
USING INSURANCE TO MANAGE ENVIRONMENTAL RISKS IN P3 PROJECTS

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This Outline and the corresponding presentation are intended as information for interested parties. Neither are intended to substitute for legal advice. Readers and/or attendees should not act upon the information contained herein without consulting legal counsel.

Types of Environmental Insurance

- **Pollution Legal Liability (PLL)** – Provides coverage for first- and third-party cleanup and tort claims arising out of environmental conditions at or affecting a property.
- **Cleanup Cost Cap (CCC)** – Also known as a “Stop-Loss” policy, pays qualified environmental remediation expenses incurred by the insured above a predetermined “attachment point.”
- **Integrated Risk Policy** – Combines aspects of PLL and CCC; pays environmental remediation expenses through a pre-funded “notional commutation account” established at policy inception. Requires initial payment by insured equivalent to present estimated value of remedial expenses set forth in an underwritten remedial plan. Also covers losses for unknown conditions or increased quantities of known contaminants discovered during work.

Key Aspects of PLL Policies

- **Surplus Lines Product** – Limited market with “Chinese Menu” approach to coverages provided, size of policy, deductibles, and term.
- **General Coverage Provided** – Cleanup and third-party BI/PD coverage for known and unknown, new and pre-existing, on-site and off-site environmental contamination. Additional coverages available including Business Interruption, NODs, Terrorism, etc.

Key Aspects of PLL Policies

- **One-Time Premium** – Premium paid and earned at policy inception – “100% minimum earned.”
- **Identity of Insureds** – Named Insured, Additional Named Insured, Contingent Named Insured and the differences therein.
- **Coverage Limits** – Per Occurrence and Aggregate coverage limits available incrementally from \$1 million to \$50 million and more.
- **Term** –PLL policies generally available for 5 and 10 year terms. Often include a renewal clause that gives the insurer flexibility on premium, policy term and other terms of renewal.

Primary Uses of PLL Insurance

- Mitigate environmental liability in connection with known and unknown environmental contamination in connection with a project site.
- Often a requirement of lenders and equity partners.
- Can be used for benefit of private developers, lenders, government agencies, operators, etc.
- Can be used as substitute for recourse environmental guarantees.

Costs of PLL Insurance Policies

PLL premiums depend upon several factors:

- Size and complexity of the “insured property”
- Type of coverage provided
- Amount of coverage provided
- Length of Term
- Deductibles/Self-Insured Retention
- Future development plans and land use
- Quality of due diligence submitted for underwriting
- Market Conditions

PLL Conditions and Exclusions

- **“You can’t insure a burning building.”**
- What’s covered by a policy generally depends on:
 - Quality of due diligence submitted
 - Known environmental conditions affecting the site
 - Development Plans and Future Intended Use
- Coverage can be denied or restricted; certain conditions or coverages may be excluded.
 - Known Contaminant Exclusion
 - Capital Improvements Exclusion

