

# The European Union Environmental Liability Directive

## The High Cost of Environmental Damage

A recent investigation by the French government examined two incidents. When they occurred in 1996 and 1997, the cost of the environmental cleanup was approximately \$67,000 and \$16,000 USD respectively. If those incidents occurred today, under the ELD, it is estimated that the costs would be \$636,000 and \$6.4 million USD.<sup>1</sup>

## What is the ELD?

The Environmental Liability Directive (2004/35/EC) is a legislative act of the European Union creating new and significant potential liabilities for costs, damages and losses for operators and companies regulated by the ELD. All EU members have now adopted the ELD into their national laws, making compliance unavoidable for companies operating in EU member states regardless of where they are headquartered.

## Are General Insurance Programs Enough for the ELD?

The answer is typically “No”.

Unless a specific environmental program is designed and implemented with intended coverage for environmental damage and written to respond to the national law implementation in the country of risk.

Even companies with existing programs or standard pollution insurance might not be covered for the liabilities stipulated under the ELD.

According to a recent International Underwriting Association report entitled “Environmental Risks: insured or not?”, “The gap between traditional insurance cover and the range of environmental liability...has become uncomfortably wide and will get wider.” In addition, different member states can have different requirements for compliance, including compulsory financial security.

## Why is Insurance Important?

Financial security plays an important role in the ELD. Currently, eight EU member states have committed to imposing mandatory financial requirements on operators, and more member states are expected to join. In these member states, insurance – among other instruments – is accepted as financial security. In some member states, the adoption of the ELD is backdated to April 30, 2007, and this should operate as the assumed date for the purpose of insurance retroactive dates for all member states.

## Who is under Strict Liability?

The ELD affects all organizations with any operations in EU member states and European Economic Area countries. However, only those operations and operators described in Annex III of the ELD are under strict liability and will feel the full force of all of the liabilities, costs, damages and losses under the ELD. All others have fault-based liability.

## Annex III includes:

- All operations licensed under the EU Integrated Pollution Prevention and Control Directive (2008/1/EC)
- Waste and waste management
- Mining, quarries and extractive industries
- Operations with consents to discharge to water
- Transport of hazardous materials

## Who Pays?

The ELD supports the regulatory principle of “the polluter pays.” Annex III operators and operations must meet the legislative mandates of the ELD to prevent and mitigate the consequences of pollution and environmental damage that may result from their activities.

## We're here to empower results

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<sup>1</sup> Environmental Liability Directive and Methods of Equivalency. Institute of Sustainable Development - Department of Economics, Evaluation & Integration. Volume 19. April 2010

## Aon Risk Solutions

### Environmental

- Operations that intentionally or negligently cause biodiversity damage must remedy that damage in addition to any other environmental liability
- If biodiversity damage cannot be fully remedied, those liable must pay for compensatory measures
- Firms operating under specific EU environmental directives are strictly liable for a range of damage to water, land and biodiversity
- All operators must take practical steps to immediately prevent any environmental damage where there is an imminent threat

### Why Insure?

Environmental fines and litigation costs can be considerable, including time and resources.

Aon's Environmental Services Group offers a full range of services to assist in assessing your exposure to environmental risk and liability under the ELD. Our specialized staff with backgrounds in legal,

engineering and insurance underwriting will assist in identifying your risk by utilizing our global specialty market knowledge, we will offer options on how best to mitigate it. Our network of over 69,000 colleagues in 120 countries is available to assist.

- Review your current arrangements
- Identify and analyze gaps in your coverage
- Provide integrated coverage for ELD
- Develop fully coordinated global environmental master insurance program
- Transfer potential financial risk from your balance sheet to the insurance market
- Address compliance with ELD and additional evolving legislation in the environmental arena
- Enhance protection for increased litigation by environmental protection groups
- Contribute to Corporate Social Responsibility strategy
- Broaden protection for your directors, officers and employees

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