



Environmental Insurance Coverage

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Environmental Liability

These days environmental liability (EL) can be a threat to almost anyone. Since the environmental movement began in the 1970's, businesses, property owners, and individuals have become legally responsible for environmental problems caused by their activities. Legislation such as the Clean Water Act, the Clean Air Act, and the Solid Waste Management Act has made polluting the environment illegal. However, the Comprehensive Environmental Compensation and Liability Act of 1980 (Superfund) drastically changed environmental liability.

Superfund laws pertain not only to those businesses or individuals that produce pollution but also to those individuals who hauled waste materials, owned land on which hazardous substances were disposed of, and even property owners who purchased land without any idea that the property was contaminated.

This fact sheet is intended to provide information on environmental insurance and how insurance can offer protection against environmental liabilities; it does not address how such liability arises. Readers who are interested in such information should contact a competent environmental professional for advice.

Environmental Insurance

Until as recently as 10 years ago, EL was a little known risk covered by only a few insurance companies. However, an increase in EL claims, both in frequency and scope, has proven that EL creates a potentially huge risk that requires a closer look by *insureds*. (See terms section for definitions of bolded words.)

Earlier in the history of insurance coverage, commercial insureds facing an EL loss received coverage from their *Commercial General Liability* (CGL) policy. However, never intending to provide

EL coverage, CGL writers quickly excluded EL from their policies. Many policies still do not provide EL coverage. However, many of these companies now provide separate EL policies that you may want to consider.

While there are a wide range of scenarios that potentially create an EL exposure, some of the more common are leaking underground storage tanks, toxic air emissions, contamination resulting from wastewater discharged into a river or other body of water, and contamination coming from any kind of waste material that seeps into the soil or groundwater. EL coverage has evolved to include: on and off-site cleanup; bodily injury and property damage liability; legal defense costs; and business interruption losses. Several specific types of EL insurance currently exist including:

- *Property transfer insurance
- *Secured creditors environmental insurance
- *Underground/above ground storage tank insurance.

Property transfer insurance. This insurance is used when property is bought and sold. If contaminants are found on the property, this policy will provide coverage for the cleanup of the insured premises. These policies normally have an eight to ten-year policy period.

Secured creditors environmental insurance. Many lending institutions are requiring environmental insurance as a part of the loan approval process. This policy provides EL coverage if a bank *repossesses* property that contains some type of environmental problem. These policies provide no value to the borrower, although the borrower pays the *premium* as part of the loan transaction.

Underground/above ground storage tank insurance. This policy provides coverage for ELs caused by leaking storage tanks that contain fuel, oil, pesticides or some type of hazardous substance. Underground

storage tank insurance policies cover **third party** liability claims for bodily injury, property damage, off-site as well as on-site cleanup costs, and include an additional limit for defense costs.

Does Your Farm Policy Cover EL?

Whether or not your policy covers EL depends upon the insurance company and the type of policy. Some policies contain what is known as a **pollution exclusion clause**, which excludes coverage of environmental liabilities. However, some policies provide limited and full coverage for EL. Several questions to ask your agent include:

What types of pollution are covered by the policy?

What is the coverage limit?

Under what conditions will policy cover EL? (For example, does it cover pollution caused by natural disaster, negligence, third-party negligence, intentional acts, etc.?)

When choosing an insurance policy, be sure the policy meets your needs. For instance, a policy that does not provide EL coverage for the cleanup of contamination caused by animal wastes may not be the best type of policy for a livestock farmer. Read the policy carefully; do not assume that a policy provides protection against all your risks. If you are unsure, give your insurance agent a scenario of your greatest risk. The agent can determine if the scenario

is covered by the insurance policy by contacting a claims department. The claims department can determine if the risk is covered and the total amount of coverage provided. Remember that a separate EL insurance policy can provide coverage for ELs not covered in a farm owner's policy.

Is EL Insurance Right for You?

EL insurance is an effective tool for minimizing the risks associated with ELs. However, everyone does not need EL insurance. In fact, the additional cost of purchasing an EL policy may not be a wise investment especially if your EL risk is relatively low. Before purchasing EL insurance ask yourself:

What type of ELs present the greatest risk to your property or business?

What is the dollar amount associated with these risks? (For instance, if you had to pay for cleanup of an EL, how much would this cost?)

Does the EL present a risk greater than the coverage provided by existing insurance policies?

If ELs pose a greater risk than the coverage provided by your existing insurance policy, you may consider adding more coverage to this policy or buying a separate EL policy to cover these risks. If you estimate the EL risk to be less than the coverage provided by your current policy, an EL insurance policy may be unnecessary.

Terms

Commercial General Liability: an insurance policy for companies engaged in business activities.

environmental liabilities: environmental problems for which a person can be held legally responsible.

environmental site assessment: a procedure performed by an environmental professional to determine recognized environmental problems associated with property.

insured: the person or business being insured.

negligence: the failure to exercise reasonable care.

pollution exclusion clause: a statement in an insurance policy that excludes coverage for environmental problems.

premium: periodic payments required to keep an insurance policy in effect.

repossess: a retaking of property, usually by a lending institution, that was sold on credit but was never fully paid for by the buyer.

third party: a person who is not a party to (not involved with) a lawsuit.