigger of insurance *coverage* is the *occurrence*, not the *claim*; therefore, the *claim* can be made anytime during or after the *policy period*.

Owned Property – Property that is owned or leased by the *insured*.

- P -

Personal Property – Any property of an *insured* other than real property (i.e., land and any structures or minerals associated with the land).

Policy – See *Insurance Policy*.

Policyholder – See *Insured*.

Policy Period (or *Term*) – The period during which the *policy* contract provides *protection* (e.g., six months or one or three years).

Pooled Insurance – An insurance pool refers to a group of organizations that insures certain risks, sharing *premiums*, losses, and expenses among themselves. Generally, “pooling” is used when a single *entity* does not have significant enough liabilities or resources to attain insurance and/or is not large enough to self-insure.

Portfolio – Refers to insurance *coverages* for a combined set of sites, whether or not there is more than one *insured* organization.

Post-Signing and Pre-Closing Conditions – A risk allocation tool used in property transactions which involves the requirement that some act be performed by a party to an agreement before closing the transaction. It establishes certain conditions that must be met, typically by the seller, prior to closing, and it may allow a party to “back out” of deal or adjust purchase price or other terms, if conditions not met

Premises – The particular location of property or a portion thereof as designated in a *policy*.

Premium – The amount of money charged a *policyholder* for an *insurance policy*.

Product Liability Insurance – Provides *protection* against financial *loss* arising out of the legal *liability* incurred by a manufacturer, merchant, or distributor because of injury or damage resulting from the use of a covered product.

Property Damage – This can have a number of meanings: 1) physical injury to or destruction of tangible property, including the *personal property* of third parties; 2) *loss* of use of such property that has not been physically injured or destroyed; or 3) diminished *third party* property value provided that such physical injury or destruction and/or *loss* of use are caused by pollution *conditions*.

Property Insurance – Property insurance indemnifies an *insured* whose property is stolen, damaged, or destroyed by a covered peril.

Protection – Term used interchangeably with the word “*coverage*” to denote the insurance provided under the terms of a *policy*.

- Q -

Quote – An estimate of the cost of insurance supplied by the insurance company.

- R -

Rate – The per unit cost of insurance. See also *Premium*.

Reinsurance – A procedure by which an insurance company insures its risks (e.g., those *liabilities* associated with its *policyholders*) with another insurance company. It is an arrangement by which one *insurer* transfers all or a portion of its *risk* under a *policy* or group of policies to another *insurer* or reinsurers. Thus, reinsurance is insurance purchased by an insurance company from another *insurer* to reduce *risk* for the original *insurer*.

Remediation Expense – Expenses incurred for or in connection with the investigation, monitoring, removal, disposal, treatment, or neutralization of pollution *conditions*, including *replacement costs*. Often, to be covered under insurance, such activities would need to be required by: 1) federal, state, local or provincial laws, regulations or statutes, or any subsequent amendments thereof, enacted to address pollution *conditions*; 2) a legally executed state voluntary program governing the cleanup of pollution *conditions*; or 3) determination or settlement of a lawsuit.

Re-opener Coverage – *Coverage* that insures for the costs of additional remediation ordered by environmental regulators or compelled by law after a cleanup has been completed and a state agency has provided an assurance such as a “No Further Action” letter.

Replacement Cost – May include: 1) the cost of replacing property without deduction for depreciation; and/or 2) costs necessarily incurred by the *insured* to repair or replace real or *personal property* damaged during the course of *remediation expense* in order to restore the property to the condition it was in prior to *remediation expense*. Within the insurance field, it is often required that these costs shall not exceed the net present value of such property prior to the investigation, removal, disposal, treatment, or neutralization of pollution *conditions*.

Representations and Warranties – A risk allocation tool used in property transactions which involves statements of fact (representations) and promises (warranties) that a seller makes to a buyer. Typically provided by seller to disclose environmental risks associated with acquisition of business or some or all of its assets.

Rider – See *Endorsement*.

Risk – A chance of *loss* with respect to person, *liability*, or the property of the *insured*.

Risk Management – Management of the pure risks to which a company might be subject. Typically, it involves analyzing all *exposures* to the possibility of *loss* and determining how to handle these *exposures* through such practices as avoiding the *risk*, retaining the *risk*, reducing the *risk*, or transferring the *risk*, often by insurance.

- S -

Self-Insurance – A form of *risk* financing through which an *entity* assumes all or a part of its own losses. Self *insurers* may purchase insurance to cover excess losses.

Self-Insured Retention (SIR) – Threshold(s) on an annual basis that must be met before *coverage* will be applied.

Surrogation – The right of an insurance company to step into the role of the party whom they compensate and sue any party whom the compensated party could have sued.

- T -

Term – A period of time for which a *policy* is issued.

Third Party – A party that is not a party to the *insurance policy*. Parties to the policy are typically the *insurer* and the *insured*. Third parties may include private parties and government entities enforcing regulations. A *claim* (e.g., a lawsuit) by an *entity* against a *policyholder* of another company and the payment, if any, will be made by the *policyholder's* company or *insurance policy*.

Third Party Insurance – *Protection* of the *insured* against *liability* for damage to or destruction of the bodies or property of others.

Tort – Any wrongful act, damage, or injury done willfully, negligently, or in circumstances involving strict *liability*, but not involving breach of contract, for which a civil lawsuit can be brought.

Toxic Tort Claims – Include a wide variety of *claims* of harm due to long-term *exposure* to toxic chemicals and contamination. Includes *claims* for *bodily injury*, *property damage*, property stigma, medical monitoring, and product *liability*.

Trigger – Refers to the conditions or events that activate *coverages* included in an *insurance policy*.

- U -

Umbrella Liability – A form of insurance *protection* against losses in excess of amounts covered by other *liability* insurance policies. Also may protect the *insured* in many situations not covered by the usual *liability* policies.

Underwriter – A person trained in evaluating risks and determining the *rates* and *coverages* that will be used for them.

Underwriting – The process of selecting risks for insurance and determining in what amounts and on what terms the insurance company accepts the *risk*.

- W -

Workers' Compensation – A system (established under state laws) under which employers provide insurance for benefit payments to employees for their work-related injury, death, and disease regardless of fault.

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