



XL CATLIN

Pollution & Environmental Damage

The Insurance Institute of Leicester

XL Catlin

Dan Alexander-Lothian – Underwriter – Environmental Liability, International Casualty

Daniel.alexander-lothian@xlcatalin.com

4th November 2015

Pollution – who should pay?

Polluter?

You the tax payer?



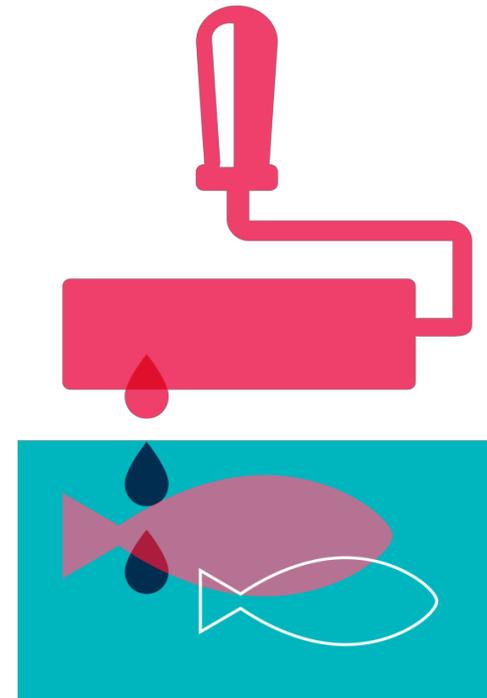
Pollution - who should Pay?

What about an insurance broker?

Case Study: Private School

- 33,000 litres of heating oil leaked from an underground corroded pipe over a weekend
- Why did the broker pay?

25% to 30% of E&O/PI claims against brokers are caused by failure of a policy to meet the claim (in whole or in part).*



* Professional Indemnity Initiative – Volume 5. An Essential guide to professional indemnity risk for general insurance broker staff. *British Insurance Brokers' Association*. Autumn 2011.

Introduction

- Why are environmental liabilities such a risk?
- Why is environmental insurance such a difficult concept to sell?
- Why is it important for the insurance industry?



1970's

Trigger:
Pollution Condition
Claim:
Private Law
3rd party claim

1980's

Trigger:
Pollution Condition
Claim:
Private Law
3rd party claim
Public law
Fines & Penalties



Ecological Condition

Pollution Start Date



£100,000

Cost = 40x
increase



£4,000,000

1990's

Trigger:
Pollution Condition
Claim:
Private Law
3rd party claim
Public law
Fines & Penalties
Investigation
Clean-up costs

