

BIOTERRORISM

UNTHINKABLE BUT INSURABLE

The bombings in Boston on April 15 re-kindled concern about a type of risk no one likes to think about: bioterrorism. Risk managers, however, must think about it and prepare to mitigate as much of the human, environmental and financial fallout from such an event as possible. This preparation includes considering bioterrorism-specific insurance coverage that is, in fact, currently available.

“Terrorism refers to the use or threat of force or violence against people or property. A bioterrorist attack releases viruses, bacteria, or other germs to cause illness or death,” as defined by the U.S. Centers for Disease Control and Prevention. Biological agents can be spread through the air, in food and can be directed against environmental resources such as reservoirs, waterways and potable drinking water supplies.

Recent reports indicate that bioterrorism is more than just a hypothetical scenario—it is a real and evolving risk. Because of the significant third-party damage potential, many different types of businesses could be targets of a bioterrorism attack, such as the following:

- Facilities or buildings in densely populated areas
- Water treatment or distribution facilities
- Hospital and health care facilities
- Chemical companies
- Large stadiums or arenas

Prudent risk management often includes prevention protocols, a response plan and working to mitigate the financial risk of a catastrophe that has the potential to bankrupt a company.

INSURANCE SOLUTIONS

Fortunately, biological terrorism coverage is available from almost all the carriers offering environmental insurance. Most markets offer this coverage through an endorsement via inclusion of bioterrorism agents in the definition of pollution conditions. “Bioterrorism agents” in most environmental policies means the



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deliberate release, discharge or dispersal of viruses, bacteria or other agents-living or dead-by a third party.

While terrifying to think about, the catastrophic potential is real and, unfortunately, proper preparedness, biosurveillance, response planning and prevention measures will only get you part of the way there, which is why it's imperative that you put additional risk management measures in place to help transfer the risk of a bioterrorism event.

ODOR COMPLAINTS: SOMETHING STINKS AROUND HERE

Odors remain among the top three complaints to air quality regulators and government bodies around the U.S. and internationally. This has become a significant risk management nuisance, particularly for those who own properties or operate businesses associated with or located near landfills, transfer stations, recycling centers or wastewater treatment facilities. Scenarios involving odors can be contentious at times and leave many trying to determine what's actually causing the odor, what is the source, if it is a health hazard, if the environmental regulators require remediation/mitigation, how it will affect property value and who is responsible for any loss/claims. Most look to their commercial general liability policies to address odor-related claims; unfortunately these losses are frequently denied due to absolute or total pollution exclusions. Historically, general liability policies have been interpreted differently by insurance carriers and have varied widely with respect to coverage for environmental exposures, thus creating gray areas and coverage disputes.

EXPOSURES, POTENTIAL LIABILITIES & OTHER CONCERNS

From an environmental liability and risk perspective the biggest concerns are toxic tort and legal defense scenarios as well as unanticipated mitigation expenses, such as:

- **PROPERTY DAMAGE** - Lawsuits asserting diminution in property value and related damages based upon traditional common law nuisance and trespass theories.
- **BODILY INJURY** - While direct causation/correlation between exposure and illness can be difficult to prove, certain odors, even at their mildest, have been known to cause a variety of maladies, such as headache, dizziness, vomiting, insomnia, lack of appetite, irritated skin and eyes, vision problems and congestion. Clever plaintiff attorneys have had some limited success as science and public policy continue to advance.
- **REMEDiation EXPENSE/
CLEANUP COSTS AND SOURCE
IDENTIFICATION ISSUES** - Potential for costly mitigation expense and identification of the source and/or proving causation can be daunting.

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RISK MANAGEMENT STRATEGIES AND INSURANCE SOLUTIONS

Since a majority of all air pollution complaints are odor-related, it may make prudent risk management sense to obtain a layer of defense against odor-related liabilities and exposures via an environmental insurance product to eliminate any gray area coverage disputes that might exist if relying solely on a general liability policy. Among other coverage grants being provided under pollution policies, coverage for odors can be built directly into the definition of pollution conditions. While many environmental insurance carriers prefer to be silent on odor (carrying with it the potent for protracted legal disputes over terms like *fumes*, *gases* and/or *vapors*), others have *odors* built directly into their form via their definition of pollutants providing affirmative coverage grants. Fortunately, environmental insurance can help to manage and transfer the risk and buffer unbudgeted or out-of-pocket costs associated with odor-related losses.

