

Spotlight: Environmental Liability Directive



Simon White,
Environmental
Branch Manager

The introduction of the Environmental Liability Directive (ELD) has put environmental insurance high on risk managers' agendas as companies have become more aware of the potential liabilities and associated costs.

From humble beginnings in the 1970s the modern environmental movement has always tried to increase awareness of the devastating impact of environmental damage. Over the years public opinion has been influenced by major pollution incidents (see timeline), global conferences such as the 1992 UN Earth Summit in Rio as well as pressure groups like Greenpeace, motivating politicians to pass tougher environmental laws.

The Environmental Liability Directive is the latest of a series of environmental laws from Brussels. The scope of the law is very wide ranging but the main intention is to reinforce a strict 'polluter pays' principle for damage to ecosystems, water and soil.

In addition to detailing obligations in the event of damage to land and water, it introduces liabilities for damage to the environment in general, in particular to protected species and habitats. It effectively gives 'rights to the environment' should it be damaged, focusing on a series of sites, collectively known as the Natura 2000 network, which are natural habitats for plant

and animal species that are endangered or threatened.

The key points of the ELD are:

- Any polluted land must be returned to its original state;
- Natural habitats and species are protected in their own legal right and polluters are liable for remedying any damage caused to them. Any damage will therefore entail a cost by the polluter to remedy the damage;
- If a damaged area cannot be brought back to the pre-incident level, other ways to compensate for the loss of the 'natural resources' must be found. This is the concept of 'complementary remediation';
- Non-governmental organisations and others have the right to ask the authorities to take action against polluters.

XL Insurance has responded with new products and expanded cover to protect against the environmental liabilities introduced by the legislation.

Environmental insurance policies are a combination of third-party liability and first-party property coverages for loss, remediation expense, and legal defence expense for sudden and gradual pollution conditions. This includes primary, complementary and compensatory remediation arising from the ELD.



Key Events:

- 1962** 'Silent Spring' published, seen as helping launch the environmental movement;
- 1976** Seveso, Italy: Explosion at facility results in dioxin contamination of surrounding area;
- 1978** Lekkerkerk, Netherlands: Toxic contamination under housing estate leads Dutch Government to establish programme to clean up contamination;
- 1986** Basel, Switzerland: Contaminated water pollutes Rhine leading to the European Commission proposing a liability system for remedying environmental damage;
- 1987** Brundtland Report, 'Our Common Future,' which coined the phrase 'sustainable development';
- 1989** Alaska, USA: Tanker 'Exxon Valdez' spills 10.8 million gallons of crude oil into sea;
- 1998** Aznalcollar, Spain: Escape of about 6.5 million cubic metres of toxic waste from tailings dam at Boliden Ltd's lead-zinc mine;
- 1999** Brittany, France: Oil spill from tanker Erika causes widespread damage to the coast;
- 2004** The EU's Environmental Liability Directive is introduced.