



Society of Environmental Insurance Professionals

Enabling insurance professionals to better serve the needs of their customers through education, technology, resources, rapid innovation and networking.

Featured in this issue:

A Guide to Environmental Insurance

Preventing & Insuring Against Environmental Violations

Environmental Forum

In 2001 "The Environmental Insurance Forum" will be presented in four regional locations. Watch for details.

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A Guide to Environmental Insurance

Contemporary environmental insurance can be an important and powerful coverage within an organization's insurance program. In contrast to the general perception that environmental insurance coverage is restrictive and expensive, the reality is, there is a wide range of coverage available at sometimes surprisingly affordable prices.

Estimates show that less than 10% of environmental losses are insured. One of the contributing factors to the underutilization of environmental insurance is general confusion on what coverage is available, and how it can be used. This problem is exacerbated by the environmental insurance underwriters' rapid introduction of new policy forms and new exceptions to pollution exclusions being added to the standard commercial policies.

Environmental insurance has been available in the US marketplace for over twenty years. Over forty insurance companies currently write environmental insurance. The premiums written in the environmental insurance market exceed \$1 billion annually. There are over 100 different environmental insurance policy forms with some coverages having a market capacity of \$400,000,000.

Today, the underwriting climate for environmental insurance is very competitive. Underwriters are willing to take on high amounts of risk, sometimes for very long periods, at premiums that are comparable to other lines of commercial insurance coverage. In today's marketplace, virtually any legal activity can obtain environmental insurance. To illustrate the underwriters' appetite for risk, the US-based environmental underwriters were recently asked to provide environmental insurance coverage for contractors participating in the cleanup of the nuclear disaster at Chernobyl. The marketplace responded quickly, with favorable terms that enabled the cleanup activities to begin.

Unfortunately, there is much misinformation as to the availability and cost of environmental insurance. Often, incorrect information leads potential users to the erroneous conclusion that environmental insurance is too costly and/or restrictive.

Unlike traditional insurance coverages, where insurance companies cooperate to produce standard policy forms for general liability and property insurance, there are no accepted industry standards for environmental insurance. Often, different underwriters create custom names for essentially the same type of environmental coverage. For example, environmental impairment liability insurance and pollution legal liability insurance are different names referring to the same coverage. Underwriters have also compounded the complexity of the

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Insider's Tips

Environmental impairment liability (EIL) also known as pollution legal liability (PLL) has a market capacity for a single risk of \$400,000,000.

Minimum premiums for contractors pollution liability insurance start as low as \$2,500.

The general liability policies for contractors with small, incidental environmental exposures can be endorsed to include pollution coverage.

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environmental insurance by combining various forms of environmental coverage into package policies, then labeling it to appeal to certain target buyers. While these package policies make powerful tools for practitioners when designing an insurance program, they also add to market complexity, which is very intimidating to the average insurance professional, and is largely responsible for the small number of insurance professionals working in the environmental insurance arena.

Environmental insurance can be broken down into five basic coverage forms. The majority of all environmental insurance policies in the marketplace will consist of one or more basic building blocks, that will be discussed.

Environmental Impairment Liability

Environmental impairment liability (EIL) insurance is used to cover fixed site exposures. The coverage responds to loss arising from pollution conditions, which, in general, requires an active release of pollutants to trigger coverage under the policy. EIL policy forms cover claims arising from sudden, as well as, gradual releases of pollutants from insured locations.

EIL policies have been adapted to cover specific risks and needs.

Property Transfer EIL Insurance

A property transfer policy is a specially adapted EIL policy designed to be used when property is bought and sold. These policies can be used in place of the seller's indemnity for clean up costs and third party claims for bodily injury and property damage when a property is being bought or sold.

Secured Creditors Environmental Insurance

Secured creditors environmental insurance was developed to meet a market demand to back the collateral interest of the lender. The coverage has a few restrictions including: only one named insured, the lender; the policy will pay if the borrower defaults on the loan and there is an environmental condition at the insured location.

Storage Tank Insurance

The Resource Conservation and Recovery Act (RCRA) provides regulations that apply to the owners and operators of underground storage tanks. When such tanks are used for storage of fuels or hazardous materials, the RCRA regulations require the owners or operators to demonstrate their ability to pay (financial responsibility) claims resulting from the release of materials from the tank. One method by which financial responsibility can be demonstrated is the purchase of insurance. The specific coverage extensions required in the federal and state environmental regulations have resulted in the development of a special form of pollution insurance, called underground storage tank (UST) insurance. These policies cover third-party liability claims for bodily injury, property damage, off-site as well as on-site cleanup costs, and defense costs.

Contractors Environmental Impairment Liability Insurance

This policy form was first developed to address the environmental insurance needs of contractors performing environmental remediation services on contaminated sites. Today, this policy form is commonly used to insure the environmental loss exposures of traditional contractors as well. The form is designed to cover a contractor's operations and completed operations. Contractors policies provide coverage for loss arising from the described operations of the named insured. This coverage is available on a claims-made or occurrence forms.