2000's

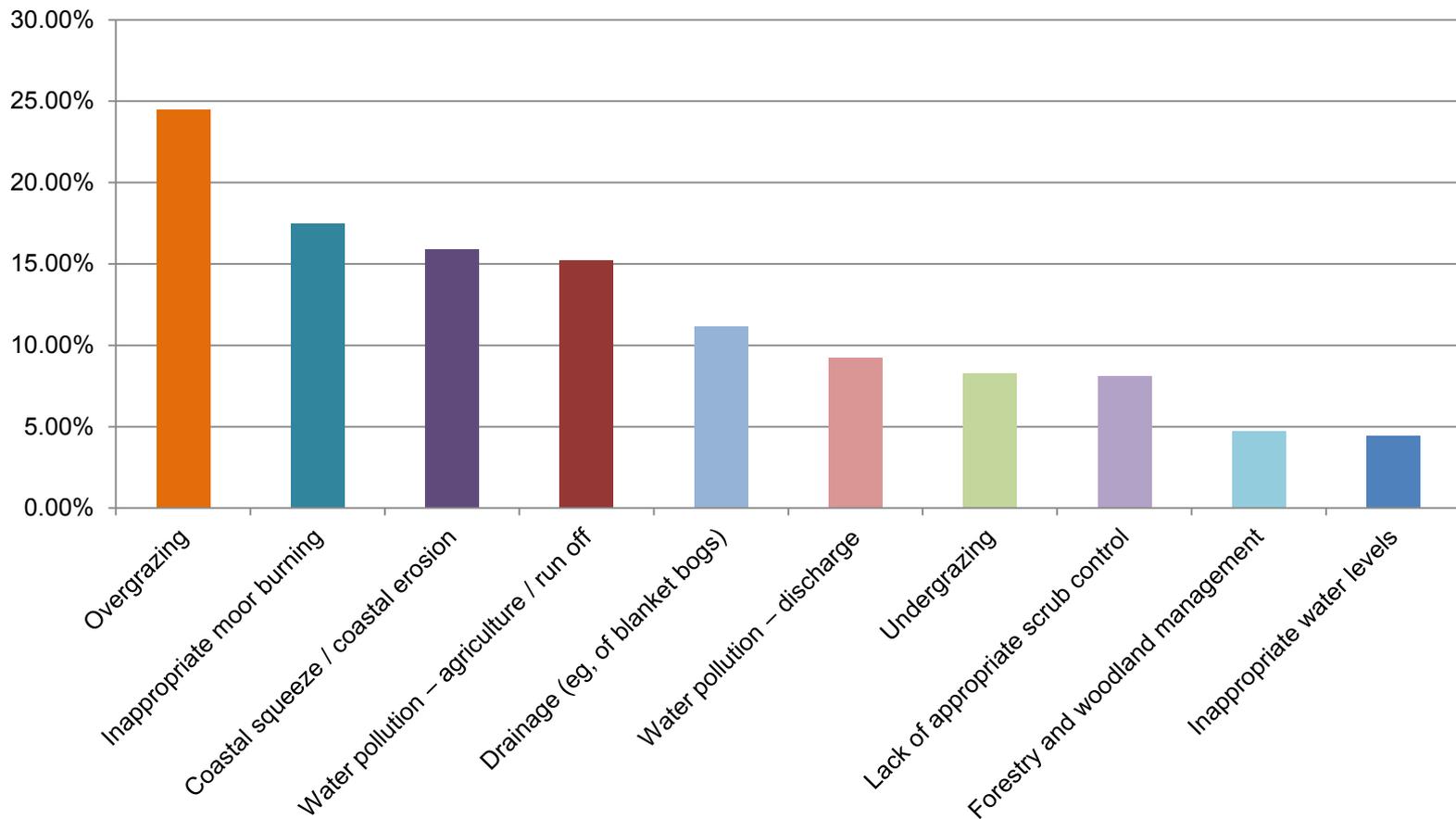
Trigger:
Pollution Condition
Environmental Damage
Claim: Private Law
3rd party claim
Public law
Fines & Penalties
Investigation
Clean-up costs
Emergency Costs
Habitat restoration
Env. compensation



Time

What's Environmental Damage?

Natural England's Top Ten Reasons for the Adverse Condition of SSSIs



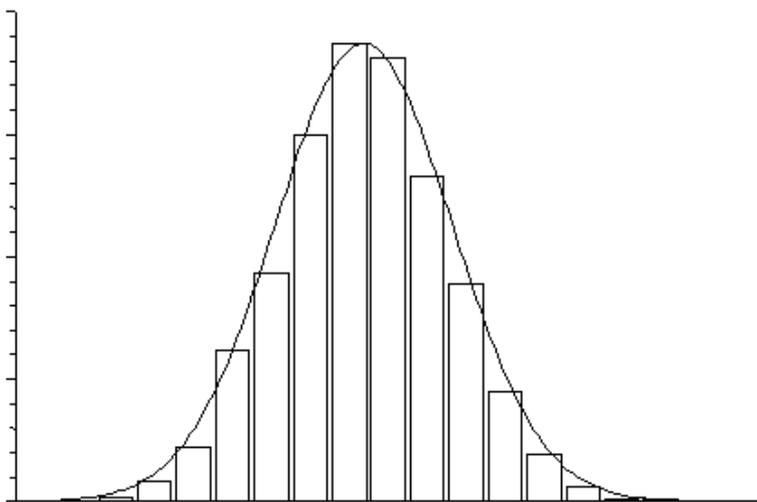
Submission to House of Commons, Innovation, Universities, Science and Skills Committee report on Sites of Special Scientific Interest, Tenth Report of Session 2008-09, HC 717 (29 July 2009).

