
Liability Insurance for Environmental Damages

Jelena Šogorov Vučković

University Business Academy, Novi Sad, Serbia
Faculty of Law for Commerce and Judiciary

Article Information*

Review Article • UDC: 368.18:504.5/.6

Volume: 23, Issue: 2, pages: 86–95

Received: June 14, 2026 • Accepted: September 15, 2026

<https://doi.org/10.51738/kpolisa.2026.2r.jsv>

Author Note

Jelena Šogorov Vučković  <https://orcid.org/0000-0002-0906-5914>

I have no known conflict of interest to disclose.

Corresponding Author: Jelena Šogorov Vučković

E-mail: jsogorov@pravni-fakultet.info

* Cite (APA): Šogorov Vučković, J. (2026). Liability Insurance for Environmental Damages. *Kultura polisa*, 23(2), 86–95, <https://doi.org/10.51738/kpolisa.2026.2r.jsv>



© 2025 by the authors. This article is an open-access article distributed under the terms and conditions of the Creative Commons Attribution (CC BY) license (<https://creativecommons.org/licenses/by/4.0/>).

Liability Insurance for Environmental Damages

Abstract

In the modern world, environmental pollution deserves more and more attention due to the undeniably established harmful impact of humans on the environment. Therefore, damage that pollutes the environment, unfortunately, is becoming more frequent and more destructive to nature. Such environmental damage is often very large and difficult to compensate for, even when it is caused by large companies. The paper will give an overview of these types of damages, and the possibility and obligation of liability insurance for causing environmental damage (based on the provisions of the Law on Environmental Protection and other positive legal regulations). The coverage of these damages in other types of insurance (general liability insurance, and specific types of liability insurance from certain industries) will also be observed, and conclusions will be made on what can be improved in terms of coverage and possible expansion of insurance coverage. In the concluding considerations, the importance of this type of insurance is shown, bearing in mind that the amounts that polluters have to pay due to such damages are usually very large, and that they can jeopardize further business, and in exceptional cases lead to the bankruptcy of the company that caused the damage.

Keywords: liability insurance, environmental damage, first party insurance, direct insurance, general liability insurance, occupational liability insurance.

Introduction

Environmental pollution is one of the phenomena that is happening more and more often, due to the rapid development of humanity in the last several decades. Liability for pollution is provided for and sanctioned by the provisions of the Law on Environmental Protection (Official Gazette of the Republic of Serbia, No. 135/2004, 36/2009, 36/2009 – other law, 72/2009 – other law, 43/2011 – decision of the Constitutional Court, 14/2016, 76/2018, 95/2018 – other law, 95/2018 – other law and 94/2024 – other law, hereinafter: ZZŽS). Article 103 of the ZZŽS provides for the strict liability of the polluter by prescribing that the polluter who causes environmental pollution is liable for the damage caused by the principle of strict liability (see more details about this in Šogorov Vučković, J., 2016, p. 495–504). The following article stipulates the obligation of a polluter who, by his actions and inactions, causes environmental pollution, *"without delay, to take measures determined by the accident protection plan and the remediation plan, i.e. to take the necessary measures to reduce environmental damage or eliminate further risks, dangers or remediation of environmental damage."* If, on the other hand, the damage caused to the environment cannot be remedied by appropriate measures, the person who caused the damage is responsible for compensation in the amount of the value of the destroyed property. (Article 104 (2) of the ZZŽS).

In accordance with Art. 105 ZZŽS, the polluter is responsible for the damage caused to the environment and space and bears the costs of assessing the damage and its removal, and in particular:

- 1) the costs of emergency interventions taken at the time of the occurrence of the damage necessary to limit and prevent the effects of the damage to the environment, space and the health of the population;

- 2) direct and indirect costs of remediation, establishment of a new state or restoration of the previous state of the environment and space, as well as monitoring of the effects of remediation and the effects of damage to the environment;
- 3) the costs of preventing the occurrence of the same or similar damage to the environment and space;
- 4) costs of compensation to persons directly endangered by damage to the environment and space.

