

# LIABILITY INSURANCE COVERAGE



- Liability Insurance indemnifies the Insured for damages that the Insured is legally liable to pay.
  - Imposed by law
  - Or liability assumed by Insured under contract
    - Insurer will verify and accept liability based on contractual language and if loss fits policy conditions
- Pollution Legal Liability
  - Provides cleanup and remediation until closure
  - Can provide reopening coverage
  - Can cover pre-existing pollution

# 22.05.125 PROOF OF INSURANCE FOR HAZARDS CREATED IN WHATCOM COUNTY



- Initial paragraph 22.05.125
- Lines 5-6
  - ...Facility or from transport of materials, goods, products or waste within the boundaries of Whatcom County.
  - Facility insurance will not respond to spills of products the Facility doesn't charter or transport themselves.
  - Carrier of the goods will generally be held legally liable for releases and spills
- Paragraph 1 Insureds
  - May be unable to provide complete copies of insurance policies
    - May include confidential business information
  - Should be able to provide endorsements and certificates of insurance
    - Manuscript insurance policies are proprietary and cover worldwide exposures

## 22.05.125 PROOF OF INSURANCE (CONT.)



- (2) **Insuring Agreements:** Insurance shall pay on behalf of the Insured for loss from third-party bodily injury , property damage or environmental remediation and restoration expenses resulting from sudden pollution conditions commencing on or after the Permit effective date, either:
  - (a) emanating from and beyond the boundaries of the Permitted Facility  
If pollution occurs outside the Facility, policy will not respond unless Facility caused loss. If not caused by Facility insurance would not respond.
  - (b) arising from materials or waste during transportation to or from a Permitted Facility

*Facility cannot control this risk if they don't have possession or title to the materials or waste, so Facility insurance would not cover.*

*A carrier needs to have an MCS-90 endorsement on its Auto Liability policy with pollution cover to even be licensed to haul waste.*

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## 22.05.125 POLICY LIMITS & TERMS AND CONDITIONS



- Paragraph 3
  - Policy limits of the \$100 million amount are available today
    - Availability based on industry claims that the market has paid
- Paragraph 5
  - If Paragraph 3 is read in conjunction with 5(a) Insurance then this insurance shall be carried for the lifetime of the Permitted Facility
  - Pollution Legal Liability policies tend to be written on a 1-3 year policy. We are unable to guarantee that the insurance market will continue to supply this coverage for the lifetime of the Permitted Facility.
  - **Cannot agree to Insurance for a lifetime of the Facility**

## 22.05.125 PARAGRAPH 4, 8, 9



### Paragraph 4

- Pollution Legal Liability policy will typically have a \$1 MM self insured retention (SIR)
- Primary Named Insured Phillips 66 or BP, both with assets greater than \$50 Billion.
  - We do not see the necessity of posting financial assurance with county

### Paragraph 8

- Insurance company AM Best size rating of XIV is too limiting on which insurers could be used

### Paragraph 9

- (d) Sudden pollution conditions may be defined by reasonable time-limits for discovery and reporting to insurer.
  - “Reasonable” should be defined

# MITIGATION BY PERMITTED FACILITIES



- Insurance requirements for tanker trucks
  - MCS-90 requirements
- Insurance requirements for vessels
  - Protection and Indemnity insurance
- Insurance requirements for railcars
  - Liability insurance requirements

Facilities recognize the risk and require transporters to obtain insurance