- Why are environmental liabilities such a risk?
- Why is environmental insurance such a difficult concept to sell?
- Why is it important for the insurance industry?

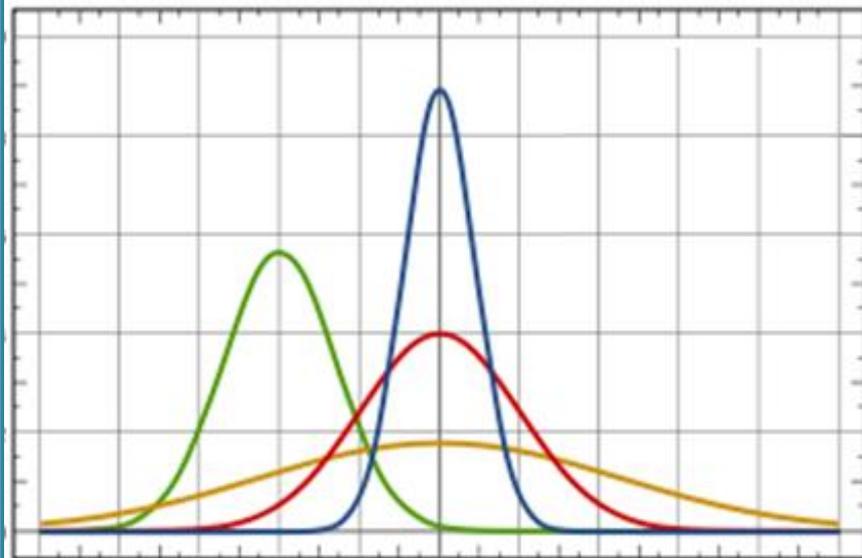


Perception of Risk

- Risk is something you can put a price on
- Understand frequency and severity – i.e. 18 year old male driver
- Has a shape – can you afford the risk, no, buy insurance



- Uncertainty - Risk you can not put a price on
- No understanding of frequency and severity
- Shape is unknown – no idea if risk is affordable or not, no need for insurance



Perception of risk – never happens, never enforced



Environment Agency Fails to Investigate Fish Kills ⁽¹⁾

- EA investigated only 16% of water pollution incidents with a wildlife survey
- Of those involving fish kills, only 5% investigated with a survey

The UK chancellor, George Osborne, claimed in 2011 that wildlife regulations were placing ridiculous costs on business. ⁽²⁾

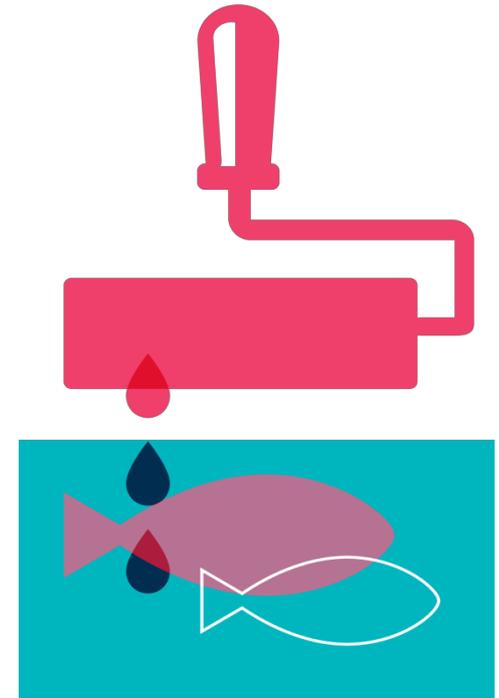
Average cost of a fine, only £10,080 in 2008 ⁽³⁾

