

Pollution Overview: Contractors, USTs, Farms, Other



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Exciting things are happening in the environmental insurance industry. With more and more insurance professionals and purchasers understanding that environmental exposures range well beyond hazardous waste, the demand for environmental insurance products continues to increase. There exists a decade-long stigma in the insurance industry that environmental or pollution insurance is only needed by hazardous waste contractors. However, never in the history of the infamous pollution exclusions found in standard ISO liability and property policies have these exclusions ever been limited to just hazardous waste. Various case law across the country confirms the broad application of these exclusions. Almost every industry carries some sort of environmental and pollution exposure including farms, any site with underground storage tanks, commercial properties, and contractors; case law in many states and actual claims have only exemplified that exposure.

For example, in 2013, the Supreme Court in Wisconsin recently ruled manure as a "pollutant". In Iowa, Des Moines Water Works sued farmers upstream of the rivers that supply Des Moines residents with their drinking water for polluting the city's water source with nitrates, which are found in manure. In Washington state, farmers spreading excessive amounts of manure on their fields were cited under the Resource Conservation and Recovery Act (RCRA) for disposing of a hazardous waste without a permit; the claim stated that the excessive amounts of manure resulted in runoff containing high levels of nitrates that polluted nearby sources of drinking water. This is evidence that federal and environmental laws are now applying to agriculture for the first time ever. Whether you want to believe it or not, these actions affect every farm across the country; a substance they deal with on a daily basis that has on more than one occasion been referred to as "liquid gold" is now a pollution exposure. The need for environmental insurance on farms has changed. Advancements in science and social norms make it no longer socially acceptable to spread manure on a farm field without consequences.

Many farms are expressively uninsured for pollution-related exposures other than crop overspray because of pollution exclusions found in standard farm property and liability policies. What is the solution to fixing the coverage gap created by pollution exclusions found in farm policies? Purchase environmental insurance coverage. There are insurance programs specifically designed for farming and agricultural pollution and environmental risks in the environmental insurance marketplace.

In 2014, American Risk Management Resources Network, LLC (ARMR) created a policy in partnership with Crum & Forster to help with the financial assurance in the agriculture industry. This exclusive program is available to you through Big "I" Markets. There are two types of coverage forms that would apply and are available for the agriculture industry:

1. For manure haulers, applicators, and custom farming operations, an operational base coverage part would apply such as a Contractor's Environmental Liability policy.
2. For farm and landowners, a site pollution liability policy would apply if a cleanup were to be triggered.

While the solution to the coverage gap created by pollution exclusions on farm policies may seem easy to solve, finding a suitable pollution policy isn't always so simple. Insurance agents and farmers are not used to dealing with the environmental insurance mechanism. Care should be taken when placing this coverage as not all pollution policies are designed for farms and other agricultural risks and may not provide adequate coverage for their exposures. Utilizing a broker who specializes in environmental insurance placements is incredibly beneficial for protecting not only your client but also your E&O.

Another notable prospect with environmental loss exposure is underground storage tanks (USTs). Many states require



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financial responsibility due to the heightened amount of environmental exposure for USTs. It is in everybody's best interest to clean up after a spill or leak from an underground storage tank. A spill or leak could have negative effects on the local economy through contamination of a town's or city's groundwater and even cause bodily injury if a tank were to spill or leak. Private insurance is the quickest way to respond to a cleanup. Historically, state tank funds and surety bonds have had delayed responses when it comes to cleaning up a spill or leak, which could end up worsening the situation. Tank system owners potentially assume more risk going into the state fund than they do in the private insurance market, because private insurance markets have due diligence to defend and indemnify the insured as included in the insurance policy contract.

There are many environmental insurance markets that offer UST coverage; however, the policies can vary a great deal outside of the financial responsibility requirements put forth by the states. The policy will schedule the UST systems and trigger for a release that results in third party bodily injury and property damage and the policy should provide coverage for cleanup costs. It is important to note that if a UST is not listed on the policy, there is no coverage for a claim involving that UST system. It is also important to note that claims resulting from or involving voluntary upgrade, replacement, and repairs are handled differently by each carrier. There are also many age limitations when it comes to underwriting UST policies that force older tanks to be replaced.

Due to the variation in UST policies available in the environmental insurance market, it's important to provide a policy that meets the expectations of the insured and communicate exactly what the policy is designed to cover and what it is not. There is an increased E&O risk to insurance agents when it comes to UST policies; if anything goes wrong and the insurance professional did not warn the insured, that is on the insurance agent. To reduce this risk, agents should utilize an insurance wholesale broker that specializes in environmental insurance placements or, if possible, one that specializes in UST environmental liability placements. Due to the complexity of UST placements, here at ARMOR, we have a dedicated UST environmental insurance broker who handles all of our UST accounts.