Environmental Professionals Errors and Omissions insurance

Today, environmental professional errors and omissions (E&O) insurance policies resemble traditional professional E&O for architects and engineers, with two important exceptions. First, the policies written specifically for environmental professionals should contain a coverage grant in the insuring agreement or the definition of loss for environmental damages and clean up. The second policy modification from the traditional architects and engineers policy should be the elimination or modification of the pollution exclusion.

Asbestos and Lead Abatement Contractors General Liability Insurance

Essentially, the asbestos and lead abatement contractors policy is a general liability policy with an exception to the pollution exclusion for asbestos materials and lead.

Remediation Stop Loss

Remediation stop-loss (also known as cost cap coverage) was designed to insure remediation costs that exceed the projected or anticipated costs. Remediation stop-loss policies typically agree to pay on behalf of the named insured the cost overrun expenses, in excess of the deductible, that the insured incurs in completing a remediation project at a specified location.

Combined Policy Forms

As the variety of environmental insurance policies grew, it became apparent that many potential insurance buyers would benefit from having a single policy that combined multiple environmental coverages. The demand for combined forms began with environmental consulting firms that were also involved in on-site remediation of contamination. Because these firms had both a professional liability exposure and a

contracting exposure, they found it necessary to purchase both a contractors environmental policy and a professional E&O policy to adequately cover their environmental liability exposures. Once the pattern of combining coverage forms was established, underwriters developed other combinations of coverage to meet the specific needs of various segments of the market. Now, combined forms are an important part of the environmental insurance market.

Conclusion

The current environmental insurance market is very flexible and competitive. Environmental underwriters have shown the ability to take on significant loss exposures for extended periods of time. Virtually any legal operation, activity, or service can be insured for environmental damage claims anywhere in the world.

By utilizing the basic building blocks of environmental insurance, the underwriting community has created a broad range of environmental insurance products that can be powerful and valuable tools in an overall risk management program.

Preventing & Insuring Against Environmental Violations

The Environmental Protection Agency (EPA) in conjunction with the Department of Justice (DOJ) continues their enforcement for criminal violations of environmental laws. In 1999 the EPA recorded enforcement actions and penalties totaling \$3.6 billion for environmental cleanup, pollution control equipment, and improved monitoring; \$166.7 million in civil penalties; and 208 years of prison time for committing environmental crimes.

Corporations and municipalities can be held liable for the acts of their employees. Environmental statutes, unlike criminal law, do not require proof of criminal intent. Employees, corporate officers, or environmental managers can be found guilty, even if they did not know their actions would result in a violation of the law.

A corporate environmental compliance program is the first step in mitigating these

possible violations. An environmental compliance program can help pinpoint problems that may exist in the storage and disposal of hazardous waste, previous and present uses of property, underground storage tanks, and contractual obligations to name a few. The DOJ is more lenient in prosecuting companies that have an effective compliance program.

A second step is a comprehensive risk management program to include environmental insurance. Environmental underwriting can provide an opportunity to look at environmental practices and help eliminate situations that can lead to environmental incidents. If an accident does occur, environmental insurance provides financial protection from claims resulting from the incident. It is also possible to obtain limited coverage for fines and penalties under environmental insurance policies.

Environmental Violations Imposed by the EPA and DOJ

CEO and Chairman of the Board for Master Circuits, Inc. was sentenced to 5 months in prison, and \$5,000 fine for illegally discharging untreated wastewater into the sewer system.

An employee of Morgan Artcraft Screen Print Co was sentenced to 16 months in prison and required to pay \$30,000 in restitution for improper disposal of ink containers, a violation of RCRA.

Koch Industries was assessed \$30 million in civil penalties and \$5 million to spend on environmental projects for violations of the Clean Water Act. Due to improper maintenance of pipelines, millions of gallons of oil was spilled into nearby lakes.

What's new on the SEiP website?

Industry Profiles

Are you unsure of the environmental exposures for a particular industry? The SEiP website has industry profiles for the dry cleaning and printing industries. The profiles give an industry background, hazardous materials used in their processes, possible violations of environmental laws, potential liability exposure lists, and insurance products for risk transfer. Coming soon is an industry profile for colleges and universities.

Find an Underwriter

Do you need to find an underwriter? If you are looking for an underwriter for a particular risk such as landscape/pesticides, recyclers or any niche market, the SEiP website has your answer. Past issues of ***Crittenden's Environmental Liability News™*** makes it easy to find the underwriter that you are looking for. Also phone numbers, email addresses, and home pages for major environmental underwriters are listed on the website. Can't find the answer on the SEiP site, Ask The Expert or contact the webmaster for assistance.

What is SEiP?

The Society of Environmental Insurance Professionals (SEiP) is dedicated to helping insurance professionals utilize environmental insurance products to better serve the needs of their customers. Through a knowledge managed website, focused environmental forums, and access to specialized resources, SEiP members have a valuable resource at their fingertips. SEiP is an independent organization that is not owned by an insurance company or brokerage firm. SEiP does not sell or broker insurance. To learn more about SEiP visit our website at www.armr.net or call 877-735-0800.

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Comments, suggestions and articles are welcomed. Potential guest columnists are encouraged to submit a brief topic outline and biographical summary to Anne Simmons at simmons@armr.net.



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