

# ENVIRONMENTAL INSURANCE

Environmental insurance is a specialist form of insurance providing cover against losses that could be incurred as a result of third party and regulatory action arising from pollution or contamination. It is increasingly used as an effective mechanism to transfer environmental liabilities associated with corporate and property transactions as well as ongoing operations.

## WHAT DO POLICIES COVER?

Environmental insurance policies cover statutory cleanup requirements, third party claims for bodily injury and property damage, and associated legal expenses, resulting from pollution or contamination events, whether such events are “sudden and accidental” or “gradual” in nature. Related costs such as business interruption losses (e.g. loss of profit, loss of rental income) can also be covered.

## WHAT ARE THE MAIN POLICIES?

The principal environmental insurance coverages, which can be tailored to meet the specific risk, are:

- **Historical Pollution Cover:**  
Arranged for liabilities associated with pre-existing contamination (e.g. due to previous industrial operations) or for contingent liability exposures associated with previous divestments.
- **Operational Pollution Cover:**  
Cover for ongoing pollution risks, for example from unanticipated discharges, leakages or spillages.



- **Contractor’s Pollution Cover:**  
Coverage for pollution liabilities associated with contractor’s operations, whether from the new incidents or the mobilisation of existing contamination.
- **Remediation Cost Cap:**  
“Stop loss” programs designed to protect against cost overruns on contamination clean-up projects.
- **Combined Programmes and Liability Buy-outs**  
A blend of the principal coverages with a funded element to cover known remediation costs. Such programs can be structured to provide buyers and / or sellers with a long-term buy-out of environmental liabilities.

## WHAT IS THE MAXIMUM PERIOD OF INSURANCE?

For a one-off premium payment, it is currently possible to obtain policy periods of up to ten years for historical contamination cover, and up to five years for “new” pollution cover. Combined programs and liability buyout programs offer the potential for longer policy periods.

## DO OTHER POLICIES PROVIDE THIS COVER?

No. Traditional insurance products provide limited, if any, cover for pollution. At best, public liability policies may offer cover for third party claims (although not necessarily statutory clean-up costs) arising from “sudden and accidental” pollution events. Property insurance may provide limited clean-up cover, but only if losses occur as a result of an “insured peril”. Such policies are clearly inappropriate for the majority of environmental risks, particularly those associated with historic contamination which is often the key concern during transactions.

Consultant’s professional indemnity (PI) insurance solely provides cover for losses arising from the consultant’s negligence, and is not therefore a substitute for environmental insurance. Environmental insurance can also be used to underpin or replace warranties and indemnities, or ring-fence liabilities incurred via such agreements.

## HOW MUCH DOES IT COST?

Premium levels will depend on factors such as the limit of cover required, policy deductible (or **excess**), policy period and, of course, the nature of the risk. The environmental insurance market is currently very competitive, with premium levels starting at £1,000 for an annual policy. For longer term policies, premiums can vary from less than 1 percent to approximately 4 percent of the policy limit.

## HOW LONG DOES IT TAKE TO OBTAIN COVER?

If necessary, environmental insurance can be procured within a matter of days. Even complex risks, requiring the review of substantial quantities of technical information, are routinely placed by Willis within transaction timescales.

## WHAT INFORMATION IS NEEDED TO OBTAIN ENVIRONMENTAL INSURANCE?

Typical requirements include desk study information (e.g. environmental database reports, **Phase 1** reports, or even perhaps just property survey reports), where necessary supplemented by **Phase 2** intrusive investigations (e.g. at industrial sites with a long industrial history). Additional information, such as environmental management plans, and correspondence with environmental regulators may also be relevant.

## WHAT HAPPENS IF ENVIRONMENTAL LEGISLATION CHANGES?

One of the key benefits of environmental insurance, particularly long term policies, is that they are designed to respond to changing legislation and enforcement practice, both of which are becoming increasingly stringent in many countries.

## CAN ENVIRONMENTAL INSURANCE POLICIES PROVIDE COVER FOR THE EUROPEAN UNION ENVIRONMENTAL LIABILITY DIRECTIVE?

Yes. Cover is available for pollution liabilities faced under the Directive, which can be broader than those previously imposed under legislation in many countries.

## DOES IT PROVIDE COVER FOR THE E.U.?

Yes. Even if a third party claim fails, the cost of defending such a claim can be substantial. This is covered as standard under environmental insurance policies.

## WHAT HAPPENS IF THE INSURED PROPERTY OR COMPANY IS SOLD?

Environmental insurers are typically willing to assign policies or include additional insureds upon transfer of the relevant assets or business to a new owner.

## WHY WILLIS?

There is simply no such thing as an **off the shelf** environmental insurance policy, as they require careful scrutiny, evaluation and negotiation with insurers to ensure that the policy terms and conditions meet the client's requirements. As a market leading broker in this specialist field, Willis is ideally placed to deliver innovative, robust and cost effective environmental insurance solutions, often working in conjunction with environmental consultants and legal advisers.

## DO CLAIMS SUCCEED?

Yes. The environmental insurance market is relatively young; nonetheless we are seeing a maturing claims experience in many countries as a result of ever more stringent environmental legislation and increasing third party litigation.

For more information contact your local Willis Associate, or call the London M&A (Environmental) Practice on: +44 (0)20 3124 6000.