



Regulatory Compliance and Your Insurance Policy

Air & Waste Management Association Midwest
Section

October 23, 2019

1.Regulatory Compliance and Environmental Insurance

2. Emerging Trends in Environmental Insurance

Insurance Basics

Managing General Agent (MGA)

Underwrite on behalf of insurance carriers

Identify niches in need of:

- custom coverage solutions
- Focused underwriting

Excess and Surplus

- free of rate and regulation
- Exposure to catastrophic loss



Coverholder at **LLOYD'S**



Commercial Insurance Distribution



Manufacturing/Insurance Company

Wholesaler

Retailer

Consumer/Insured

Policy structure

Declarations

- Premium
- Limits of Insurance
- Deductible
- Policy period

Insuring Agreement

- Promise to Pay

Exclusions

- What is not Covered

Conditions

- Terms of agreement
- Duties of the Policy Holder

Definitions

- Defining Key Coverage Terms



Regulatory Compliance and Environmental Insurance



No correlation to compliance and reduced spills

Local and State Community and Regulatory Characteristics

- Ethylene Oxide
- Landfills

Regulatory Compliance and Insurance Analysis

Heterogenous Statistics

- Compliance stats do not differentiate type of operations

Litigation and Legal venues

- Legal liability and judicial verdicts do not always equal true responsibility for an incident

Regulatory Compliance and Insurance Analysis

- noncompliance for different Pollutants do not necessarily trend together
- noncompliance rates are poor metrics for evaluating the impact of enforcement on environmental performance.
- noncompliance rates are averages across the population of facilities, so they are not facility specific.
- we find that noncompliance is falling over time, especially for TSS, but that pollution discharges do not trend in any obvious fashion.

Monitoring, Enforcement, & Environmental Compliance: Understanding Specific & General Deterrence Comparative Analysis of Monitoring and Enforcement Impact Measures
June 2009
Jay P. Shimshack

Monitoring, Enforcement, & Environmental Compliance: Understanding Specific & General Deterrence State-of-Science White Paper
October 2007
Jay P. Shimshack.

12. Knowingly Wrongful Acts

The **insured's** dishonest, fraudulent, malicious, knowingly wrongful, deliberate disregard, or willful or intentional non-compliance with any law, statute, regulation, ordinance, administrative complaint, notice of violation, notice letter, executive order, or instruction of any governmental agency or body.

