Inn of court

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GLOSSARY OF TERMS

**Municipal Solid Waste**, more commonly known as trash or garbage, consists of everyday items people use and then throw away, such as product packaging, grass clippings, furniture, clothing, bottles, food scraps and papers.

The first federal legislation addressing solid waste management was the Solid Waste Disposal Act (SWDA) that created a national office of solid waste. By the mid 1970’s, all states had some type of solid waste management regulations.

In 1976, Congress passed the **Resource Conservation and Recovery Act (RCRA), 42 U.S.C. Sec. 6901 et seq.,** that dramatically expanded the federal government’s role in managing waste disposal. RCRA divided waste streams into **hazardous** and **non-hazardous** categories, and directed the EPA to develop design and operate remediation plans based on how the waste streams were categorized.

New Jersey DEP administers the RCRA program in New Jersey. See, e.g., Strategic Envtl. Partners, LLC v. New Jersey DEP, 438 N.J. Super.125 (App. Div. 2014).

The **Spill Compensation and Control Act (“Spill Act”), N.J.S.A. 58:1—23.11,** prohibits the discharge of hazardous substances.

In addition, **New Jersey’s Site Remediation and Waste Management Act, N.J.S.A. 13:1E-125 et seq.,** as amended, establishes requirements and controls applicable to “legacy landfills” and closed sanitary landfill facilities that accept new materials after closure to, for example, close a landfill that has not been previously closed, regrade a landfill for proper drainage, or prepare the landfill surface for redevelopment.

A “legacy landfill” is defined as any site which closed before 1982 and contains material which would be defined as hazardous under RCRA, but received material before the law was enacted in 1976.

The imposition of **Joint and several liability** allows a plaintiff “to sue for and recover the full amount of recoverable from any (defendant).” Restatement (Third) of Torts, Apportionment of Liability, Sec. 10 (2000).

Entities may be joint and several tortfeasors if they are liable to the same person for the same harm. Notably, they need not act at the same time or in any concerted way. Instead, the measure of joint and several liability is whether the tortfeasors’ conduct produced an indivisible, single harm. Jointly and severally liable defendants are generally (and theoretically) entitled to recover from one another the percentage of damages attributable to the other party or parties’ conduct.

**Environmental damage claims** are often very technical. This is especially true where the policyholder seeks coverage in the face of a “pollution exclusion.” Some pollution exclusions are not absolute and may provide coverage for discharges that are “sudden and accidental.”
See, e.g., “Proving Sudden and Accidental Discharge Requires an Expert with a Reliable Methodology,” National Law Review, September 14, 2019.

**Comprehensive general liability (CGL)** insurance is a broad policy that protects the organization from **liability** claims related to products coverage, completed operations coverage premise and operations coverage, and independent contractors coverage.

**An occurrence policy** covers claims made for injuries sustained during the life of an insurance policy, even if the claim is filed after the policy has been canceled. An **occurrence** is an event that can result in the filing of an insurance claim.

 A **claims made** policy covers claims made against a party only while the policy is in effect. The downside of this policy is that coverage must be continued indefinitely to assure coverage for claims filed in the future for actions that occurred in the past. Essentially, once the policy has lapsed, the policyholder no longer has coverage.

 **Pollution liability insurance policies** cover claims from third parties against bodily injury and property damage caused by hazardous waste materials released during a company’s business operations. This insurance not only covers you while you are completing a job; it covers your “completed operations.”

A good discussion of problems associated with historic or legacy landfills:

“The Contaminant Legacy from Historic Coastal Landfills and their Potential as Sources of Diffuse Pollution,” Marine Pollution Bulletin, 2018, Vol. 128, pages 446-455; [www.sciencedirect.com](http://www.sciencedirect.com). Prior to modern environmental regulation, landfills in low-lying coastal environments were frequently constructed without leachate control, relying on natural attenuation within inter-tidal sediments to dilute and disperse contaminants reducing environmental impact.