

# SOCIETY OF ENVIRONMENTAL INSURANCE PROFESSIONALS



*Enabling environmental insurance professionals to better serve the needs of their customers through education, technology, resources, rapid innovation, networking and knowledge sharing.*

## Featured in this issue:

### Understanding Environmental Impairment Liability

By: Susan Doering

### Coverage Corner: Environmental Impairment Liability Policy

By: David J. Dybdahl

### The Closure and Long-Term Care Bond Market Has Collapsed

## Environmental Insurance Forum

### Roosevelt Hotel New York City June 14 – 15

Society of Environmental Insurance Professionals  
4901 Pine Cone Circle  
Middleton, WI 53562

1-877-735-0800  
www.armr.net  
simmons@armr.net

Spring 2001

## Understanding Environmental Impairment Liability

By Susan Doering, *AIG Environmental*

As recently as ten years ago, environmental impairment liability (EIL) was a little known exposure, covered by only a few insurers for a small segment of the commercial marketplace.

The increase in EIL claims, both in frequency and severity, has proven beyond question that EIL creates a potentially huge exposure that warrants a closer look by commercial insureds and their insurance agents. Earlier in the history of the coverage, insureds facing an EIL loss often sought indemnification through their Commercial General Liability (CGL) policy. CGL writers, never intending the scope of their coverage to extend to EIL, quickly addressed the coverage question by excluding EIL from their CGL policies. Today, EIL insurance has evolved into a highly specialized product marketed by approximately ten major national carriers to insureds involved in virtually every commercial endeavor. Insurance agents should take definitive steps now to add EIL to their arsenal of product offerings.

While there are a wide range of scenarios that potentially create an EIL exposure, some of the more common are the result of air emissions, contamination resulting from waste water discharged into a river or other body of water and contamination deriving from any kind of waste material that seeps into the soil or penetrates the ground water. Commercial facilities also face an EIL exposure arising out of the presence of underground storage tanks or a deterioration of the facility's indoor air quality, often resulting from problems with their HVAC systems.

The breadth of EIL coverage has evolved significantly over the past ten years to include: on and off-site cleanup; bodily injury and property damage liability; delete mitigation of loss (on-site coverage makes it immaterial); legal defense costs; business interruption; diminution of value (of a third party property resulting from contamination); and contracted liability coverage. Additionally, the EIL product has become much more affordable over time and EIL rates are viewed as highly competitive.

It's also important for agents to realize that EIL is not an exposure looming over only the large commercial or manufacturing operation. All commercial insureds are potentially at risk. Consider the property damage liability incurred by a commercial laundry, which inadvertently released chlorine gas into the air, resulting in paint peeling off of cars parked nearby. In another claim scenario, a local university experienced an EIL loss after mercury was found in the sewer piping as a result of years of improper disposal of the chemical by students in the lab. The piping in and

*(Continued on page 2)*

## Representative EIL Customers

Agricultural Lands

Banks & Financial Institutions

Colleges & Universities

Drycleaners

Gas or Service Stations

General Industrial Facilities

Golf Courses

Hospital & Healthcare Facilities

Incineration Facilities

Laboratories

Landfills

Manufacturers of Chemicals, Products, or Pharmaceuticals

Mining

Office & Retail Properties

Petroleum & Oil

Transporters

Utilities

Warehouses & Storage Facilities

Waste Treatment, Storage, Disposal Facilities (TSDF)

Wastewater Treatment Facilities

Loss exposures for these and many other industries can be found on the SEIP website at [www.armr.net](http://www.armr.net) click on Production Tools then Potential Environmental Exposures

(continued from page 1)

from the lab building had to be ripped out and replaced and fines were paid to the local environmental agency. Another EIL claim saw the neighbor next door to an office building allege that gasoline contamination resulting from an underground storage tank located on the commercial property had leaked and migrated onto his site, killing some rare bushes he had cultivated.

An EIL claim can easily cause financial disaster on the commercial client if the proper insurance coverage is not in place. Often an EIL loss has its origins in the most unlikely source, with no obvious indication that the exposure even existed. That is why it's imperative for agents to conduct a thorough review of each commercial site they insure with an eye toward EIL.

