

ENVIRONMENTAL RISK ASSESSMENT (eRA)

Michigan Boating Industries Association Members

What is a Pollutant?

Any material, substance or product which is introduced into an environment for other than its intended use / purpose. In other words, something that ends up where it does not belong. Fresh water, cheese, and milk have all been classified as pollutants by Insurance Carriers under various circumstances.

Environmental Exposures Impacting MBIA Members

Include, but are not limited to: Natural resource damages; Storm water runoff; Erosion; Chemicals used for aquatic weed control; Fertilizers and pesticides used for landscaping; Spills/releases during loading/unloading process; Illegal / midnight dumping of pollutants, Waste from tenants, ships, and other 3rd parties; Spills from fuels, anti freeze, hydraulic fluids, pool chemicals and hazardous materials stored in above ground or underground storage tanks, totes or buckets; Pollution from neighboring properties migrating onto MBIA Members property (Vapor Intrusion); Loading and unloading of pollutants over unsealed areas; Equipment maintenance services; Corroded wastewater and storm water sewers; Sick building syndrome; Impacting underground utilities; No auditing of waste handling and disposal companies; Equipment storage (bone) yards where contaminants percolate into the soil/groundwater; Releases from refrigeration systems; Wastewater treatment plants/ lift stations/ pumping stations; Vandalism; Mold; Asbestos; Lead; Silica; Past/present use of septic systems; Adverse reactions and interactions of chemical compounds that accidentally commingle during a fire; Janitorial cleaning compounds; No emergency and spill control plans; nuisance odors; Fumes and wastes from Fiberglass work; Painting and sanding; Brownfield's....and more

Environmental Claim Examples for Marine Operations

1. A marina's chemical storage area sparked a fire that forced the evacuation of neighboring businesses because of fumes from the chemical fire. The hazardous nature of the chemicals, and the fumes created by the fire, necessitated the evacuation of more than 20 businesses. Businesses remained barred from their facilities for several days while the fire was extinguished and chemicals were cleaned-up. The marina was sued by several business and third parties for business interruption as well as property damage, cleanup costs and third-party bodily injury. Costs to settle the claims exceeded \$30,000,000.
2. A boat dealer and repair facility placed a new building on the site of a former equipment storage area. During excavation, petroleum hydrocarbon contamination was discovered. Cleanup costs exceeded \$400,000.
3. A marina owned several parcels of vacant land. When the owner visited the site to begin construction of a new boat storage building they discovered that several piles of unidentified waste had been illegally dumped

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on the property. The marina had the piles tested and test results showed the piles contained hazardous waste. Cost for the marina owners to dispose of the waste exceeded \$650,000.

4. A marine storage facility acquired a neighboring property to expand their facility. Their new location had previously been used for manufacturing. When excavation began, an abandoned on site waste treatment lagoon was discovered. The soil had to be removed at the owner's expense. Remediation and disposal costs exceeded \$750,000.
5. While working on the construction of a new seawall, an excavation contractor unknowingly spread petroleum-contaminated soil across a project site. The contractor and harbor were named in a lawsuit filed by a nearby residential community. After lengthy deliberations, the harbor was eventually removed from the lawsuit. However, they had already spent over \$150,000 in attorney fees.
6. While working on a harbor improvement project, a marine excavation contractor ruptured and unmarked natural gas pipe. Due to the safety concerns, local authorities evacuated a 2-block area around the harbor until the situation could be controlled. This forced local business to shut down for most of the day, which happened to be during the peak tourism season. The contractor was denied coverage by their general liability carrier due to the policy's total pollution exclusion. The contractor was liable for cleanup costs, 3rd party business interruption, and other costs associated with the project delay. Total losses sustained by the contractor exceeded \$1,000,000.
7. The concrete secondary containment of a 10,000-gallon diesel aboveground storage tank was cracked. A release from the tank spilled 8,000 gallons into the containment. The diesel seeped into the underlying soils and required costly excavation and removal. The total cost for investigation, removal and disposal exceeded \$320,000.
8. An asphalt paving contractor paved a new parking lot. At the end of the day, tack coat was sprayed onto the sub-base prior to paving. During the evening, a major thunderstorm caused the tack coat to wash off and flow into the nearby waterway. The contractor was responsible for cleanup costs and natural resource damages which exceeded \$200,000. The damages caused for the contractors bankruptcy, thus leaving the property owner responsible for the damages.
9. After performing routine engine maintenance on a house boat, the boat mechanic accidentally attached the automatic bilge pump to the fuel line. By the time the problem was detected more than 500 gallons of diesel fuel had been pumped into the bay. Cost to the marina for cleanup and third party property damage claims exceeded \$100,000.
10. A marine manufacturer's delivery truck got into an accident and caught on fire. The burning cargo created toxic fumes and when the fire department put out the fire it created contaminant runoff that flowed into a nearby stream. Cost to remediate the site and claims from third parties for bodily injury and property damage due to exposure to toxic fumes exceeded \$800,000.
11. At a marina's wastewater treatment plant pumping station, a faulty valve malfunctioned. As a result, a ruptured pipe released raw sewage into a local river. The river was used by local fisherman, recreational boaters and marinas. Numerous boats were damaged by the sewage and marinas were forced to close temporarily while cleanup of the raw sewage took place. The total cost of property damage and loss of income claims totaled \$400,000.
12. A marina's fueling dock was shut down by the EPA after the agency had received multiple complaints of leaking fuel from local boaters. After further investigation, faulty line hookups were discovered in the