(1) -

<http://fishlegal.net/page.asp?section=940§ionTitle=Environment+Agency+Fail+to+Investigate+Fish+Kills>

(2) - <http://www.theguardian.com/environment/georgemonbiot/2014/nov/21/we-need-nature-wellbeing-act-protect-wildlife-decline>

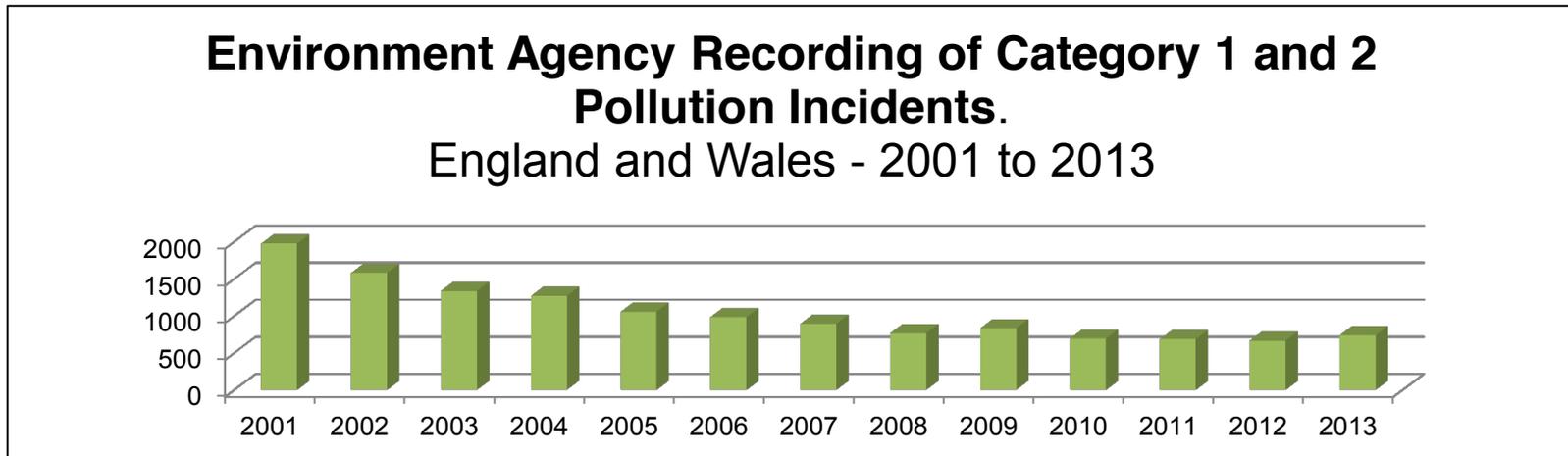
(3) - <http://www.endsreport.com/21472/fines-up-and-pollution-incidents-down-in-2008>



Perception of risk – never happens, never enforced



- The Environment Agency reports 2 significant pollution incidents a day in the UK
- Serious and significant pollution incidents were 44% above target in 2013 ⁽¹⁾
- Just 27% of English and Welsh rivers and lakes were at 'good' ecological status in 2012 ⁽²⁾
- >40% of pollution incidents result from mechanical failure or operator error
- >10% pollution incidents result from fire



(1) - <http://www.endsreport.com/44805/consultations-start-over-jobs-cuts-at-agency>

