

What Is Environmental Insurance?



Growing awareness of the serious, long-term effects of pollution, increased regulatory scrutiny and legal liability have created a demand for environmental insurance. Also known as environmental impairment liability and pollution liability, environmental insurance pays for claims related to the release of pollutants, including bodily injury, property damage, cleanup and business interruption.

The insurance came about as a result of the environmental movement. In the 1970s, Congress passed a series of major bills aimed at conservation, protection, recovery and pollution liability. Landmark laws included the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), known as the Superfund Act.

Environmental protection and liability

The Superfund Act was designed to clean up toxic chemical sites and spills, but it also established strict liability standards for owners and operators of sites, transporters to sites, and those parties responsible for any hazardous materials at the site.

As the National Association of Insurance Commissioners (NAIC) notes, these environmental laws “impose[d] clear liability on polluters. As part of their overall risk management, many businesses sought to acquire

separate insurance coverage recognizing they were not fully protected under their general liability and property policies. Also, insurers, realizing they needed to reduce their potential exposures, started adding explicit pollution exclusions to their general liability policies starting in 1973.”

Over the course of a decade or more, insurers tightened these exclusions to the point that, beginning in 1986, general liability policies “exclude[d] almost all pollution and explicitly bar[red] coverage for any release of contaminants,” the NAIC says.

Hence, the genesis of a separate environmental coverage to fill the gaps left by insurers in their general liability and property policies. The first environmental insurance in the form of **pollution legal liability** coverage was introduced in 1978, and **contractors pollution liability** was introduced in 1986.

Today, environmental insurance still falls primarily into these two types of coverage, along with a separate coverage sometimes found in professional liability insurance.

The basic types of environmental insurance

- **Pollution legal liability (PLL)** – A form of environmental impairment liability insurance, this policy protects the owners of an ongoing business operation. It covers new pollution and preexisting pollution, and it will pay for claims such as cleanup costs, loss of rent and business interruption. Any number of businesses might need PLL, including apartment buildings, hotels, manufacturing plants and hospitals. Even mortgage lenders, real estate agents and developers may need protection if the properties they handle are polluted.
- **Contractors pollution liability (CPL)** – This coverage is intended for contractors who are working on a job site and may release toxic chemicals into the air or water or contaminate the soil. There are a wide range of exposures CPL covers, including chemical spills, water contamination, inappropriate disposal of hazardous materials, and the release of mold and bacteria. For many construction projects, having a CPL policy may be a requirement of the contract.
- **Professional liability** – Professional liability coverage that doesn’t have a pollution exclusion provides some protection for pollution-related losses. You may also be able to add pollution liability as an endorsement (an addendum to your policy).

Environmental insurance is still evolving, and there are few industry standards and little regulatory oversight. This is because environmental insurance is sold in the excess and surplus lines market, which isn’t subject to the same level of regulation as standard property/casualty insurance.

This makes it imperative that you consult with an experienced broker who knows this market well. Unfortunately, many businesses and even some insurance agents, are under the mistaken impression that a general liability policy will protect against pollution liability or that it excludes only hazardous waste. This simply isn’t the case.

On the plus side, the excess and surplus lines market is known for its innovation and willingness to experiment with new forms of insurance. Environmental insurers continue to introduce new types of coverage designed to protect risks that standard insurance companies won’t insure.

Coverage you should look for in a policy

According to the International Risk Management Institute (IRMI), here is the basic coverage you should look for in an environmental policy for losses stemming from the release or escape of pollutants:

- Bodily injury
- Property damage
- Cleanup expenses (as required by environmental laws)
- Defense costs

Other coverage to look for, according to IRMI:

- Non-owned waste disposal sites
- Transportation of pollutants as cargo
- Business interruption
- Loss of rent
- Extra expenses
- Reputational damage
- Midnight dumping on insured locations
- Coverage for fungi and bacteria

An experienced broker will be familiar with the different forms of environmental insurance and will be able to help you find the right coverage for your business. A common pitfall is using the wrong type of coverage, such as using a form meant for an industrial site when trying to insure an apartment building or a form designed for outdoor exposure when insuring an indoor exposure.

Most environmental insurance is sold on a claims-made basis. It will cover claims that are made during the policy's reporting period only. Since pollution liability often has a long "tail," contractors should choose a reporting period that extends well beyond the completion date of a construction project. Extended reporting periods (ERPs) are fairly common and can be purchased to cover future liabilities. For ongoing operations, make sure you keep your policy in force and up to date.

Pay careful attention to pollutants covered

It's also important to carefully consider what pollutants are covered by the policy. Since there is no set form in environmental insurance, make sure your policy covers a broad range of chemicals and pollutants.

Policies may vary in how they define pollutants and the types of events that are covered. For contractors, be sure the types of substances and materials you handle in your work are covered. Some examples include asbestos, epoxy sealant, lead-based paint, strippers, solvents and roofing tar.

Check to make sure mold and bacteria are covered, since these are specifically excluded from general liability insurance. Most contractors and businesses are unaware that mold and bacteria exclusions can lead to a denial of water intrusion claims if it is found the water is contaminated. The same is the case for agribusiness operations, where aquifers can become contaminated from farming. In recent years, mold has become the No. 1 PLL claim, mostly from high-rise buildings.

The need for environmental liability protection is extensive and not just limited to construction or heavy industry. Pollution can be defined quite broadly to include indoor air quality and a variety of naturally occurring and human-made hazardous substances. Even dry cleaners and hair salons may need environmental insurance. The Society of Environmental Insurance Professionals estimates that only 2% of businesses have the liability protection they need.

Environmental insurance premiums are relatively low compared to the devastating impact a pollution claim could have on your business. As new substances are identified that may cause cancer or other diseases, your liability may shift or grow. Make sure you are adequately insured.

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