

Coverage Note

Natural Resource Damages – What are they and why are they important to you?

Natural Resources are defined by the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the Oil Pollution Act (OPA) of 1990 to include "land, fish wildlife, biota, air, water, drinking water supplies, and other such sources" that are held in trust of the public or Trust Resources. Natural Resource Damage (NRD) is defined as the injury to, destruction of, or loss of natural resources, including the costs for a Natural Resource Damage Assessment (NRDA). CERCLA and OPA, through enforcement by the USEPA, make parties responsible for hazardous waste sites, other contaminated properties, and oil spills not only liable for remediation of the resulting contamination, but also for the resulting NRD. Historically, NRD related fines have been assessed as a result of a catastrophic ecological disaster; however, states are now attempting to seek restoration and compensation for damages involving natural resources involving routine pollution.

Federal NRD claims have been most prevalent with respect to rivers, lakes, estuaries, harbors and other sites involving sediments that contain persistent haz-

ardous substances like polychlorinated biphenyls (PCBs) and other chlorinated compounds and heavy metals. State NRD claims have tended to focus on contaminated groundwater. NRD litigation can involve various regulatory agencies at the federal and state level and Native peoples, and result in the assessment of monetary damages for loss of natural resources.

The potential of an NRD claim could be of great concern to a buyer of a business, a merger partner and to a lender contemplating a loan transaction. A lender will have concerns that any potential exposure could impact adversely on the creditworthiness of its borrower. A buyer of a business and a potential merger partner will be concerned that they might also be liable for the NRD claim. *

Recently underwriters have been proactively addressing the coverage in their policies by more specifically addressing what is covered and for how much. To learn more about Natural Resource Damages and how they may or may be covered, contact your New Day representative.

* Source: July 11, 2005 NJDEP Press Release



**HOLIDAY
GREETINGS
& THANK
YOU!**

All of us at New Day Underwriting Managers wish you a holiday season full of laughter, happiness and lots of fun. This season affords us the opportunity to reflect not only the success we have had with you, our business partners this year, but also to appreciate the warm friendships and fond memories we've built in the process. Our sincere thanks for the chance to work with you in 2007. We hope that our being able to provide

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Professional
and Responsive**

service to you was evident and that we can continue to be of service to you and your clients in the upcoming year. Here's to even more success, and even more fun, in 2008!



Introducing Sharron Gaskins, Account Executive

Please join us in welcoming Sharron Gaskins, our new account executive. Sharron's 18 years of experience and diverse background in underwriting and customer service is a welcome addition to New Day. Sharron will be assisting with the day to day servicing of environmental and construction related professional liability accounts. Welcome, Sharron!

Hot Off the Press... Real Life Environmental Incidents

A QUICK SCAN OF A FEW LOCAL PAPERS provided real life examples demonstrating the need for sound environmental risk management programs. We're not sure if any of these businesses had proper environmental coverage in place. We do know that they certainly would have benefited from New Day's unique brand of technical insurance, risk management and underwriting services.

TALMO, GEORGIA: Emissions from a private wastewater treatment facility in this small Georgia town are threatening air and water quality and driving down

property values. The Georgia Environmental Protection Division is seeking to shut down the plant.

TRENTON, NEW JERSEY: Nine contaminated sites in Burlington County, New Jersey are among those named in 120 lawsuits filed by the state seeking damages for exorbitant pollution in an initiative of the state Department of Environmental Protection and Attorney General's Office to hold polluters responsible for the damage they inflict on the environment. The lawsuits seek compensation from polluters above the costs of site cleanups and fines.

LANGHORNE, PENNSYLVANIA: A collapsed chimney sent carbon monoxide into the ventilation system of an area mall. Eight employees from one store were hospitalized and the store was closed for two days.

FRESNO, CALIFORNIA: California agriculture officials ordered an organic dairy to recall and quarantine some of its Grade A raw cream after finding product that contained a bacteria that can cause serious or fatal infections in children, the elderly or those with weakened immune systems.



Congratulations to our intern (and future attorney!) Steve Link

It is with great pride that we inform you that our dedicated intern, Steve Link, a senior at The College of New Jersey, has been accepted at Rutgers University Law School. Steve has worked on many projects at New Day, and have no doubt he will continue his successful ways in law school. We look forward to Steve working with New Day until he graduates in the Spring of 2008. Good luck, Steve.

UPCOMING EVENTS

New Day is proud to be attending the **53rd Annual Beavers Awards Dinner** to be held on January 18th at the Hyatt Regency Century Plaza in Los Angeles, CA. Founded in 1955, The Beavers is a social, honorary organization formed, organized and managed by construction companies and individuals who are or have engaged in heavy engineering construction. The purpose of the Beavers is to promote goodwill, friendliness and consideration within the heavy engineering construction industry; to give recognition to those men and women who have demonstrated particular skill, responsibility and integrity; and to encourage and support entry of promising young individuals into heavy engineering construction. Our own Jeff Lejfer and Jeff Slivka will be joining over 2,100 members and guests as the 2008 Golden Beavers Award are distributed.

Jeff and Jeff will also be on-hand for **The Moles' Annual Awards Dinner** on January 30, 2008 at The Grand Ballroom, New York Hilton Hotel in New York City, NY. The Moles, a fraternal organization of the heavy construction industry, are leaders in their profession who are dedicated to promoting the industry and supporting their colleagues through outreach programs and networking opportunities.

