

Environmental Impairment Liability Insurance

Global Casualty
April 2014

The Environmental Liability Directive (ELD) is an example of another piece of legislation that has placed a duty on all businesses in the EU to take more responsibility for the environment.

The directive is wide ranging, requiring a business to prevent and remedy damage to animals, plants, water resources and natural habitats, regardless if these are owned by the business, another party or non-owned. The directive is based on the polluter pays principal. Further details of which can be found on the following link: <http://ec.europa.eu/environment/legal/liability/>

The directive is just one of a number of environmental laws that imposes environmental liabilities on polluters in the UK. Currently there are around 290 environmental regulations in the UK.

Key concerns for a business:

- Unexpected environmental costs
- First Party clean-up costs
- Compensation to third parties including consequential losses and diminution in property value
- Reputational damage
- Costs imposed by the Environmental Agency (EA) and Local Authorities
- Compensatory and Complementary Damages and costs for risk assessment and monitoring following Environmental Damage.

A General Liability policy typically leaves significant gaps in coverage for Environmental liabilities, leaving companies exposed to potentially significant financial loss. Cover is usually limited to an organisation's legal liability for 3rd party damages that result from a sudden and accidental event only. Many General Liability policies with environmental extensions fail to modify the policy trigger to include cover for clean-up liabilities following regulatory action.

Will Mellor

+44 (0)20 7933 2886
william.mellor@uk.lockton.com



James Pryke

+44 (0)20 7933 2895
james.pryke@uk.lockton.com



Global Casualty

A division of Lockton Companies LLP. Authorised and regulated by the Financial Conduct Authority. A Lloyd's broker
Registered in England & Wales at The St Botolph Building, 138 Houndsditch, London, EC3A 7AG, Company No. OC353198
LLP 1590 - Apr 14
www.lockton.com



The table below demonstrates some of the key differences between environmental policy and a General Liability policy.

Key gaps in coverage between PL and EIL Policies

	PL Policy	EIL Policy	Comments
Regulatory Claims	No	Yes	The majority of environmental claims involve regulatory intervention
First Party Clean up	No	Yes	The majority of claims require remediation of the contaminant source, this is more often than not "on-site"
Gradual Releases	No	Yes	Gradual releases may not be noticed until their cumulative effect of a number of years is found to have caused environmental damage (e.g. leaking underground pipes and drains)
Env. Liability Directive	No	Yes	The ELD imposes broad liabilities including Primary, Compensatory and Complementary Remediation
Transportation Liability	No	Yes	Motor Policies typically do not cover regulatory liabilities to clean up spillages
Legal Defence	No	Yes	Legal defence costs often account for a significant proportion of damages following an environmental incident
Clean up mitigation and restoration	No	Yes	A regulator may now require a polluter to restore a habitat to its original condition, or create a new habitat of commensurate value to the one which was damaged
Historic and New Conditions	No	Yes	Latent environmental liabilities may exist from former land uses. The current owner / occupier may assume liability where the original polluter cannot be found
Admission of Liability	No	Yes	The ELD now makes it a criminal offence not to report environmental damage or an imminent threat of environmental damage to the regulator (a GL policy often precludes an admission of liability)
Non Pollution Environmental Damage	No	Yes	Fires, landslips, changes to groundwater levels as a result of construction works are just a few examples where environmental damage can arise without the need for a "pollutant"
Emergency Costs / Preventative Measures	No	Yes	Companies are now responsible for acting where there is an imminent threat of environmental damage

Typical Exclusions

- War / terrorism
- UST (Underground Storage Tanks) - however, a write-back is available if tanks are 25 years old or less
- Voluntary Site Investigation (VSI)
- Prior knowledge
- Fines and Penalties.

Global Placement

Carriers can cover an organisations global exposure and issue paper where required.

Information Requirements

In order to secure indicative pricing, markets will require the following information as a minimum:

- List of locations
- Full business description and detail of activities undertaken at each site
- Turnover info if related to Contractors Pollution.

Please note that the level of information required will vary depending on a number of factors such as level of contamination, coverage required and business activities.