THE CHEMETCO WAKE-UP CALL

Many scrap recycling companies operate without coverage for environmental impairment liability risks. Ongoing litigation related to the Chemetco Superfund site is a painful reminder of why you should carry such coverage, or at least understand the risks you face regarding environmental cleanup events.

THE CHEMETCO BACK STORY

Chemetco, based in Hartford, Ill., was one of the world's largest secondary copper smelters. The company purchased copper scrap and refined it into high-purity copper anodes and cathodes from 1969 until October 2001. In 1996, an enforcement officer with the U.S. Environmental Protection Agency discovered a hidden 10-inch pipe the company was using to secretly discharge toxic waste and contaminated stormwater into Long Lake, a tributary of the Mississippi River.

A federal court convicted Chemetco and its CEO of conspiracy to violate the Clean Water Act and violation of that act, among other charges. The federal government fined the company $3.86 million, and the firm filed for bankruptcy protection in November 2001. The EPA subsequently sealed the site to contain the contamination and assess its extent. The agency determined that the site and nearby wetlands had high levels of lead, cadmium, copper, and zinc contamination. In 2010 the EPA added the Chemetco property to the National Priorities List of Superfund sites, and it joined forces with the Illinois EPA to search for potentially responsible parties that they could hold liable for cleanup costs.

The two agencies named hundreds of firms in the PRP group, many of them scrap recycling companies that sold materials to Chemetco—either directly or through brokers—in its 30-plus years of operation. The recyclers named as PRPs probably reached out to their insurance brokers to determine if or how they would be covered or defended against potential losses. Those without specific environmental insurance likely discovered they had no protection, as most general liability policies have pollution exclusions.

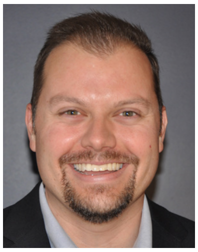
COVERING EIL RISKS

The Chemetco case should serve as a wake-up call regarding your firm's exposure to environmental impairment liability. It's essential to understand such risks and the ways in which you can cover them. Key components of environmental insurance include (but are not limited to) coverage for losses arising out of defense costs, bodily injury, property damage, cleanup costs, punitive damages, civil fines, penalties or assessments, and products pollution liability.

Fortunately, you can choose among a variety of coverage options, from comprehensive site pollution protection to stand-alone coverage for specific risks (such as underground storage tanks) and options that cover sudden and accidental releases, pollution that occurs continuously over time, and even known, pre-existing pollution conditions. Other options include non-owned disposal sites, or NODS. NODS coverage—designed for Superfund events such as Chemetco—addresses losses the policyholder is legally obligated to pay for a non-owned location that was used for handling, storage, disposal, processing, or treatment of "waste." Insurers might have denied NODS coverage in the Chemetco case because scrap has beneficial use and because recyclers sold the scrap to be refined rather than disposed. But if a recycler also had products pollution liability coverage, a Chemetco-type loss could be considered a pollution condition caused by the recycler's product, which would trigger coverage even if the condition occurred off site (depending on specific policy terms and conditions).

Given the complexity, number of options, and variability in EIL coverage agreements, it's critical to understand what you're buying and the details of the coverage offered. The good news is that EIL insurance currently is a vibrant marketplace, with an abundance of providers and capacity chasing business, which means competitive pricing, terms, and conditions for companies that wish to explore the market. S

Dan Curran is senior vice president and underwriting officer for AmWINS Program Underwriters (Portsmouth, N.H.), which underwrites RecycleGuard®, the ISRI-sponsored insurance program. Reach him at 603/334-3027 or daniel.curran@amwins.com. *RecycleGuard has prepared this article for informational purposes only. It is not intended to provide legal advice. Readers should not rely on this document or act upon any of the information it contains without first consulting competent legal counsel.*



The Chemetco case should serve as a wake-up call regarding your firm's exposure to environmental impairment liability.