(2) - <http://www.endsreport.com/36759/river-quality-targets-not-met>

Perception of risk – Pollution Headlines

November / December 2014



- Welsh Water Fined £35K For Sewage Pollution
- Brick Manufacturer Fined £27K Plus Costs For Polluting Brook
- Investigation At Sizewell B After Chemical Pollutes Groundwater System
- Fire-Hit Swindon Averies Waste Recycling Plant **Permit Revoked**
- Southern Water Fined £500K For Polluting Whitstable Waterways
- Poultry Firm Fined For Ammonia Spill That Killed Thousands Of Fish
- Devon Waste Firm Fined For Breaching Environmental Permit
- Surrey Waste Criminal Sentenced To **10 Months In Prison**
- H & S Executive Probes Chemical Spill At Runcorn Chemical Site
- EA Monitor River Pollution In Aftermath Of Hadleigh Fire
- St Albans' River Ver Cleaned Of Pollutants After Business Waste Leak
- Clean-Up Under Way After Oil Spill From Ship In Warrenpoint Harbour
- Pollution Probe Under Way At Keil's Burn
- Dying Eels Spotted Near Swalecliffe Brook After Sewage Spill
- Environment Agency: River Enler Pollution Fines Are 'Significant'

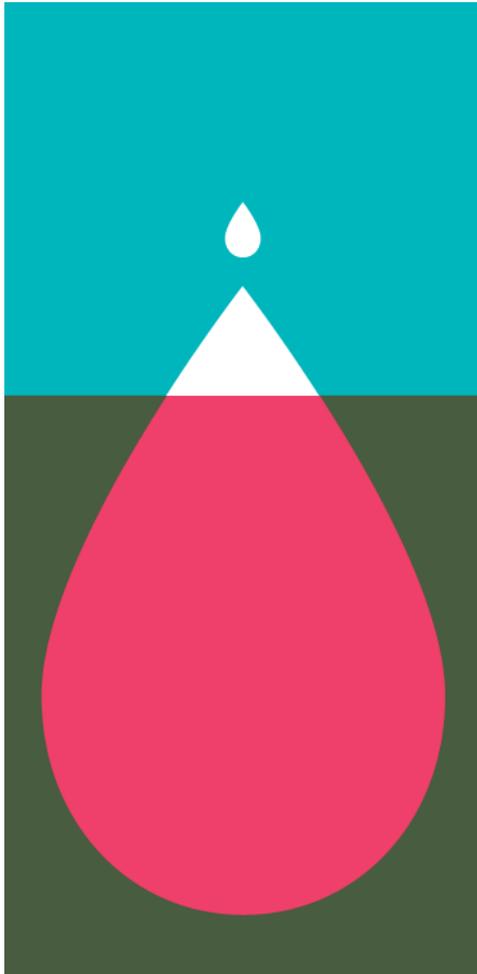
Perception of risk – Pollution Headlines January 2015



- Thames Water Fined £113K For Sewage Spill
- Southern Water Compensate Anglers After Sewage Pollution
- Pollution Risk Forces Shropshire Fertiliser Co To ***Upgrade Infrastructure***
- Newhaven Waste Fire Under Investigation
- Concerns Raised Over River Pollution In The Welsh Valley
- Yet Another Fire At Kent Waste Site
- Permits For Averages Recycling And Swindon Skips Revoked By EA
- Thousands Of Fish Killed By Pollution In Leicestershire Canal
- EA Clean Up Sewage At Golf Course
- "Revolting" Smell In Newent After Spillage At Chicken Processing Plant

CONTAINMENT NEWS 2015 - Business Synergies Publications <business.synergies@me.com>

Perception of risk – True cost of pollution not often reported



Reported April 2010 UK Water Company fined £15,000 for polluting a local river

£32,600 – tankering away the spilt chemical

£8,300 –plugging the leak

£26,000 – fish surveys

£2,271 – EA costs

£63,500 – restocking the stretch of river

£79,000 – replacement and upgrade of systems

Total cost - £211,671

Ref: Containment News – October 2012 issue ([Press.Office.EIL \[eilpressoffice@me.com\]](mailto:Press.Office.EIL@me.com))

- Why are environmental liabilities such a risk?
- Why is environmental insurance such a difficult concept to sell?
- Why is it important for the insurance industry?



