POLLUTION INSURANCE

Addressing Manufacturing Risks in a Changing Regulatory and Liability Environment

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Pollution liability insurance offers manufacturers a comprehensive risk management solution to safeguard against these potential risks.

Manufacturers play a crucial role in the global economy, but their operations can also pose significant environmental risks. Pollution incidents can result in severe financial losses, legal liabilities, regulatory penalties and reputational damage.

Heightened regulatory scrutiny, increased environmental litigation and growing stakeholder expectations continue to elevate environmental risk for manufacturers. From PFAS-related liabilities to pollution incidents impacting water, air and soil, organizations are facing greater financial, operational and reputational exposure than ever before.

Pollution liability insurance offers manufacturers a comprehensive risk management solution to safeguard against these potential risks.

Understanding Pollution Liability

Pollution liability refers to the legal responsibility of manufacturers for any pollution-related exposures associated with their operations, products, or properties that they own or lease. Manufacturers can be held liable for bodily injury, property damage, cleanup costs, and legal expenses resulting from pollution incidents impacting soil, water, and the atmosphere.

Standard liability and property insurance policies have excluded coverage for claims associated with pollution events since 1985, leaving significant coverage gaps in insurance programs. The broad interpretation of pollutants reinforces the strength of pollution exclusions. Pollution liability insurance is the solution for securing affirmative insurance coverage for pollution exposures.

Risks and Liabilities

Manufacturers face various risks and liabilities related to pollution incidents. These include accidental spills, leaks, emissions, and improper waste disposal. Moreover, manufacturers may own and/or operate properties with existing contamination, which they may ultimately be responsible for in the event of required cleanup costs or third-party claims for bodily injury or property damage.

In addition to these location-specific risks and liabilities, manufacturers may experience a pollution-related loss arising from their product. As previously discussed, a pollution-related product liability loss would be excluded under the “pollution” exclusion on standard policies and would require consideration of a combined General Liability and Pollution Legal Liability (GL/PLL) policy.

These pollution-related exposures can harm human health, damage ecosystems and violate environmental regulations. Manufacturers may be held accountable for cleanup costs, third-party claims, business interruption and legal expenses that can lead to:

Financial Consequences	Reputational Damage	Regulatory Fines and Penalties

In addition to traditional pollution exposures, manufacturers are increasingly evaluating emerging environmental liabilities related to PFAS, legacy contamination, supply chain operations, waste management practices and evolving environmental regulations. These exposures can create significant cleanup obligations, third-party liability claims and business interruption impacts.

Programs Available

Standalone Pollution Legal Liability (PLL) Coverage

Standalone Pollution Legal Liability (PLL) programs provide coverage for cleanup costs, bodily injury, and property damage associated with pollution conditions on, at, under, or migrating from your property. Coverage can be tailored to address potential future pollution events as well as potential liabilities associated with existing contamination at a property.

PLL programs typically include numerous enhancements, including legal defense, transportation, business interruption and waste disposal coverage, among others.

Our team can also obtain excess liability coverage with follow-form PLL coverage in order to obtain the desired limit of liability (given that many carriers have capacity limitations).

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Combined General Liability and Pollution Legal Liability (GL/PLL) Coverage

The value of a combined General Liability and Pollution Legal Liability (GL/PLL) program can vary depending on several factors, including the size and nature of the business, the industry it operates in, and the specific risks it faces. However, there are several potential benefits that can add value to such a program:

- **Comprehensive coverage:** By combining GL and PLL coverage, businesses can obtain a more comprehensive insurance solution that addresses a broader range of risks under a single policy. This can help protect the business from financial losses and potential lawsuits arising from both general liability and pollution-related incidents. Additionally, numerous enhancements would be included, such as products pollution for pollution-related losses arising out of your product (which would be excluded on standard GL forms).
- **Cost savings:** Purchasing a combined policy can often be more cost-effective than buying separate GL and PLL policies. Insurers typically offer discounts or package deals for combining these coverages, resulting in potential cost savings for the business.

Choosing the Right Insurance Coverage

As environmental liabilities become more complex, manufacturers should evaluate their risk profile and implement insurance solutions that align with their operational footprint, regulatory environment and long-term business objectives. Factors to consider include program type, coverage limits, retroactive dates, policy exclusions and additional endorsements. Working with the Gallagher Environmental team can help manufacturers navigate the complexities of insurance policies and ensure adequate coverage.

Claim Examples

- **In 2023**, an agricultural pesticide manufacturer sold its product to agricultural customers across the country. Despite rigorous testing and safety protocols, a batch of the pesticide was found to have been contaminated during the manufacturing process, ultimately leading to unintended environmental pollution in the form of runoff into surface water near the customers' properties. Additionally, significant claims from farmers alleging that their crops had been damaged by the contaminated pesticide were received. Total losses from property damage, natural resource damage, cleanup costs and business interruption claims exceeded $11,000,000.
- **In 2022**, an Indiana steel company was ordered to pay $3 million in a settlement with environmental groups after a 2019 cyanide spill into a river killed almost 3,000 fish, closed beaches and shut down a water facility.
- **In 2022**, an unknown amount of milk from a new factory spilled into the city's stormwater system, leading to an emergency response given the potential impacts to the ecosystem. While the emergency response costs are unknown, a $600,000 fine was imposed on the company.

Conclusion

Pollution liability insurance is a vital risk management tool for manufacturers. By investing in this coverage, manufacturers can protect their financial stability, navigate an evolving regulatory environment, safeguard their reputation and strengthen organizational resilience in the face of increasingly complex environmental risks. Manufacturers should proactively assess their pollution risks and seek appropriate insurance coverage to mitigate potential liabilities and protect their businesses and the environment.

Gallagher's Environmental team specializes in providing environmental risk management and insurance services. Our role as an industry leader in this area is to (1) identify the potential environmental risks facing our clients, (2) analyze them in terms of potential frequency and severity, and (3) review the appropriate risk control and financing mechanisms, including environmental insurance available to address these risks.

Reach out to our team to learn more about how Gallagher Environmental can adequately address your pollution liability exposures through environmental insurance solutions.

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