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# Developments in Environmental Insurance - Switzerland, Europe, and Beyond

***ACE Customer / Broker Event  
04th June 2009  
Weggis, Switzerland***

***Karl Russek  
ACE Environmental Risk***

# Agenda

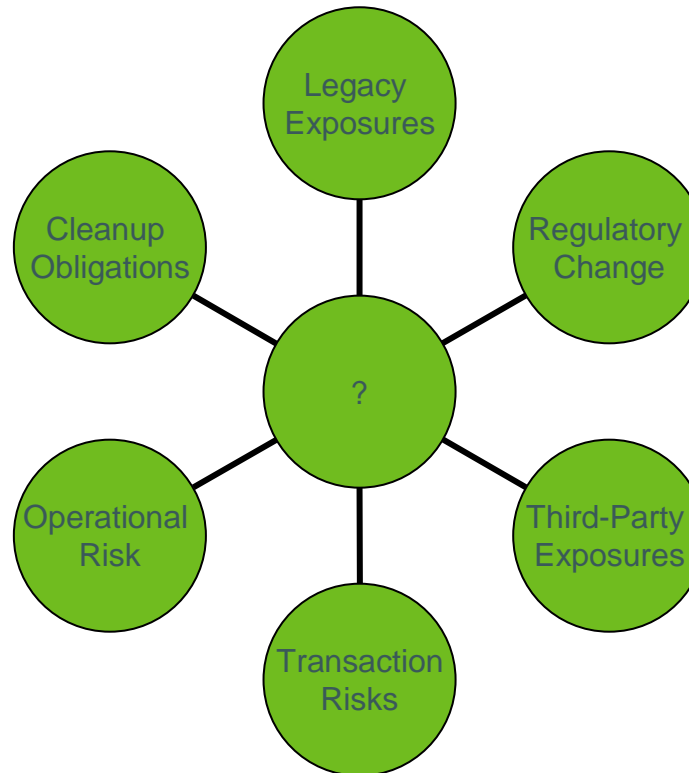
- 1. Defining the Risk**
- 2. The Evolving Regulatory Context**
- 3. Typical Claim Scenarios**
- 4. Typical Environmental Risk Products**
- 5. Focus on Portfolio Management**
- 6. Discussion**



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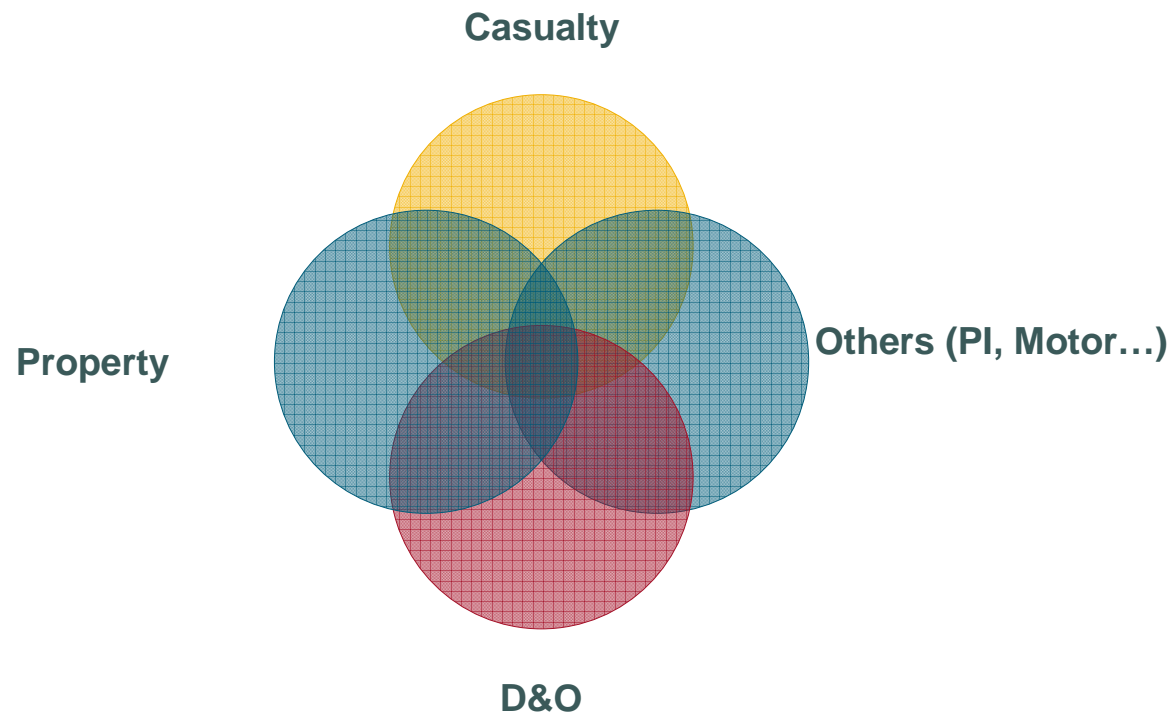
# What is Environmental Risk?



