



Environmental Liability Insurance

As a result of increasing environmental regulation, businesses should be more mindful than ever of the financial, legal and reputational consequences of dealing with a pollution event, as well as their social and ethical responsibilities.

Whilst a 'Polluter Pays' principle exists, as enforced by the Environmental Liability Directive (ELD) which came into force across the EU about fifteen years ago, environmental liabilities can pass to the current property owners, who increasingly find themselves being held responsible for pollution or environmental damage for which they had no knowledge of and for which they had no control over.

Environmental Liability Insurance protects an insured against claims from third parties or the regulator against the cost of restoring any damage that has been caused by environmental accidents, such as pollution of land, water, air, or biodiversity damage.

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We often find that clients believe they already have environmental coverage under their general liability policies. But there might be significant gaps in coverage, or differences in coverage, that could leave clients exposed if an event occurs as most property and liability policies exclude all forms of pollution, hence the need for businesses to consider separate cover.

For example, environmental impairment liability policies cover regulatory claims, first party clean-up costs, gradual releases and emergency costs – all areas that a typical public liability policy will likely exclude. Also, an environmental impairment liability policy can cover investigation and monitoring costs and habitat restoration costs resulting from impacts to natural habitats.

In the Real Estate sector, requests for an Environmental Liability Insurance policy may come from any of owners, occupants, lenders or investors, or a combination thereof. Whilst landlords are generally not the original polluters and often benefit from contractual protection in leases, landlords have been known to be held responsible for addressing the pollution damage caused by their tenants in the event that tenants have gone into liquidation or disappeared. In these situations, landlords are often forced to pay.

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Case Study

A company leased a site to a company to store bales of shredded, recycled carpet. A fire broke out which lasted for six months, and around 3,000 tons of waste was left at the site following the incident.

The company went into voluntary liquidation. The liquidators stated that the company had insufficient sums to make the site good and stated that following liquidation, the responsibility for clean-up lies with outside agencies or the ultimate owner of the site.

An Environment Agency spokesman stated: **“The landowner has a legal responsibility to manage the site to prevent further pollution.”**

Businesses should consider their potential exposures, focusing on the issues in the buying, selling and development of land. Some potential examples of when and why the cover would be needed are:

- Industrial land can have legacy pollutants which would need cleaning up and may additionally have the potential to cause bodily injury, illness or disease.
- Hazardous materials such as chemicals, fuels and oils or hazardous occupations of sites can give rise to future environmental liabilities.
- Building works and renovations often involve demolition and potential exposure to lead, asbestos or other materials.
- Poorly operating drains can cause run-off of oil into a water supply.
- Future contamination incidents could potentially arise from the ongoing operations of a business.
- Properties may have poor indoor air quality, resulting in mould or Legionella and exposing residents, customers or workers.

At Arlington we speak to specialist insurers about environmental liabilities to ensure the cover closely fits the bespoke requirements of our clients.



Who to Contact at Arlington

If you would like to know more, please contact:

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