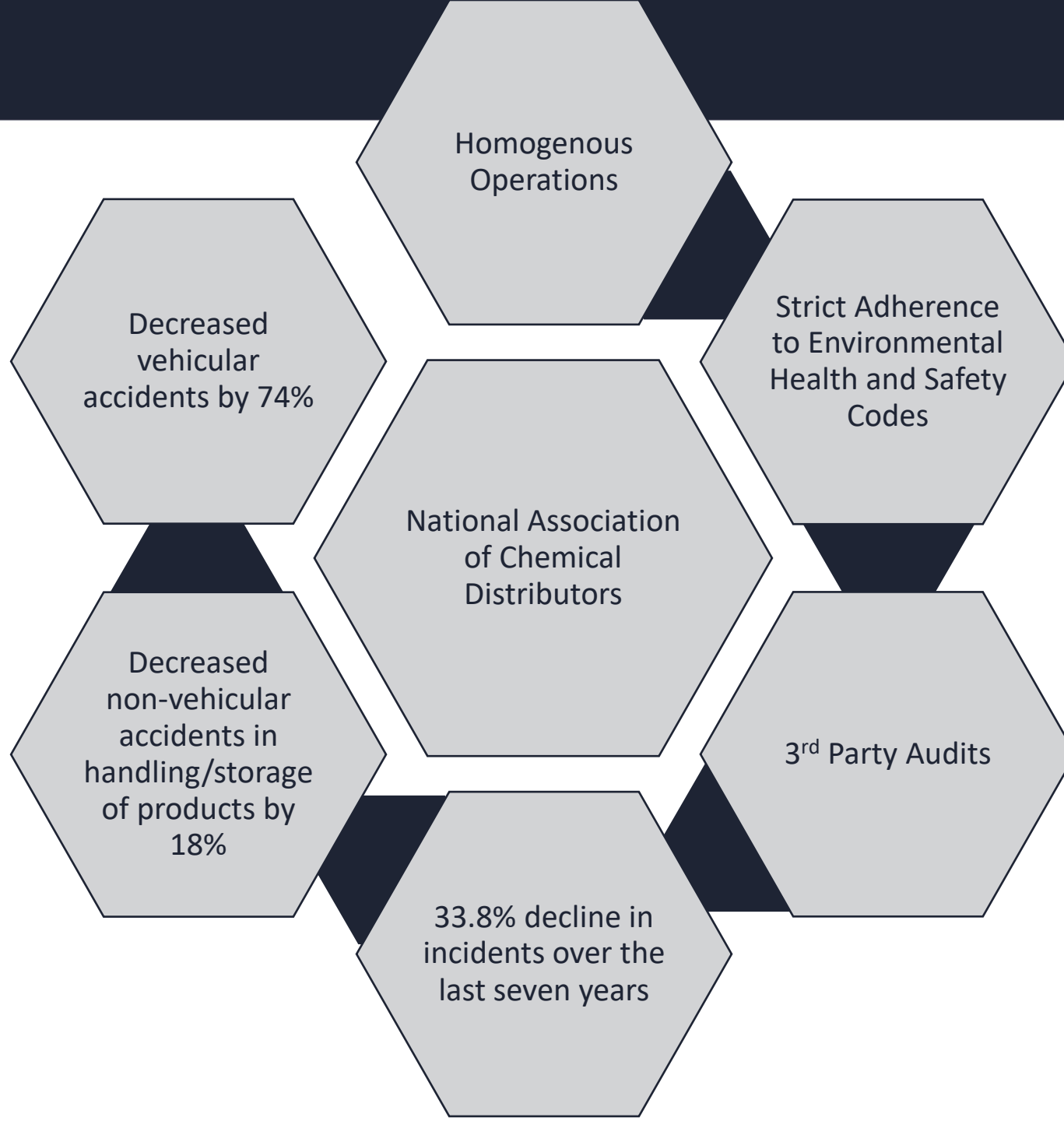
Known Pollution Conditions

Pollution conditions known to exist prior to the inception of this policy, by any current or former officer, director, partner, or employee responsible for environmental affairs of the insured.



