THE BIGGEST MYTH - WE'RE ALREADY COVERED

Did you know?

- Pollution liability coverage under your Public/Products Liability policy is probably limited to third party claims resulting from a sudden identifiable unintended and unexpected incident which takes place in its entirety at a specific moment in time and place during the Period of Insurance:
- If you do not have a specific pollution and contamination clean up extension on your Public/Products Liability policy, you are probably not covered for the cost of remediation required or incurred by a regulatory authority, such as the Environment Agency (for example, clean up of pollution of a watercourse) even after a sudden, identifiable, unintended, etc. incident.
- If you do have a clean up extension, it is likely to have a low sub-limit (typically between £250k and £1m in the aggregate).

- The extension is likely to exclude clean up of your owned property (even where such clean up is required by a regulatory authority).
- The extension is likely to also exclude restoration of flora and fauna (natural resource damage liabilities under national laws implementing the EU Environmental Liability Directive in member states).
- Pollution coverage under your Property or Material Damage/Business Interruption policy is probably limited to loss resulting from property damage or business interruption caused by pollution associated with a Defined Peril.
- The definition of property in the policy probably excludes land, so the policy probably does not cover pollution damage to land or water at your owned sites (other than possibly limited coverage for debris removal).
THIS MEANS

• None of your existing policies are likely to provide you with any cover whatsoever for liabilities resulting from gradually occurring pollution or pre-existing (historic) pollution conditions.

• None of your existing policies are likely to provide you with effective cover for clean up of pollution of land or water at your owned sites.

• None of your existing policies are likely to provide you with any cover for environmental damage liabilities (biodiversity/natural resources restoration).

• Where any form of pollution coverage is provided under any of your existing policies, it is likely to be in the form of a complete exclusion, other than where specific stated conditions are met (e.g. “sudden identifiable, unintended, unexpected…”, “from a Defined Peril”). This is likely to place on you, not the insurer, the onus of proving that all the conditions for pollution coverage have been met.

• There is significant potential for uncertainty over the events surrounding many types of pollution incident, which means it may be very difficult for you to prove that all the stated conditions required for pollution coverage under any of your policies have been met.

• In practice, this means you are unlikely to know what, if any, insurance coverage you have until well after a pollution incident has arisen, when all the relevant facts have been determined. In the meantime, your obligations under environmental law are likely to require you to incur significant costs, which may well not be insured.

• An inevitable consequence of the limitations highlighted above is that you are likely to currently have significant potential for uninsured losses if any of your sites or business activities release pollution.
The main option available to significantly increase your insurance coverage for pollution liabilities is to purchase a specialist pollution liability insurance policy to cover your sites and activities.

Standard pollution legal liability policies provide site-specific cover on a single site, multi-site or portfolio basis. Cover under these policies is typically for:

- On-site and off-site statutory clean-up costs (clean-up to the extent required by environmental laws) including emergency/mitigation costs and property restoration costs
- Natural resource/biodiversity damage (liabilities arising under the Environmental Damage [Prevention and Remediation Regulations 2009 or equivalent national laws implementing the EU Environmental Liability Directive in other Member States)
- Third party claims for bodily injury and property damage
- Investigation and legal defence costs

where these result from either new pollution conditions or both new and pre-existing (historic) pollution conditions, depending on the coverage option selected. (Note – the policy wordings make no distinction between pollution conditions resulting from sudden and accidental and gradually occurring sources and therefore cover both).

There is the option under some policies to include cover for Transportation liability, which covers clean-up costs, third party bodily injury and property damage resulting from pollution conditions caused by products or waste during transportation.

Policies can also potentially be extended to cover Business Interruption loss resulting directly from a pollution condition.

The definition of Insured under these policies normally includes directors, partners and employees of the Insured. Other interested parties can be included as Additional Insureds.

“Policies can also potentially be extended to cover Business Interruption loss resulting directly from a pollution condition”
BUSINESS ENVIRONMENTAL INSURANCE

This type of insurance provides you with essentially the same types of cover as a standard Pollution Legal Liability policy, but it also goes further by covering your pollution liabilities resulting from Business Activity, which includes:

- Your activities on property you own, or lease;
- Your activities at or on third party premises;
- Transportation by you or on your behalf and associated with your Business activity.