Insurance - “.....I am already insured for environmental risks”



Sudden & Accidental
Gradual

Cover under a typical EIL
policy

Pollution Condition
Natural Resource Damage

Arising out of:
Insured's Locations / Insured's operations
Transportation

Public Law / Statutory Law

3rd Party Liabilities

Bodily Injury
Property Damage
Compensatory claim for damages
Award – financial settlement

Fines and Penalties
Emergency Costs
Investigation & Monitoring Costs
Cleanup Costs
Habitat Restoration Costs
Physical actions insured undertakes in order to
comply with Environmental law

Insurance - “.....I am already insured for environmental risks”

Bartoline Ltd v (1) Royal & Sun Alliance Insurance Plc (2) Heath Lambert Ltd [2006]



Environmental Risks: Insured or not?



Sudden & Accidental
~~Gradual~~

**Cover under a
typical PL
policy**

Pollution Condition
~~Natural Resource Damage~~

Arising out of:
Insured's Locations / Insured's operations
~~Transportation~~

~~Public Law / Statutory Law~~

3rd Party Liabilities

Bodily Injury
Property Damage
Compensatory claim for damages
Award – financial settlement

~~Fines and Penalties~~
~~Emergency Costs~~
~~Investigation & Monitoring Costs~~
~~Cleanup Costs~~
~~Habitat Restoration Costs~~
~~Physical actions insured undertakes in order~~
~~to comply with Environmental law~~

Gaps in Coverage in a PL Policy



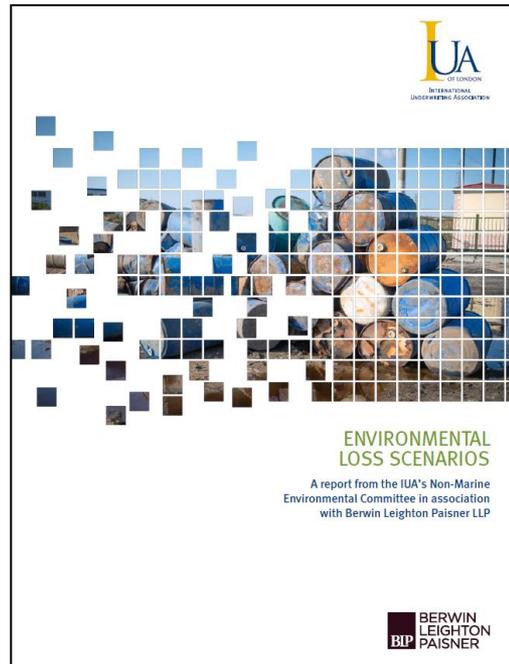
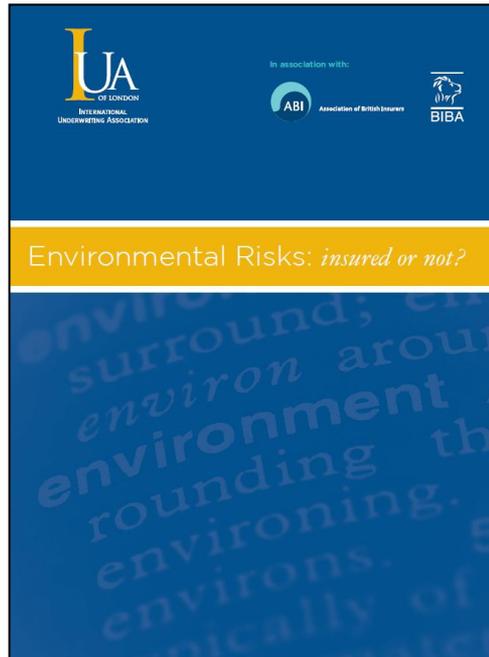
“...but I’m already covered for environmental risks”

Key gaps in coverage between a public liability (‘PL’) and a specialist environmental policy (‘EIL’)

	PL Policy*	EIL Policy
Regulatory Claims?	No	Yes
First Party Clean-up Costs?	No	Yes
Gradual Releases?	No	Yes
Emergency Costs?	No	Yes
Environmental Liability Directive?	No	Yes

* Typical PL Policy

Further reading



IUA Web Site: Insured or Not?

http://www.iaa.co.uk/IUA_Member/Publications/Environmental_Liability/IUA_Member/Publications/Environmental_Liability.aspx?hkey=e14518bf-4a18-479f-a518-2ed0d6d70b49

Case study: Village Hall – an unlikely choice for EIL?