The polluter shall provide financial or other guarantees to ensure the payment of compensation for the costs referred to in paragraph 1 of this Article, during and after the performance of the activity.

The Government shall prescribe the type of guarantees referred to in paragraph 2 of this Article, the amount of funds and the duration of the guarantee provided by polluters.

Due to the above-mentioned extent of damage and possible consequences, the ZZŽS provides for the obligation to insure against liability for damage caused to third parties. Article 106 explicitly prescribes that "A polluter whose plant or activity poses a high degree of danger to human health, and the environment must be insured against liability in case of damage caused to third parties as a result of the accident."

The Concept of Environmental Damage Insurance

Environmental damage insurance is an area of insurance within which various insurance contracts provide coverage for damage caused by environmental pollution. The European Union Environmental Liability Directive (Directive 2004/35/EC of the European Parliament and of the Council of April 2004 on environmental liability OJ L 143, 30.4.2004) defines the concept of environmental damage in Art. 1 as: damage to protected species and habitat, water pollution and soil pollution (see more about this in Šogorov Vučković, J., Marković, D., 2020, p. 144).

With the Environmental Pollution Liability Insurance Contract, one of the contracting parties, the insurer, undertakes to provide the insured with legal protection against unfounded or excessive claims for compensation for damage caused by persons damaged by environmental pollution, as well as to compensate for the damage that the insured (injured party), if a harmful event (environmental damage) occurs, will be obliged to pay to the injured person(s) in connection with his civil liability covered by the And the other party (the insured party) is obliged to pay the insurance premium.

In accordance with the European Union's Environmental Liability Directive, its application is aimed at "operators" of registered activities. An operator is defined as "any natural or legal, private or public person who pursues or controls a professional activity or to whom, where provided for by national law, the power to take economic decisions on the technical exercise of that activity has been delegated, including the holder of a license or authorization for that activity or a person who registers or declares that activity" (Article 2(6) of the Directive). In addition to this condition, according to the Council of Europe Convention on Civil Liability for Damage resulting from Activities Dangerous to the Environment (*Lugano Convention*) (ETS No. 150)), the existence of civil liability requires the condition that the operator controls dangerous activities at the time of the occurrence of the damage (Article 6, paragraph 1 of the Convention). Therefore, in order to be insured by this type of insurance contract, they must meet both of the above mentioned conditions (Marjanski, V., 2011, p. 570).

Liability for environmental damage is defined in Articles 6 and 7 of the Council of Europe Convention on Civil Liability for Damage Caused by Performing Activities Hazardous to the Environment. The issue of liability for these types of damages, as well as the possibility of insuring them, has long been controversial in the theory and practice of insurance companies. The Convention prescribes *strict liability* for environmental damage caused by undertaking dangerous activities or using dangerous goods. Harmful risks may originate from hazardous substances, genetically modified products, dangerous micro-organisms or hazardous waste. In accordance with Art. 2 st. Article 5 of the Convention is the primary responsibility of the operator, who is liable for environmental damage occurring in the course of his activity or during the time or period during which he was required to supervise the undertaking of such dangerous activity. Art. 2.7c provides that compensatory damages are those that occur to persons (due to death or bodily injury) and to property, as well as damage to the environment. The costs of preventive measures and any loss or damage resulting from preventive measures are subject to Article 2.7d is also recoverable, whereby preventive measures, as defined in Article 2 and Article 9 are all reasonable measures taken by any person to prevent or cause minor damage following an environmental incident. Article 8 provides for very restrictive conditions under which a responsible person can be exempted from liability, this type of liability is defined as strict liability (Mrvić-Petrović, N., Petrović, Z., (2012), p. 94-95).

For liability to exist, two circumstances must be proven: that the so-called compensable damage occurred through the use of a dangerous object or from a dangerous activity to which the Convention applies, and that the operator's action is causally related to environmental damage. Article 10 of the Convention, however, emphasizes that it should be recognized that certain hazardous activities naturally have an increased risk of causing harm. A common case in the case of environmental damage is multiple causality, when, according to Article 11, the rules on joint and several liability of a number of operators involved in the occurrence of damage can be applied.

