

## ENVIRONMENTAL LAW SERVICES

Environmental law has been the core of Willms & Shier’s legal services for almost 40 years. Our clients benefit from our innovative, practical solutions and extensive knowledge in a broad range of environmental law areas. Our ability to drive results is augmented by our lawyers’ unique grasp of highly technical issues, derived from educational and/or pre-law backgrounds in environmental studies, environmental engineering and geology.

### Contact



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### Our Services

- ◆ Alternative dispute resolution
- ◆ Appeals and Judicial Review
- ◆ Brownfields strategy and contaminated site remediation
- ◆ Clean technology
- ◆ Defence of regulatory prosecutions
- ◆ Drinking Water, source water protection, waste water
- ◆ Environmental approvals—air, noise, odour, waste, water
- ◆ Environmental assessments—federal and provincial
- ◆ Environmental due diligence and risk management
- ◆ Environmental management
- ◆ Environmental regulatory compliance and managing relationships with regulators
- ◆ Insurance coverage, defence and subrogation
- ◆ Land use planning and development
- ◆ Negotiating and settling disputes
- ◆ Prosecution and defence of environmental civil lawsuits
- ◆ Spills and discharges response
- ◆ Waste management
- ◆ Wildlife law and management including species at risk

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# Environmental Insurance and Director and Officer Liability

## (Key Take Aways to Consider)

When an environmental event occurs Corporate Officers/Directors (D&O) have many competing considerations. What is the extent of the damage? Who is at fault? When will the regulator come knocking? Will there be civil litigation? And what will your insurer cover?

### Types of Liability

- ◆ Civil Liability—lawsuits naming D&Os personally
  - ◆ Involves compensatory damages
- ◆ Regulatory Liability—statutory duties, orders and prosecutions
  - ◆ Involves fines, stop work orders, orders to investigate/remediate contamination

### Directors and Officers

- ◆ Can face environmental liability even if not involved in day-to-day operations
- ◆ Do not need a finding of fault to have environmental liability
- ◆ Companies can only indemnify D&Os if the company exists and has financial resources
- ◆ May be personally liable even after the company no longer exists

### Policy Considerations

- ◆ D&O Insurance *generally* does not cover environmental matters
- ◆ CGL Policies *generally* do not cover environmental matters
  - ◆ What perils is the policy designed to cover?
  - ◆ What perils are excluded?
  - ◆ Civil liability only, or regulatory actions, or both
  - ◆ Environmental compliance v Claim
  - ◆ Costs of Emergency response v Defence v Clean-up
  - ◆ Claim or Pre-claim costs
  - ◆ Indemnities from company towards D&O, including Advancement