GREEN INSURANCE NOW COMPULSORY IN CHINA

“China is the second largest economy in the world and home to seven of the world’s 10 most polluted cities. Rapid urbanization, booming population growth, rising incomes and individual spending all contribute to China’s pollution problem.”

**“Air Pollution Linked to 1.2 Million Premature Deaths in China
(New York Times 4/1/13)”**

On February 21, 2013, the Ministry of Environmental Protection (MEP) and the China Insurance Regulatory Commission (CIRC) jointly promulgated *The Guiding Opinions on Pilot Scheme for Compulsory Environmental Pollution Liability Insurance*, which makes the purchase of pollution liability insurance compulsory for companies with high environmental risks operating in China.

The requirement, which follows the introduction in 2007 of the pilot plan for green insurance in eight geographic areas, is believed to be a significant move against increasingly serious pollution and should enable enforcement bodies to make polluters pay for the damages caused by their operations.

According to *The Guiding Opinions*, the following industries are required to take out environmental liability insurance:

- Miners and processors of heavy non-ferrous metal ore
- Heavy non-ferrous metal smelting industry
- Lead battery manufacturing industry
- Leather and leather product industry
- Chemical raw material and chemical product manufacturing industry

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Green Insurance – continued from page 4

Besides the above-captured mandated industries, *The Guiding Opinions* recommends that the following industries also consider purchasing environmental liability insurance:

- Petrochemical industry
- Producers, warehouse, users and transporters of dangerous chemicals
- Hazardous waste treatment industry
- Industries with dioxin emission

The designated companies are required to take out the insurance according to existing local provincial or municipal regulations.

Based upon the experience of pilot green insurance programs in place for the last six years, *The Guiding Opinions* specify the scope of the pollution insurance coverage for the first time:

- Third-party liabilities arising from sudden and accidental new pollution (personal injuries, death or property loss)
- Necessary and reasonable expenses incurred by the insured to save any third party's life (including medical treatment) or to prevent or mitigate the loss of property of any third party
- Necessary and reasonable clean-up expense incurred by the insured in order to control the extent of pollution or to remediate contaminated waters and land in accordance to environmental legislation

Beyond this mandatory scope, insurance companies may agree on additional contractual indemnity provisions.

Insurance carriers are required to fine-tune their policy forms and implement differentiated pricing based on a quantified environmental risk assessment and classification. *The Guiding Opinions* also define the reporting mechanism for pollution accidents, claim calculation principles and penalties for breach of the law.

RECOMMENDATION FOR GLOBAL RISK MANAGERS

Global program carriers are including these environmental risk solutions as part of an overall Environmental Impairment Liability (EIL) master program. We recommend that risk managers consider implementing local EIL policies for their Chinese affiliates as part of an environmental master program or on a stand-alone basis, purchasing from one of the approved insurance carriers available in the areas considered.

Willis environmental experts, with the support of our local Chinese offices, can advise companies on the selection of appropriate insurers and the negotiation of appropriate coverage. We will update this information as local provincial legislation begins to enforce *The Guiding Opinions*.

CONTACTS

For additional information, contact a local Willis Associate® or the following Environmental Practice team members:

NORTH AMERICA

Rich Sheldon

Environmental Practice Leader
+1 610 254 5625
richard.sheldon@willis.com

Anthony Wagar

National Sales Leader
+1 212 915 7768
anthony.wagar@willis.com

Brian McBride

National Placement Leader &
South Region Team Leader
+1 404 224 5126
brian.mcbride@willis.com

Kate Dodge

Midwest Region Team Leader
Environmental Team Leader – Willis Canada
+1 312 288 7336
kate.dodge@willis.com

Rick Ringenwald

Northeast & Atlantic Region Team Leader
+1 610 254 5985
richard.ringenwald@willis.com

David Orleans

West Region Team Leader
+1 415 955 0142
david.orleans@willis.com

LONDON

Julien Combeau

Executive Director
+44 20 3124 8046
julien.combeau@willis.com

Amber Lepparde

Environmental Resource
+44 20 3124 6407
amber.lepparde@willis.com

Clive Walker

Environmental Resource
+44 20 3124 6315
clive.walker@willis.com

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