

Examples of Environmental Pollution Liability Claims

Petrol Station

Scenario: A large petroleum distributor was notified by the regulatory authority of a significant release of petroleum from one of its petrol filling stations. The release of petroleum was identified during development activities on an adjacent parcel of land. The petroleum distributor faced extensive investigation to determine the degree of soil and groundwater remediation required to clean the site to a standard acceptable to the regulatory authority.

Product: The petroleum distributor had purchased Environmental Pollution Liability cover for all petrol stations under their ownership. The cover gave an incident limit of £5 million with a policy aggregate of £10 million and an excess of £25,000. The cost of the policy was passed on to the tenants as part of their tenancy agreement.

Claims Management: The claims team assisted the insured in appointing a qualified environmental consultant, who designed a programme of intrusive investigation and assessment works. The investigation works and subsequent Quantitative Risk Assessment (QRA) demonstrated that the identified contamination did not represent a significant risk to nearby controlled waters, as first thought. As a result, a less rigorous Remediation Action Plan (RAP) was agreed by the regulatory authority, which allowed some contamination to remain in-situ. The rapid response of the claims team not only avoided unnecessary remediation costs, but also prevented the site from being registered by the regulatory authority as 'contaminated land' and reduced business interruption. The petroleum distributor's policy responded to meet the cost of investigation and cleanup, which amounted to approximately £325,000.

Property Owner / Industrial Unit

Scenario: A small powder coating company who leased an industrial unit from a large property fund went into liquidation. Contractors employed to refurbish the unit discovered large process tanks, which had been poorly maintained. This had resulted in leakage of chlorinated solvents. Furthermore, cracks in the reinforced concrete floor of the warehouse had allowed chemicals to escape, causing extensive soil and groundwater contamination to the surrounding property, with potential to impact on sensitive local water resources. As a result of the former tenant going into liquidation, the property fund became liable for the resulting environmental exposures.

Product: The property fund had purchased an annual portfolio-wide Environmental Pollution Liability policy, covering some 75 properties, as part of their management strategy and in order to protect their stakeholders. The cover gave an incident limit of £5 million with a policy aggregate of £10 million and an excess or self-insured retention (SIR) of £25,000.

Claims Management: Specialist consultants were immediately deployed to the site under instruction from the insurer to assess the extent of the impact. Investigation works were undertaken and extensive risk modelling prepared to determine the potential impacts on local water resources. As a result, source removal i.e. the process infrastructure and tanks filled with chlorinated solvents and a programme of groundwater treatment were undertaken. The insurer's relationship with specialist consultants provided for a rapid response and prevented contamination from impacting on water resources, which would have resulted in a much greater liability and potential prosecution. The policy responded to meet the costs of physical remediation, and covered loss of rental income.

Car Showroom

Scenario: A heating oil tank attached to a garage and car showroom developed a fracture in an underground pipe. Over time fuel oil seeped from the tanks into the surrounding soil and groundwater, contaminating both the car dealer's land and neighbouring business. The extent of the contamination was not realised until oil was noted in a nearby watercourse.

Product: The site owner purchased an Environmental Pollution Liability policy on a prospective basis. The cover gave an incident limit of £1 million and policy aggregate limit of £5 million with an excess or self insured retention (SIR) of £20,000. The policy had been purchased on an annual basis for 4 years, thereby providing retroactive cover for the same period.

Claims Management: Investigations were undertaken and followed by a contaminated soil and groundwater treatment programme in order to mitigate the insured's liability with respect to the Regulator and the adjacent property owner. The insured's policy provided coverage for third-party property damage claims, investigation and remedial site activities, legal defence costs, expenses and business interruption. The swift installation of a remedial system served to reduce the insured's liability and damages and was viewed favourably by the regulatory authority. The policy responded to first and third-party impacts resulting from gradual pollution conditions, which would not have been picked up under other liability policies in place. The legal fees alone exceeded £85,000.

Architects exposed

Scenario: A city firm of architects operating out of a converted warehouse in Europe assumed they were not causing any contamination but were aware of the site's historical use as a printing works. A solvent plume was identified beneath a neighbouring third-party property when foundations to an adjacent development were sunk. It was determined that the pollution source originated from historical printing activities on the architect's site over twenty years before they took ownership. The impact on surrounding premises occurred due to the migration of contaminants through shallow groundwater. The original polluter could not be tracked down, so liability attached to the architect firm as the current site owner and appropriate responsible party.

Product: The architect firm purchased an Environmental Pollution Liability policy for historical pollution conditions as a precautionary measure given knowledge of the site's historical land use. The cover provided an incident and policy aggregate limit of €1,000,000 with an excess or self-insured retention (SIR) of €10,000.

Claims Management: The identification of the pollution impacts by a third party triggered the insurance policy. The insurance claims team appointed (on behalf of the insured) a remediation contractor who designed, installed and operated a groundwater solvent extraction system to bring the groundwater quality in line with regulatory guidelines. Business Interruption costs were also paid to the developer of the adjacent land. Total costs were just over €300,000.

Property Owners

Scenario: A housing stock transfer was undertaken between a Local Authority and a private management company involving approximately 7,000 residential units. A problem emerged when unusually high levels of lead, arsenic and zinc were discovered on land surrounding multiple residential premises. Tests were carried out in the grounds of the properties and it became apparent that the properties had been built on land primarily used as a chemical dump from the early 1900s to 1960s by a company still operating in the area. A class action was brought against the Local Authority by residents, alleging health risks and diminishing property values.

Product: The Local Authority had purchased an Environmental Pollution Liability policy for pre-existing pollution conditions relating to the housing stock transfer as a contingency to the indemnity offered by the private management company. This 10-year policy provides an incident limit of £5 million a policy aggregate of £10 million and an excess or self-insured retention (SIR) of £50,000. The policy was designed to respond to unknown pollution conditions arising prior to inception of the policy.

Claims Management: The insurance company provided legal support to the Local Authority and relocated residents perceived to be at risk from the presence of contamination. Significant investigation works were undertaken to assess the extent of the problem. A combination of remediation, compensation and relocation of residents was eventually achieved and paid for by the original polluter. Although the liability was not deemed to ultimately lie with the Local Authority, significant costs were incurred in demonstrating this, which was paid for by the insurer. They were eventually able to recover these costs by means of subrogation against responsible parties, including the previous landowner and the developer. In addition, the Local Authority was able to recover the £50,000 SIR from the former landowner.

Contractor's Environmental Pollution Liability

Scenario: As part of a significant regeneration project, an environmental contractor had been appointed to undertake remediation of buried waste at the site, through excavation and disposal of materials off site. During excavation, a number of chemical drums were discovered with several pierced by the earth-moving equipment used. This resulted in the release of a significant volume of process effluent, containing toxic organic compounds, into the surrounding soils and groundwater. The release of these contaminants increased the volume of material requiring off-site disposal and required the installation of a containment system to prevent migration to off-site receptors.

Product: Prior to commencement of the remediation, the environmental contractor purchased Environmental Pollution Liability cover specifically for the period of the project. The policy gave an incident limit of £1 million, a policy aggregate of £3 million and an excess or self-insured retention (SIR) of £25,000. In addition an extended reporting period was added to the policy term.

Claims Management: The contractor was able to manage a rapid response to the incident. Additional remediation measures were implemented to ensure the issue of on-site property damage was dealt with. The policy was triggered and responded by meeting all costs associated with cleaning up pollution conditions which resulted from the covered operations.