- A tree fell onto the insured's heating oil tank during a storm, fracturing the outlet tap.
- Several thousand litres of oil escaped into the ground.
- The insured's property is situated in a ground water protection zone. A drinking water abstraction point was located 320m away from the site of the spill.
- In addition, a designated SSSI is located 250m away.
- Total Liability: £500,000



Information taken from 'Environmental Loss Scenarios' published by International Underwriting Association of London Limited in association with Berwin Leighton Paisner LLP.

http://www.iaa.co.uk/IAA_Test/Documents/Circulars_2010/Circulars_2013/Environmental_Loss_Scenarios.aspx

Case study: Car Park – an unlikely choice for EIL?



- A retail car park interceptor malfunctioned.
- Oil passed through the drainage system into a canal.
- Impact to local amenity for fishermen.
- Tort liability of £15,000

Information taken from 'Environmental Loss Scenarios' published by International Underwriting Association of London Limited in association with Berwin Leighton Paisner LLP.

http://www.iaa.co.uk/IUA_Test/Documents/Circulars_2010/Circulars_2013/Environmental_Loss_Scenarios.aspx

Environmental Impairment Liability

The brokers story



Roger Morgan
Land Based Underwriters

The story so far

2008

- ▶ Environmental regulations
- ▶ Major competitor included a full EIL cover within commercial combined policy

2009

- ▶ We stopped quoting against the competitor
- ▶ Negotiated an MGA with XL
- ▶ Contacted all clients and offered cover

2010 – 2014

- ▶ Over 90% of our clients now have EIL
- ▶ EIL claims have outnumbered fire claims

In a Nutshell

- ▶ Products and public liability = third party
- ▶ Environmental liability =
 - Land
 - Air
 - Water
 - protected species
 - wildlife



Biggest perceived risks?

- ▶ Own site clean-up
- ▶ Pollution to the watercourse



Claims examples

- ▶ Vehicle crashes into ditch
- ▶ Vehicles catch on fire
- ▶ Septic tank pollution
- ▶ Accidental damage to fuel tank
- ▶ Oil heater fails to cut off



More claims examples

- ▶ Fire caused imminent threat to environment
- ▶ Thief ruptures oil tank
- ▶ Chemical load spilled in gateway
- ▶ Slurry tank pumped out by Fire Brigade
- ▶ Accidental damage to oil can

Are you covered?

Known incidents of PI claims

- ▶ Bartoline case
- ▶ Private school oil tank
- ▶ Farm fuel tank



Just a farming risk?

- ▶ The experience we have gained from the farming sector is now being applied to the general commercial & SME sectors