Key Aspects of CCC Policies

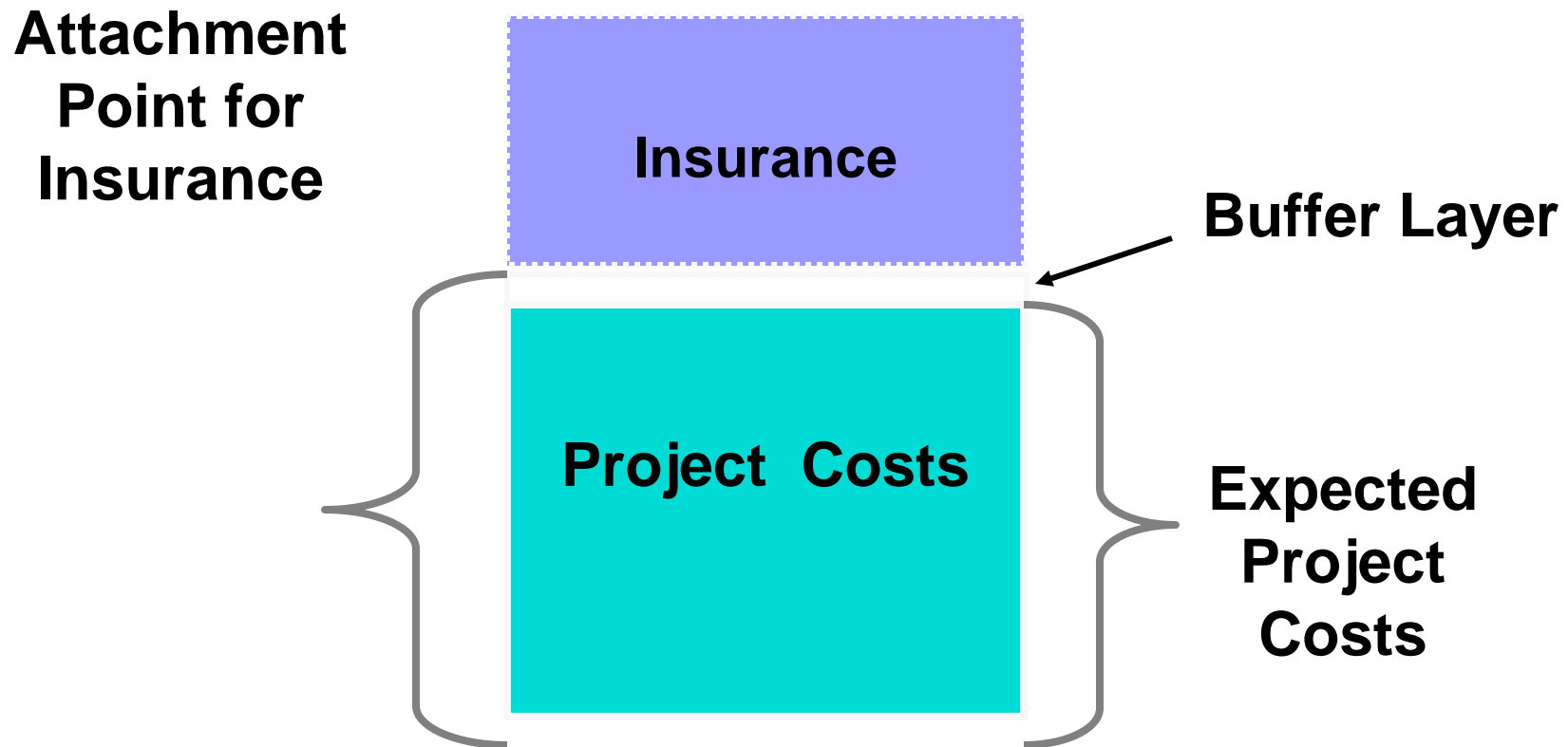
CCC coverages include:

- Remediation cost overruns
- Discovery of unknown contaminants or known contaminants where unexpected
- Additional quantities of known contaminants discovered during remediation

Key Aspects of Integrated Risk Policies

- Notional Commutation Account
 - Equal to the present value of the expected cost to extinguish environmental liabilities for all sites, based upon an underwritten Remedial Work Plan
- Remediation Contractor provisions
 - How claims are made and handled
 - “Clawback” Provisions and dispute resolution
- Contingent Insureds
 - Substitution of contractor upon default
 - Substitution of insured interests upon default
 - Revisions to Remedial Work Plan

Cost Cap Structure



Costs of CCC and Integrated Risk Insurance Policies

Premiums depend upon:

- Size, scope and cost of remediation project
- Type of project being insured
- Complexity of contamination and Remedial Plan
- Insurer's familiarity with project consultants and contractors

Managing Exclusions; Making Claims

- State of the Insurance Market.
- Ensuring necessary coverage is provided; canvassing the markets for best, most cost-effective coverage.
- Limiting the scope of exclusions.
- Using the policy to achieve risk mitigation objectives of transaction.