Environmental damage liability insurance contract

Liability insurance for damage caused by environmental pollution evolved in the second half of the 20th century, first as part of liability insurance for damage that may be caused by the performance of a certain activity. Later, it was separated into liability insurance for damage caused by dangerous activities. The development of this type of insurance has led to the fact that insurance companies in practice have begun to design special insurance policies that provide exclusive coverage of risks that cause environmental pollution (environmental damage).

Damages caused by environmental pollution can be extremely large, so in order to protect the interests of the insurer when concluding the usual types of insurance contracts (property insurance), the so-called environmental risks are excluded in the insurance policy (see below for more details).

However, due to the economic risks for the performance of this type of insurance (difficulties in assessing the frequency and scope of risks, determining the adequate amount of insurance premium, the problem of double payment of polluters), as well as a number of open legal issues (defining liability and its time validity, identifying responsible persons, determining the insured risk and their insurability, determining the type of rescue costs and their scope, defining the insured event, etc.) on the market environmental damage insurance in some countries environmental pollution liability insurance is

predominantly or completely giving way to other types of environmental damage insurance – First Party Insurance or Direct Insurance. (Marjanski, V., 2011, p. 572).

First party insurance

In the case of first-person insurance coverage is provided and compensation is paid directly to the insured as the injured party (victim). Thus, it differs from classic liability insurance, in which the insured is protected from the amount to be paid to third parties in the event of damage. First-party environmental insurance, commonly known as Pollution Legal Liability (PLL) or Environmental Impairment Liability (EIL), protects a company's (insured's) own assets. Unlike general liability, which only covers damages to third parties, it pays for on-site cleanup, business interruption, and regulatory fines caused by pollution.

Core coverage included is:

- On-Site Cleanup: Covers the costs to clean up pollution, hazardous waste, or toxic spills on own property.
- Business Interruption: Reimburses for lost income and extra operating expenses if pollution events force a temporary shutdown of operations.
- Historical Contamination: Protects against undiscovered, pre-existing pollution events that occurred before insured person purchased or managed the site.
- Transportation & Disposal: Covers environmental incidents that occur while hazardous materials are in transit or at a non-owned waste disposal site.
- Biodiversity Damage: Pays for the costs of restoring damaged ecosystems and natural habitats resulting from an on-site release.

Although the first-party insurance system seems better in theory due to the advantages described, it is difficult to fully apply it in the field of environmental damage insurance. In the case of the so-called pure first-party insurance, i.e. the one who concludes in his own name and for his own account, the insured is at the same time the policyholder and is charged with the obligation to pay the insurance premium. For this reason, in practice, it is difficult to imagine the interest of the insured (e.g. citizens who fear the occurrence of environmental damage) to protect themselves from environmental damage by concluding an insurance contract and paying the premium from their own sources, except in the case of an operator who otherwise performs a dangerous activity, for whom it could be conceived that he would seek insurance coverage for pollution that may occur on his plant.

Direct insurance against environmental damage

For this reason, an alternative can be sought in concluding a contract in one's own name, for someone else's account or for the benefit of a third party(s). (*direct insurance*). These contracts, as well as those concluded in their own name and for their own account (first-party insurance), have the nature of "classic" property and personal insurance contracts. In the so-called direct insurance, potential polluter who owns a particular plant and therefore seeks insurance coverage, while providing protection to third parties who may suffer damage from his activity.

However, unlike liability insurance, where the condition for the payment of insurance compensation is the existence of the liability of the insured (insured party), in the case of insurance contracts in their

own name and for their own account (first-party insurance) and in their own name, and on someone else's account or in favor of a third party (direct insurance), the mere existence of damage is sufficient for the conditions for the payment of insurance compensation.

