

Summer 2011

According to a recent Marsh Multinational Client survey¹, 71 percent of multinational organizations are growing more rapidly (as defined by revenues, employee headcount, and/or assets) outside of their country of headquarters than they are domestically. While growth in these new territories is exposing companies to a host of emerging risks, there has never been a time when addressing their potential environmental liabilities has been more important.

Recently, the public and regulators have come to realize that environmental regulations can serve as an important means to protect human health, natural resources and the environment. Meanwhile, the challenging global economy persists. The combination of these factors has led to more stringent environmental regulation, which provide governments with new revenue streams. These new revenue streams include the development of environmental permitting schemes for certain activities; taxes on certain activities that may impact the environment; increased enforcement, with fines and penalties for noncompliance; and liability schemes in certain countries which hold site owners or previous site owners responsible for the cleanup of polluted sites.

This increase in environmental regulatory activity has brought the topic of global environmental insurance programs into multinational organizations' boardrooms, environmental stakeholder meetings, and corporate

risk discussions. It has also led environmental insurance carriers to look outside of the United States for territories which could be potential markets for new environmental insurance products.

The following is a summary of some of the key areas of activity in the environmental insurance arena outside of the United States:

EMEA

Interest in environmental insurance has increased for companies that operate in a number of European countries that require mandatory financial security associated with the implementation of the Environmental Liability Directive. Increasing corporate mergers and acquisition activity across the EMEA region has also led to increased uptake of environmental insurance.

Requirements for local language policies, to respond to local or regional regulations, continue to prompt insureds to develop structured environmental programs across geographies. The number of

environmental insurance markets with local capacity has increased, a trend that is expected to continue.

United Kingdom

The London environmental impairment liability insurance market has become highly competitive, as both the number of environmental insurance markets and capacity continue to grow. Markets are now taking a more commercial approach to underwriting—developing, for example, new policy forms that provide coverage for environmental damage, preventative action costs, and business interruption.

Multinationals continue to exhibit strong interest in the placement of well-structured international programs of environmental impairment liability insurance. The increase in the level of corporate transaction activity has led to greater interest in obtaining multi-year environmental impairment liability insurance for historic liabilities. Meanwhile, the Environmental Liability Directive's new requirements to prevent and mitigate environmental damage have led to greater interest in environmental insurance from companies with less overt environmental exposures.

Asia Pacific

In the last 12 months, environmental laws and regulations have been a major area of focus for governments in Asia Pacific, which have sought to match the best practices

¹ Multinational Trends Survey, <http://usa.marsh.com/Insights/FeaturedContent/MultinationalTrendsSurvey.aspx>

used in Europe and the United States. Under new regulations in the region, in the event of an environmental incident the polluter bears the burden of proving that its emissions or discharges did not cause the damage or injury. In China, these regulations are still in their infancy—individual provinces are currently at different stages in regulatory development, implementation, and enforcement—but broad implementation and enforcement appears likely. It also appears likely that expatriate multinational companies operating in China, as opposed to those headquartered in China, will be the initial targets of these regulations.

In China, the major local insurance markets, PICC and Ping AN, offer basic environmental policies similar to a third party sudden and accidental insurance policy. The Chinese Ministry of Environmental Protection has encouraged the local insurance markets to offer this environmental product cover.

In Thailand, the Philippines and Indonesia, compulsory environmental insurance is being actively discussed and implemented (for example, there are now environmental insurance requirements for Indonesian port facilities). Clients have been driven to seek environmental insurance in Asia Pacific mainly by large environmental claims recently in the news, such as oil spills, mining waste water incidents, and pipeline explosions.

Canada

Regulatory changes in several Canadian provinces over the last few years have resulted in more stringent standards for acceptable levels of certain contaminants in soil and groundwater. This is beginning to result in claims

against environmental insurance policies, and environmental insurers—not surprisingly—are taking these changes in standards into account when they underwrite new and renewing policies. Most provinces do not mandate the purchase of environmental insurance by companies; one exception is in Ontario, where the provincial electricity regulator requires all new power-generating facilities to show evidence of environmental insurance. Environmental insurance has become very common for real estate asset and property management companies. Other areas where environmental insurance is becoming more common in Canada include infrastructure projects and heavy manufacturing.

South America

Recent changes to waste regulations in Mexico impose strict liability against owners and possessors (including operators) of contaminated sites to be held responsible for site cleanup. In addition, while it was previously forbidden to transfer ownership of a site contaminated with hazardous materials without the approval of Mexico's environmental ministry, the ministry now also requires that before such a transfer the site must be cleaned up or the new owner must agree to a cleanup plan. There have also been recent mandates for disclosure of environmentally contaminated sites to new potential buyers of these sites.

Mexico's General Law of Ecological Balance and Environmental Protection, reformed in July 2007, requires that anyone undertaking "high risk activities" have environmental insurance (Article

147); article 46 of the Mexican Waste Law requires the same for any "large generator of hazardous waste" and article 89 requires that importers or exporters of hazardous waste also have insurance or guarantee to provide economic resources to deal with "any contingency and the payment of damages." Also, third party liability insurance in respect of transportation of toxic substances is a legal requirement for both owners and haulers.

In Argentina, regulations require that companies obtain compulsory insurance to address any adverse environmental conditions which they may have caused. Resolutions passed by joint regulating committees have gone even further, establishing basic guidelines or mentioning certain alternatives to traditional insurance such as surety policies, environmental liability insurance, and self insurance programs.

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² Axco Report, Mexico-Non-Life (P & C) 2011

New Global Passive Investor Environmental Insurance Program

Passive majority investors in core trading companies may not be involved in the day-to-day operations of strategic assets such as mining companies, oil and gas firms, commodities, or other businesses with a high level of environmental risk. But passive investors may still be held liable should an environmental incident occur, potentially compromising the value of their investments and exposing their firm to an unfunded, uncapped liability.

Marsh's Asia Client Services and Marsh's Environmental Practice are working together to offer clients a unique environmental insurance product that will mitigate losses from environmental liability as a

result of catastrophic environmental incidents. The coverage can be designed to protect investors from catastrophic pollution losses resulting from:

- Investments into a company, project, or joint venture;
- Investments into a particular asset or property, including mining rights; and
- Core trading operations during the normal course of business.

Typically these programs are designed so that the insured purchases dedicated limits of liability in an amount equal to its investment (equity) interest in a particular company or strategic investment. In addition, the

program can be designed to respond to losses incurred during the course of transit as dictated by international commerce terms.

Limits of liability cannot be encumbered by other investment partners. These programs provide blanket coverage for most assets and complement coverage provided under other supporting insurance lines, such as energy package policies.

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Why Marsh for Your Risk Management Needs?

Environmental risk can have serious negative effects on an organization's financial wellbeing and ability to achieve its business objectives, whether in the US or overseas. Existing and forthcoming environmental legislation and regulations, emerging risks, and liability trends can all influence an organization's financial performance, reputation and brand, cash flow, and shareholder value.

For more than a decade, Marsh has been the recognized leading producer of environmental insurance. Over the past five years we have placed approximately \$850 million in environmental premium by bringing global expertise to local issues affecting our clients.

The experience our professionals have gained advising thousands of clients has reinforced our

understanding of the need to bring a multidisciplinary approach to solving environmental risk issues.

For additional publications and information from Marsh's Global Environmental Practice, please visit:
<http://global.marsh.com/risk.environment/>

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