The policy can also be extended to cover your Increased Cost of Working/Business Interruption and can cover any lender with an interest or security in your Business Activity.

As in standard Pollution Legal Liability policies, the business environmental insurance wording makes no distinction between pollution conditions resulting from sudden and accidental and gradually occurring sources and therefore covers both. However, it can potentially be placed on a Difference in Conditions/Difference in Limits basis, to sit alongside your existing PL/Products policy.
Key risks for which you are likely to currently be uninsured that could potentially be covered by a specific pollution liability insurance programme include:

- Liabilities (third party claims and regulatory clean up costs) resulting from gradually occurring pollution and pre-existing (historic) pollution conditions
- Clean up of pollution of land and water at your owned sites
- Environmental damage liabilities (biodiversity/natural resources restoration) arising under national laws implementing the EU Environmental Liability Directive in member states
- Business interruption loss resulting from pollution conditions at your owned/leased sites
- Pollution mitigation costs
- Full policy limits cover for regulatory clean up costs caused by a sudden and accidental incident (including transportation)

The additional benefits to you of using a business environmental insurance policy as the specific pollution liability insurance programme include:

- Cover for pollution liabilities resulting from your business activities on non-owned/third party properties
- Cover for pollution liabilities faced by your past directors, officers or partners
- Cover for lenders with an interest in your business
- Policy placement on a DIC/DIL basis, to utilise most effectively the pollution liability cover currently provided under your existing insurances.

“The principal benefit of a specific pollution liability insurance programme is that it can fill in most of the significant gaps in pollution liability coverage that exist under your existing insurances and thereby significantly reduce your exposure to future uninsured pollution liability losses.”
THE OTHER MYTHS

It costs too much
The cost of pollution liability insurance has decreased very significantly in recent years – especially new pollution conditions cover for relatively straightforward lower risk sites and operations. Minimum premiums for a single site can now be as low as £1,000 and the effective cost per property on multi-site and portfolio policies can potentially be significantly lower (premium levels can, of course, be significantly higher, depending on the specific risks associated with your site[s]/business activities and the coverage required).

You need a survey first
Cover can usually be placed on the basis of existing environmental reports and other information that you already hold. It is unlikely that insurers will require any further environmental surveys conducted, specifically for their benefit, prior to insuring you. All available existing environmental reports and other material information must, of course, be disclosed.

If there’s a risk it will be excluded
It is often possible to insure against known existing pollution resulting in future claims/liabilities and it should certainly be possible to insure unknown pollution risks.
A range of specialist environmental insurance policies is available to fill in the significant gaps in pollution liability coverage that probably exist under your current insurances and to thereby reduce your exposure to uninsured losses. The availability and affordability of these policies has increased greatly in recent years. The extent of cover provided as standard under these policies has increased significantly to deal with the range of new pollution liabilities that you now face, such as those under the EU Environmental Liability Directive, and also to potentially deal with known pollution conditions that you may have.

Don’t base your views on environmental insurance on enquiries you may have made some years ago. If you are concerned about how limited your existing insurance cover is for pollution liabilities, then find out how much it would cost to fill the gaps with a pollution liability policy – it will probably be less than you expected!

“The availability and affordability of these policies has increased greatly in recent years”
Graeme is an Environmental Director in the Arthur J. Gallagher, Construction Services team. He provides environmental liability solutions to client organisations facing environmental risks, using the most appropriate mix of risk reduction, control, financing and transfer.

With over 20 years’ experience in the environmental profession, primarily in consulting and insurance, and knowledge of environmental risk Graeme is an insurance specialist in his field. His specialist consulting areas are environmental risk and insurance, environmental liability assessment, environmental due diligence, environmental management and contaminated land investigation and remediation.

Throughout his career, Graeme has worked as an environmental insurance underwriter, in New York and then London and has worked as an environmental risk advisor and environmental insurance broker since 1997.

Graeme’s unique background of experience in environmental consulting, environmental insurance underwriting, insurance broking and risk management means that he is able to deliver the full range of environmental risk and insurance services to clients, from consulting through to negotiation and placement of financial risk protection solutions.

For a discussion on your requirements or to explore cover options please contact:

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