

## New Regulation: European Union Environmental Liability Directive

**E**nvironmental risk is considered a major worldwide issue. As a result, the European Union has adopted a common regulation—the EU Environmental Liability Directive 2004/35/CE—in addition to existing EU and national environmental regulations. The key change is that the new regulation adds to the former third-party liability that companies had for bodily injury and property damage. The addition is the responsibility for environmental damages to non-owned property, such as natural resources.

The directive, also known as the “Biodiversity Directive,” was passed in 2004 and has been in force since April 30, 2007. While each individual country is responding to the legislation in different ways, and may be at varying stages in the process, the requirements apply across all EU member countries. For example, Germany plans to enact its version of the directive in November 2007, which will be retroactive to April 30.

The liability for environmental damage falls into three categories:

1. protected species and natural habitats;
2. water; and
3. soil.



Category 1 applies to all companies operating in the EU while categories 2 and 3 apply only to specifically listed dangerous activities. At a minimum this includes those activities listed by the Integrated Pollution Prevention and Control Directive (IPPC) as chemical, waste, and water treatment sites. Countries may also elect to extend this list to include any or all activities requiring an environmental permit. Additionally, the transport of dangerous substances, civil engineering, and construction activities that require an environmental permit are considered dangerous and are faced with increased liability exposures.

It is important to note that only government authorities are entitled to claims remediation or indemnification from culpable businesses.

Non-governmental organizations (NGOs), however, are encouraged to alert authorities, which is expected to increase the probability of claims. Therefore, a business is now exposed to the potential that a government authority will require remediation or indemnification for damage it causes to the environment.

The EU Environmental Liability Directive does not require any financial security or insurance purchase. It does, however, encourage such developments, and will consider the issue, but has pushed back a decision until 2010. Local requirements have already been introduced in some countries.

Bulgaria, Romania, and Slovakia, for example, will most likely include

financial security requirements once the law is locally enacted. This requirement may be satisfied with the purchase of insurance, bond, bank guarantee, or other possible solutions. Other countries, such as Spain (2010) and the Czech Republic (2012) have created a time frame for the enforcement of such financial guaranties. Many of these country-specific requirements are only for specific classes of business.

Prior to the enforcement of this legislation, European insurance markets covered basic liability resulting from physical harm or property damage caused to third parties by pollution or environmental damage. However, due to the increased liability of the directive, many companies' liability exposures would not be covered under either the general liability or previously written environmental liability policies unless specified in the policy wording.

Marsh has been instrumental in the creation of new coverage options adapted to include the major changes in liability, adding first-party claims, public law claims for biodiversity, and historical liability. Marsh assists its clients in reviewing their exposures and securing appropriate coverages where applicable.

Current insurance solutions exist that address the new requirements of the directive. The markets fall into two categories:

1. global markets (ACE, AIG, Chubb, XL, Zurich, etc.)—offering first- and third-party coverage for new as well as preexisting conditions; and
2. local markets—offering first-

and third-party coverage for new conditions only.

For the most part, insurers are offering coverage as an environmental program, not as part of the general liability programs. Some global markets, however, have begun offering provisional coverage as part of the general liability programs. Marsh cautions against this type of coverage as a permanent solution, as it may be very restrictive and may only apply to clients with very low exposure or within limited geographical zones.

Specific attention should be given to addressing international European environmental risk exposure issues and insurance should be placed within Europe as it is mandatory, specifically with respect to the fact that sole claimant would be a public entity.

Marsh will keep abreast of developments and will continue to create innovative insurance market solutions and alternatives. For more information on the EU Environmental Liability Directive, or to discuss your company's specific exposures, please contact your local Marsh representative or:

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The directive is available for review online at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0035:EN:NOT>

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