

FarmWeb Environmental Insurance Briefing Document

Introduction

The objective of this briefing note is to provide:

- A discussion around the environmental risks and liabilities associated with the agricultural industry;
- The gaps in insurance protection provided by “standard” combined insurance products;
- Introduce the coverage provided by the new Section 17 Environmental Liability cover to be provided by the 2013 FarmWeb Combined policy form; and
- Identify key sales messages for the new section.

Terminology

Throughout this document, the following terms are used and it is important to note their meaning:

Pollution – is the release into the environment of a material that is hazardous to the environment. This is easily understood for fuels and chemicals, but equally applies to milk or silage.

Sudden and Accidental – referred to when talking about pollution cover provided by Public Liability Policies – referrers to a pollution event that is both sudden and identifiable.

Gradual – refers to a pollution event that happens over a period of time (ie a leak).

On-site – within the boundary of the insured’s premises (ie the farm).

Off-site – beyond the boundary of the insured’s premises.

Controlled Waters – in the UK legislation protects water resources – lakes, rivers or groundwater – and it is an offence to pollute them.

Diffuse Sources – sources of pollution over a large area and period of time – concentrations may not be high, but the loading of contamination is significant.

Environmental Risk

For the purposes of this document, environmental risk is considered to be the potential impact to the environment caused by pollution.

The risk is described as a function of the likelihood of the event and the severity of its impact. Therefore, consideration is given to the type of pollution and the receptor that can be impacted. The route that the pollution takes to get to the receptor is referred to as the pathway.

Risk is determined by the damage that the pollution could cause, along with the sensitivity of the receptor being damage.

Certain types of environmental risk are obvious – a fire causing damage. However other forms of risk are not so obvious – the slow drip of a leak or the spreading of a contaminant over a large area – a diffuse source.

It is important to note that:

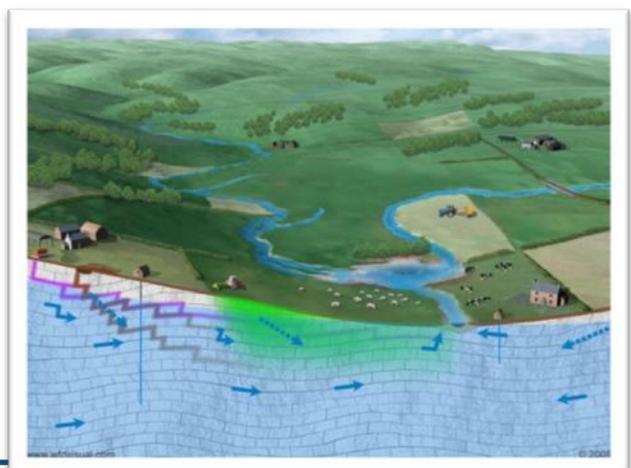
Whilst immediate events can be easily visualised, they are limited in volume. Slow events (over a period of years or a large area) involve much larger volumes and so have a much more significant risk.

The Agricultural Industry and Environmental Risk

The agricultural industry presents a significant environmental risk. Virtually all the activities that a farm conducts involves the handling of a pollutant of some form (fertiliser, silage, fuel, milk etc). At the same time the farm is located in a very sensitive area.

Therefore, over time a farm will have many diffuse sources that pose a risk to the environment.

The diagram to the right indicates a farm, surrounded by a sensitive geography– the trees, fields and stream, all underlain by the geology containing groundwater. Obvious pollution sources are present in the form of a heating oil tank and silage pit – but it is the muck



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spreading that actually causes the more significant diffuse source of pollution.

The Environment Agency states that:

- **90%** of nitrogen pollution actually comes from diffuse sources.
- **70%** of England drains to Nitrate Polluted Water.
- **60%** of nitrates in rivers comes from farms.
- **62%** of England is now a Nitrate Vulnerable Zone.

For farmers however, this pollution is part and parcel of their daily business and is very difficult to identify.

Legislative Drivers

With time, the legislation surrounding pollution caused by the agricultural industry is increasing.