In the case of environmental damage, in addition to the liability for environmental damage, it is possible to imagine the existence of first-party insurance, where a potential "victim" seeks insurance coverage for self-insurance and direct insurance where a potential polluter (damager) is looking for insurance coverage for the account or benefit of a third party (s) endangered by dangerous activities carried out by him.

ENVIRONMENTAL DAMAGE INSURANCE COVERAGE IN OTHER TYPES OF LIABILITY INSURANCE

General Liability Insurance Contract

The previous chapters present the liability and liability insurance of polluters, defined in the regulations governing the field of environmental law. Below we will be considering other persons (natural or legal) who may find themselves in a situation where they cause environmental damage by their actions or inactions. The question arises as to how they can protect themselves from this type of liability, and whether insurance protection through typical liability insurance contracts is sufficient.

In general liability insurance, the subject of insurance is first defined as the legal civil liability of the insured for damages due to death, bodily injury or health, as well as damage or destruction of the property of a third party.

Coverage of damage due to environmental pollution is defined separately (Art. 5 of the Terms and Conditions for General Liability Insurance Dunav Insurance ADO)

Scope of coverage for damages due to environmental pollution

Article 5

Environmental pollution in the sense of these means' pollutants or energy into the environment, caused by human activity, which has or may have adverse consequences on the quality of the environment and human health.

- (2) The insurance covers only damages resulting from death, injury to the body or health of a person resulting from pollution.

If separately contracted, damages due to destruction or damage to property are also covered.

- (3) Damages referred to in paragraph (2) shall be covered by insurance only if they occurred as a result of a sudden and unexpected event, even if the damage itself occurred gradually.
- (4) Liability for damages related to an increase in the source of danger indicated in the policy due to improvements or changes in production is not covered by the insurance.
- (5) The insured shall participate in each damage with 10% and at least with EUR 500 (in dinars equivalent);
- (6) The insurance excludes liability for damages that would occur due to the insured failing to maintain, change and repair wastewater treatment plants and other waste products, nor to comply with other measures provided for by environmental regulations.

As can be concluded, this type of insurance also includes coverage for environmental damage (with a special premium surcharge for the damage of movable properties). In the most cases, in order to influence the behavior of the insured, i.e. for his increased attention, he contracts a deductible in the damage (in the cited example, 10% or at least 500 euros in dinar equivalent). The terms and conditions of other insurance companies contain identical or slightly modified provisions.

Occupational Liability Insurance Contract

The subject of insurance under the Terms and Conditions of Liability Insurance is the civil liability of the insured for damages due to death, injury to body or health, as well as the destruction or damage to the property of third parties. This insurance covers liability for damage caused if it arose from the activity or from the possession of things, from a legal relationship or from a property as a source of danger indicated in the Insurance Terms and Conditions or in the document on the concluded insurance contract.

As with other types of liability insurance contracts, insurance coverage for environmental damage must be arranged separately. Thus, in Art. 22 of the Terms and Conditions, conditions for liability insurance for damages caused to third parties, ADO Wiener Stadtische Beograd, more precisely define the insurance coverage for these types of damages, as well as the obligations of the insured before and after the occurrence of the insured event:

Article 22

- (1) Only if it is specifically contracted and explicitly stated in the insurance document, the coverage also applies to damages due to environmental pollution or other types of endangerment to the human environment, i.e. the so-called environmental damage.*
- (2) Environmental pollution is the deterioration of the properties of air, soil and/or water through immissions.
- (3) Insurance coverage for damage to property caused by endangering the environment (including damage to land or water) exists only if the endangerment to the environment is caused by a single, sudden, unexpected event that deviates from a regular, undisturbed work event. This means that the insurance does not cover the threat to the human environment that has caused several events that have the same effect (such as leakage, evaporation, etc.), which would not have occurred in individual cases of this kind, as well as for gradual threats to the human environment.
- (4) An insured event is the first verifiable determination of environmental damage on the basis of which compensation obligations arise or may arise. Multiple environmental damages caused by the same event are considered to be one insured event (serial damage).
- (5) The insurance shall cover environmental damage that is determined during the validity of the insurance or no later than two years after the expiry of the insurance, whereby the insured event must occur during the duration of the insurance.
- (6) The insured person shall be obliged to perform the activity in accordance with the laws, other regulations and other acts of state authorities. For plants, facilities and other equipment, which can easily endanger or pollute the environment, the insured is obliged to provide regular professional maintenance. Urgent repairs and other maintenance work must be done immediately, without delay.

