

CHANGES IN ENVIRONMENTAL LEGISLATION: HOW TO PROTECT YOUR POSITION



The EU Environmental Liabilities Directive (ELD) has introduced new legal requirements, which the Irish Environmental Protection Agency (EPA) has summarised in its Guidance on Financial Provision for Environmental Liabilities for EPA Licence Holders.

This guidance requires licensees who undertake activities falling under the various authorisations to ensure there is “adequate protection” in place for “corrective and remedial costs” associated with “environmental damage” at their licensed facility.

There are two requirements for licence holders:

- **Financial provision for incidents** – The full cost of responding to remedial measures if an incident occurs on a licensed facility: known as Environmental Liability Risk Assessment (ELRA) liabilities.
- **Financial provision for closure** – The cost of closure/ decommissioning/ restoration/ aftercare/ management at a licensed facility: known as Closure, Restoration and Aftercare Management Plan (CRAMP) Liabilities.

Marsh has worked closely with specialist insurers to devise solutions for our clients that satisfy both of these provisions. Please contact us for assistance.

FINANCIAL PROVISION FOR INCIDENTS – ENVIRONMENTAL IMPAIRMENT LIABILITY (EIL) INSURANCE

EIL insurance is a specialised liability policy indemnifying the policy holder in respect of costs incurred following an environmental incident, typically:



First and third party remedial and clean up costs.



Third party bodily injury.



Legal defence costs.

The EPA's guidance requires specific additional features (not normally included in a licensee's EIL policy) in order to meet their approval, including:

- The policy must respond to environmental and pollution loss and damage in accordance with the Environmental Liability Directive.
- The policy must respond to the release of pollutants, however these occur.
- There must be a ring-fenced limit of liability at least matching the value outlined in the facility's ELRA report.
- There must be retroactive cover, effective from the original license grant date.
- The EPA is to be named as an additional insured as well as named insured following bankruptcy/insolvency of the licence holder and/or failure of the licence holder to notify the insurer of a claim and/or accept receipt of the EPA's notice of claim.
- The premium must be paid prior to inception of cover and EPA policy approval.

A standard policy will not be sufficient to meet these requirements. Marsh has experience of working with clients and underwriters to write specific bespoke policies to meet these requirements.

ON-DEMAND PERFORMANCE BOND (CRAMP LIABILITIES)

The EPA financial requirements in respect of CRAMP are very prescriptive and only certain forms of security are acceptable:



On-demand performance bond.



Secured fund.



Charge on property.



Parent company guarantee.

Marsh can arrange an "on-demand" performance bond which can immediately pay the EPA the cost associated with CRAMP to make the facility environmentally safe following closure, should the licensee be unable to meet their statutory obligation and/or becomes insolvent. We have successfully placed EPA approved bonds since the guidance was published in June 2015 and we are actively working with strong "A rated" surety markets to bring these solutions to our clients.

Such a bond essentially backs the requirement that the licensee will fully comply with its CRAMP obligations outlined in the EPA's Financial Provisions. The licensee must ensure that a suitable financial provision remains in place throughout their license holding, meaning that this bond must be renewed annually.

If the bond is called the surety will then immediately seek reimbursement from the licence holder, but will have met the first "on demand" call to EPA as primary beneficiary in line with CRAMP requirements.

In order to obtain a bond as a solution to CRAMP liability obligations, licensees must demonstrate to underwriters a good financial/credit risk and strong cash flows. Any acceptance of risk by underwriters is subject to their own underwriting criteria, review of financial projections, balance sheet strength, business plan, and provision of security.

The information contained herein is based on sources we believe reliable and should be understood to be general risk management and insurance information only. The information is not intended to be taken as advice with respect to any individual situation and cannot be relied upon as such.

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