



INSURANCE AND POLLUTION PREVENTION

Publication #99-440

Standard Business Insurance: What It Is and How It Deals With Environmental Pollution

What potential damages and liabilities to a firm may result from its use or generation of hazardous substances?

Potential damages and liabilities resulting from the illegal or unintended release into the environment of hazardous substances can be divided into three major categories:

- ✓ Fines and administratively mandated cleanup costs;
- ✓ Common law (tort) actions by third parties affected by illegal or unintended releases; and
- ✓ Damages to property or operations experienced directly by a firm as a result of its release of hazardous substances.

For a more detailed listing of potential costs and liabilities related to use or generation of hazardous materials, see *Environmental Insurance*, Ecology publication #99-439 at <http://www.ecy.wa.gov/biblio/99439.html>

How does insurance deal with the potential damages and liabilities resulting from the use or generation of hazardous substances?

Property insurance protects a business's interest in physical property against loss or the loss of its income producing abilities. Under this general heading are particular property coverages, e.g. fire, theft.

Comprehensive general liability insurance protects a business against all legal liability not specifically excluded. Such coverage includes injury to other people or the property of others.

Based on these differences in coverage, property policies are also referred to as "first party" policies while comprehensive general liability policies are referred to as "third party" policies.

Most property and comprehensive general liability coverages contain an explicit “pollution exclusion.” This standard provision excludes any coverage for damages or liabilities resulting from the use or release of pollution, including hazardous substances.

What accounts for the pollution exclusion and what does it exclude?

The pollution exclusion is a series of exclusions to limit coverage for costs and liabilities related to pollution, including costs and liabilities resulting from the use or generation of hazardous substances.

After previous efforts to limit coverage for damages and liabilities related to use or generation of hazardous materials proved unsuccessful in the courts, the insurance industry trade organization introduced the “absolute pollution exclusion.” in 1986 This exclusion states that an insurance policy containing the exclusion does not apply to injury or damages resulting from “discharge, dispersal, release or escape” of various hazardous substances “whether or not such discharge, dispersal, release or escape is sudden or accidental.

This absolute pollution exclusion applies to on-site property damage, to common law (tort) claims for bodily injury and property damage, and to the major federal and state legislation establishing liability for management of hazardous substances and for clean-up of hazardous waste sites.

Does the “absolute pollution exclusion” absolutely exclude coverage of all costs and liabilities related to use or generation of hazardous substances ?

While state courts have generally supported this exclusion, some cases alleging coverage under comprehensive general liability policies have been decided in favor of the policyholders. The causes for such findings are specific to each case. However, some ambiguity remains regarding whether coverage exists under comprehensive general liability policies for liabilities resulting from use or generation of hazardous substances.

Are any costs or liabilities resulting from use or generation of hazardous substances covered by conventional property insurance?

By virtue of the “pollution exclusion”, property coverage usually excludes on-site damages resulting from the use or generation of hazardous substances. However, use or generation of hazardous substances can significantly influence claims allowed under conventional property insurance. For example, fire risk can be reduced by elimination of hazardous substances which are explosive or flammable. Many businesses are not aware that reducing the use of flammable products or improved environmental management may qualify them for a reduction in their conventional property insurance costs.

What has been the consequence of the absolute pollution exclusion on insurance coverage for costs and liabilities related to the use or generation of hazardous substances?

Special coverages have been developed for the potential costs and liabilities targeted by these specific exclusions. The most significant of these coverages is environmental liability coverage, some versions of which also include coverage for property owned by the insured and for liability incurred by the insured in the transport of hazardous substances. See *Environmental Insurance*, Ecology publication #99-439 at <http://www.ecy.wa.gov/biblio/99439.html>

Specific environmental property coverages may cover a range of damages resulting from use or generation of hazardous materials, including loss in value of the property, interruption of business activities, and cleanup costs.

Can insurance coverage be obtained for clean-up costs for existing on-site hazardous waste?

The major portion of environmental insurance is purchased by buyers and sellers of commercial and industrial properties to protect against possible clean-up costs resulting from historic site contamination. Such coverage has only a very limited impact on current or future use or generation of hazardous substances.

How might the use or generation of hazardous substances affect the cost of workers’ compensation insurance?

All businesses in Washington are required to participate in the Workers’ Compensation Program, an insurance program for on-the-job injuries administered by the state Department of Labor and Industries. Few on-the-job injuries can be linked unequivocally to exposure of workers to hazardous substances. Consequently, only a small portion of potential long-term

consequences of worker exposure to hazardous substances is covered under Workers' Compensation. For this reason, reduction in the use or generation of hazardous materials has a limited effect on the cost of Workers' Compensation coverage.

How might changes in the use or generation of hazardous substances affect the cost of health insurance?

Where claims against health insurance coverage are based on exposure to hazardous substances, such claims must prove a clear and unequivocal link between the hazardous substance exposure and the medical impairment. This constitutes a significant hurdle to coverage. Impairments where such a link exists are referred to as "signature diseases." Asbestosis and black lung are examples.

Even when a link between hazardous material exposure and a medical impairment can be documented, impairment most often develops after the health insurance has expired or the worker has retired. Consequently, reductions in long term health risk resulting from reductions in the use or generation of hazardous substances may not directly impact claims made or coverage provided under most health insurance policies.

A reduction in use or generation of hazardous substances can significantly reduce routine health costs and may result in reduced health insurance premiums. However, such reductions are seldom, if ever, granted prospectively.

Off-site (third party) health claims are not covered under conventional health insurance. Because of the pollution exclusion, off-site health claims are not usually covered under comprehensive general liability policies. They are covered under most environmental liability policies. Most such policies specifically exclude coverage of employees of the insured.

If you have questions or comments on this or other insurance fact sheets, please contact: Jerry Parker, Hazardous Waste and Toxic Reduction Program, Washington State Department of Ecology, at 360-407-6750, or jepa461@ecy.wa.gov

If you need this information in an alternate format, please call the Hazardous Waste and Toxics Reduction Program at 360-407-6700. If you are a person with a speech or hearing impairment, call 711, or 800-833-6388 for TTY.

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Short Description	What is "environmental insurance and what does it insure against? Environmental insurance insures against potential damages and liabilities resulting from pollution which are excluded from conventional property and liability insurance. (For more on these pollution exclusions, see Standard Business Insurance, Publication #99-440.)
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