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marina's fueling system. The marina was found liable for cleanup costs exceeding \$500,000, in addition to hefty government fines and penalties.

Benefits of Environmental Liability Insurance

The majority of MBIA members lack the financial strength to self-insure their environmental liabilities. Consideration needs to be given to the economies of scale afforded with environmental liability insurance as part of your risk transfer strategy, versus self-insuring.

The Three Main Benefits environmental liability insurance offers:

1. **Defense Costs**: Environmental liabilities are relatively new and very litigious. Even if you do nothing wrong you can still get named in a suit and have to expense defense costs i.e. legal fees, environmental investigations, etc.
2. **Claim Management**: All policies come with specialists to assist you in handling a claim. Who is in charge of communications, public relations, emergency response, government compliance, financial management, third party claims for bodily injury, property damage, natural resource damages....?
3. **Third Party Liability**: The majority of the time the cost to clean up the environmental problem/s is far less than the associated claims that come in from third parties for bodily injury, property damage and business interruption. You need to look at your client's and neighbors that can be impacted if you or a sub-contractor/vendor cause an environmental loss.

Environmental Liability Insurance Products for MBIA Members

Environmental Impairment Liability (EIL)

EIL is for MBIA members susceptible to economic loss caused by pollution that actually or allegedly originated from their locations. Sometimes referred to as pollution legal liability, this coverage is for those who own, operate, lease, or have any other insurable interest in real property and its operations. Coverage can be written in a variety of ways addressing unknown preexisting conditions or new conditions. Coverage can include third party bodily injury and property damage along with business interruption and extra expense, on and off site cleanup costs, legal defense expenses, non-owned disposal sites, transportation and more. EIL can be offered on multiyear terms. Most EIL policies cover above ground storage tanks and some can include underground storage tanks. EIL coverage can also be used to protect for environmental losses caused by tenants.

Contractors Pollution Liability (CPL)

Contractors Pollution Liability (CPL) coverage is for marine contractors (i.e. mechanical, dock builders, dredgers, marine remediation, electrical, janitorial, demolition, drilling, excavation, utility, etc.) performing work at a third-party location, should their operations cause or exacerbate a pollution condition. Environmental liabilities are generally excluded from the contractor's general liability coverage.

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Property Transfer Coverage

When buying or selling property there can be unknown preexisting environmental conditions. Since a Phase I or Phase II site assessment cannot guarantee uncovering all potential environmental liabilities, insurance companies have created property transfer insurance. This coverage protects the new owner or any party with an insurable interest, against unknown environmental conditions that may be discovered during the policy period, that were not caused by the new owner. This coverage not only helps to keep the property at its maximum value, it will assist the purchaser in being able to secure the necessary financing to complete their transaction.

Transportation Pollution Liability

Generally, transportation policies will exclude pollution losses arising from spills or other releases of their cargo. Transportation Pollution Liability affords coverage during the loading, unloading and transportation, for a spill, release or sudden upset and over turn of transported cargo. Transportation Pollution Liability covers for cargo moving via air, rail, road or water. Note: An MCS-90 endorsement is not pollution coverage. Make sure you do not confuse the MCS-90 endorsement as being transportation pollution liability coverage, it is not, and the insurance carrier reserves the right to subrogate back against the insured for cost to clean up a release of the transported cargo.

Underground and Aboveground Storage Tanks

Financial responsibility requirements ensure that owners and operators of underground storage tank systems have the ability to financially handle a release from an underground storage tank system. The responsibility encompasses the ability to pay funds for corrective action and third party bodily injury and property damage from non-sudden and sudden and accidental releases from a regulated underground system. A storage tank is considered underground if 10% or more of its volume, including associated piping is underground.

***Note:** MBIA Members have potential indirect environmental exposures from the vendors you hire to perform services. Should your vendors cause an environmental loss or exacerbate an existing environmental issue their general liability insurance policy generally will have either an absolute or total pollution exclusion. In order to be protected you should make sure your vendors have the proper environmental insurance coverage before they do any work on your behalf.*