- **Wildlife and Countryside Act, 1981** - Prevents spreading of fertilisers etc on SSSI
- **Water Resources Act, 1991** - Offence to cause impact to controlled water
- **Nitrate Pollution Prevention Regulations, 2009** - EC Nitrates Directive 91/676/EEC
- **The Environmental Damage (Prevention and Remediation) Regulations 2009** - European Union Directive 2004/35/EC on environmental liability

Currently the impact on the agricultural industry is one of control – for example the Nitrate Pollution Prevention Regulations required that all farmers should, by the start of 2012, have the capacity to store up to 6 months of silage at any time – thereby ensuring that the release of contaminants in to the environment can be controlled.

The Environmental Liability Directive

Directive 2004/35/EC (The Environmental Liability Directive) was transposed to English Law in 2009 as The Environmental Damage (Prevention and Remediation) Regulations 2009. The following text discusses DEFRA's own assessment of the impact of the legislation:

Impact Assessment of the Environmental Damage Regulations (England) and the Environmental Damage Regulations (Wales) 2008 by Defra & WAG

“States anticipated that the total number of events that would be covered by the regulations would vary from 2 per year to 165, with a Best Estimate of 53 per year.”

With respect to the agricultural industry the report states:

“Farmers may be subject to more uncertainty than other types of business as their operations are often conducted under conditions beyond their control (open to the elements and vulnerable to animal behaviour) and exposed to public scrutiny ... The costs of a major case of environmental damage could exceed a farmer's assets rendering them bankrupt ...”

With respect to the scale of any cost associated with this type of loss:

“The level of remediation and costs are not limited in regulations and the cost of severe cases might run from over £1m to many millions of pounds ... It is suggested on the basis of available information that the average cost of a ‘once in five years’ case might range from £1m to £10m with a best estimate of £5m.”

Discussion

Whilst there remain limited examples where Farmers are held responsible for this large scale pollution (it is limited to enforcement of working practises), the pressures are growing and with time it can be expected that claims will increase in scale and frequency. This is due to:

- Legislation and management is increasing – farmers are aware of the damage they cause; and
- The role of NGO's (“interested parties”) is increasing, giving powers to members of the public to ensure that measures are taken to prevent and repair damage.

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Gaps in Standard Insurance Programmes

With respect to the environmental risk described above, standard insurance programmes do not provide adequate cover:

- The pollution trigger is limited to Sudden and Accidental events;
- There is no legal definition to “sudden” – recent cases have shown that “sudden” event caused by wear and tear are now considered “gradual”;
- Public Liability cover is limited to off-site cover only; and
- Material Damage cover is limited to defined perils only, and low limits.

Therefore, agricultural operators do not have insurance protection for the most significant environmental liabilities.

The FarmWeb Environmental Section 17

The cover provided by Section 17 provides cover for claims arising from pollution (caused by sudden or gradual / diffuse events) at the Insured’s property or caused by the Insured’s business.

Cover is provided for on-site and off-site clean up and bodily injury and property damage of third parties.

Key features of this cover include:

- Clean up covers the full scope of liability under the environmental liability directive;
- Clean up includes restoration of the property (in case a building needs to be replaced);
- Cover is provided with an automatic retroactive date that matches the first time that the insured purchased similar cover (ie under the NFUM scheme); and
- Actions of the regulator are covered.

Cover is subject to certain exclusions, including:

- Fines and penalties;
- Non agricultural high hazard activities (listed in the policy);
- Known events;
- Underground storage tanks (but not tanks located in bunds below ground level);
- Crop spraying on third party land;
- Other cover provided by the rest of the FarmWeb policy.

The policy provides a limit of £1M for this cover, subject to a deductible of £500.

Interaction with the Rest of the FarmWeb Policy

Cover provided under the rest of the FarmWeb policy is not affected by the new Section 17.

Therefore the deductibles that apply to those sections (S1 – Material Damage and S5 – Public Liability) remain in place. The interaction of the sections of the policy is illustrated in the diagram to the right.

Claims are notified through the normal process, with access to a specialist environmental claims handler – Questgates Limited to support the process.



Key Messages

The following messages are key to the product:

1. Agricultural operations have the potential to be exposed to significant (business damaging) environmental liabilities;
2. These liabilities, in the main, are not covered by standard insurance products;
3. The FarmWeb product provides significant cover at a very cost effective premium;

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4. The deductible that applies to Section 17 (only) is not material when compared to the potential scale of loss that the insured may face.