

# **FORA: Pollution Legal Liability Insurance Coverage**

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## WHY PLL COVERAGE?

CERCLA Joint Strict and Several Liability  
CERCLA Warranty and the 120 kick out

Section 330 Indemnity  
“to the extent of” limitation

Timing of response by Army-project delay

New conditions

Disputes over origin of contamination

Regulatory requirements

## FORA's CURRENT PLL POLICY

Term-10 years (Dec. 2014 expiration)

Limits-\$100 million

Self-Insured Retention-\$1 million

Covered Parties

FORA + 5 Land Holding Jurisdictions + development entities

# CONSIDERATIONS GOING FORWARD

Insurance Market considerations

Claims experience

FORA's expiration

Economies of Scale

First dollar coverage

Cross border disputes

Continuity during transition from FORA to municipalities: 10 year policy

Exclude Groundwater Coverage and MEC remediation

# CONCEPTUAL CONSIDERATIONS

1. No exclusions from covered location.
2. Remediation and/or property damage for MEC?
3. \$50,000,000 limits. Possible need for excess coverage to address additional insured parties?
4. Carriers (if more than one) will follow form without exception.
5. If allocated slice entity ceases to exist, slice reverts to municipal entity with jurisdiction.
6. Covered risks are pre-existing unknowns and new conditions
7. No exclusion for breach of land use controls.
8. Insured v. insured endorsement.
9. Need a methodology for cross border issues between insured—allocation formula for whose slice of coverage it comes from and with only one SIR.
10. Additional insured developers' coverage (if not identified at time of binding) subject to underwriting. Not to be unreasonably denied.
11. Policy will be primary
12. Claims honored for covered locations subsequently entered into voluntary Clean-up Program with DTSC, provided notice is given to carrier.
13. Premium consideration: use of grant funds.
14. Allocation of premium cost amongst named and additional insured.

## ISSUES TO BE ADDRESSED BY ENDORSEMENT

1. Ability to allocate sub-aggregates to governmental and development entities.
2. FORA first named insured as long as FORA exists; then designate the successor first named insured. Can we identify now?
3. Extent of MEC coverage.
4. 10 year policy, 90 day Extended Reporting Period
5. SIR = \$500,000
6. 100% earned premium at inception
7. Cancellation requires consent of all insured (named and additional) except for non-payment of premium after 30 days' notice to all named and additional insured, with opportunity to cure.
8. No pollution conditions excluded except (a) ground water and (b) MEC prior to regulatory certification of completion.
9. Coverage limited to participating municipalities, utility providers, and educational entities.

## NEXT STEPS AND SCHEDULE

1. Prepare Request for Proposals and submit to market: 1 March 2014
2. Submission of proposals to FORA: 1 May 2014
3. Evaluation of proposals: complete by 1 June 2014
4. Notify submitters of acceptance/rejection: 15 June 2014
5. Negotiations with carriers: 1 July -30 September 2014  
Cost, SIR, exclusions, endorsements, coverages
6. Presentation to FORA Board for approval: 8 November 2014
7. Bind new policy: 1 December 2014