

**MARSH**

# **The Use of Environmental Insurance for Brownfield Projects – Life Cycle of the Deal**



**2018 Oregon Brownfields**

**Leadership, Knowledge, Solutions...Worldwide.**

# Agenda

## Solutions for Environmental Liabilities associated with Brownfields

- Managing Environmental Risk
  - ∅ Risk Identification
  - ∅ Risk Transfer Tools
- Life Cycle of the Brownfield Deal
  - ∅ Identify the Stages of the Deal
  - ∅ When to Use Risk Transfer Tools



- Managing Environmental Risk
  - Risk Identification
  - Risk Transfer Tools



# Common Environmental Exposures and Losses

## 1<sup>st</sup> Party Cleanup

- § Cost overruns for pre-existing conditions
- § Discovery of unknown pre-existing conditions
- § Re-opener of “closed” issues

## Third Party

- § Offsite cleanup
- § Property Damage
- § Bodily Injury
- § Loss of value

## Regulatory and Legal

- § Natural Resource Damage
- § Toxic Tort Claims
- § Legal Defense Costs \*
- § Off-site Disposal Legacy
- § Fines and Penalties
- § Governmental re-openers

## Business Risks

- § Business interruption
- § Loss of Rents
- § Increased development costs

Defense can be important defending against frivolous and non-meritorious actions



# Triggering Events

- § **Transactional Acquisition or Sale (M&A) with legacy liabilities**
- § **Simple Real Estate Purchase and Sale and Refinancing**
- § **Leases...existing and exiting**
- § **Bankruptcy Issues**
- § **Corporate Restructuring**
- § **Plant Closings**
- § **Redevelopment Projects *Brownfields***
- § **Construction**
  - Site improvements, remodeling and expansions find issues
  - Demolition activities
- § **Third Party Contractor Operations**
  - on site cause or exacerbate an environmental issue
  - result in a claim from adjacent properties or operations



# Contractor's Pollution Liability (CPL)

## § Operations and Activities that

- result in a new pollution incident (release of new contaminants)
- exacerbate a current known condition (spread a current contaminant)

## § Contractor OR Project

### **Covers:**

- § Cleanup costs
- § Third-party claims for bodily injury and property damage
- § Natural Resource Damage claims
- § Diminution of third-party property value
- § Mold
- § Defense costs

