

ENVIRONMENTAL IMPAIRMENT LIABILITY INSURANCE



The nature of many business operations means that pollution or environmental damage¹ could occur at any time. This could subsequently lead to a third-party claim for nuisance, bodily injury or damage to property, or a regulatory authority demanding clean-up of land or the restoration of biodiversity, on-site or off-site, and associated legal defence expenses. Environmental insurance, more formally referred to as environmental impairment liability (EIL) insurance, can provide cover for these types of liabilities.

Any organisation that could cause pollution or otherwise incur responsibility for pollution liabilities should consider the value of environmental insurance. Also, those who embark on organisational change, such as mergers and acquisitions (M&A), divestitures, or property transactions, should consider the environmental liability apportionment in the sale agreement and consider risk mitigation measures and whether EIL insurance could offer an effective option.

From an insurance perspective, many businesses have tended to rely upon the limited pollution coverage provided by general liability and property policies to manage their environmental risks. It is important to note, however, the limitations of environmental cover within these general forms of insurance.

LIMITATIONS UNDER GENERAL LIABILITY INSURANCE

	GENERAL LIABILITY – TYPICAL SUDDEN AND ACCIDENTAL (S&A) POLLUTION CLAUSE	ENVIRONMENTAL LIABILITY IMPAIRMENT POLICY FORMS
Liabilities arising from gradual pollution	No	Yes
Damages payable to third parties for sudden and accidental pollution events	Yes (excluding on own site)	Yes (both on-site and off-site)
Statutory (regulatory) requirement for clean-up of own site	No	Yes
Statutory (regulatory) requirement for clean-up of pollution that has escaped/migrated off-site	Extensions may provide cover for S&A events	Yes
Damages payable to third parties for nuisance pollution risks	No (nuisance is unlikely to be from a S&A risk)	Yes, with some wordings
Cover for liabilities arising from historic contamination	No	Yes (under separate clause on some policies)
Emergency costs	No	Yes
First-party business interruption	No	Optional section
Cover for liabilities introduced by EU Environmental Liability Directive ²	No	Yes

LIMITATIONS UNDER PROPERTY INSURANCE

Typical property insurance would only respond to pollution when it has been caused by an insured property peril such as a fire or a flood, and would only respond to costs of reinstatement or indemnification of owned tangible property, for example, buildings, machinery and plant or stock, not soil and groundwater. Hence, there is little overlap between property and environmental insurance.

TYPES OF ENVIRONMENTAL POLICIES

The main environmental policy wordings have been developed around three main types of risk scenario, where pollution or environmental damage is caused on owned sites, for activities away from own sites (for example, at customer or third-party sites), or both. Cover is on claims made basis unless specified otherwise. Pollution can often impact soil and groundwater at a site and it can remain undiscovered for a long period of time. This has created the need for cover to respond to either historic or new pollution conditions, or both. The different policy forms are illustrated below:



FOOTNOTES

- ¹ The term pollution is used to represent both pollution and the wider term environmental damage, which could be caused by physical damage or adverse impact without a pollution event.
- ² Directive 2004/35/CE of the European Parliament and of the Council, of 21 April 2004, on environmental liability with regard to the prevention and remedying of environmental damage.

CONTACT

Please contact your Marsh representative with any questions you may have on environmental risks and insurance solutions. Alternatively, submit your request to national.enquiries@marsh.com.



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FREQUENTLY ASKED QUESTIONS

Is it compulsory?

*Environmental cover is usually a discretionary insurance. However, it can become a requirement through contract, for example, in M&A negotiations or public sector contracts, or to satisfy permitting obligations. Some countries have also introduced financial security obligations under the EU Environmental Liability Directive**.*

What information needs to be submitted to source terms?

For historic pollution conditions, an environmental report, such as a soil and groundwater investigation report, is often required, although not for many low-risk site histories, where a desk study or environmental search report might be suitable. For new (operational) policies, a business description, environmental management plans, and turnover details are sometimes all that is required.

Can it insure development cost overruns associated with existing soil pollution?

No, there is usually a development/change in use exclusion on policy wordings. Although increased costs of site development due to remediation after discovery of historic pollution is often considered unforeseen and unexpected, this risk remains a business risk. Off-site, third-party claims for bodily injury or property damage may still be insurable during development works.