

Pollution Insurance Comes of Age

A Maturing Environmental Insurance Market Means Affordable Coverage Now Is Available for Most Localities

Corey Stein

The water department superintendent shows up unexpectedly. Chemicals have just been found in one of the city's wells. It looks bad. In the days ahead, you learn the facts. A city-owned underground tank has leaked, polluting not only the well but the adjacent land, too, some of it privately owned. The press and the public are asking questions. Is there a health threat? How much will the cleanup cost? Will the city's insurance cover it? Does the tank supplier or installer have insurance that will cover the loss? What about the engineering firm that approved the tank installation?

If your local government is like most, chances are that current general property and casualty insurance will *not* cover these types of claims. And pursuing reimbursement from old suppliers, contractors, and engineers often leads to legal and financial dead ends. The good news is that there has been a great deal of development recently in the United States pollution insurance market. Ready, affordable solutions to inherent environmental risk problems may be available to local governments.

What Is Pollution Liability Coverage?

Most pollution policies are designed to augment a liability insurance program by adding coverage for the pollution claims normally excluded from standard liability policies. Such pollution insurance coverages as on-site cleanup, third-party pollution liability, professional liability for environmental consultants, and contractors' pollution liability provide coverage that is excluded under the standard ISO general liability policy.

Pollution coverage usually is targeted at specific properties, operations, and professional services. While the pollution insurance market is maturing, coverage still is not standardized. Managers will need to work carefully with broker and insurance providers to ensure that their purchased coverage meets their localities' expectations and properly covers pollution exposures.

Is My Community Covered For Pollution Claims?

Beginning in the early 1970s, pollution coverage was eliminated from most standard insurance policies. (An insurance provider should be able to clarify the amount of coverage that a locality has purchased.) While this curtailment of coverage was not welcomed by insurance consumers, it did have some positive effects.

Pollution coverage limitations forced businesses and governments to pay attention to and better control their pollution risks. That meant better pollution controls and lots of cleanup projects. And it created a whole generation of specialty insurers focused on the pollution market.

Today, that generation of insurers has matured, creating a viable market for pollution coverage that is indeed good news for local governments and their managers. With improved pollution controls and insurance competition, prices are considerably lower than before.

With improved pollution controls and insurance competition, prices are considerably lower than before.

Purchasing Considerations

The key coverage questions that managers will need to ask are similar to those they ask about other forms of insurance.

What locations and operations are covered? Know in advance which properties and operations are and are not covered by the policy. Because coverage is generally linked to specific properties and operations, avoid surprises by verifying which ones are not covered by the policy.

How is pollution coverage triggered? Pay attention to how and when coverage begins. What event must happen? During what time period? Is coverage limited to pollution events discovered and reported during the term of the policy? Must the pollution event be sudden and accidental?

What types of pollution are covered? Verify the definition of what constitutes pollution under the policy, and find out whether any types of pollution are not covered. Insurance coverage can hinge on these definitions, so make sure the policy covers the pollution risks your community faces.

What will the insurer do in the event of a loss? Determine both the extent of the coverage and the insurer's obligations to respond. Will the insurer respond to liability claims? If so, which types of claims? Will the insurer provide

for cleanup of the property or others' property that is affected? Will the insurer oversee and pay for loss settlement or only reimburse your entity?

What are your organization's responsibilities in the event of a loss? Make sure you understand your responsibilities if pollution occurs or a pollution claim arises, and see that a response protocol is established and communicated to fulfill this requirement. Is there a mandatory notification requirement? If so, who must be notified and in what period of time? Are there other actions you are required to take under the policy?

Common Types of Exposures

Understanding a locality's exposures to pollution losses is essential to purchasing the right coverage. Exposures can range widely—from the minor to the extremely significant—depending on the scope of your operations. While it's true that some local governments face only modest pollution risk, several common operations involve high risks of pollution liability. Private operations and even residential areas in a community can create significant added indirect pollution risk.

Here's a rundown of the major areas of pollution exposure.

General premises and operations. These exposures involve the risks of spills and misuses of everyday materials in everyday operations, causing injury or environmental contamination. Common exposures happen during vehicle fleet operations, building maintenance tasks, and mechanical equipment breakdowns.