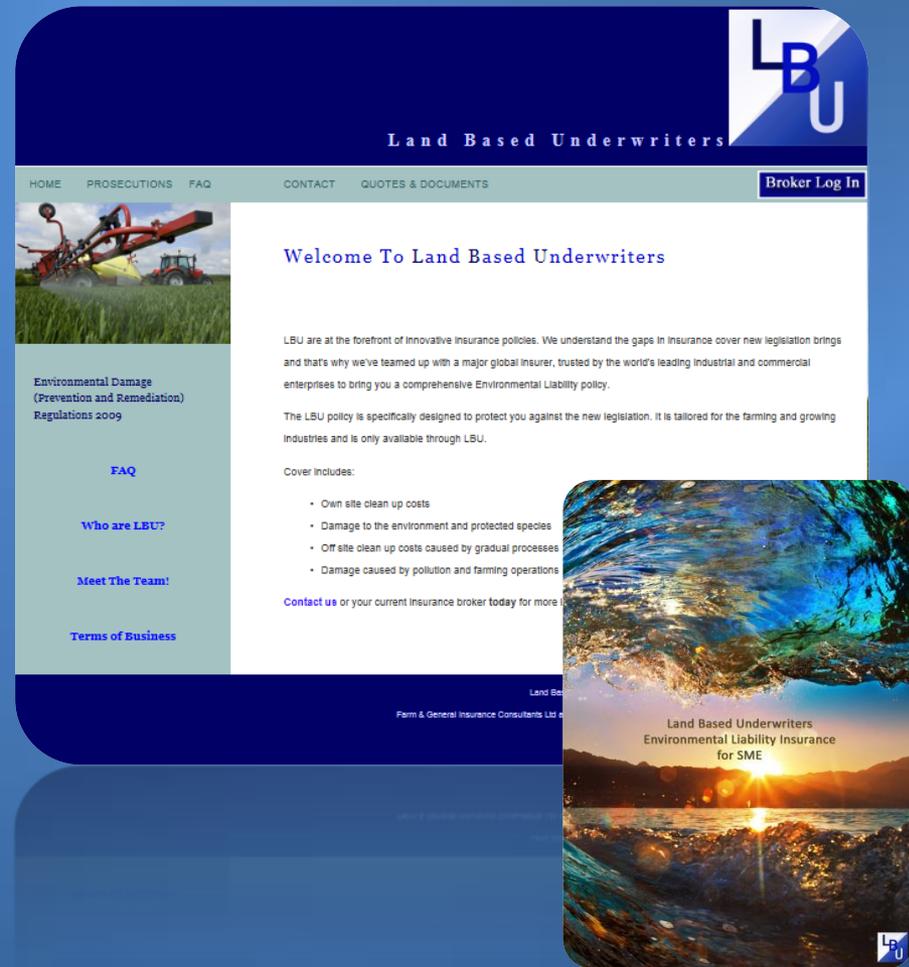


Recommended Guidelines

- ▶ Contact all policyholders with offer to arrange cover
 - ▶ Keep clear notes of discussions
 - ▶ Expect clients not to understand the difference and they assume it is covered
- 

LBU

- ▶ Full web portal for quote and bind
- ▶ Knowledgeable professionals to talk you through any queries



The image shows a screenshot of the Land Based Underwriters (LBU) website. The header features the LBU logo and the text 'Land Based Underwriters'. Below the header is a navigation menu with links for 'HOME', 'PROSECUTIONS', 'FAQ', 'CONTACT', and 'QUOTES & DOCUMENTS'. A 'Broker Log In' button is also visible. The main content area includes a 'Welcome To Land Based Underwriters' message, a brief description of the company's focus on innovative insurance policies, and a list of cover inclusions for Environmental Liability Insurance. The cover inclusions include: Own site clean up costs, Damage to the environment and protected species, Off site clean up costs caused by gradual processes, and Damage caused by pollution and farming operations. A 'Contact us' link is provided for more information. The footer contains the text 'Land Based Underwriters Farm & General Insurance Consultants Ltd'.

LBU
Land Based Underwriters

HOME PROSECUTIONS FAQ CONTACT QUOTES & DOCUMENTS [Broker Log In](#)

Welcome To Land Based Underwriters

LBU are at the forefront of Innovative Insurance policies. We understand the gaps in insurance cover new legislation brings and that's why we've teamed up with a major global insurer, trusted by the world's leading industrial and commercial enterprises to bring you a comprehensive Environmental Liability policy.

The LBU policy is specifically designed to protect you against the new legislation. It is tailored for the farming and growing industries and is only available through LBU.

Cover Includes:

- Own site clean up costs
- Damage to the environment and protected species
- Off site clean up costs caused by gradual processes
- Damage caused by pollution and farming operations

[Contact us](#) or your current insurance broker today for more information.

Land Based Underwriters
Farm & General Insurance Consultants Ltd

Land Based Underwriters
Environmental Liability Insurance
for SME



THANK YOU

Questions?





The LBU Team