



Environmental Insurance

May 29, 2017
2017 SPIAO Conference



Environmental Insurance

- Absolute Exclusion under General Liability Policy except Hostile Fire
- Coverage can be brought back by:
 - Endorsement - Sudden & Accidental only with a specific reporting period e.g. 120, 240 hours
 - or
 - Purchase Environmental Impairment Liability Policy covering scheduled locations and operations
- Municipalities generally only purchase Third Party Coverage



As a municipality – where is my exposure

Municipal Operations

- Waste Removal
- Waste Water Treatment Plants
- Salting of roadways, sidewalks
- Underground or above ground storage tanks
- Landfills – open and closed
- Acquiring property resulting from unpaid taxes
- Known/unknown conditions prior to acquiring a property for future municipal use
- Approving developments on a potentially contaminated site

As a Municipality how can we limit our exposure:

- Purchasing an Environmental Impairment Policy
- Completing Phase I, and if required a Phase II Environmental Site Assessment when acquiring properties including when acquiring properties resulting from a tax sale
- Knowing the history of the property before issuing a permit
- Investigating the history of the property prior to acquiring the property resulting from unpaid taxes



As a municipality – where is my exposure

Third Parties:

- Subdivision Agreements
- Contracts with Vendors
- Construction Projects
- Third Party operating your Waste Water Treatment Plant
- Leasing land and or a building to third party

As a Municipality how can we limit our exposure:

Insurance:

- Depending on what work is being done and where, if there is potential for an environmental loss - ensure the developer, vendor, contractor has in place/is required to have in place
 - Contractor's Pollution Liability Policy or
 - Sudden & Accidental coverage be endorsed onto the GL Policy or
 - Premises Environmental Liability Policy e.g. Ontario Clean Water Agency

Tender Specifications:

- Request confirmation that the automobile or contractor's equipment coverage includes costs to cleanup and restore property damaged by the sudden and accidental escape of pollutants.



As a Municipality how can we limit our exposure:

Contractual Language:

Indemnification Clause – for example:

The Contractor shall comply with the provisions of any applicable federal, provincial or municipal laws concerning the environment. The Contractor shall be responsible for any Environmental Contamination created or caused as a result of the Associated Works and shall indemnify and save harmless the Municipality from and against any and all claims and losses in respect thereof. The Contractor shall immediately take all measures which the Municipality, in its sole discretion based upon applicable safety and regulatory requirements, may consider necessary to keep the lands in an environmentally clean state and clear of all Environmental Contamination resulting from the Associated Works. The Contractor shall be solely responsible for the cost of all work carried out to correct any Environmental Contamination which occurs on other lands as a result of the Associated Works

Landlord Tenant Agreement – Termination Clause

The municipality can immediately terminate the lease if:

- the tenant changes their operations and the new operations has potential to cause a hazardous pollution condition
- the tenant sub-leases all or any part of the property to a sub-tenant whose operations could cause a hazardous pollution condition

Third Party Agreements

Ensure the vendor is not transferring their operational risks onto the municipality.
For example Third Party operating Waste Water Treatment



Road Salt

- If salt causes damage to property it becomes a contaminant
- Contamination is considered to be an environmental loss and therefore covered under your municipality's Environmental Impairment Liability Policy which is a claims made policy.
- Therefore your municipality must ensure staff are aware that they are required to report any pollution condition or potential pollution condition to your insurer as soon as they become aware of the pollution condition or potential pollution condition.
- Distribution of salt on municipal roadways, sidewalks, walkways is always a balancing act between the environment and public safety because:
 - Salt contamination would more than likely result in a relatively low-dollar nuisance claim vs a multi-million dollar road liability bodily injury claim



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THANK YOU!