



# Environmental Impairment Liability

## The Risks You Now Face

In 2009, major changes to legislation came into force for environmental impairment. These changes mean every business is now at risk of prosecution if they cause damage to the environment.

### What Is Damage To the Environment?

Damage to the environment encompasses a wide range of environmental impairments, including pollution of land, water, air and biodiversity damage (i.e. damage to protected species and habitats). Damage can be the result of an obvious sudden incident such as a burst fuel tank or from a gradual cause such as a leaking underground pipe.

Environmental damage can lead to other problems such as illness from drinking contaminated water or breathing contaminated air; property damage to cars showered with corrosive chemicals; or “amenity” issues for those who have to live in the changed environment.

Businesses are responsible for ensuring they undertake practices to minimise the likelihood of causing such damage whilst carrying out their operations and can be held responsible for all clean-up costs if their measures fail.

### My Liability Policy Protects Me - Doesn't it?

In short, no. A standard public liability policy covers liability for third party claims however, most environmental liabilities are “statutory” or “regulatory” liabilities which are policed by bodies such as the Environmental Agency and will therefore fall outside the scope of cover.

More often than not public liability policies also include exclusions which

a) exclude all pollution related liabilities except those that the policyholder can show were caused by “a sudden, identifiable, unintended and unexpected incident which took place in its entirety at a specific time and place during the Period of Insurance” and;

b) exclude liabilities associated with any remediation work that takes place on the policyholder’s own land.

The majority of environmental liabilities that do fall under the scope of the cover are subsequently thrown out by these exclusions.

Some public liability policies appear to offer adequate protection under an environmental “extension”. In reality, this extension provides limited protection.

The extension still contains the exclusions a) and b), so many environmental liabilities are consequently excluded from cover.

The extension also relies on legal action being taken by a third party before cover comes into force.

**Under most public liability policies, liability for clean-up costs would not be covered.**





## So How Do I Protect Myself And My Business?

Land Based Underwriters (LBU) was formed by a group of insurance professionals to meet the needs of businesses following the major changes to legislation for environmental impairment.

When the laws came into effect in 2009 LBU started working with insurers to provide environmental impairment insurance to brokers for their policyholders.

The LBU stand-alone environmental liability policy is specifically designed to cover the widest possible range of environmental liabilities such as:

- Statutory or regulatory liabilities – including tort liabilities
- Liability arising from gradual pollution as well as sudden and unforeseen pollution
- Liabilities of the insured for own property clean-up costs as well as off-site clean-up costs
- Environmental liabilities during transit
- Investigation, complementary and compulsory remediation costs
- Non-pollutant related environmental damage (e.g damage caused by fire or flood)
- Remedial action made prior to a formal regulatory claim and before legal liability is officially established
- Historical liability by agreement

## The Hidden Costs Of Environmental Pollution

In the majority of cases, only the court fine is made public.

In almost every case there are additional “hidden costs” involved in returning the polluted area back to pre-incident levels, including re-stocking rivers etc.

For example;

A UK company was fined £15,000 for polluting a river. However they also had to pay the bill for:

Tankering away the chemical	£32,600
Plugging the leak	£8,300
An initial fish survey	£6,000
Installing new equipment to detect a leak	£60,000
EA attendance charges	£2,271
Further fish surveys reserve	£20,000
Restocking the stretch of river	£63,500
Prosecution costs	£3,493
Fine	£15,000

**TOTAL £211,164**

For further information or a quotation, please contact your insurance broker