Partnership Strategy







Third Party Services

- EDR/ERIS

Regulatory Databases

- ECHO
- State Databases

Site Assessments

- Phase I or II
- Corrective Action Plans



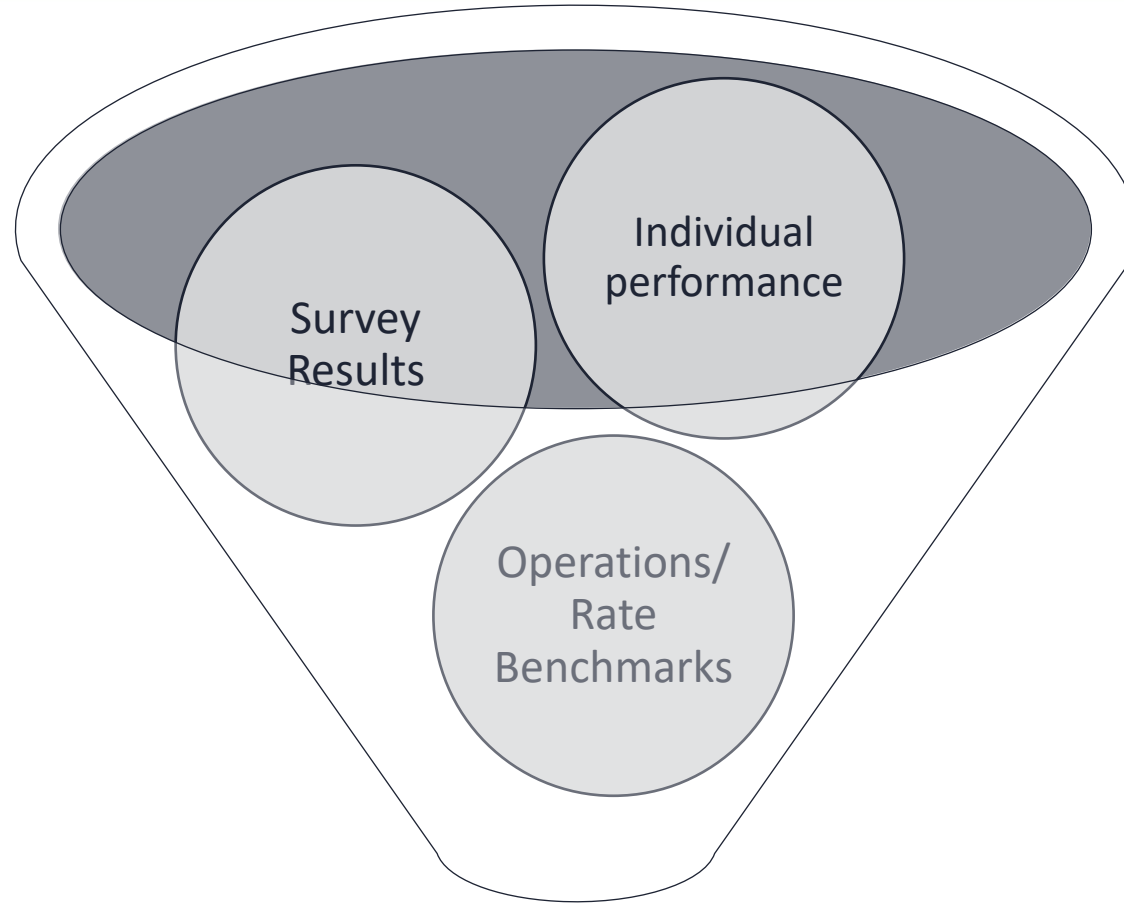
Onsite Controls

- Spill Kits
- Signage
- Security
- Containment Systems

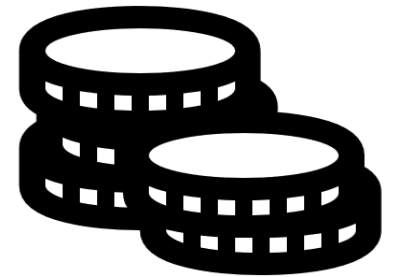


Attitude and Commitment

- Training/Drills
- Tailored EH&S Plans
- Owners Investing in Operations

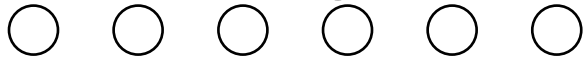


Premium





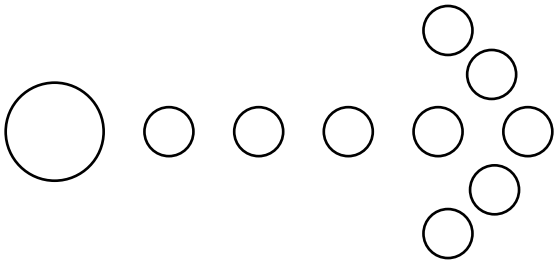
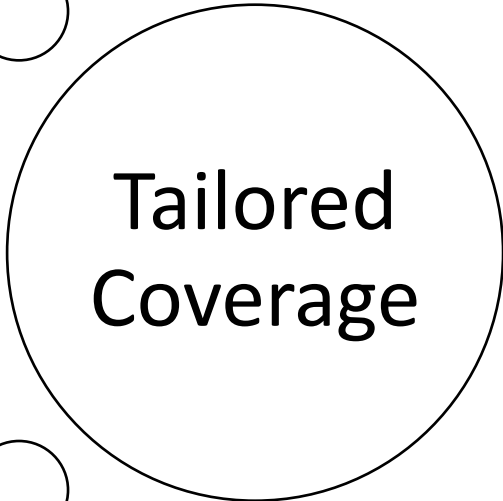
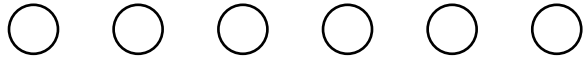
Amend Coverage