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# Where does Environmental Risk Fit?



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# Quick Survey

- 1. Have you had any experience with Environmental Insurance?**
- 2. What was your Impression of the Product?**
- 3. Would you use it again?**
- 4. Why / Why not?**



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# Limiting Factors

*What has limited the growth of this business area to date?*

## **Evolving Regulatory Standards**

- Consistency = Firm Underwriting Basis

## **Small Market = “Adverse Selection”**

- “The law of small numbers”

## **Risk Perception vs. Reality**

- Where do the losses actually come from?



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# Legislative Drivers

- **Increasing Volume of legislation – Local, National, Multi-lateral**
  - EU Environmental Liability Directive
- **Emerging (*slowly*) Global Consensus**
  - Technical, Regulatory, Financial
- **Global Hotspots**
  - US
  - Europe
  - China (!?)
- **Emerging Issues:**
  - Carbon / GHG Regulation
  - Habitat Loss
  - Nanotech, GMO, etc.



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# EU Environmental Liability Directive

- Forces operators to pay prevention and remediation costs
- Three kinds of environment damage:
  - Land damage
  - Water damage
  - Damage to protected species and natural habitats (**'BIODIVERSITY'**)
- Strict liability – no need to show fault or negligence for certain industries
- Compulsory insurance on the horizon (e.g. Spain)



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# Typical Environmental Risk Products

## **Premises Pollution Liability (PPL):**

- Menu of coverages available
- Limits up to EUR 25M +
- Multiyear Terms (For legacy issues or projects)
- Claims-Made

## **Contractors Pollution Liability (CPL):**

- Practice or Project Policies
- Claims-made or Occurrence trigger
- Available E&O extension

## **Other Bespoke Coverages Available**



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# Client Considerations

- Existing P&C pollution coverage is inadequate
- Client does not need to handle chemicals or waste to have exposure (e.g. real estate)
- Disclosure and Financial Reporting requirements expanding
- Contract conditions addressing environmental liabilities
- Awareness of Financiers
- Future regulations are uncertain, but they **WILL** be more stringent



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## Why Now?

- Pollution cover is ***MORE AFFORDABLE*** than before
- The process is ***LESS DIFFICULT*** than before
- The wordings are simpler, broader and more flexible
- To fill serious gaps in the existing program



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# Claims: Why you actually buy the policy!

## Claims are being paid.

### Frequency Areas:

- *1<sup>st</sup> Party Cleanup*
- *Defense Costs*



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# Continued Operation

- Heating oil tank attached to car showroom
- Fracture developed in pipe work
- Impacted on 1<sup>st</sup> & 3<sup>rd</sup> parties
- Operational environmental cover
- Policy triggered
- Sizeable clean up costs, several months disruption to property owner and adjoining business



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# Urban History

- **City Centre firm of Architects operating out of converted warehouse**
- **Historical use as printing works**
- **PPL policy to protect against historical liabilities**
- **3<sup>rd</sup> Party identified solvent plume when redeveloping adjacent to site**
- **Liability with current owner as ‘polluter’ no longer exists**
- **Solvent extraction system installed**



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# Property Fund

- Powder coating company leasing unit from property fund
- Liquidation
- Poor maintenance encountered – leaking chlorinated solvents
- Sensitive receptors
- Portfolio wide PPL cover – cost passed on to tenants
- Remediation and lost of rental



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# Portfolio Management

1. Existing Portfolios versus Acquired / Divested
2. Role of due Diligence
3. Asset Valuation
4. Practical tools:
  - Automatic acquisition language
  - Due diligence language



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# Environmental Risks in Business Transactions

- **Known Legacy Issues**
  - Magnitude of Known Obligations
  - Regulatory Uncertainty associated with 'Knowns'
  - Ancillary Risks of 'Knowns' (Third party claims, etc)
  - Compliance issues
  - Indemnifications / Credit Risk
- **Undiscovered Obligations Based on Current Knowledge**
  - Undiscovered Contamination
  - Latent third-party risk associated with cumulative impacts
  - Divested Properties
  - Compliance issues
- **Complete Unknowns**
  - Regulatory Change / 'Reopeners'
  - Scientific 'Advancements'
  - Political Risk



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# Conclusion

**Thank You...**  
**Questions?**



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