

Environmental Insurance: It Should Be On Your Radar

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One of the most intriguing aspects of the insurance industry is its affinity to adapt. As the world changes around us, the insurance mechanism evolves to keep up (for the most part at least). It can be exciting when some radical, new innovation hits the scene like autonomous vehicles and a new loss exposure emerges that we, as insurance practitioners, need to address.

Take cyber liability, for example. You can hardly open an insurance-related magazine or media outlet's website without seeing a story about a ransomware attack or data theft. If you're like me and get daily blasts from the big media players in our industry, you can bet that at least one headline will be cyber-related. Folks are interested in this loss exposure, because it is present

in basically all facets of society from business to politics to entertainment. We're talking about it in our industry, because it has infiltrated almost every other industry.

Environmental insurance is another great example of the insurance industry's aptitude for change. It is a lesser-known line of coverage despite being around longer than cyber coverage and seems to receive less discussion in our industry and presence in the media. Not surprisingly then, environmental insurance exhibits poor market penetration even though almost every business faces some kind of environmental loss exposure. Is it because the topic isn't as consistently covered like the topic of cyber liability and we have sort of "out of sight, out of mind" problem? Or is it a common misunderstanding of how broadly pollution exclusions can be applied to claims that don't resemble the traditional archetype of a pollution loss? Before we tackle these questions, here is a little background on pollution exclusions and environmental insurance.

Society started to realize the horrendous effects that industrial pollution and contamination have on both human beings and the environment, starting in the 1960s. Instances such as the Cuyahoga River in Cleveland catching fire and the environmental tragedy that was and still is Love Canal were making national news and capturing the country's attention. We began to hold businesses accountable for the harm and damage they caused. Companies suddenly had this new liability, created by environmental loss exposures, that they'd never had to deal with before.

The insurance companies responded to these new loss exposures and added liability by introducing pollution exclusions into almost every General Liability and property insurance policy. They wanted to shield themselves from pollution claims being filed by businesses for contamination events, which is not surprising given these claims were uncharted and were proving to be quite significant in terms of damages. Simply put, pollution exclusions stated that coverage would not apply to bodily injury or property damage arising out of the discharge, dispersal, release, or escape of irritants, contaminants, or pollutants; this applied to releases into or upon land, the atmosphere or any body of water. So now companies not only faced this new liability, but they also had no coverage for them on their standard insurance policies. Environmental insurance policies were then created to fill the gaps in coverage created by pollution exclusions that were added to most standard liability and property policies.

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Pollution exclusions have been modified over the years and their application has evolved greatly since their introduction in the 1970s. At the time pollution exclusions first came into play, they were for insurance carriers to combat the onset of industrial pollution claims. Because of this, they earned the reputation of only applying to these situations, a reputation that has stayed with them for decades. However, modern interpretations of these exclusions have clearly demonstrated that they are much broader-reaching.

For example, a popular hotel in Memphis, Tennessee experienced an outbreak of Legionnaire's disease, which is caused by legionella bacteria that often spreads to humans through water droplets that they breathe in. In this case, it originated in the hotel's pool and hot tub. Nine people were infected, and one woman later died. Lawsuits were filed against the hotel by the victims and their families. When the hotel attempted to claim coverage for damages from their insurance company, coverage was denied citing the pollution exclusion clause. The hotel is now fighting their insurance company for coverage of the Legionella-related expenses. This example hardly compares to industrial pollution, yet the same exclusion was triggered to deny coverage showing that pollution exclusions have greater reach than what many people believe.

This is just one instance, but there are many more that follow a similar pattern. It's clear that pollution exclusions can be applied to more than just the classic industrial contamination claims. This limited scope or misunderstanding of how broad-reaching pollution exclusions explains why we see underutilization of environmental insurance and why so many businesses are needlessly underinsured for their environmental loss exposures. Many businessowners are sorely unaware that they face some or often significant environmental loss exposures, because pollution exclusions are commonly mischaracterized as only applying to hazardous chemicals or waste.

So it seems that the misunderstanding of pollution exclusions might be the answer to our original question on what is the driving force behind the underutilization of environmental insurance. But you could also argue that this misunderstanding plays a role in preventing appropriate discussion and proper attention of environmental loss exposures. Most articles that you see about environmental insurance focus around what we would consider traditional pollution claims: oil spills, industrial runoff, air pollution, or hazardous waste cleanup. This in turn influences the underutilization of environmental insurance, because there is not a lot of literature or marketing out there that covers the many other environmental loss exposures like the Legionnaire's outbreak or the manure pollution from above. In reality, there are examples in the news all of the time, we just don't realize it.

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