

Potential Motor/Liability Coverage Gap Issues



The policies arranged by OAMPS Petrochemical Insurance and Risk Management have been specifically designed with the fuel, chemical and environmental industries in mind to dovetail with each other, thus ensuring there are no gaps in the cover provided. We would urge all clients who have chosen to place part of their insurance portfolio outside of the OAMPS Petrochemical facility to consider the potential gap issues outlined in this summary.

The gap issues referred to in this document mainly refer to the issues surrounding the transportation and delivery of hazardous goods, particularly petrochemicals.

The summary issues under the two OAMPS Policies are as follows.

Issue	Cover that needs to be provided
Spillage of product during delivery	Legal Liability (including Environmental Statutory Liability) for the clean-up costs arising from the accidental spillage either from the use of the insured vehicle, or from an error or omission during the process of loading and unloading the insured vehicle by either the driver or attendant
Crossover / Wrongful Delivery	Legal Liability (including Environmental Statutory Liability) arising from the accidental delivery of product which does not conform to the specification of, or the order of the goods made by the customer, arising from the use of the insured vehicle or from an error or omission during the process of loading and unloading the insured vehicle by either the driver or attendant
Pollution	Legal Liability (including Environmental Statutory Liability) arising from pollution or contamination caused by a sudden and identifiable, unintended and unexpected incident.
Own Site Clean-up	Clean up of the insured's own land arising from the sudden and accidental pollution or contamination caused by a sudden and identifiable, unintended and unexpected incident.

OAMPS has handled over 75,000 claims within your industry and there have been a number of incidents involving the above issues which could have caused problems with anyone who does not have a Motor and Public Liability policy with the same Insurer / facility. Should you choose to place either of these two policies away from the OAMPS facilities it is vital that you consider the implications arising from potential gaps in any alternative insurance arrangements made.

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Delivery to faulty tank

When placing an order, a householder requests that the driver calls before commencing delivery. Unfortunately this request is mislaid in the office and is not passed onto the driver. Delivery commences in the normal way and a spillage occurred. In the event it transpired that the old tank had been disconnected and a new tank had been installed round the corner, the driver had delivered to the old tank.

You would be liable for losses occurring, even though in your mind the driver had not made a delivery error. As this was a domestic delivery, a higher duty of care applies. The courts would view that as the professional on site your driver should have checked the condition of the tank, failure to do so would be deemed to be an error, as such you could be held liable for losses incurred. The OAMPS dovetailed facility would provide cover in these circumstances.

If you have placed part of your insurances away from the dovetailed scheme, are you confident that the cover will be in place, and if so under which policy?

Bulk Deliveries to either Third Party Oil or Chemical Terminals

When delivering product to the above facilities which employ site management staff - if the driver is told there is enough room in the tank for 'X' amount of product but when filling is underway the tank over flows causing a spillage No liability attaches to you as the Duty of Care lies with the terminal staff

When delivering product to third party terminals or storage facilities without depot staff, the duty of care lies with the delivery driver. Should a spillage or crossover event occur due to driver error during delivery/unloading then the OAMPS dovetailed facility would provide cover.

Should one of these events occur and you do not benefit from the OAMPS dovetailed facility, are you confident that the required cover will be in place, and if so under which policy?

Spillage at own premises

Should a spillage or crossover event occur at your own premises, you could incur clean up costs in respect of your own land along with potentially clean up of third party land should the spill spread outside the boundaries of your depot.

Should the incident occur during loading or unloading there is an argument that it was due to driver error and should be a motor claim, if the incident occurred at any other time it could be argued that the combined policy should operate. In addition, as you cannot be legally liable to yourself you could face difficulties in respect of making a claim to clean up your own land.

The OAMPS dovetailed facility provides cover in respect of legal liability arising from sudden and accidental pollution of third party land and in addition extends to include costs incurred in cleaning up your own land (subject to a maximum of the chosen sum insured).

Which policy do you think would provide the cover in respect of these incidents? The dovetailed OAMPS facility would provide cover in all of these circumstances (subject to the relevant sections being insured).

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Contamination of product during transit due to tanker defect

If during transit a compartment divider fails and the products are contaminated, there would be no liability attaching to you as no error was made by your staff. However if the tanker was manufactured by you, insured and operated by a third party haulier, you could be held liable for supplying a defective product. The combined OAMPS facility would provide cover in this eventuality.

The driver is issued with an incorrect ticket by his/her office

Driver delivery ticket says product grade A is due for delivery whereas in fact grade B was ordered by the customer, this is an error in the office so any resulting claim - e.g. crossover and consequential loss – should be covered. This is not the driver's error.

Incorrect product loaded into tanker for delivery

If an incorrect product is loaded into the tanker by the driver who has disregarded an instruction from his/her office or if the tanker was loaded by someone other than the driver, or the instruction from the drivers office was incorrect – are you covered? This is a mixture of both driver and non driver error.

Office/Yard Staff instruct the driver to put the product in the wrong tank

When delivering product to a third party - the driver is told to put the product in the wrong tank by his office staff; as there was no driver error there is an issue as to whether a claim should be made under the motor insurance or under the public liability.

Contamination due to bad tanker clean

If a bad tanker clean leads to contamination of a load and a claim is made against you for the loss/contamination of product and associated consequential loss, there would be an issue as to which insurer should cover the damage as whilst there was no error on the drivers part whilst loading or unloading, there was an error by the driver whilst carrying out his other duties.

Again, the OAMPS dovetailed scheme would provide cover.

Deliveries by a third party haulier

The standard principles apply in that no liability can attach to you for incidents caused by driver error as the driver was not acting on behalf of you. However if your depot staff had loaded an incorrect product and contamination occurs, then liability could attach and you could be held liable for losses incurred by your customer.

Summary

Whilst the above is not an exhaustive list of all possible events, it does give you an idea of some of the incidents which may befall you. They are all incidents which have occurred in the past, some of them to business who did not benefit from the dovetailed OAMPS policies and who as a result have suffered difficulties and confusion attributed to gaps in cover. We at OAMPS are the recognised professionals in this field; we have handled over 75,000 claims arising from oil and tanker hauliers/distributors and have the expertise to ensure you benefit from the best cover available.

There are no questions on which policy provides cover when you place all your insurance via the **OAMPS Petrochemical Scheme**