

Market Update

Oil spills caused by flooding

Crawford & Company



As Crawford responds to flood claims from Storms Desmond, Eva and Frank, our UK adjusters have encountered some problems involving fuel oil spills at both domestic and commercial properties. In this market update, we detail a number of elements customers and insurers should look out for in such cases.

The unprecedented flooding in low lying rural areas can be devastating to communities. In such places where properties are frequently "off grid" from natural gas supplies, fuel oil is a typical feature. Unfortunately, with typical waist-deep waters, fuel tanks can topple and spill, causing a variety of damage with potential consequences to the environment, first and third party property.

Causation

Often domestic oil tanks stand on plinths at ground level. If they are low on oil and flood waters are deep, the tanks can float off the plinth and overturn, spilling out their entire contents. This can lead to very significant additional damage. Sometimes the tank might move only a few centimetres but this can be enough to break the fuel feed line and allow all the oil to escape.

Other causes include storm winds which can rip off fence panels or tree branches that collide with fuel lines or the sight glass on the tank, with the same result.

An oil spill which occurs during flood conditions can have less of an impact than in normal circumstances; if the oil spreads widely on the flood water, is diluted and eventually washed away. However, if as the water recedes, oil has soaked into the ground close to buildings, this can spread under the footprint of a house and cause very serious additional damage over a period of time (for example internal vapours may take time to manifest).

Domestic insured perils

In terms of domestic losses, if there is an insured event such as flood causing the spill, the insured event carries through and damage caused by the spill will be regarded as part of the flood damage. Similarly, if a neighbour's tank has leaked adding to the flood damage, the same logic applies.

Pollution is also a concern. Domestic policies sometimes have exclusions for damage by pollution or contamination but the exclusion does not normally apply if the pollution or contamination is caused by an insured event.

Third party claims

If a policyholder's tank overturns due to flood there may well be an "act of god"- type defence to any civil law based claims made by third parties.

Similarly, if a tank overturns in a flood and oil is affecting a local stream, requiring intervention from the Environment Agency, the policyholder is in the territory of statutory liability that does not require any legal fault. For example if there are issues for controlled waters, the Environment Agency can impose a clean-up obligation on whomever it deems to be "the polluter". Most household Insurers will indemnify for such statutory liabilities but it is vital the position is properly explained to them. Also, unless supervised, costs and specifications of investigation and response work can be disproportionate.

Commercial insured perils

On commercial policies, All Risks wordings normally exclude any damage or liability arising from pollution or contamination unless caused by or causing the operation of a defined peril. Contrary to the scenario with personal lines above, commercial customers should beware statutory liabilities arising off site. Even if they arise from a "sudden identifiable" event, they are not necessarily covered by the operative clause of a standard public liability wording (see *Bartoline v RSA* 2006).

DAVID WALLER LLB (Hons) ACII ACILA
Head of Environmental Adjusting
T 0207 265 4076
M 07788 393 055
E david.waller@crawco.co.uk
www.crawfordandcompany.com

MARK O'MAHONY
Business Development Director
M 07880 007237
E mark.o'mahony@crawco.co.uk