Even commercial building owners and managers assume environmental risk in the daily operation and upkeep of their buildings. What happens if a pipe springs a leak and no one discovers it for months? Mold will start to grow. We have found that the average mold remediation job on a commercial building is \$250,000. The issue lies in the standard property policy where there is a sub-limit of only \$25,000 for mold-related losses, leaving the property owner or manager footing, on average, a bill of \$225,000 for the mold cleanup and remediation. The good news is there is an exclusive environmental program for commercial buildings created by ARMOR that combines risk management and the insurance mechanism: Property Environmental Risk Management (PERM). Putting a PERM option into a renewal proposal will help protect you from a professional liability standpoint if your client finds themselves with an uninsured environmental loss. We have seen many insurance agents find a lot of success with this program.

The insurance part of the PERM product is a specially designed and priced environmental insurance policy to fill the environmental coverage gaps in property and liability policies. The PERM product is absolutely needed to fill the coverage gaps caused by the pollution, fungus, mold, bacteria, category 3 water, asbestos and lead exclusions found on general liability and property policies sold to commercial property owners and managers. The second part of the PERM product is the risk management piece that is available when your client purchases the environmental insurance policy. This risk management is a water intrusion loss prevention plan conducted by a fire and water restoration professional who will visit their property. An onsite visit will be conducted with the property manager to create a risk management plan for the property owner and manager. There is nothing else like this in the marketplace.

The environmental loss exposures for contractors can vary greatly depending on their operations. For example, general contractors assume environmental risk during excavation, construction and completed operations. Environmental loss exposures come in the form of unknown pollution plumes in the ground; the release or presence of irritants, contaminants such as mold, fungi, mildew, or bacteria during the course of construction; or the discovery a "pollutant" such as mold, fungi, mildew, or bacteria after construction is complete and the building has been put to its intended use. These loss exposures may lead to bodily injury, property damage, cleanup costs, or all of the above.

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Specialty trade contractors also carry a great deal of environmental risk. A specialty trade contractor ranges from a painter to a fire and water restoration contractor and everything in between. We have seen environmental claims for almost every sub-industry of contractors. A few to date include a banana peel left in a hospital during construction, carbon monoxide poisoning to the homeowner's son after servicing a furnace, evacuating an entire assisted living facility with fresh paint fumes, hitting a pipeline when laying a new parking lot, and blowing asbestos throughout the home resulting in complete demolition of the house. Both general contractors and specialty trade contractors are nowhere near exempt from pollution exposures and especially not the fungi and bacteria exclusion found in standard ISO forms. There is a considerable coverage gap for contractors created by pollution exclusions and fungi or bacteria exclusions on standard GL policies sold to contractors.

Much like it is with farms and their pollution exposure, there is a relatively simple solution to fixing the coverage gap for contractors created by pollution exclusions and fungi or bacteria exclusions. However, similar to pollution coverage for farms, environmental policies must be altered appropriately to adequately cover the indoor loss exposures for general contractors and trade contractors. For example, the first Contractor's Environmental Liability policy (commonly referred to as Contractor's Pollution Liability) was created to insure the nuclear disaster cleanup contractors responding to the nuclear meltdown at Chernobyl. Off the shelf, this product is not designed for folks swinging a hammer in someone's kitchen. It's important to understand how the policy works and what triggers coverage in addition to modifying specific exclusions and definitions so that coverage applies to the exposures faced by contractors. The best way to ensure your client is properly covered is to utilize the expertise and know-how of a wholesale broker that specializes in environmental insurance coverage.

Environmental insurance has been available since 1986, yet many times it is overlooked and not even considered by clients and insurance professionals. To this day, it is still less popular than cyber liability insurance despite being around longer. Existing case law shows that many industries have pollution and environmental exposures whether they want to believe it or not. Gone are the days when it was okay not to offer environmental insurance coverage to those prospects and clients of yours that have environmental or pollution exposure. My advice is to use the ignorance of the majority the insurance industry to your advantage. Working in a coverage line that has relatively low competition, increases your chances for success. In addition, it protects your E&O and shows your value as an insurance professional to your clients. You don't need to take on the stress of an unfamiliar line of coverage alone; in fact, I wouldn't recommend it. I encourage you to partner with a trusted, experienced wholesale broker that specializes in environmental insurance placements. There are many qualified wholesale brokers that are here to help. The environmental insurance market is continually changing, shaping and responding to emerging environmental risks while also providing a home for existing risks, and it is ripe with opportunity.

To submit a quote request log in to [Big "I" Markets](#) and select **Pollution Contractors-Farms-USTs-Other** from the commercial lines menu, or call (608) 824-3341.