

# **Contract Management - Insurance, Indemnity & Bonds**

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**March 2, 2011**

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## Specialization

## Evolution

### Topics:

- **Insurance market & products for our business sector**
- **Distribution channels (Agent, Broker, Specialization)**
- **Professional, CPL, Product Liability & Site Pollution**
  - **Why it is critical to get it right**
- **Contract Bonds - Market Status**
  - **Realistic expectations for program support**
  - **Bid, Performance, Payment**
  - **Financial Assurance (Rad & RCRA)**
- **Rules of Engagement – Insurance, Indemnity & Bonds**

## Great Opportunity (...to solve coverage issues)

- **Soft**
- **Rate decreases - >50% comparison to 2005 levels**
- **Only exceptions – WC, products liability & property**
- **Few large players are trying to drive change (market share)**
- **Increased number of specialty players**
- **Increased number of general markets offering professional & pollution coverages (limited)**
- **Increased number of intermediaries (increased costs, lack of control)**

## Leap of Faith - distribution

- **Small local/regional agents having no or limited environmental, engineering/waste management industry expertise**
- **Large Brokers**
  - **Profit centers (group or individual)**
  - **Practice groups (control errors, expertise spread thin)**
- **Specialty – (check educational and work experience credentials)**
- **Not going to see distribution controls (\$)**

## ...it's the economy

- **“They are underwriting”**
- **Liquidity is the key**
  - **Strong Cash Positions (working capital, AR, history of deposits, limited costs in excess of billings, cash, solid equity)**
  - **Analyzing Receivables (getting paid, >90 days – discounted)**
  - **Old ratio of (1.5 assets to liabilities) is gone (5x wc/10x equity program size)**
  - **Looking at the make-up of debt (notes payables, distributions, equipment financing heavy - more subordinated)**
  - **Personal indemnity (sometimes not weighed, see brokerage statements and tax returns)**
  - **Management actions (reduction of OH, cash funding, history of payment to subcontractors)**

# **Bond Market – our industry**

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- **Type of owner (DOE, Commercial Nuclear, Construction)**
- **Class of Business (restrictions, stimulus, disadvantaged)**
- **Specialty Markets (few players... representation, professional/contractual back stops)**
- **Rate to Collateral Ratios**
- **Collateral Release (warranty periods, statute of limitations)**
- **Successful Past Project Performance**
- **Corporate resume and project summaries**
- **Acceptance of manuscript forms (remediation)**

# Professional, Contractors Pollution & General Liability

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- **Insurance company designed**
- **Policies for environmental, engineering & waste management companies**
- **Large variation in provisions, terms, exclusions & definitions**
- **Must be specifically designed for the professional services**
- **Endorsements**
  - **Radiological & Mixed**
  - **Professional services and operations description**
  - **Waste broker**
  - **Hammer clause**
  - **Knowledge of occurrence**
  - **Definition of insured**
  - **Primary & non-contributory**
  - **Project specific sublimits**
  - **Joint ventures**
  - **Many others**

# **Pollution Legal Liability & Remediation Cost Cap (GFPR)**

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- **Insurance company designed**
- **Policies for general industrial operations**
- **Large variation in provisions, terms, exclusions & definitions**
- **Must be specifically designed for the site operations & pollution conditions**
- **Endorsements**
  - **Radiological & Mixed**
  - **Contaminant concentration trigger**
  - **Reopener clause**
  - **Indemnity backstop**
  - **Natural resource damages**
  - **Consent to settle/hammer**
  - **Diminution of value 1<sup>st</sup> & 3<sup>rd</sup>**
  - **Business Interruption 1<sup>st</sup> & 3<sup>rd</sup>**
  - **Non-owned disposal sites**
  - **Definition of insured**
  - **Emergency response costs**
  - **Punitive damages, fines & penalties**
  - **Many others**



## **Bonds ...not insurance**

- **Bid, Performance & Payment Bonds**
  - Decontamination & Decommissioning Projects
  - Environmental Remediation Projects
  - Construction Projects
  
- **Closure/Post-Closure Financial Assurance**
  - Radiological & Mixed Wastes
  - Hazardous & Industrial
  - RCRA compliance

**(You should never see a bond being required for professional services)**

## Quick Course

- **Proposal or Pre-Qualification**
  - Surety reference letter
  - Not an actual guarantee
  
- **Bid & Award**
  - Guarantee to enter contract if awarded
  - \_\_\_% bid security (20%)
  - Form of bond (options – cashier's check, ILOC)
  - Default
  
- **Performance**
  - Guarantee to perform SOW
  - As bid – per cost, scope & timeline

## Quick Course

- **Payment Bonds**
  - Guarantee to pay subcontractors
  - 90% of all defaults
  
- **Closure/Post-Closure Financial Assurance**
  - Regulatory Driven (Rad, Mixed, RCRA)
  - FA amount various by state
  - Non-negotiable (for the most part)
  
- **Option to C/PC – FA**
  - Blended insurance and bond structure
  - Decreasing insurance to cash position
  - Long term pre-funded with insurance cap solution

# Contract Key Components

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**history tells me...**

- **Insurance requirements**
- **Indemnity requirements**
- **Bonding requirements (Bid, Performance, Payment)**
- **Penalties**
- **Warranties**

## Everything is negotiable

- **Modify T&C**
- **Lowest Limit of Insurance**
- **Penalties – get them out**
- **Engage broker in contract reviews (and negotiations)**
- **Fix existing contracts**
- **Maintain subcontractor certificates**

# General Rules of Engagement for Bonds

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## Everything is negotiable

- **Eliminate or reduce requirement**
- **Confirm qualified to respond to RFP**
- **Engage broker in contract reviews (and negotiations)**
- **Backstop with insurance (professional, facility pollution)**
- **Warranty Period – up-front agreement to reduce to 90 to 120 days, never over one year**
- **Collateral release agreement**

# Decisions Involve Risk

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