Agents who may be inclined to balk at this suggestion, asserting they have neither the time nor the expertise to aggressively market the product, can turn to an EIL insurer to help them address all of the clients' EIL coverage needs. Appointment by the carrier is not a prerequisite for using it as a market as virtually all EIL insurers are willing to work with agents on an open brokerage arrangement for EIL risks. Additionally, their personnel are highly experienced in this specialized niche, ready to help the agent identify EIL risks commonly associated with a

particular industry class, to offer sound loss control and risk management recommendations, and to work closely with the agent along every step of the marketing and claims process.

The recently established Society of Environmental Insurance Professionals is another valuable informational resource for agents desiring to become more active in the EIL marketplace. Agents are encouraged to contact the Society at 1-877-735-0800 and to avail themselves of the many services this organization offers, not only to help agents take those first, tentative steps into the EIL arena, but also to help them expand their EIL market penetration.

In an industry characterized by ever intensifying competition, principals must find ways to distinguish their agencies from other providers of insurance. EIL insurance is not only a necessary component of the commercial client's overall program of protection, but it can play a valuable role for the agent both in client retention and in opening up doors to other significant cross selling opportunities. Those agents who are willing to make the time and commitment to establish themselves as knowledgeable providers of EIL products will emerge as decidedly stronger competitors in today's highly competitive insurance marketplace.

## News You Can Use

### The Closure and Long-Term Care Bond Market Has Collapsed

Proof of financial responsibility is required for the owners and operators of Hazardous Waste Treatment, Storage and Disposal Facilities and some sanitary landfills. The market for these bonds was dominated by United Capitol until their parent company Frontier lost their treasury listing, which made them both a non-compliant provider of the bonds. The rest of the environmental market did not step in to fill the void. A recent telephone survey of specialty environmental underwriters showed that AIG, ECS, Zurich, Kemper, Gulf, Seneca, American Safety Group, Gen Star and Investors Underwriters have either left the proof of financial responsibility bond market or were never in it. Senior surety executives say that these bonds were a bad write to begin with, the bond underwriters could never charge a bond premium commensurate with the risk taken.

Look for an alternative to bonds in the form of closure and post closure insurance. Expect a requirement for at least partial collateral from most markets. ECS, Zurich, and AIG have substantial minimums for the amounts of financial responsibility. Investors Underwriters has a insurance product that can provide the proof of financial responsibility requirement with little or no collateral on financial responsibility amounts under \$1,000,000.

Closure and long term care is a complex topic. Resource information and underwriter contacts can be found on the SEiP web site at [www.armr.net](http://www.armr.net).

# Coverage Corner Environmental Impairment Liability

By David J. Dybdahl, Society of Environmental Insurance Professionals

Environmental impairment liability (EIL) insurance policies have evolved from the early EIL policies written in the 1980's. Modern EIL policy forms cover claims arising from sudden and gradual releases of pollutants from insured locations. The insuring agreement in an EIL policy obligates the insurer to pay on behalf of the insured a loss, in excess of a deductible, for bodily injury, property damage, or cleanup costs. In traditional form the loss must result from pollution conditions that exist beyond the boundaries of the site(s) listed within the policy declarations.

EIL policies are viewed as filling the coverage gap created by the pollution exclusion in the general liability policy. The definition of pollution conditions in the EIL policy closely follows the pollution exclusion in general liability policies.

Neither the definition of pollution conditions nor the pollution exclusion include the words hazardous waste or hazardous material. The definition of pollution is much broader than hazardous waste, which is an important point to remember when analyzing potential coverage gaps. See insider's tip in the right margin.

Standard off-the-shelf versions of the EIL policy will typically exclude onsite cleanup, claims from non-owned disposal sites (Superfund), and pre-existing conditions although these coverage extensions are readily available.

