



# Environmental Insurance Overview

Local Government Authorities

**AON**

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# Introduction

Aon's Environmental Services Group (ESG) is a specialist team that provides insurance and risk management solutions for environmental exposures, pollution and contaminated land. The global Environmental Services Group was recognised by Risk & Insurance magazine as the "best team of environmental brokers to handle the most complex environmental risks".

Almost every industry has some kind of environmental exposure that can lead to soil or water contamination, injury, property damage or business interruption. Environmental insurance policies have been designed to address these various financial losses that can occur from a pollution incident.

The ESG has prepared this report to provide an overview of the benefits of environmental insurance for Local Government Authorities, highlight typical coverage gaps in traditional policies and provide examples of relevant pollution losses.

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# Environmental Exposures

Even with comprehensive management plans and procedures in place, events may still occur that result in pollution or contamination. Local Government Authorities are subject to a number of environmental exposures. Examples of some of these exposures are detailed below.

## Chemical and fuel storage

Storage of chemicals or fuel in aboveground or underground storage tanks poses an environmental risk because of a tank's potential to leak, be overfilled, or have faults. Storage tank integrity decreases with age and the likelihood of a pollution incident becomes greater. Clients purchasing new sites can be liable for pollution caused by a storage tank that has been abandoned by a former site owner.

### Case study

- 15,000 gallons of fuel oil was released from a storage tank through vandalism
- The fuel oil migrated to an off-site drainage trench and resulted in soil and groundwater contamination
- The property owner was found liable and required to pay \$1.5 million in both on-site and off-site clean-up, and future monitoring costs

## Asbestos

Asbestos products have been commonly used in commercial and industrial settings for fireproofing, soundproofing and insulation. In Australia, asbestos cement materials were first manufactured in the 1920s and were commonly found in residential building materials from the mid-1940s until the late 1980s. During the 1980s asbestos materials were phased out and as of December 2013, Australia has had a total ban on the manufacture, use, reuse, import, transport, storage and sale of all forms of asbestos. While asbestos is no longer used, exposure to asbestos is still a problem through renovation and refurbishment projects. Asbestos can cause soil and groundwater contamination and is linked to health conditions such as pleural plaques, asbestosis, lung cancer and mesothelioma.

### Case study

- During the renovation of a major hotel in the city, contractors unsuspectingly drilled into and damaged asbestos materials
- After realising the material might be asbestos and receiving confirmation, clean-up with appropriate containment controls and air monitoring was required
- The remediation works ended up costing over \$2M and delayed the renovation project by several months
- The potential for injury claims remains

## Waste collection and disposal

Waste collection and disposal contractors are exposed to a number of risks including:

- Asbestos contained in demolition waste
- Hydrocarbon pollution at vehicle depots
- Spillage or release of hazardous wastes during transportation, loading and unloading
- Failure of wastewater treatment systems
- Odour and air emissions from transfer stations, Materials Recovery Facilities and grease trap plants

When waste is disposed of in landfills, facility owners also face environmental risks. As waste begins to decompose, contaminants can leach into soil and groundwater if pits are not lined properly or if a fault occurs. Contaminants can also be released into the air when waste is crushed or incinerated. The potential for landfill fires as a result of spontaneous combustion increases with time and the amount of waste that is deposited

### Case study

- A local council were involved in a landmark class action after residents living near a former landfill were affected by methane gas emissions
- Initial identification of explosive levels of methane gas lead to the evacuation and relocation of residents from around 750 houses
- Compensation costs totalled approximately \$23.5 million
- A trench wall was also required to be installed to contain the methane gas at a cost of \$11 million with additional costs for extensive remediation and monitoring work

## Construction/demolition

Construction and demolition activities can expose parties to a number of environmental risks including:

- Damage to underground storage tanks, pipelines or other buried structures
- Disturbance and mobilisation of existing ground contamination from previous uses or naturally occurring substances such as acid sulphate soils
- Release of hazardous chemicals & fuels stored/handled at a job site
- Release of hazardous chemicals, fuels or waste during transport to or from a job site
- Releases of soil/sediment into waterways
- Severe weather events resulting in run-off of pollutants (e.g. silt) into watercourses, or spreading of contamination around and beyond a job site

Local councils can have exposures from performing contracting activities themselves, and hiring contractors to do work for them. While contractors are generally required to carry their own insurance, councils can still be found liable for pollution events caused by subcontractors.

For example; asbestos removal contractors may only carry claims-made and reported coverage for asbestos removal works, and therefore there is no coverage for injury claims that may arise after the works have been completed.

### Case study

- A hospital's contractor discovered soil contamination while conducting excavation work for an expansion project
- The source of the contamination was found to be an underground storage tank that the contractor had accidentally punctured during their activities
- The tank was previously unknown to the hospital
- The contamination spread to an adjacent property
- The cost of the clean-up was \$350,000
- The owner of the adjacent property also sued the hospital for \$250,000 for decreasing the value of his property and interrupting his business
- The case settled for \$150,000 and the hospital also incurred defence costs of \$80,000

# Environmental Policy types and coverage available

If a client is identified as having environmental exposures, environmental insurance can be used as a form of risk transfer. Environmental liability policies provide coverage for both statutory and tort liability, in comparison to public liability policies which only provide coverage for tort liabilities.

This means that environmental policies will provide coverage in the event of 3rd party claims for bodily injury and property damage, as well as requirements under law to clean-up pollution.

Environmental policies can provide coverage for:

- Costs of site investigation and assessment
- Costs of pollution clean-up, both sudden and gradual
- 3rd party claims for bodily injury and property damage
- Legal defence expenses
- Emergency response
- Business interruption
- Civil fines and penalties, including enforceable undertakings
- Natural resource damage

There are three main types of environmental program structures; fixed-site operational policies, transactional environmental policies to address legacy contamination issues, and contractors' pollution policies for specified covered operations.