Industry Specific Enhancements



Adjust Language Based on Carrier Claims Response





12. Knowingly Wrongful Acts

The **insured's** dishonest, fraudulent, malicious, knowingly wrongful, deliberate disregard, or willful or intentional non-compliance with any law, statute, regulation, ordinance, administrative complaint, notice of violation, notice letter, executive order, or instruction of any governmental agency or body.



d. Intentional Noncompliance

Arising from pollution conditions based upon, due to or attributable to any responsible insured's intentional, willful or deliberate noncompliance with any statute, regulation, ordinance, administrative complaint, notice of violation, notice letter, executive order, or instruction of any governmental agency or body. However, this Exclusion does not apply to such non-compliance based upon:

- 1) The insured's good faith reliance upon the written advice of qualified outside Counsel received in advance of such non-compliance or upon the Company's written consent; or
- 2) The insured's reasonable response to emergency circumstances in order to mitigate such pollution conditions or loss, provided such emergency circumstances are reported in writing to the Company within ninety-six (96) hours of the discovery of such emergency circumstances.



Known Pollution Conditions

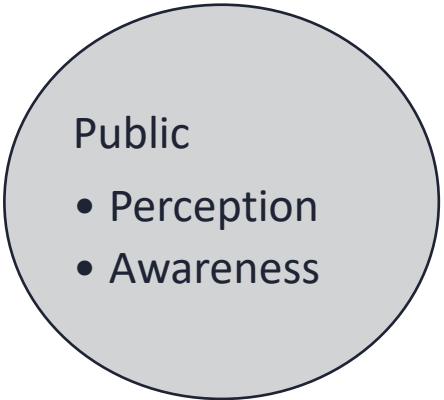
Pollution conditions known to exist prior to the inception of this policy, by any current or former officer, director, partner, or employee responsible for environmental affairs of the insured.



Prior Knowledge/Non-Disclosure

Arising from pollution conditions existing prior to the inception date of this Policy and known by a responsible insured **and not disclosed in the application** for this Policy, or any previous policy for which this Policy is a renewal thereof.

Emerging Trends in Environmental Insurance



PFOA/PFOS

Late
to
React

Extent of discovery and
production phase outs

PFOA discovery in areas with no
identified source

Large Verdicts and Settlements

Dupont – \$670M

Mn v 3m – 850M

Scope of impacts – 110M
people

PFOA/PFOS

The New Asbestos

Hundreds of Billions estimated for clean up and injury

More than 100 current lawsuits (majority class action)

Market Response

Blanket Policy Exclusions

Exclusions based on geography (proximity to airports)

Avoidance of classes of business such as Airports and Mfgs

Glyphosate

Developments

13,400 Legal actions against Bayer/Monsanto

Skyrocketing Awards - Pilliod Lawsuit - \$2b Award – Reduced to \$87M

Verdicts not always consistent with available science

Monsanto current focus – Generic suppliers yet to develop

Market Response

Market wide move to exclude glyphosate and non-renew insured's with significant exposures.

Nanotechnology

Concerns	Physical properties and fate and transport in the environment change at the nano-level
	Size of particles readily cross the blood brain barrier
Market Response	Feared as the new Asbestos – Markets started conservative
	Lack of significant litigation development – business as usual
	Few markets exclude the exposure

TCE/PCE

Concerns	Products Litigation Declining Mostly Dry-Cleaning Industry	Mostly Dry-Cleaning Industry
	Current major Developments	Re-opens due to indoor air quality Brownfield redevelopment
Market Response	Avoid dry-cleaning exposures	Lack of robust EH&S controls at mom and pop dry-cleaners Certainty of contamination with historical use
	Avoid dry-cleaning products	Industrial uses appear to present less litigation potential