

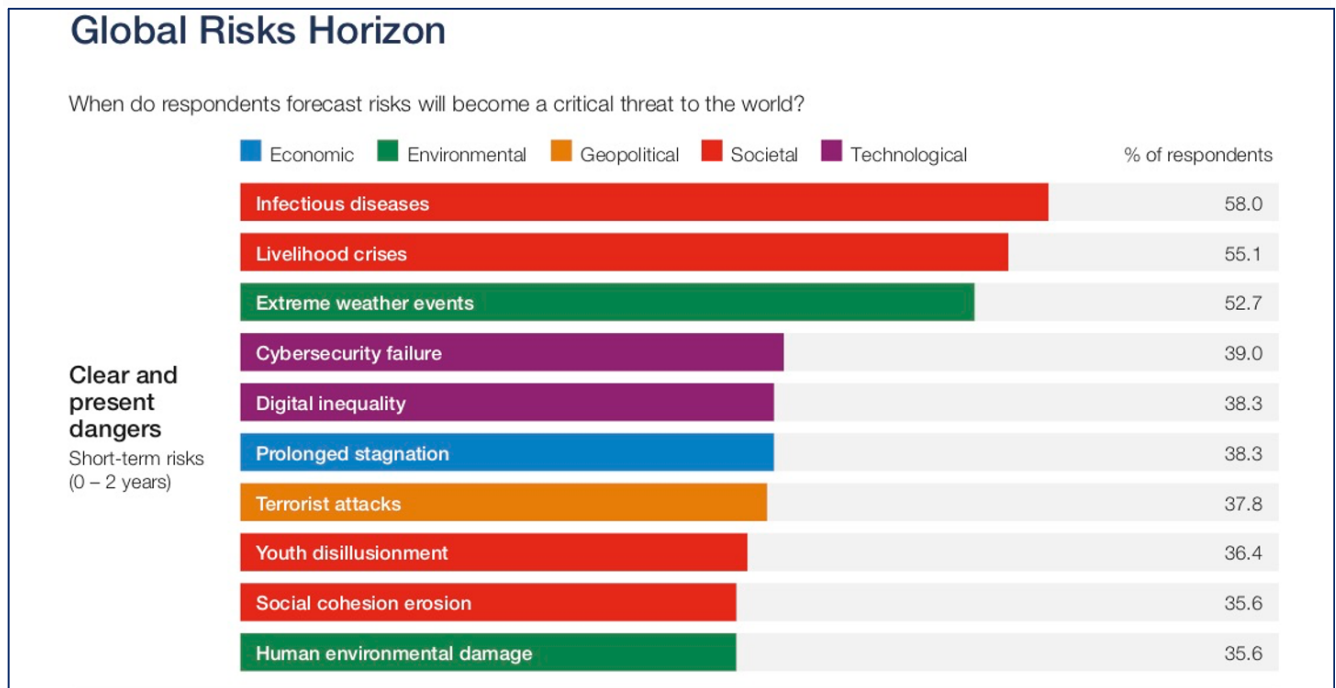


June 2021

Environmental Risk Management For Public Power

Securing The Right Insurance For Today's Threats

Environmental perils rank among the highest in Marsh's [Global Risks Report 2021](#), specifically extreme weather, failure to address climate change, and environmental damage from human activity. These perils can lead to expensive clean-up measures and tort liability. U.S. municipalities and their community-owned utilities should adapt their business model to these realities and include environmental insurance coverage in their risk transfer strategy.



Source: Marsh Global Risks Report 2021

The following are examples of environmental risks that will become more prevalent in the coming years:

- Encountering contaminated soils and debris during system repairs following an extreme weather event
- Disposal site liability from retiring outdated equipment in electric and water distribution systems
- Alleged bodily injury claims from EMF emitted by advanced metering and smart grid deployments
- Decommissioning coal-fired generation assets
- Brownfield redevelopment on municipally-owned, former industrial properties
- Pollution caused by infrastructure projects
- Tort liability from end-users of potable water and repurposed biosolids
- Legacy asbestos claims from municipal employees and third parties
- Landfill management and cleanup
- Cyber events with environmental loss components

Immediate Action Is Necessary

Responsible municipal utilities are addressing environmental exposures in a wide variety of ways. They are adapting to climate change by investing in energy efficiency projects, diversifying energy sources, and deploying “smart grid” technologies. They are also developing more sustainable practices for waste management, improving safeguards for drinking water, and factoring pollution into their emergency response plans. Further, they are prioritizing brownfield cleanup and returning those properties to safe and productive reuse. These actions are proactive measures to prepare for more stringent environmental regulations, as well as to limit exposure to civil suits and tort liability for environmental damages.

Municipalities that continue to treat environmental exposures as externalities without appropriate risk management risk potentially catastrophic losses. Community-owned utilities and their city departments should review their current insurance program, giving special attention to how these policies will or will not respond to pollution. While property and general liability policies may provide some coverage for pollution losses, this coverage rarely responds in a broad way to environment-related perils. General liability policies typically do not provide coverage for cleanup of your site, remediation of contamination that predates a storm, and business interruption due to environmental problems.