Carrier's Liability Insurance Contract

The activity of a carrier carries with it a number of risks. Traffic accidents that can cause various types of damage (to things, persons, goods, etc.) are a particularly high risk. During traffic accidents, environmental damage can also occur (e.g. fuel spillage, fire on goods in which dangerous substances can be produced, spillage of dangerous goods from the vehicle, etc.). Like all other environmental damages, these damages can be very large and jeopardize the solvency of the carrier in the absence of adequate insurance coverage. The subject of this type of insurance is most often defined as: contractual liability of the insured as a road carrier in accordance with the provisions of the Law (Law on Contracts of Carriage in Road Transport (Official Gazette of the Federal Republic of Yugoslavia No. 26/95 and Official Gazette of the Republic of Serbia No. 1/2003 – Constitutional Charter) and the CMR Convention (Convention on the Contract for the International Carriage of Goods by Road (CMR) – in force since 2nd of July 1961 with the amendment in the form of the Protocol of 28th of December 1980) for proven total or partial physical loss, damage or destruction and delay in the delivery of goods (things) actually taken for carriage with the appropriate transport documents or contract of carriage and with the payment of freight from the moment of collection to the moment of delivery, to the extent and with the coverages determined by the provisions of these terms and conditions and what is agreed in the policy.

Under these conditions, the subject of insurance is not:

- 1) the general liability of the insured person, and
- 2) liability of the insured for damages incurred towards third parties: for damage to the property of third parties, for damage due to death/bodily injury/damage to health of third parties, for damages due to environmental pollution (environmental damage).

Therefore, with this type of insurance, the possibility of contracting coverage for environmental damage is explicitly excluded (it is excluded from insurance), while with liability insurance, with an additional fee, it is possible.

Conclusion

Bearing in mind the enormous importance of a healthy environment, as well as the provisions of the Law on Environmental Protection that regulate the liability of polluters, the scope of liability, measures that must be taken in the event of damage, and the obligation to insure against liability of certain polluters, we believe that liability insurance for environmental damage is a necessity of modern society. With the undeniable progress of technology and industry, these types of damages continue to occur and harm the environment, which has already been brought into a state of danger by man's actions. By contracting this type of insurance, the possibility of compensation for these types of damages increases, because insurers (as well as their reinsurers) are highly solvent companies, and a guarantee for the payment of high claims that can occur in the event of environmental damages. Therefore, it is impossible to imagine the business of operators that fall under the influence of the European Union Directives and the Law on Environmental Protection without this type of insurance, and it is necessary for domestic insurance companies to offer this type of insurance with high sums insured, in order to provide the highest possible protection of third party injured parties.