Solid waste landfills and waste disposal. Solid waste disposal operations, especially landfills, represent key risks of environmental liability. Exposures include waste transfer spills, incidents of contamination of adjacent land and water, volatile gas and particulate releases, and other hazardous-materials exposures.

Expect pollution underwriters to

focus on how your landfills are engineered. They will address such issues as liner construction, leachate collection systems, and ground-monitoring wells. Underwriters also will want to know whether closure and post-closure plans are in place. If disposal operations are well controlled, pollution insurers will normally extend third-party pollution liability coverage at reasonable prices.

Underground storage tanks (USTs). The EPA has implemented significant UST regulations in the past decade, most recently determining that all USTs must be upgraded to meet its 1998 standards. These regulations affect the design and construction standards of petroleum tanks, leakage monitoring standards, and financial assurance requirements. Noncompliant tanks already should be out of the ground. Tanks in compliance now are readily insured by pollution underwriters at reasonable prices, sometimes as little as \$250 to \$500 per tank.

Hazardous materials. If a local government has operations involving hazardous materials or waste management, including hazardous-materials handling, treatment, processing, transportation, or disposal, then significant risk management and safety measures already should be in place. If these operations have not been insured in the past because of the high cost of pollution insurance, now is a good time to revisit coverage options.

Electrical utilities. Electrical operations rely inherently on a number of hazardous materials to produce, transport, and distribute electricity. While electric-industry technology and pollution controls have improved significantly, these utilities remain a key exposure for public entities. Electromagnetic field radiation also is of public concern, although there is inconclusive evidence that it is a significant pollutant.

Lead and asbestos. These building materials are a major pollution exposure.

Expect insurance underwriters to review in-place maintenance procedures, age of building units, educational programs, and remediation plans before offering pollution liability coverage.

Spraying. Pesticide spraying, and that of other chemicals and biological agents, constitutes an often-overlooked pollution exposure. Specifically, exposure includes overspraying and other types of herbicide and pesticide misapplication. Coverage now is readily extended at reasonable rates to well-managed spraying operations.

Wastewater treatment. Even for local governments that have eliminated other waste disposal operations by outsourcing their solid waste streams, wastewater treatment remains a significant source of moderate to high pollution risks, involving the wastewater itself and improperly treated sludge or effluent, the potential for illegal dumping, and the agents used to treat this waste stream. Pollution liability coverage for these operations should be investigated.

Water treatment. Water treatment and filtration operations also present pollution risks, primarily from the concentrated treatment chemicals used. Water treatment plants also are vulnerable to outside pollution sources and should be targeted in environmental risk surveys (see *Ways to Manage Environmental Risks*).

Policy decision making. One frequently overlooked type of pollution exposure can occur in the governmental decision-making process. In making policy decisions with even modest environmental implications, the appropriate use of legal and technical consulting is essential. This can help minimize the potential both for protracted litigation and for unreasonable pollution safeguards. Both outcomes represent substantial exposures for localities, and this area of pollution insurance remains one that is difficult to underwrite and insure.

Coverages Offered

Pollution coverage forms are not standardized. So managers will have to examine closely the coverages offered (and not offered) when they select policies. Here's a review of the major types of pollution-related coverage. If a needed coverage is not addressed here, consult a broker and insurance provider for more information.

Pollution liability. Also known as environmental impairment liability insurance, this coverage normally provides protection from third-party bodily injury and property damage liability and should include pollution cleanup coverage. Coverage is available for general and high-risk operations, transportation exposures, and acts of contractors. Waste management and medical facilities usually are subject to significant underwriting. Generally, however, exposures can be underwritten at a low cost and with short applications.

Contractors' pollution liability. This coverage protects pollution cleanup contractors and other contractors engaged in work that has a high risk of pollution, including lead and asbestos remediators, landfill developers, petroleum tank installers, groundwater and soil pollution remediators, and hazardous-materials transporters. This coverage should be required of all environmental contractors and should extend to protect public entities.

