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Environmental Insurance and Director and Officer Liability

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1. Can officers and directors of a company be held personally liable for environmental claims or violations of a company?

- The short answer is: YES.
- The longer answer is: Liability under environmental laws is generally determined based on the responsibility and control of the parties involved in the underlying event or non-compliance. Liability is determined on a case by case basis, is not limited by corporate structuring (e.g., the corporate veil) and can extend to the officers, directors and employees of a company.
- The company can, but is not required to be, subject to a claim or enforcement action as a precondition of an officer and director being held responsible for an environmental event or non-compliance.
- Directors and officers are required to take all reasonable care to prevent the corporation from violating the requirements of environmental laws and related permits/approvals.

- Regulatory directions and orders can be issued against directors and officers instead of or in addition to the corporation in response to an environmental incident.

2. Is there environmental insurance coverage available for directors and officers?

- Yes – this can be a standalone policy or part of the coverage under a corporate policy.

3. In what circumstances is environmental insurance available?

- Insurance is available to cover pollution incidents with respect to operations on a party's owned or leased properties, as part of off-site operations (e.g., contractor work, transportation of materials, etc.), impacting a party's property or other assets but originating from an off-site source and bodily injury.
- Most commercial general liability insurance policies have pollution exclusions so do not assume you have coverage.

4. What is environmental liability insurance designed to cover?

- Pollution incidents and, in particular, cleanup arising from pollution: (i) on, under or migrating from a site; or (ii) caused by contracted activities.
- Policies may also cover bodily injury and property damage claims arising from pollution.

5. What types of services do environmental liability carriers offer?

- Almost all environmental liability carriers offer a spill response hotline service, which may: dispatch spill response contractors; arrange for clean up and safe disposal; and provide confirmatory reporting and documentation (e.g., waste manifests).
- Some environmental insurance carriers also offer the following services: ensuring a lawyer is present during any Ministry investigation or inspection; paying for legal costs, environmental consultant costs, laboratory costs and other related fees; and helping ensure meeting notes, records, documents and other evidence is preserved.

6. What are some ways to reduce the environmental risk of officers and directors as well as the corporation?

- Preparing, implementing and maintaining an Environmental Management System (EMS) for the company.
- Ensuring environmental management and spill response training, procedures and policies are regularly updated and implemented. Consider also executing emergency drills, modeling potential contaminant plume releases and coordinating fire/emergency plans with local police/fire authorities.
- Implementing reporting structures to ensure upper management is aware of environmental incidents and violations to ensure it can respond properly, including appropriate budgeting and directions for corrective actions.

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