

## Potentially Responsible Party (PRP) Shield Helps Address Environmental Costs

Cleanup costs are often a vexing challenge for companies and investors dealing with potentially responsible party (PRP) risks. And when the risk is already known, rendering it noninsurable, PRP risks can become an even bigger headache.

Historically, many corporations have self-insured their PRP sites. But costs can often spiral beyond initial forecasts, causing a drain on operating income. For private equity firms and others involved in merger and acquisition activity, PRP sites represent a significant hurdle for investment, post-transaction management, and disposition at the close of the investment cycle.

To help organizations better manage this complicated risk, Marsh has exclusively developed PRP Shield, an innovative, bundled solution that combines pollution legal liability (PLL) and cost cap coverage.

### Potentially Responsible Party Risk

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, also known as Superfund) imposes liability on parties that are wholly or partially responsible for the contribution of pollutants to a particular site or receptor, including cases where there has been contribution from multiple parties. PRPs are identified by the United States Environmental Protection Agency (EPA).

There are four types of companies that could become involved in Superfund sites as PRPs:

- Current owners and operators of a facility.
- Past owners and operators of a facility.
- Generators of hazardous waste and parties that arranged for the disposal of that waste.
- Transporters of hazardous waste.

#### WHO IT'S FOR

- Companies with PRP risks in US locations already on their books or that may arise during M&A transactions.
- Private equity firms and other related investors as well as law firms and other outside experts advising clients that may be subject to PRP liability.

#### WHAT YOU GET

- An insurance solution that addresses previously uninsurable PRP risks.
- Coverage for PRP risks both before and after 104(e) letters are received.
- Coverage for excess costs associated with cost overruns and increases in PRP allocations.

Because liability is “joint and several,” a PRP — once identified — can be held liable for a portion or all of the cleanup costs. Most often, liability is limited to an allocated share of the cleanup costs, which is usually based on the amount of contributing pollutants or the risk that those pollutants represent. In addition, liability is “strict,” which means a PRP cannot assert it was not negligent or was operating to industry standards at the time the pollution occurred.

In addition to cleanup costs, a PRP could be held liable for damages to natural resources (for example, to a fishery) and injunctive relief (for example, performing a cleanup) where a site may present an imminent and substantial endangerment.

It is often difficult to determine the ultimate cost a PRP may incur because:

- Cleanup costs may — and often do — materially exceed forecasts.
- The PRP’s allocation of the total cleanup cost may change as more is learned about other contributors and the site risk.

These uncertainties can impact a PRP’s ability to project and manage costs over time.

## A Two-Pronged Solution

Organizations are notified of their PRP status through 104(e) letters from the EPA. If PLL coverage is already in place *before* a letter is received, it can be used to cover claims associated with:

1. Waste sent by an insured to a non-owned disposal site.
2. Pollution conditions at or emanating from an insured’s covered location that gives rise to a PRP liability.

PLL coverage can be used to provide coverage on a site-specific basis or on a “blanket” basis for entire transactions or portfolios.

However, if PLL coverage is not in place before a 104(e) letter is received, the site and the insured’s liability is considered a “known condition” and is almost always uninsurable or excluded from PLL coverage. Organizations have historically self-insured this risk, but have often run into budgeting challenges as costs fluctuated.

PRP Shield is a bundled risk management solution that aims to address both instances. The PLL policy is triggered if the solution is purchased before a 104(e) letter is received. And the cost cap portion is used where a letter has already been received, rendering the risk a known condition.

## A New Approach to Cost Cap

While cost cap solutions are not new, they were rarely applied to PRP risks. Marsh has worked with Axis, a leading insurer with an A+ AM Best rating, to address this issue and incorporate cost cap within PRP Shield. The solution provides:

- An attachment point, above which the insurance pays, structured to cover worst-case outcomes.
- Coverage for cost overruns and allocation uncertainty.
- Premiums in line with historical cost cap averages.
- Coverage manuscripted to the client and site-specific requirements.
- Coverage assignable with carrier approval.
- Available insurance capacity in excess of \$30 million when including other excess markets.
- A policy term up to 10 years plus an extended reporting period.

PRP Shield can be applied in two situations:

1. During transactions, to facilitate deals and manage post-transaction risk.
2. Where there may be PRP sites or potential future PRP liability within an operating company’s portfolio.

## Why Marsh?

Marsh exclusively developed PRP Shield to comprehensively manage PRP risk, including some risk elements that were previously not insurable. We have the experience, market relationships, law firm connections, technical expertise, and broking skills to deliver successful outcomes with this highly complex risk. We also understand the business imperatives involved and focus to meet those business needs.

Marsh is one of the Marsh & McLennan Companies, together with Guy Carpenter, Mercer, and Oliver Wyman.

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