



The dangers of putting environmental insurance on the back burner

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Despite high profile environmental disasters such as France's Bouches-du Rhône oil accident or the Hungarian toxic sludge spill, many buyers remain convinced that simply extending their general liability policies covers their risks, while others rely on prevention without insurance. Unsure about how the Environmental Liability Directive (ELD) will be enforced, many companies and brokers across Europe are simply waiting for something to happen.

Real cost of a clean-up

A lack of awareness persists over the increased financial liability and consequent cleanup costs associated with the ELD. A study by the French Ministry of Ecology, Energy, Sustainable Development and the Sea from April 2010 assessed the costs of past pollution events compared to the new ELD regime. The report concluded that costs now were estimated to be around 40 times the regulatory costs originally incurred by companies in the late 1990s.

While media coverage focuses on high profile environmental disasters, two significant pollution incidents are reported on average every day in England and Wales alone. A typical example would be the aviation fuel supplier fined £40,000 in 2007 after severely polluting groundwater beneath Heathrow Airport with aviation fuel. On top of costs payable the Environment Agency of £14,000 the firm was required to pay for a specialist remediation company to remove the fuel. As at June 2010 over 139,391 litres had been recovered with the remediation costs having already reached £1 (€1.28) million.

This type of incident should be a wake-up call for many companies who believe these events don't occur or are not expensive. While the fines may be low the remediation bills can be substantial and the balance sheet of the polluter will not always be taken into account when it comes to paying for re-stocking rivers

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or returning land to its pre-spill condition. In other words, a large portion of environmental legislation does not have any 'hardship clause'.

Companies are now required to take immediate steps to prevent damage to the environment and to notify the enforcing authority, which must now enforce the "polluter pays" principle. With the public purse low on funds authorities are less willing to pick up the tab for environmental damage and are also more likely to pursue the polluter.

To insure or not to insure

Many risk managers have been reviewing their exposures in light of the tougher regulations, but some seem to be relying on existing procedures and General Liability insurance in a belief that this law is not relevant to their operations. According to the UK's Environment Agency, 37% of significant pollution events are caused by equipment or control failures. Still some are choosing not to make financial provisions for these events, ignoring the costly exposure of an unpredictable and potentially catastrophic event. Insurance is intended to compliment not replace existing environmental risk management practices.

Confusion over cover

There is significant confusion in the market over whether existing general liability policies cover environmental risks as highlighted in a report by the *International Underwriting Association* in London.

In most European countries traditional general liability policies provide only a basic level of coverage for environmental liabilities. They pay for damages suffered by a third party following a sudden and accidental event. However, these policies will in most cases fail to respond to liabilities established under the statutory / public law system, e.g. a clean-up notice from the authorities. Since the early 1990s virtually all public liability policies across the UK include "gradual pollution" exclusions.

This means that a GL policy will usually only indemnify for a "sudden, identifiable, unintended and unexpected incident," leaving the insured exposed to gradual pollution conditions, such as the cumulative impact of a leaking underground storage tank, or the ongoing odour that can arise from waste management facilities.

France has a similar approach where, according to the Napoleonic code, regulator injunctions are not considered as third party actions and therefore not covered in general liability contracts. Furthermore, following a court ruling after the oil spill caused by the tanker Erika off the French coast in 1999, the polluter might have to even pay reimbursement of expenses to environmental associations.



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Germany's general liability equivalent, the UHV, also only provides cover for damages suffered by a third party following a sudden and accidental event. With the implementation of the ELD a new insurance form was introduced responding to statutory cleanup requirements, but with limitations regarding onsite clean-up, groundwater impacts, gradual and normal operational exposures.

The most notable difference in **Spain** is the expected requirement of companies to have financial provision regarding their environmental liabilities. These requirements are set to follow a tiered structure based on assessment of potential to cause damage to Natural Resources versus environmental management systems of the firm.

Without the right cover, a company may well find itself needing to pay for this clean-up itself. This can have dire consequences where the clean-up costs are significant in relation to the company's overall financials. Following the toxic spill in Hungary last autumn the responsible company is now operating under supervision of the Hungarian Government and will have to be nationalized in return for the Government paying for clean-up costs, estimated currently at €50m plus, and third-party claims.



It is inevitable that environmental pollution guidelines and laws will continue to tighten and the impact of the ELD will become more palpable. In March 2010, the European Court of Justice concluded that “it is only necessary for a member state to establish a weak link of causation between operators’ acts and the environmental damage in order to force payment.” Still some cite the lack of relevant data for the slow uptake and that more losses are needed to increase demand. Not knowing how the ELD will work is causing many to simply ignore the risks involved, leaving numerous businesses underprepared for the significant remediation costs and negative publicity of an environmental disaster.

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