

PANEL SESSION 42 - Contract Management Issues Related to Insurance, Indemnity and Bonding in the Waste Management Industry

Co-Chairs: John Coffman, *DeNuke Services, Inc.*;
Jim Gilley, *Wells Fargo Insurance Services USA, Inc (WFIS).*
Reporter: Jim Gilley, *Wells Fargo Insurance Services USA, Inc.*

Panelists Included:

- Bob Patterson, *Regional Manager, Environmental – Berkley Insurance Company*
- Glynis Preister, *National Director, Environmental Practice, WFIS*
- Dave Rose, *Principal, Rose Consulting Law Firm*
- Jim Gilley, *Sr. VP Energy & Environmental, WFIS*

Jim Gilley opened the proceedings. He gave the overview of the panel discussion and introduced the first two panelists, Mr. Bob Patterson who has been leader in the environmental industry for over 25 years and Mr. Dave Rose, a lawyer who specializes in providing legal assistance and program structures for companies working under DOE contracts.

The focus of this panel session was to provide attendees with an up-to-date analysis of market conditions and insurance policy forms, endorsements to wrap the financial and insurance protection around the project and a discussion on risks associated with contracts and facility operational risks. A discussion on contract bonding for decontamination and decommissioning projects and financial assurance for radioactive materials and waste processing was also included during the panel session. The following topics were covered in the session.

- An Overview of the Current Insurance Status of the Insurance and Surety Bond Market
- An Understanding of the Underwriting Process – From Rejection to Acceptance
- Professional & Contractors Pollution Legal Liability
- Site Pollution Legal Liability
- Contract Surety – Bid, Performance and Payment Bonds
- Financial Assurance for Radiological Waste Processing
- Contract Rules of Engagement for Insurance and Bonds
- Decisions Involve Risks

All panelists are recognized leaders in the business sectors and have many years of experience in the development of corporate risk management insurance and bonding programs.

Bob Patterson was the first presenter. His presentation provided an overview on the recent growth in the environmental insurance markets due to tougher contractual obligations, stricter Federal and State regulations, tighter purchase and sell agreements and our litigious society. He explained the reasons for the various environmental insurance policies and possible combinations of the policy forms. The following policies were discussed during his presentation:

- Environmental Combined Policy
- Contractors and Consultants Pollution
- Contractors Pollution Legal Liability

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- Site Specific Pollution Liability
- Workers Compensation
- Business Auto
- Excess Liability (covering the ECP form)

Also during his presentation, Bob discussed what an underwriter needs to properly underwrite a company's operations. One of his closing comments was that many underwriters are provided with accurate information from the brokerage firms due to the lack of specific industry knowledge. This lack of information is one of the prime reasons for company programs to be declined or rated incorrectly.

Public Comment and/or Questions – Questions were focused on the how the coverages in the various policy forms differed and his expectations regarding industry conditions going into 2011.

Dave Rose's presentation focused on “how to” effectively manage government contracts. The focus of the discussion was on 17 areas to include in subcontracts. These ranged from fees to subcontractor flow down requirements. He spent some time on discussing the ownership of work materials and your rights as a subcontractor. Some time was spent on how to negotiate warranty periods, contracts to subcontractors, indemnities, general limitations of remedies and dispute resolution. Mr. Rose also discussed the flow down of FAR provisions.

Public Comment and/or Questions – Questions were focused on a number of contract provisions of concern in DOE contracts. Some time was spent on discussing the need to reduce warranty periods and the statutes of limitations in various states. He did address compliance with certain DOE flow down requires and provided some suggestions as to how to push liabilities on to others involved in the project work. He gave some examples to facilitate the understanding of the requirements.

John Coffman introduced the next two speakers, Ms. Glynis Preister with the Wells Fargo Environmental Practice and Mr. Jim Gilley, Sr. VP with the WFIS Energy & Environmental Industry Group.

Glynis Preister's presentation covered the current status of the insurance carrier market. Due to the soft industry there are now over 23 insurance carriers underwriting insurance for companies engaged in the waste management industry. Most of the policy forms that the carriers are providing are specifically underwritten to cover waste management facilities and contaminated properties. She explained how the site pollution legal liability insurance works and its limitations. She also provided a discussion on DOE work in comparison to commercial nuclear industry projects. In particular, was a discussion on the Price Anderson Act and its applicability to commercial insurance. She also discussed the purpose of American Nuclear Insurers facility and suppliers/transporters policies and their limitations are relates to both commercial and DOE work.

Public Comment and/or Questions – Questions were focused at difference in ANI's policy forms and the PLL forms. Explanations were given providing examples of appropriate application.

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Jim Gilley's presentation focused on the specialization with the insurance industry on providing program design and contractual support to companies providing waste management, technical consulting and engineering support to the DOE and commercial nuclear industries. He also provided a historical discussion on the development of environmental insurance products in relation to environmental regulations, professional liability exposures and hazardous and radiological waste facility operations. The focus on his discussion as relates to contractual compliance issues dealt with why the provisions of the policies require certain amendments to work in the event of a legal action or claim and to achieve compliance with DOE and commercial nuclear contracts.

Mr. Gilley's presentation also covered the following topics on contract surety:

- Market status
- Realistic expectations for program support
- Bid, Performance and Payment bonds
- Financial assurance bonds for RCRA compliance and radioactive waste processing

Public Comment and/or Questions – Questions were focused requirements for securing bonding support on DOE decontamination and decommissioning projects. A discussion on level of support based on corporate financial condition as relates to liquidity, indemnity, management, backlog and successful project completion was provided in response.

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