

AAPA PORT ADMINISTRATION AND LEGAL ISSUES SEMINAR

April 16, 2009

**“ENVIRONMENTAL ISSUES FACING PORTS: USING
ALREADY PURCHASED INSURANCE POLICIES TO
COVER ENVIRONMENTAL LIABILITIES”**

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OLD INSURANCE POLICIES MAY COVER TODAY'S PROBLEM.

- Liability Insurance Policies (General, Umbrella, EIL, etc.).
- WQIS.
- Ship Scrapping.
- Additional Insured Under Other Entity's Insurance Program.

The Policies in Effect When the Property Damage Occurred May Provide Coverage for Liabilities Imposed Today.

POTENTIAL BENEFITS:

- Defense (Pays Fees of Lawyers Dealing With Environmental Authorities) (Also May Pay For Investigation: RI/FS Costs).
 - Any Possibility of Coverage.
- Indemnity (Pays Settlements, Judgments and Clean-Up Costs).

FIND OLD INSURANCE POLICIES.

- Own Insurance Files (Storage).
- All Brokers/Agents (Existing and Old).
- Outside Accountants.
- Outside Counsel.
- U.S. Navy (Maryland Warehouse).
- Insurance Archeologists.

NOTICE.

- Notice of An Occurrence (An Event or Happening That Might Result in a Claim Against the Policyholder).
- Notice of A Claim (Claim or Threat Against Policyholder).
- When?
- To Whom?
- How?

WHAT NEXT?

- Identify/Collect/Preserve Records.
- Determine Policy Erosion/Settlement/Release.
- Provide Reasonable Cooperation.
- Provide Updates.
- Value Claim.
- Discuss Settlement.
- Cost/Benefit Analysis of Pursuing Coverage.

INSURANCE COMPANY DEFENSES.

- Polluter's Exclusions (1973/1985).
- Clean-Up Costs As "Damages".
- Allocation: All Sums v. Pro Rata.
- Adversity Needed for Defense.
- Owned Property.
- Expected/Intended.