

Broker Guide to Environmental Liability

Recent legislative changes which mean that landowners / farmers can be made liable for environmental / biodiversity damage caused by incidents of pollution. In addition, more and more legal cases are testing the new legislation and an increasing number of successful high profile cases are hitting the headlines.

Situations that your client may be liable for include:

- Accidentally polluting a watercourse
- Spilling diesel and accidentally contaminating the land
- Thieves damaging fuel storage tanks
- Unintentionally allowing livestock to damage a conservation area
- Spray drift which kills a protected species or habitat
- Sudden rainfall causing slurry run off
- Creating odours offensive to local residents

Most Insurers are not offering full EIL cover although some Insurers (including AXA under our Policy) will provide cover for the following:

- Clean up Costs for damage to own land following a sudden and identifiable incident of pollution. Under current legislation a landowner can be made to pay for clean up costs for damage to their own land. Under the Public Liability section of the Policy there would only be cover for “third party” land (i.e. not the Proposer’s own land). Generally, there is quite a small limit of indemnity available – maybe up to £25,000. Under the AXA Policy, we are providing cover up to £10,000 as standard following a rupture to a bunded tank, but can extend this to £25,000 subject to an additional premium.
- Statutory Enforcement costs following a sudden and identifiable incident of pollution. There was a high profile case (“Bartoline”) a few years ago whereby the Environment Agency was called in to clean up a third party site following a pollution incident. The Insurers successfully argued in court that the enforcement costs charged by the Environment Agency did not constitute damages and therefore should not be paid by Insurers. The case was due to go to the Court of Appeal, but was settled out of court for an undisclosed amount. We are providing cover up to £500,000 with only a £250 Third Party Property Damage Excess (much lower than other Insurers) as standard. We can increase the limit of indemnity to £1 million or £2 million subject to additional premium.

There is considerable confusion in the market at the moment surrounding the level and extent of environmental liability cover available under most farm combined policies. At BIBU we believe that the level of cover generally available is not sufficient for your farming clients. Farmers and property owners can now quite easily be liable for considerable costs following a prosecution under environmental law and as a consequence their businesses or even their livelihoods may be under threat. BIBU have therefore developed a new environmental liability product that can be purchased by you to indemnify your clients for the very real and substantive risks that they face. This new policy provides the following:

- Cover for third party personal injury and property costs up to a £1 million limit of indemnity following a pollution incident (including gradual pollution)
- Cover for clean up costs up to a £1 million limit of indemnity following a pollution incident (including gradual pollution and for cleaning up the Insured's own land)
- Cover for making good land following fly tipping up to a £1 million limit of indemnity
- Remedial action costs following natural resource damage if prosecuted under the environmental liability directive – this may mean considerable expenses in setting up an alternative natural habitat for flora and fauna on a third party site following an incident of pollution in a protected area
- Legal expenses connected with a prosecution under the environmental liability directive

The items in red are covers that may well be unavailable to your clients under their current insurance arrangements. However, should your client be insured through BIBU for their farm / estate combined insurance cover may be available for as little as £300 EX IPT. The policy is underwritten by XL Insurance on a "claims made" basis.