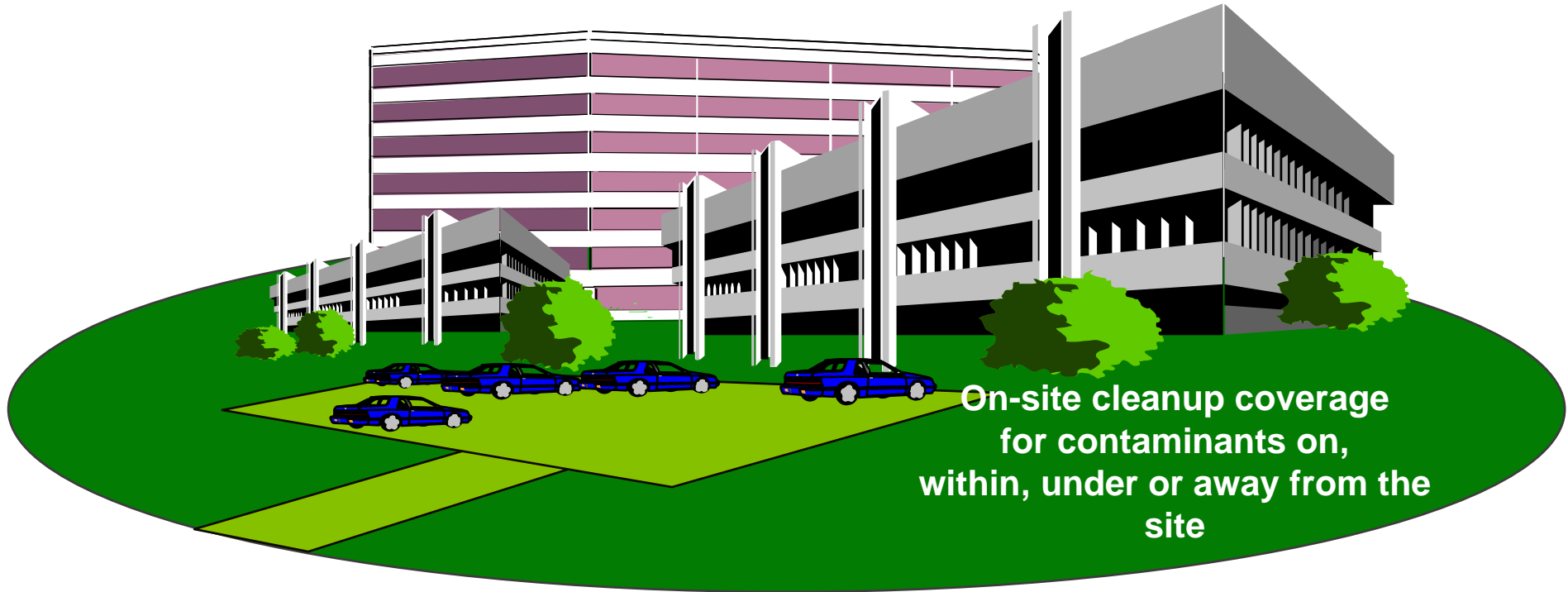


# Contractor's Pollution Liability

- Claims-made and reported form and the only pollution form that offers possible occurrence-based pollution coverage.
- Self Insured Retention starts at \$10,000 – typically \$25,000 to \$50,000.
- Defense costs included in the limits.
- Used in construction, renovation and expansion projects.



# Pollution Legal Liability... Covers Sites or Property



On-site cleanup coverage  
for contaminants on,  
within, under or away from the  
site

Timeline of Coverage\*

Covers Unknown  
Pre-existing  
Contamination

Policy Inception

Covers New  
Pollution Events

\* Discovery or Third-Party Trigger





# Pollution Legal Liability

## Overview

- § Insures against risk of “unknowns” not scheduled
- § Know conditions excluded
- § Reduces financial uncertainty and impact from unforeseen events
- § Common uses:
  - Portfolio management
  - M&A
  - Real Estate Transactions

## Coverages

- § Clean-up of new releases
- § Clean-up of unknown pre-existing conditions
- § Divested Properties
- § Excess of Indemnity
- § Third party liabilities (e.g Bodily Injury/Property damage)
- § Business Interruption
- § Non Owned Disposal Sites
- § Fines and Penalties
- § Natural Resource Damages
- § Transportation



# Pollution Legal Liability

- § Technical negotiation critical to maximize value.
- § Claims-made and reported form.
- § Self Insured Retention typically \$100K- \$250K. Can be as low as \$25k for simple real estate.
- § Defense costs included in the limits, outside the limits is available.
- § Can cover single sites or portfolios of properties.
- § EXCESS OF INDEMNITY.
- § Pricing- softest market in past 10 years.



# Pollution Legal Liability

## Underwriting Information

§ Phase I

§ Phase II

§ Environmental reports

§ Reported losses

§ Purchase and Sale Agreements

§ Site Schedule and property boundaries (legal description)



# Pollution Legal Liability

## Common Endorsements

- ú Known Conditions Exclusion, with give-back post closure
- ú Excess of Indemnity
- ú Insured Contract
- ú Material Change in Use
- ú Institutional Controls/Engineering Controls Exclusion
- ú Disclosed Documents
- ú 3<sup>rd</sup> Party Trigger, only



- Life Cycle of the Brownfield Deal
  - ∅ Identify the Stages of the Deal
  - ∅ When to Use Risk Transfer Tools



# Life Cycle of a Brownfield Project

Insurance Solution	Acquisition	Entitlement & Horizontal	Vertical Development	Operations	Exit Strategy
??					
??					
??					



# Life Cycle of a Brownfield Project - Continued

Insurance Solution	Acquisition	Entitlement & Horizontal	Vertical Development	Operations	Exit Strategy
PLL (unknown pre-existing)	Yes	Yes	Yes		Yes
PLL (new conditions)		Yes	Yes	Yes	Yes
CPL		Yes	Yes		



# In Summary

- § Environmental Risk Transfer Products are available.
- § These products can be have been used to mitigate the exposures throughout the Life Cycle of a Brownfield project.





# Case Studies

## Development – St. John's District in Portland, OR

- ∅ First Phase – Mixed Use Redevelopment.
- ∅ Site was former industrial property.
- ∅ Contamination generally in surficial soils.
- ∅ Included petroleum hydrocarbons, polynuclear aromatic hydrocarbons and metals.
- ∅ Total acreage – approximately 15 acres (First Phase is about ½ of this).





N Pittsburgh Ave

N Crawford St

N Burlington Ave

N Willamette Blvd

N Princeton St

N Edison St

N Richmond Ave

N Crawford St

N Decatur St

N Edison St

N Crawford St

N

# Case Studies

## Development – St. John’s District in Portland, OR

- ∅ Placed 5 year Pollution Legal Liability Policy.
- ∅ Limits of \$10,000,000/\$10,000,000.
- ∅ Deductible of \$100,000.
- ∅ Coverage for unknown pre-existing pollution conditions.
- ∅ Coverage included Natural Resource Damages.
- ∅ Premium was approximately \$100,000.



