



# A Users Guide to Liability Insurance for Controlled Burns and Wildfires

December 2023

by David Dybdahl CPCU, CIC, MBA, ARM

This is a user's guide on the liability insurance needs of land stewards and the contractors that perform conservation related services for them. Specific attention is given to insuring losses arising from wildfires and controlled burns.

While wildfire exclusions in both property and liability insurance policies caught everyone's attention in 2023, the reality is the core general liability insurance policies sold to every business in America have had a coverage gap in liability insurance for losses arising from fires for decades.

All general liability insurance policies have pollution exclusions. The excluded "Pollutants" as a cause of loss in insurance policies are usually defined as "smoke, vapor, soot, fumes .....". Three of the first four words in a standard pollution exclusion are referencing damages normally caused by fires. Because of pollution exclusions, there has been a significant coverage gap in business liability insurance policies for the possible damages caused by a wildfire for a long time. <sup>1</sup>

What changed with the introduction of wildfire exclusions in 2023? Fire itself is not an excluded "pollutant", therefore losses caused by a fire, not from smoke, soot or fumes were generally not subject to the effects of a pollution exclusion.

With the introduction of wildfire exclusions, claims for causing Bodily Injury or Property Damage to third parties as a result of a wildfire are now specifically not covered under a Commercial General Liability insurance policy. Most off the shelf General Liability insurance policies will have wildfire exclusions in 2024 and beyond.

Land stewards who use prescribed fire as a land management tool and the contractors that provide controlled burn services need highly specialized liability insurance and risk management strategies to address claims arising from wildfires, smoke, soot and fumes. Customized environmental insurance products for the stakeholders in prescribed fire will be a key component to properly insuring these risks.



<sup>1</sup> There are endorsements available on Commercial General Liability insurance policies that exclude hostile fires from the definition of excluded pollutants. This endorsement would conflict with a wildfire exclusion endorsement on the same policy.



**Below is a summary of the needed liability insurances for land stewards to cover the risks of controlled burns and wildfires\***

Type of Insurance	Special Provisions Needed	Limits of Liability
Commercial General Liability Insurance (CGL) This can be combined with specially modified Environmental Liability insurance in a package policy.	This policy should not have a wildfire exclusion if the land has controlled burns performed on it. Volunteers should specifically be "Insureds".	\$1,000,000 per Occurrence \$2,000,000 in Aggregate
Business Automobile	Needed by land stewards that own or lease a vehicle.	\$1,000,000 per accident
Hired and Non-owned Automobile Coverage	Needed for liability arising from the use of automobiles that the land steward does not own or lease. This risk may be insured under a CGL or Automobile Liability policy.	\$1,000,000 per accident
Workers Compensation	Needed by land stewards that have one or more employees.	Statutory benefits
Environmental Liability	Specially modified environmental insurance policies for the operations of a land steward are needed to fill the insurance coverage gaps created by the Pollution and Wildfire exclusions that are now common in General Liability insurance policies. Volunteers need to be specifically included as "Insureds".	\$1,000,000 per claim and in the Aggregate
Excess	Provides extra limits of liability above the CGL and Environmental Liability and optionally the Automobile coverage.	Up to \$10,000,000

\* These insurance guidelines address the basic business liability insurance policy forms needed to address the risks of controlled burns. They are not a complete set of insurance specifications for a land steward, a services procurement contract or for a contractor. Technical assistance on the insurance requirements in services procurement contracts is available from American Risk Management Resources Network LLC.

In addition to purchasing specialized liability insurance covering the land steward itself, which is highly recommended, a land steward can economically manage the risk of wildfires arising from prescribed burns simply by utilizing a solid set of insurance requirements in the services procurement contract for the controlled burn.

The Commercial General Liability and Contractors Environmental Liability insurance policies purchased by a contractor will normally have the built-in ability to extend the contractors liability insurance protection to their customers as Additional Insured's, free of charge. If the contractor's customer gets sued because of a insured loss that the contractor caused, the Additional Insured coverage on the contractor's liability insurances will also cover that customer.

Conservation services contractors following the insurance recommendations below will have access to better liability insurance coverage for losses caused by pollution/wildfires/pesticide/herbicide application than most land stewards carry on their property today.

To access the Additional Insured coverage that the contractor paid for when they purchased their General Liability and Contractors Environmental Liability insurance, the land steward must require in the services procurement contract;

1. To be indemnified by the contractor for any claims for damages made against the land steward, arising from the operations and completed operations of the contractor and:
2. Require that the land steward be an Additional Insured in the General Liability and Contractors Environmental Liability policies. In the absence of a specific request to be an Additional Insured on these two policies, the free insurance coverage extension offered to the land steward as an Additional Insured will be squandered. In essence, the Additional Insured coverage for the land steward on a properly insured conservation services firm is free for the asking, if the services procurement contains these two provisions.

**Below is the liability insurance that should be carried by contractors offering conservation related services including controlled burns to land stewards\***

Type of Insurance	Special Provisions Needed	Limits of Liability
Commercial General Liability Insurance (CGL) plus Contractors Environmental Liability (CEL) or Contractors Pollution liability (CPL) plus if consulting services are offered Professional Liability preferably in a package policy.	This policy cannot have separate wildfire or pesticide/herbicide application exclusion in it. This policy shall provide primary contractual liability coverage on the CGL and CPL coverages and waive the rights of subrogation against the Additional Insured for contributory negligence.	\$1,000,000 per Occurrence \$2,000,000 in Aggregate
Business Automobile	Needed if the services vendor owns or leases a vehicle.	\$1,000,000 per accident
Hired and Non-owned Automobile Coverage	Needed for liability arising from the use of automobiles that the services vendor does not own or lease.	This can be included as part of the CGL or Business Automobile insurance policy.
Workers Compensation	Needed by services vendors that have one or more employees.	Statutory benefits
Contractors Environmental Liability and Professional Liability	May be included in a package policy with the CGL. The Professional Liability coverage shall insure the full scope of professional services offered, including writing burn plans.	\$1,000,000 per claim and in the Aggregate
Excess	Provides extra limits of liability above the CGL and Environmental/Professional Liability and optionally the Automobile coverage.	As needed up to \$10,000,000

\* These insurance guidelines address the basic business liability insurance policy forms needed to address the risks of controlled burns. They are not a complete set of insurance specifications for a land steward, a services procurement contract or for a contractor. Technical assistance on the insurance requirements in services procurement contracts is available from American Risk Management Resources Network LLC.

The specialized liability insurance products needed to insure land stewards and conservation services vendors described above are available and are affordable. These specially modified liability insurance products are available through independent agents and brokers working with (ARMR) American Risk Management Resources Network, LLC.

*ARMR is wholesale insurance brokerage specializing in environmental insurance products.*



**Honesty | Integrity  
Knowledge | Excellence  
Accountability**

For more information on these insurance products contact:



**Noah Krantz**  
noah@armr.net  
608-824-3342

This advice on risk management and insurance was contributed by David Dybdahl, CPCU, MBA, ARM. He is an Insurance Business America, Hall of Fame inductee, prolific author, insurance educator, expert witness in state and federal courts and an active supporter of conservation organizations. His national award-winning insurance wholesale insurance brokerage firm, American Risk Management Resources Network, LLC. offers the specialized liability insurance policies discussed above through local insurance agents in most states.



**David J. Dybdahl**  
dybdahl@armr.net  
608 836-9590