References

- Glintić, M., (2020). Osnovne karakteristike osiguranja od odgovornosti za štetu po životnu sredinu, Zbornik radova kopaoničke škole prirodnog prava – Slobodan Perović.
- Konvencija o ugovoru o međunarodnom drumskom prevozu robe (CMR) – na snazi od 2. jula 1961. godine sa izmenama i dopunama u obliku Protokola od 28. decembra 1980. godine.
- Konvencija Saveta Evrope o građanskoj odgovornosti za štetu prouzrokovanu obavljanjem delatnosti opasne po životnu sredinu „*Convention on Civil Liability for Damage resulting from Activities Dangerous to the Environment*“ (Lugano Convention) (ETS No. 150), otvorena za potpisivanje i ratifikovanje 21. 6. 1993. godine (R. Srbija je nije potpisala)
- Marjanski, V., (2011). Pojam, vrste i osnovna obeležja osiguranja od ekoloških šteta, Zbornik radova Pravnog fakulteta u Novom Sadu, 3/2011.
- Mrić-Petrović, N., Petrović, Z., (2012). Odgovornost države za ekološke štete, Ekologija i pravo, Institut za uporedno pravo, Pravni fakultet Univerziteta Union, Beograd, str. 88–100.
- Opšti poslovi, uslovi osiguranja od odgovornosti za štetu nanесenu trećim licima, ADO Wiener Stadtische Beograd
- Pećanac, B. (2007). „Pravna priroda osiguranja od ekoloških šteta“, Tokovi osiguranja, br. 2.
- Šogorov Vučković, J., (2016). Princip uzročnosti u pravu životne sredine, Pravni život, str. 495–504.
- Šogorov Vučković, J., (2018). Principi međunarodnog regulisanja životne sredine, Pravni život, str. 529–538.
- Šogorov Vučković, J., Marković, D., (2020). The Polluter-Pays Principle in the Legislation of the Western Balkans Countries as an Element of Ecological Security, Socioeconomic and Environmental Aspects of Sustainable Development During the Fourth Industrial Revolution : thematic Compendium, str. 138–166.
- Šulejić, P. (2000). „Zagađivanje životne sredine i osiguranje“, *Pravni život*, god. 49, br. 11, str. 471.
- The European Union Environmental Liability Directive - Directive 2004/35/EC of the European Parliament and of the Council of April 2004 on environmental liability OJ L 143, 30.4.2004.
- Uslovi osiguranja opšte odgovornosti Dunav osiguranje ADO
- Zakon o ugovorima o prevozu u drumskom saobraćaju ("Službeni glasnik Savezne Republike Jugoslavije", broj 26/95 i Službeni glasnik RS, broj 1/2003 – Ustavna povelja
- Zakon o zaštiti životne sredine ("Službeni glasnik RS", br. 135/2004, 36/2009, 36/2009 - dr. zakon, 72/2009 - drugi zakon, 43/2011 - rešenje Ustavnog suda, 14/2016, 76/2018, 95/2018 - drugi zakon, 95/2018 - drugi zakon i 94/2024 - drugi zakon)

Osiguranje od odgovornosti za ekološke štete

Jelena Šogorov Vučković

Univerzitet Privredna akademija, Pravni fakultet za privredu i pravosuđe, Novi Sad, Srbija

Sažetak

U savremenom svetu, zagađenje životne sredine zasluži sve veću pažnju usled nepobitno utvrđenog štetnog uticaja čoveka na životnu sredinu. Samim tim, štete kojima se zagađuje životna sredina su, nažalost, sve češće i razornije po prirodu. Takve ekološke štete su često veoma velike i teško nadoknadive, čak i kada ih prouzrokuju velika privredna društva. U radu će se dati prikaz ovakvih vrsta šteta, te mogućnost i obaveza osiguranja od odgovornosti za prouzrokovanje ekoloških šteta (na bazi odredaba Zakona o zaštiti životne sredine i ostalih pozitivno-pravnih propisa). Posmatraće se i pokriće ovih šteta u drugih vrstama osiguranja (osiguranja od opšte odgovornosti, te specifičnih vrsta osiguranja od odgovornosti iz pojedinih delatnosti), te dati zaključci o tome šta može biti poboljšano u pogledu pokrića i eventualnog proširenja osiguravajućeg pokrića. U zaključnim razmatranjima prikazan je značaj ove vrste osiguranja, imajući u vidu da su iznosi koje zagađivači moraju da plate usled ovakvih šteta po pravilu veoma veliki, te da mogu ugroziti dalje poslovanje, a u izuzetnim slučajevima dovesti i do stečaja privrednog društva koje je štetu prouzrokovalo.

Ključne reči: osiguranje od odgovornosti, ekološke štete, osiguranje prvog lica, direktno osiguranje, osiguranje od opšte odgovornosti, osiguranje od odgovornosti iz delatnosti.