# Case Studies

## Development – Ventura & Los Angeles Counties, CA

- Ø Phased Redevelopment.
- Ø Over 25,000 acres.
- Ø Uses include residential, retail, commercial, education, open space, agricultural and municipal.
- Ø Former and current uses include oil production.



# Case Studies

## Development – Ventura & Los Angeles Counties, CA



# Case Studies

## Development – Ventura & Los Angeles Counties, CA

- Ø Placed a 10 year Pollution Legal Liability policy.
- Ø Limits of \$50,000,000/\$50,000,000
- Ø Deductible: \$100,000
- Ø Coverage for both unknown pre-existing and new pollution conditions.
- Ø Premium was greater than \$1,000,000.



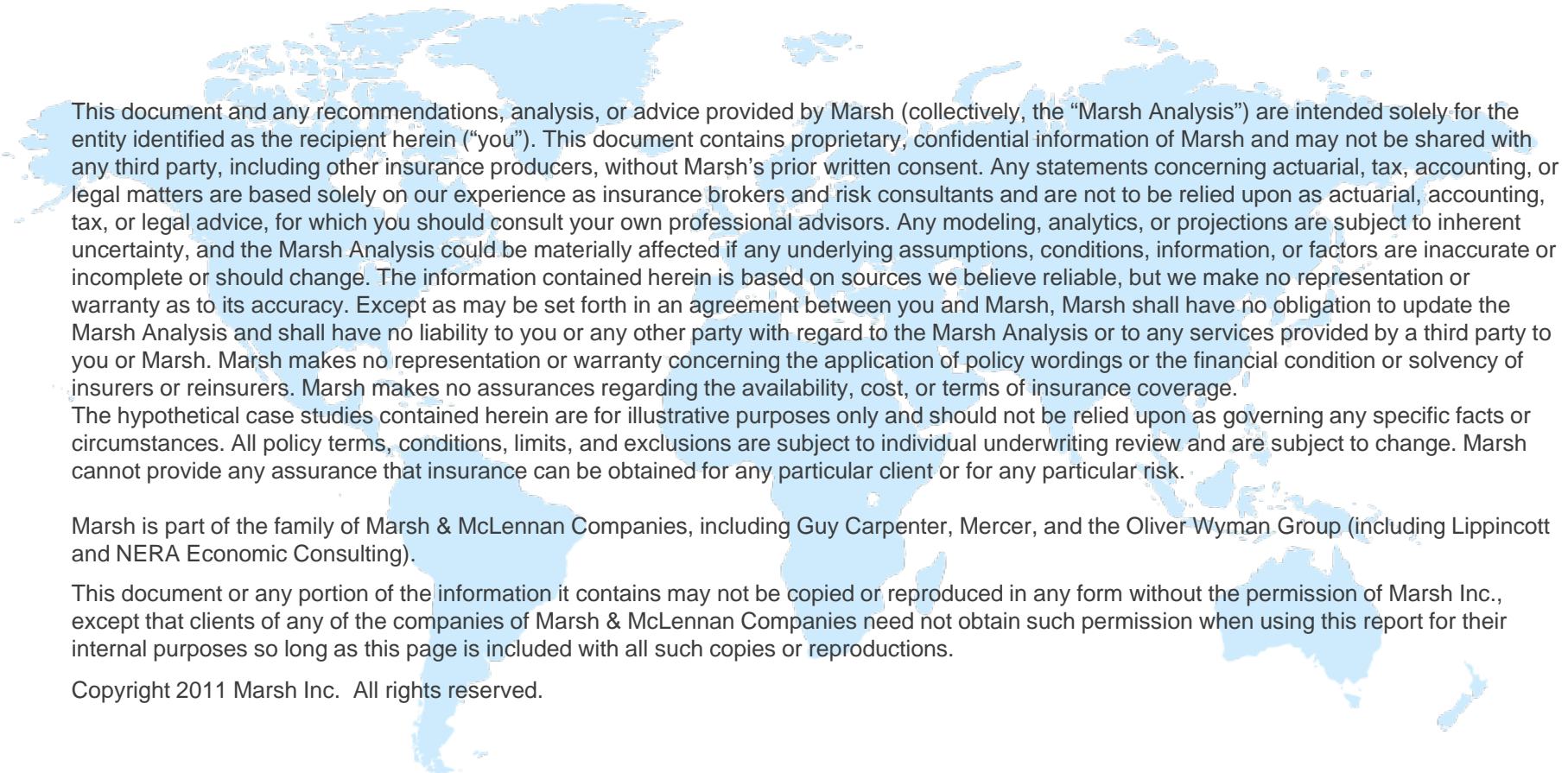
# Environmental Risk Management for Brownfields

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Questions/Answers?



# MARSH



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