## Fixed-site Pollution Liability

Fixed-site Pollution Legal Liability (PLL) policies protect clients from liabilities and costs resulting from pollution conditions at, on, under or migrating from specified locations. This type of policy is appropriate for clients who operate at premises that they own, lease or licence (also known as “covered locations”).

PLL insurance can cover single sites or portfolios and be arranged on an annual or multi-year term. The coverage can be structured to respond to new pollution whether caused by an owner or tenant, and in some cases, can also be structured to respond to historical contamination caused by prior use of the site. These policies are designed to respond to pollution at or from the site, not to who caused it. PLL policies are issued on a claims-made and reported basis.



## Transactional Environmental Policies

Environmental insurance for property and M&A transactions is designed primarily to protect sellers and/or buyers against the financial impact of unknown pollution that pre-dates the transaction i.e. pre-existing or legacy pollution. In certain cases, cover for some known pollution conditions can be provided. Cover is normally linked to pollution at defined locations, which are scheduled on to the policy, and can apply to strict or fault-based statutory or civil pollution liabilities, including contractual liabilities. Environmental insurance programs for M&A transactions are regularly customised to the particular characteristics of a transaction and the specific needs of clients.

Programs may feature the following:

- Coverage for up to 10 years for a one-off program
- Full retroactive coverage
- Personal coverage for directors and officers
- Coverage for losses arising from future changes in environmental legislation
- Clauses enabling insured's to assign the policy to a future purchaser



## Contractors Pollution Liability

Contractors Pollution Liability (CPL) policies protect clients from liabilities and costs arising from pollution conditions which result from specified contracting activities (also known as “covered operations”). This type of policy is appropriate for clients who work on 3rd parties' sites.

CPL insurance can be used to cover a contractor's exposures on an annual basis or multi-year term, complimenting and filling in the pollution gaps in their public liability or CAR policy. Alternatively it can cover single projects for the duration of the project. CPL policies are available on a claims-made or occurrence basis.

If a contractor is arranging cover, then a CPL policy covering the contractor and any subcontractors working on the project is suitable. On the other hand, if a contractor's client is arranging cover, a CPL policy with an Owner Controlled Insurance Program (OCIP) endorsement is appropriate.

# Coverage gaps in traditional policies

While public liability and other policies may provide some coverage for pollution, this is often restricted to sudden and accidental pollution, and 3rd party claims for compensation.

When assessing the environmental insurance needs of a client, a review of the client's current insurance policies can identify coverage gaps and then lead to a robust discussion on ways to address these coverage gaps, such as an appropriately structured environmental insurance program.

As a general rule, traditional insurance policies:

- Do not cover gradual pollution
- Exclude loss arising from specific contaminants or groups of contaminants (e.g. asbestos and PCBs)
- Are linked to damages that an insured becomes legally obligated to pay to 3rd parties: therefore 1st party clean-up and statutory clean-up costs are not covered
- Exclude liability for civil fines and penalties
- Limit the cover of 3rd party property damage and rarely extend it to cover diminution in value, natural resource damage or biodiversity damage

Furthermore, D&O policies do not cover the organisation's regulatory, tort or criminal environmental liabilities. While some D&O policies may provide directors with limited cover for claims against them arising from a pollution incident, coverage would not extend to clean up costs or claims for bodily injury / property damage, nor would they otherwise provide a comprehensive solution.

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## Case study

- On August 25th, 2005 a chemical plant in Queensland operated by Binary industries Pty Ltd (owned by Hamcor Pty Ltd) was destroyed in a fire
- Emergency services responded to the fire, resulting in large quantities of contaminated fire water being spread throughout the site and to neighbouring areas
- Consequently, the Queensland Environmental Protection Agency (EPA) issued a Statutory Clean-up notice to Hamcor to remediate the effected land. The cost was over AUD10 million
- The claim was denied under the Public Liability Policy on the grounds that costs associated with complying with an Environmental Statutory Notice did not constitute 'compensation' under the policy wording, i.e. there was no 3rd party claim initiated, only a statutory order
- The ISR policy also did not respond to any of the clean-up as the debris removal cover did not include pollution
- A specialist environmental insurance product with appropriate terms and conditions could have potentially covered this claim





# Placement of an environmental insurance program

The ESG is available to assist with the placement of an environmental insurance program. If you require further information about the capability of the product or coverage available, please do not hesitate to contact us (details on page 12).

The following underwriting information is generally required:

## Fixed-site pollution policies

- The nature of the insured's business including site layout, features and processes
- Full list of locations to be covered and surrounding land uses
- Current and historical use of sites to be covered
- Types of tenants (if applicable)
- Environmental licences/permits and management plans
- Incidents, claims and loss history
- Future site plans e.g. planned construction or extensions
- Asbestos registers and management plans (if applicable)
- Any environmental assessment reports if available

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## Contractor's pollution policies

### Project-specific:

- Scope of works including job-site location & activities to be undertaken
- Project time-frame
- Total contract value + breakdown by activity
- Name of contractor and qualifications/experience
- Information on any known environmental issues or existing contamination at the job-site
- Environmental licences/permits and management plans
- Emergency response procedures
- Asbestos registers and management plans (if applicable)
- Completed and signed CPL application form

### Annual:

- Name of contractor
- List of activities to be insured
- Insured's turnover (previous year & projected for coming year) + approximate breakdown by activity
- Environmental licences/permits and management plans
- Emergency response procedures
- Completed and signed CPL application form

# Contact

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