NEW DAY SUCCESS STORIES

COMMERCIAL/HABITATIONAL REAL ESTATE: New Day represented two separate owners of mixed-use, commercial and habitational real estate comprising a combined 15M square feet, located throughout the Mid-Atlantic States. Both companies were interested in environmental insurance as a form of protection for their balance sheets and to complement their acquisition strategy. Due to the age of many of these properties, they were riddled with environmental issues including lead-based paint, asbestos-containing building materials, mold and moisture issues and historic and current dry cleaning operations. Upon review of the available environmental due diligence (Phase I reports), discussions with underwriters and client, New Day successfully structured a program to include coverage for bodily injury, property damage and defense for lead-based paint and asbestos, as well as coverage for third party claims and on-site clean-up coverage for mold. Since the Insured did not have a current mold plan in place, the insurance market agreed to develop a Mold Management Plan and conduct mold awareness training at no additional cost to the Insured. New Day was also

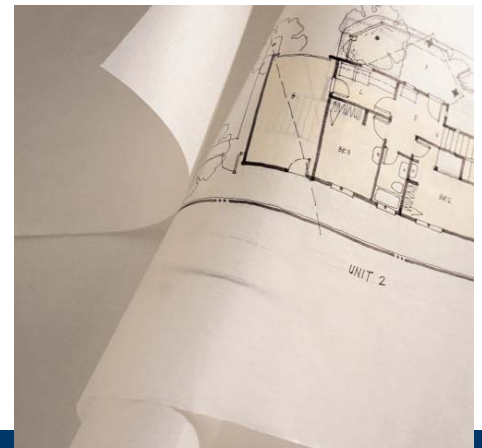
able to negotiate automatic acquisition language which allows the Insured a period of time to notify the insurance market of an acquisition. Once the market is notified of the acquisition, the location is considered covered under the policy. Limits for both policies were \$10M per occurrence/\$10M aggregate with a \$50,000 deductible. The policy terms were both for five years.



COMBINED CONTRACTORS POLLUTION LIABILITY/ PROFESSIONAL LIABILITY (CPL/PL) – PROJECT SPECIFIC LIMITS

New Day placed a \$5,000,000 limit combined form policy, with the incumbent carrier. Shortly after the renewal New Day was engaged to satisfy a contractual limit requirement imposed by the Insured's largest client. This client

accounted for well over 50% of the insured's gross revenue. The limit request was to establish a stand alone Contractors Pollution Liability limit at \$1,000,000/\$10,000,000 and a Professional Liability limit at \$1,000,000/\$3,000,000 while maintaining a separate \$5,000,000 blanket limit for all other operations. New Day knew the biggest challenge would be the stand alone Professional Liability limit request. Stand alone project specific PL for contractors is a rare commodity in the current market place, so alternative markets were not a viable option. New Day worked with the incumbent carrier and several options were tabled including offering an increased blanket limit at \$10,000,000 and a project specific increase for both coverages at a \$10,000,000 limit. The unique twist here is the insured was being asked to evidence two separate limit towers on a stand-alone basis, and the client would not modify the contractual requirement or accept the conventional alternatives previously mentioned. New Day was able to work with the incumbent market to establish all three sets of limits, allowing the insured to maintain an adequate overall blanket program while addressing the contractual needs of their largest client.



Legislative Update

HOUSE PASSES HOUSE BILL H.R. 1065. NONADMITTED AND REINSURANCE REFORM ACT OF 2007. The bill was approved by the House on June 25, 2007. It was submitted by Representatives Dennis Moore (D-Kansas) and Ginny Brown-Waite (R-Florida) to establish national standards for how states regulate the surplus lines market and reinsurance. The intent is to create a uniform system of surplus lines premium tax allocation and remittance, one-state compliance on multi-state surplus lines risks, and direct access to the surplus lines market for sophisticated commercial purchasers. The bill has been introduced in the Senate by Senator Mel Martinez (R-FL).



In our opinion, the passage of this bill by the Senate would significantly enhance the state of the Surplus Lines Market. Many products in the marketplace, including most of the New Day's, are only available in the surplus lines marketplace. While the repeal of countersignature and the ability of obtaining non-resident surplus lines licenses has allowed organizations like ours to operate on a national basis; the complexity and often contradictory nature of the various surplus lines laws makes it feel like we are walking a tight rope. So, we're encouraged that House Bill H.R. 1065 will bring structure and organization to the surplus lines market.

We will look forward to sharing any updates on the progress of the bill through the Senate.

“MOLD = GOLD: ARE YOU KIDDING?”

Jeff Slivka, New Day's Senior VP, has been at the forefront of helping businesses address the ongoing concern of mold liability. He has co-developed many mold management/awareness programs for various construction-related risks and is a well-respected authority on this often “toxic” issue. Jeff's article “Mold = Gold: Are You Kidding?” is featured in the September - October 2007 issue of Building Profits, the magazine for CFMA. Jeff's thorough analysis of what we've learned since the onset of mold-related lawsuits in the late 1990s is a must read for helping contractors understand risk exposure, implement appropriate risk management programs and proactively respond to potential problem areas. Check out the article on our website at <http://www.newdayunderwriting.com/>

WEBINARS

The New Day team is now able to schedule training and educational sessions in your office via webinar technology. Sessions are available for technical training as well as an introduction to working with New Day. Please discuss with your New Day underwriter the session offerings that are available.

CONTACT US



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