



Tip Sheet on Environmental Risks - Pollution

Since an environmental accident can quickly turn out to be much more extensive or complex than initially expected, it is crucial that representatives be fully aware of the limits of their knowledge and expertise before accepting and undertaking a mandate. This applies both when conducting the needs analysis and proposing coverage, as well as in the event of a loss and a potential claim.

What is an environmental risk?

Broadly speaking, an environmental risk is a risk that affects the environment in which we live, for example, natural disasters (floods, global warming or drought). Environmental risk can also directly result from human activities such as manufacturing; or using or processing hazardous substances (pollutants), or even substances that—while non-hazardous in small quantities—may cause health concerns when present in large quantities.

This tool specifically deals with risks related to pollutants and the consequences of emitting, discharging, spilling or dispersing them into the environment.

Personal-lines insurance representatives most frequently find themselves dealing with situations involving residential heating-oil tanks (interior or exterior, and sometimes underground); however, liquid spills (from liquids used for rolling stock) are not uncommon either. **Business-lines insurance representatives**, on the other hand, deal with a broader range of situations. They must therefore be alert to the possibility of environmental risks in a variety of settings, from service stations to fuel transportation companies to companies that use or store chemicals.

Insurance contracts do not consider the presence of asbestos, pyrite, fungi (such as *serpula lacrymans*, or “dry rot”), iron ochre or other contaminants to be types of pollution. However, such contaminants could lead to an increase in risk. Thus, if they are found at the site of a loss, it may be necessary to use special measures or protocols. Vigilance is required.



FOR AGENTS AND BROKERS

Conducting a needs analysis and information gathering allow damage insurance representatives to better explain to their insureds what coverage is available. Taking such steps also ensures that representatives properly fulfill their duty to advise by enabling them to recommend the appropriate product to meet the needs that were identified. Here are certain points to keep in mind:

Identifying potential pollution risks and determining financial needs in the event of a loss.

- As a **personal-lines insurance** representative, have you noticed the presence of:
 - An oil-burning heating system (or the possibility of old buried tanks)?
 - Ground contaminated by the previous occupants or the neighbours? Might the insured's activities or property have contaminated neighbouring land?
 - Old or poorly maintained septic tanks that could be of concern?
 - A tractor, truck or boat belonging to the insured that could cause a diesel-fuel spill?
 - Off-site property that could pose a risk (for example, gas tanks or other materials in a warehouse or a rented cottage)?

- As a **business-lines insurance** representative, are you insuring:
 - A transportation company (transporting dangerous goods)?
 - A gas station or body shop?
 - A dry cleaner?
 - An agricultural or agri-food business (risk of explosion; waterway or groundwater pollution due to fertilizers or slurry)?
 - A manufacturing company (paint, chemicals or fabric dyes) that stores polluting or flammable products?
 - A contractor (for example, construction or excavation, landscaping, roadside mechanical repairs)?

In all such cases, the company's activities could directly or indirectly cause an environmental accident. The agent or broker must not only evaluate the risk, but also the potential costs of a claim for business interruption, fines or penalties arising from government regulations, or decontamination.



Understanding Available Coverage

The agent or broker must understand all the nuances of the coverage, in particular the limits and exclusions applicable in the event of:

- direct damages;
- civil liability;
- decontamination.

Case Law

In a 2004 case, a broker whose client experienced a diesel spill on his property was found guilty of improperly advising the client and misleading him with respect to the decontamination coverage offered by two insurers. The broker had misinterpreted the definition of the term “premises.” (2004 CanLII QCCQ 48931, para. 35 to 37 of the decision).

Did you know?

Damages for civil liability are more costly than direct damages. Furthermore, basic coverage for direct damages usually excludes the cost of soil or water remediation, despite the fact that remediation makes up the bulk of pollution-related costs. In order to make sure the client’s needs are covered or verify that these needs are not already covered, the representative must understand the contract’s exclusions, since they sometimes include exceptions.

If the representative is unable to offer the appropriate coverage (insurer does not offer such coverage; creditor believes the coverage is unsuitable or insufficient), the client must be notified and referred to another professional who is able to meet his or her needs.

Preventing, Managing and Reducing Risk

Does the client have a risk management strategy? Is it appropriate? It is important to discuss options such as those listed below in order to raise the client’s awareness of the issues (this is particularly applicable to business-lines insurance):

- A surveillance system for the operations or the premises (existing or future measures);
- Technologies (leak detection system);
- When reviewing the risk, bringing in a loss prevention specialist for an inspection or site visit.

Attention: Leak-prevention systems that detect a change in volume in the tank are not infallible and do not fully protect the client against environmental risks. Specific types of coverage might be advisable.



FOR CLAIMS ADJUSTERS

Given the high stakes involved in settling an environmental damage claim, claims adjusters must take into account the limits of their abilities and knowledge and the means available to them. Here are a few points to take into consideration when managing this type of claim.

Taking Charge of the File as Quickly as Possible

Time is of the essence when managing a claim. Acting without delay will help to avoid both worsening the environmental damage, and potentially increasing the cost of the claim. Claims adjusters must:

- Conduct a rapid preliminary assessment.
- Minimise damage by taking the appropriate emergency measures.
- Quickly begin the investigation in order to identify decontamination options.

Case Law

The cost of decontamination following a spill that occurred when a tanker truck was involved in a traffic accident ended up exceeding \$900,000 and decontamination took over four years (2009 QCCS 862, upheld by the Court of Appeal in 2011). Two issues were raised before the court: the choice of the method of decontamination and the reaction time of the parties involved.

Informing All Parties Concerned

- The insured, the mandator, as well as all third parties concerned must be quickly notified of the situation, the decisions to be made and any potential impacts on the claim.
- The events must be reported to the concerned authorities (various government levels: federal, provincial, municipal), required notifications sent and necessary approvals obtained without delay. Your firm must suggest procedures that will help save time.

Investigating the Loss, Estimating Damages and Negotiating the Settlement

- The investigation must begin as soon as possible. Often, the claims adjuster must consult a number of experts in order to determine the cause of the loss and make a final decision.
- If need be, the adjuster may issue a reservation of rights or a non-waiver agreement in order to notify the insured or a third party that it will be necessary to conduct a more in-depth investigation of the circumstances surrounding the loss.
- If the claim is not admissible (or certain limits apply), the insured should be quickly notified to ensure that he or she is aware of the decisions that will need to be made and any potential consequences.



- Ordering an evaluation and an estimate of the work to be done (including options for remediating or cleaning up the contaminated area) will enable the adjuster to better assess the scope of the claim and make informed choices.
- The claims adjuster will also have to manage costs at every stage of the claims process (decontamination, prevention of spread, excavation, backfilling, etc.); knowing suppliers who specialize in such work helps the representative to better control costs.

Notes in the Files

A claims adjuster who documents every discussion, conversation and decision is able to produce a more detailed report and thus keep better track of events. The various parties may provide a wealth of information, making it all the more important to keep proper notes in the file.