

The ARMR Toolkit™

Your Environmental Insurance Resource

Environmental Impairment Liability Why You Need It and Why You Should Keep It

The best way to understand the importance of keeping Environmental Impairment Liability (EIL) or Site Pollution coverage in place is to revisit the reason for originally purchasing the coverage. Companies and organizations buy EIL coverage, because they hold some kind of environmental risk or exposure due to operations and/or Environmental Laws. Some examples of this would be, chemical companies handle substances that can poison an entire drinking water supply for hundreds of thousands of people. Byproducts from a manufacturing facility's operations can lead to serious natural resource damage. The chemical used in dry-cleaning solution has been linked to dangerous health effects from long-term exposure. The liability associated with these risks tends to be more than most companies are

able to or willing to self-insure and look to transfer the risk. A way to do this is to purchase insurance. In the case of environmental liability, folks purchase EIL coverage.

What's important to understand, is what drives or creates this environmental liability for companies and organizations. What makes a company or organization responsible for the natural resource damage they cause or the bodily injury that results from their actions? The answer is a mix of statutory regulation and Common Law. Negligence, nuisance, and trespass form the Common Law portion of environmental liability and provide the basis for civil suits. Environmental protection laws create liability for cleanup costs and damages to natural resources.

The environmental protection laws make it that environmental

liability never truly goes away. It is strict liability that applies jointly and severally to responsible parties. In regards to EIL or Site Pollution coverage, responsible



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(continued)

parties include any organization that benefited financially from a site or location during the ownership and operation of the site. This goes so far as to include the financial institutions that provided lending for companies at these sites. The environmental liability will attach to your status, not just your actions. While the liability will follow the title to land and can be acquired by successors, it cannot truly be transferred by contract; for example, a Purchase and Sale agreement cannot effectively transfer environmental liability to another party. The Environmental Protection Agency (EPA) does not recognize these contractual arrangements when it comes to environmental damage or threats to human health.

For these reasons, it is imperative that EIL or Site Pollution coverage be kept in place even when the threat for environmental liability seems nonexistent. Environmental liability is essentially endless; it never goes away. It's worth noting that losses from pollution conditions can take years, even decades, to be realized. In the present, you may feel that your exposure to pollution losses is minimal, because of procedures and protections in place to prevent them. However, ten years ago before those protocols

were implemented, you still have exposure. The chemicals that leached into ground before you installed the spill-catch and get into the drinking water will be your problem. The EPA will require you to clean up the pollutants and hold you responsible for any natural resource damage. In addition, bodily injury lawsuits from the municipality or even private citizens will fall on you. This applies even if you have contractually transferred your liability to another entity. As discussed above, the EPA does not recognize these arrangements and focuses on responsible parties and their connection to a site or location.

An EIL policy is designed to provide coverage for bodily injury, property damage, natural resource damage, cleanup costs, and defense on claims resulting from pollution conditions on, at, under, or emanating from a scheduled site or location. EIL policies are almost always written on a claims-made basis. In order for the policy to trigger and pay a claim, the claim must be first reported during the policy period and the pollution condition that resulted in the claim must have occurred after the retroactive date on the policy if there is one. Once you discontinue an EIL

policy and the Extended Reporting Period (ERP) ends, coverage is gone. If the EPA comes knocking the day after your ERP is up, you lose any ability to file that claim on your policy. It is important to keep EIL coverage continuously in place. Environmental claims are unpredictable and can be very expensive. At the Society of Environmental Insurance Professionals conference, we spoke with an environmental consultant who mentioned the lowest average environmental clean-up is around \$700,000+. The last thing you want is to be without coverage when you need it most.



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