Environmental professional liability. Similar to environmental contractors' liability, this coverage is intended to cover negligence liability arising out of the professional acts of environmental consultants, such as environmental engineers and testing laboratories. These firms often are employed in the planning and oversight of pollution cleanup projects and in siting landfills and other waste or hazardous-materials management operations. This coverage should be required of all environmental consul-

Ways to Manage Environmental Risks

tants and should include indemnification of the local government.

Environmental surety bonds. Like environmental contractors' and consultants' liability insurance, environmental surety often is required for projects in which project nonperformance would cause financial loss to a locality. Also frequently required is closure and post-closure bonds for landfills and hazardous-waste facilities.

Storage tank liability. This coverage is similar to and can be included in pollution liability insurance, or it can be written separately. It normally includes both third-party liability and site cleanup coverage. Such policies can help to meet the EPA financial assurance requirements related to underground petroleum storage tanks.

Property transfer liability. Also known as lenders' environmental liability insurance, this coverage is designed to protect banks, other financial institutions, property sellers, and sometimes purchasers from environmental cleanup costs. The product may have uses for local governments, too, when they provide financing or lease property to private groups or become involved in other property transfers, like some transactions during brownfields initiatives.

Hazardous-waste processors' and transporters' insurance. These coverages include specially designed pollution liability policies for private businesses engaged in hazardous waste or materials storage, processing, transportation, or disposal. Coverages range from the Department of Transportation's required MCS-90 endorsement for waste transporters to comprehensive multi-line insurance plans. These coverages are not normally carried by localities but may be required by governmental regulators as a reasonable financial assurance mechanism for these types of businesses under their supervision or in their jurisdictions.

One advantage of purchasing pollution liability insurance, besides the protection it can provide, is that the application process often serves as a high-level survey of your environmental risks, at more or less no cost to you.

If a local government does have high-hazard environmental operations, such as waste disposal and medical operations, an insurer likely will recommend more intensive analysis and management of these operations, especially to obtain more favorable insurance terms. Whether or not pollution insurance is purchased, it can be a good idea to conduct a survey and develop an ongoing environmental risk management plan.

One environmental risk area that often is overlooked in a survey is private operations. Private pollution from these operations can potentially affect localities, and it is a legitimate public policy, public health, and risk management concern. Accordingly, the survey work and risk management plan should encompass outside pollution exposures that could impact your local government. This might include residences with lead paint and asbestos exposures, businesses with underground storage tanks, and waste and hazardous-materials processing or other industrial operations in and around your community.

Local governments should proceed cautiously when hiring environmental consultants and contractors. Special care must be taken when bidding out services that involve hazardous materials, contaminants, or other environmental risks. Contractors' pollution liability and/or consultants' professional liability, as well as surety coverage, should normally be required.

Additional coverages might be required in special circumstances. You will need to work with your insurance provider to ensure that the proper coverages are requested and provided by these firms and that your local government is appropriately indemnified by this coverage.

How to Ensure You're Getting the Right Protection

Working with a broker, insurance provider, and pollution underwriter, the process of exploring pollution coverage options is a straightforward one.

Many times, an underwriter will provide a pre-underwriting price range for coverage, which can help managers assess the affordability of coverage. To secure a firm price quotation, you may need a coverage application that identifies and assesses major pollution exposures. For many localities, this application will be four or five pages in length. If there are significant exposures, however, expect more questions, and consider a risk management plan to control risks and reduce premium costs.

When you receive a pollution liability quotation, it will be important that you understand the coverage terms and con-

ditions being offered. An insurance provider can help assess the extent of coverage, the exclusions or limitations, and the optional coverages available. Together, the manager and the insurance provider also should assess the limit and deductible options provided, the financial strength of the insurer, and the claims-reporting procedures. If the coverage needed is not provided, often it can be endorsed or manuscripted to the policy. It is worth asking.

Pollution liability is a specialized—and growing—area of insurance. There are high stakes involved in going without coverage, especially now that a viable market for coverage exists. Even if your pollution exposures are modest, remember that insurers want “spread of risk” and will provide low premiums to achieve this spread. **DM**

Corey Stein is director of public risk management, Coregis Insurance Company, Harrisburg, Pennsylvania.