If you already purchase environmental insurance, you should carefully check those policies’ coverage, terms, and limits. Many environmental insureds purchase multi-year policies with a single limit. Given that reinstatement of limits is not commonly available, it is possible for policy limits to be completely eroded by a single pollution incident.

Pollution Coverage For Utilities Supplementing AEGIS Policy

Many community-owned utilities purchase insurance through Associated Electric and Gas Insurance Services Limited (AEGIS). AEGIS provides insurance to its participating members and includes a number of insurance products. AEGIS does offer some pollution coverage within the form, but it is important to recognize that not all pollution coverage is the same.

A typical AEGIS policy is not as broad as the standard environmental pollution coverage that can be purchased monoline through a number of insurers. Relying solely upon AEGIS pollution coverage could result in material uninsured pollution risks and coverage gaps from operations, including the following:

- **Cleanup Coverage:** Cleanup is a core coverage in standalone environmental policies. The AEGIS form typically excludes coverage for actual cleanup of pollution at properties owned, occupied, or rented by the insured.
- **Onsite Disposal, Storage, and Treatment:** AEGIS typically excludes liability for waste material generated at a facility and sent to a disposal facility. This cover is critical for utilities that may dispose of waste material on their own sites, or utilize non-owned disposal sites.

Ultimately, site and utility-specific risks need to be adequately understood and mapped against the AEGIS policy to identify other coverage gaps that may exist with regard to exposures. Most importantly, those risks should be compared to the broader coverage that can be afforded under monoline pollution policies.

Managing Environmental Risks In Brownfield Redevelopment

Certain power plants (coal-fired in particular) are being shuttered or nearing the end of their useful lives. Further, many municipalities often take title to former industrial properties with contamination that presents a barrier to reuse. This presents an emerging and relatively unique opportunity to re-develop these “brownfields” to the economic benefit of the local community; however, utilities and municipalities must factor in the environmental conditions and risks of these brownfield sites when considering their development.

Most brownfield development projects focus on environmental issues during the acquisition stage. However, a successful environmental strategy should consider risks associated with all stages of development in a brownfield project lifecycle. These include:

Stage 1 — Acquisition risks and needs:

- Quantify known and unknown risks identified during due diligence.
- Factor the risks into pro forma cost assumptions and developing a cleanup/reuse strategy.

Stage 2 — Redevelopment risks and needs:

- Manage cost overruns associated with remediating known conditions.
- Limit third-party liability

Stage 3 — Exit strategy risks and needs:

- Eliminate or limit indemnity and costs to developer on exit.
- Provide assurance to other developers, homeowners, or tenants.

Various environmental insurance products can be used on brownfield projects to help manage an array of environmental risks for buyers, sellers, and/or consultants. For example, Pollution Legal Liability (PLL) insurance can help protect against adverse financial consequences related to the discovery of unknown conditions.

Contractor Pollution Liability Insurance

Utilities and municipalities hiring contractors to work on sites they own and operate must evaluate the contractor liability coverage. Contractors may believe that their general liability policies will provide protection, but policies typically exclude pollution releases resulting from their operations or services.

Contractor Pollution Insurance (CPL) is designed to respond to the unique needs of contractors and can be tailored to contractors' specific operations. CPL policies can be designed to protect contractors against third-party claims for pollution-related damages that arise out of assumed contractual liabilities, which are often excluded under General Liability policies.

Addressing Environmental Risks From Cyber Events

The growing prevalence of cyberattacks can also present pollution risks. A recent cyberattack against a water treatment plant in Oldsmar, Florida, threatened to contaminate the municipality's water supply by altering the treatment chemical mix. The city could have faced significant tort liability had the attack not been detected and reversed.

This incident dovetails with the larger issue of managing third-party bodily exposure for customers within a water utility's service area. Municipalities and water utilities could be exposed to multiple lawsuits if pollutants of any kind enter the water stream and cause illness in the customer base.

PFAS/PFOA

Another major environmental issue impacting the utility and municipal space is the growing number of lawsuits and regulatory action concerning PFAS/PFOA chemicals. These chemicals have been linked to numerous health issues and pending federal regulation could trigger a flurry of requirements to investigate and clean-up sites where they were used.

PFAS/PFOA are commonly used in fire suppression foams, most notably Aqueous Firefighting Foam of AFFF. Any utility or municipality that has conducted extensive firefighting activities using this foam, specifically at airports, power plants or industrial facilities, is highly exposed to cleanup and tort liability at a time when the environmental insurance market is beginning to exclude coverage for these chemicals.

Environment Risk Management Solutions For Public Power

Addressing the broad array of environmental risks for community-owned utilities requires a complete evaluation of exposures, coverages, coverage gaps, and risk management options. As the Hometown Connections insurance partner, Marsh USA stands ready to help.

The world's leading insurance broker and risk advisor, Marsh helps municipalities and their utilities navigate this increasingly complex landscape by providing an understanding and assessment of environmental risks, determining appropriate risk management solutions to address, identifying and negotiating environmental insurance solutions, and providing claims management expertise. Marsh reduces the total cost of environmental risk management and supports the organization's business goals.

For More Information

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