In recent years, underwriters have redesigned the EIL policy to meet the market demands of their clients. A few of the revamped EIL policies include:

## Property Transfer

A property transfer policy is specially designed to be used when property is bought and sold. It is basically an EIL policy with an eight to ten policy period and coverage for the cleanup of the insured premises. These policies can be used in place of the seller's indemnity for clean up costs and third party claims for bodily injury and property damage.

## Secured Creditors Environmental

Secured creditors environmental insurance

was developed to meet a market demand for very inexpensive environmental insurance to back the collateral interest of the lender on loans. These policies have their roots in traditional EIL property transfer coverage forms, then restrict the coverage in the following ways. First, there is only one named insured, the lender. These policies provide no value to the borrower, although, the borrower pays the premium as part of the loan transaction. Another restriction is the double coverage trigger. The policy will pay if the borrower defaults on the loan and there is an environmental condition at the insured location. There are two basic coverage variations for the secured creditor policy. One variation of the policy will pay the lender for the cost of remediation, and one will pay for the cost of remediation or pay off the outstanding loan balance, whichever is less.

## Underground/Aboveground Storage Tank

The Resource Conservation and Recovery Act (RCRA) was modified in 1986 to provide regulations that apply to the owners and operators of underground storage tanks. When such tanks are used for storage of fuels or hazardous materials, the RCRA regulations require the owners or operators to demonstrate their ability to pay (financial responsibility) claims resulting from the release of materials from the tank.

One method by which financial responsibility can be demonstrated is the purchase of insurance. The specific coverage extensions required in environmental regulations have resulted in the development of a special form of pollution insurance, called underground storage tank (UST) insurance. These policies cover third-party liability claims for bodily injury, property damage, off-site as well as on-site cleanup costs, and include an additional limit for defense costs. Some tank policies only respond to a corrective action as that term is defined in RCRA, and not to other environmental damage claims. This distinction is important for any insured that may face environmental liability claims on grounds other than RCRA, or could have an environmental loss from something other than a storage tank.

## Insider's Tip

### Definition of Pollution Condition

"Pollution conditions means the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminant's or pollutants into or upon land, the atmosphere or any watercourse or body of water."

The definition of pollution conditions is much broader than hazardous waste.

For example, milk normally is not considered a pollutant. However, milk in a stream can reduce the oxygen level in the water, thereby killing fish. In this situation milk is a "contaminate", which would be excluded in a GL policy. However, coverage would apply in an environmental policy.

Concrete sealant would not normally be considered a pollution exposure. In a case where concrete sealant was taken into a hospital ventilation system, the hospital had to be evacuated. Since the sealant was an "irritant" the pollution exclusion would apply in the GL policy. However, the coverage would be apply in the Contractor's Pollution Legal Liability policy.

### SEIP Website "Members only" section

Society of Environmental Insurance Professionals website at [www.armr.net](http://www.armr.net) will create a "members only" section on July 1, 2001. The members only section will feature enhanced content. For information about how to become a member visit [www.armr.net](http://www.armr.net) or email: [webmaster@armr.net](mailto:webmaster@armr.net)

**REGISTER TODAY!  
Space is Limited**

**ENVIRONMENTAL INSURANCE FORUM**

**A unique opportunity to learn about environmental insurance and risk management from the nation's senior practitioners.**

**The Roosevelt Hotel**  
New York, NY  
June 14 – 15, 2001

**Wilshire Grand**  
Los Angeles, CA  
September 6 – 7, 2001

**Emory Conference Center**  
Atlanta, GA  
November 8 – 9, 2001

For forum information or to join SEiP  
visit [www.armr.net](http://www.armr.net)  
email [webmaster@armr.net](mailto:webmaster@armr.net)  
call 877-735-0800

Continuing education credits available from most states!

*What is SEiP?*

The Society of Environmental Insurance Professionals (SEiP) is an independent, not for profit organization dedicated to helping insurance professionals utilize environmental insurance products to better serve the needs of their customers.



4901 Pine Cone Circle  
Middleton, WI 53562

**REGISTER TODAY  
FOR THE  
ENVIRONMENTAL INSURANCE FORUM**