



2009

Pollution Legal Liability as a Tool for Managing Risk in Brownfield Transactions

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Presentation Objectives

- Provide Overview of Pollution Legal Liability (PLL) Fixed Facility Environmental Insurance
- Case Studies – How PLL helped to facilitate two Brownfield Development Transactions

What Can PLL Cover?

The background is a solid blue color with several abstract geometric shapes and lines. A large, faint, light blue circle is centered in the upper half. A solid white line starts from the top right and extends diagonally towards the bottom center. A dotted white line starts from the middle left and extends diagonally towards the bottom right, crossing the solid line.

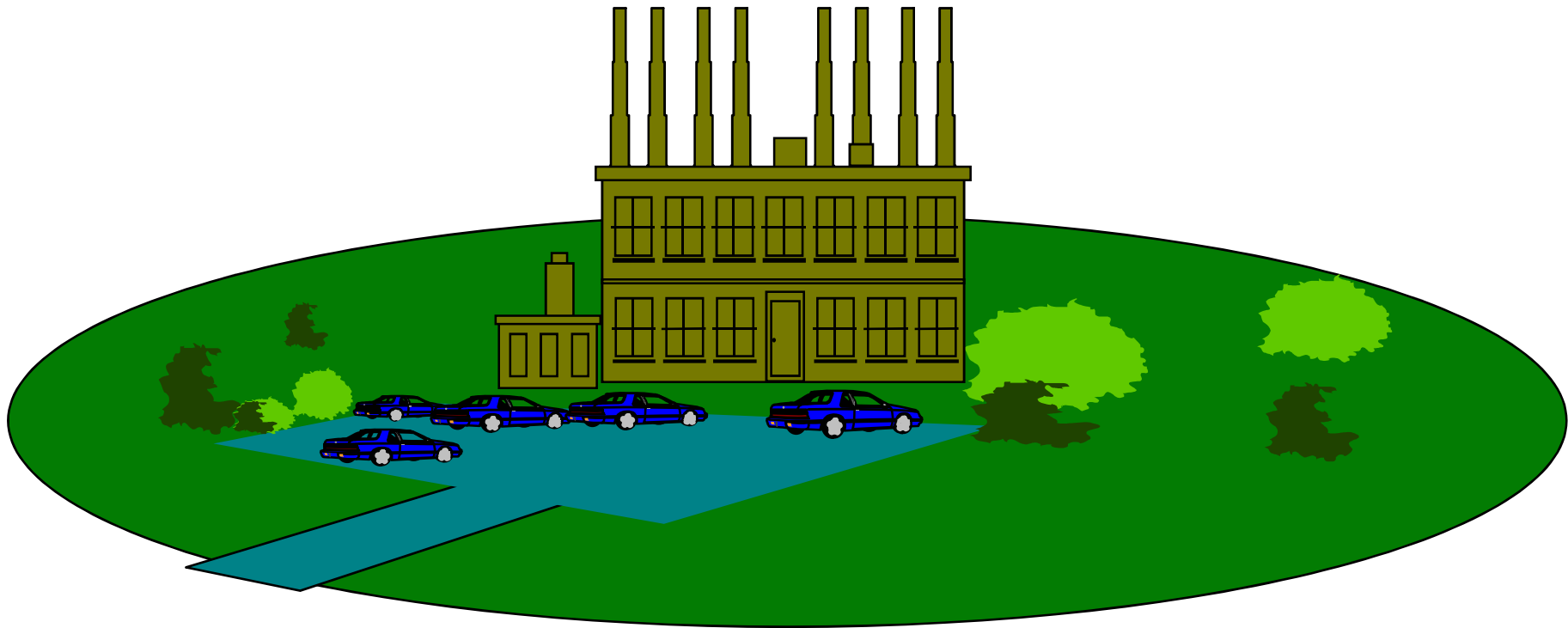
Clean-Up Costs: What Is Covered?

Clean-Up Costs means reasonable and necessary expenses, including legal expenses incurred with the Company's written consent, which consent shall not be unreasonably withheld or delayed, for the investigation, removal, remediation including associated monitoring, or disposal of soil, surfacewater, groundwater or other contamination:

1. To the extent required by **Environmental Laws**; or
2. That have been actually incurred by the federal government of Canada or any provincial, territorial or local government thereof, or by third parties.

Clean-Up Costs also include **Restoration Costs**.

On-Site Clean-Up Costs



- On-site clean-up costs coverage for contaminants on or under the insured property
- First Party Discovery Trigger and Third Party Claims

Off-Site Clean-Up Costs



- Coverage for Claims for Clean-Up Costs from Pollution Conditions which have migrated beyond the boundaries of the Insured Property
- Pollution Conditions must migrate from the Insured Property (not limited to on site sources)

Bodily Injury and Property Damage

Bodily Injury means physical injury, or sickness, disease, mental anguish or emotional distress, sustained by any person, including death resulting therefrom.

Property Damage means:

Loss of use, but not diminution in value, of tangible property of parties other than the **Insured** that has not been physically injured or destroyed;

For Off-site:

- Physical injury to or destruction of tangible property of parties other than the **Insured**, including the resulting loss of use and diminution in value thereof;

For On Site: Physical injury to or destruction of tangible property of parties other than the **Insured**, including the resulting loss of use thereof

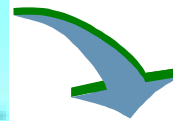
Property Damage can also include Natural Resource Damage.

On-Site Bodily Injury and Property Damage



- Coverage provided for onsite third party Bodily Injury and Property Damage arising from Pollution Conditions on the Insured Property

Off-Site Bodily Injury & Property Damage



Third Party Claims for
Off-Site Bodily Injury and
Property Damage

New Vs. Pre-Existing

Timeline of Coverage



Pre-existing Conditions
Commenced prior to
the Continuity Date

Continuity Date

New
Conditions
Commenced
on or after the
Continuity
Date

Non-Owned Locations



Transportation



Business Interruption



Microbial Matter



Legal Expense and Defense

- Right and duty to defend
- Defense costs included in definition of Loss and erode the limit of liability
- Defense costs included within the deductible

Brownfield Residential Development

➤ Overview:

- 12 acre former iron and steel manufacturing works site in Toronto area, vacant since 1990
- Site was considered largest Brownfield site in western beaches area
- Many developers were deterred by prospective environmental liability concerns

Brownfield Residential Development

➤ *Problem:*

- Long term environmental liability for known and unknown conditions
- Potential change in remediation standards in the future
- Potential for third party claims for environmental conditions in future

Brownfield Residential Development

➤ *Solution:*

PLL Select was purchased to protect against liability arising from unknown pre-existing and new pollution conditions at the subject site for cleanup, bodily injury, property damage.

Brownfield Commercial Development

Overview:

A company for sale owned a contaminated location which deterred prospective purchasers.

Developer was willing to purchase property and clean it up.

Seller wanted assurance that developer had the financial support to indemnify seller and complete the cleanup.

Brownfield Commercial Development

Problem:

By acquiring a contaminated property, the developer could be held liable for all environmental conditions, old and new, at the subject site by virtue of holding title to the property.

Seller was concerned about future civil liability claims - deeper pockets.

Brownfield Commercial Development

Solution:

PLL Select was purchased to protect against liability arising from unknown pre-existing and new pollution conditions at the subject site.

In Brownfield Transactions, PLL Can...

- Help sellers and buyers minimize or transfer risks
- Assess, quantify and control costs
- Provide protection from escalating costs
- Assurance against unknown legal liability
- Thorough clean-up will be completed quickly and economically

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