

# SPECIAL REPORT

## THE POLLUTION EXPOSURE Analyzing Pollution Exposures in Your Business

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In the United States, pollution accidents occur about once an hour causing loss of life, damage to property and the environment, and creating millions of dollars in claims. One of the largest insurance claims ever involved a pollution incident.

Many businesses expose themselves to serious risk of financial loss because:

- 1) They believe that they have taken adequate precautions to prevent such accidents. Hopefully this is true; however, the pollution incidents that we see would suggest that this is not always the case.
- 2) They think that the small risk of loss from pollution related claims does not warrant the expense of additional insurance. Most businesses have hidden or apparent pollution exposures, and the risk of loss is not small. The cost to secure insurance is small in comparison to the risks involved.
- 3) They are under the impression that their existing general liability and property policies provide pollution coverage. In fact, these policies are very limited as respect to pollution coverage.

Consider the following environmental exposures:

### I. You Are Exposed to Pollution Claims

1. Exposures That Exist:

- a. On site cleanup of unknown pre-existing conditions.
- b. On site cleanup of new conditions.
- c. Bodily injury or property damage to third parties caused by on site pollution conditions.
- d. Third party claims for cleanup costs or property damage beyond the boundaries of the insured's site resulting from pollution conditions.
- e. Off site bodily injury, property damage or cleanup costs beyond the boundaries of a non-owned location resulting from pollution conditions originating from a non-owned location.
- f. Bodily injury, property damage or cleanup costs resulting from a pollution release from transported cargo carried by owned or hired trucks.
- g. Third party claims from transportation of the business owner's product or waste by third party vendors that result in bodily injury, property damage or cleanup costs caused by a pollution condition.
- h. Loss of income sustained by the business owner resulting from the interruption of business due to on site pollution conditions.

2. Potential Causes of Claims: Environmental Exposures for Manufacturers & Other Industrial Risks

- a. Accidental spills because of improper containment or during the internal movement of materials.
- b. Improper historical and current disposal of hazardous wastes.
- c. Air emissions or spills from painting and plating lines, ovens, boilers and reactors.
- d. Inadequate housekeeping and preventive maintenance of machinery and equipment, including pollution control equipment.

- e. Improper storage of raw materials including chemicals, compressed gases such as cyanide and hydrogen chloride, fuels, flammable paints and solvents.
- f. Third party traffic through the facility such as contractors, customers and vendors causing environmental accidents.
- g. Inadequate underground and above ground storage tank management programs.
- h. Wastewater generated from cooling water, plating lines, drum cleaning, products cleaning and chemical treatments.
- i. Inadequate waste storage/handling practices.
- j. Generation of waste materials including solvents, acids and caustics, paints, heavy metal particulates from baghouses and electrostatic precipitators, sludges from wastewater treatment operations.
- k. Potentially contaminated soils around production and maintenance areas, cracked concrete surfaces in production areas and in secondary containment for tanks, raw materials and waste storage areas.

### 3. Examples of Pollution Claims: Claim Scenarios For Manufacturers & Other Industrial Risks

- a. While transporting a large metal coil, a forklift operator hit a hydrofluoric above ground storage tank releasing dangerous fumes into the neighboring community. Area residents and businesses were evacuated and several people were treated at a local hospital for fume inhalation. Claims for bodily injury and business interruption topped \$94,000.
- b. A manufacturer operated a machine, which was used to punch holes in sheet metal. A portion of the machine was located beneath the floor. For more than 20 years, lubricating oil from the machine was released into the surrounding soils. When a nearby

- homeowner's drinking water well was tested, it contained petroleum hydrocarbons. They were determined to be from the leaking equipment. The homeowner was forced to hook up to municipal water. The homeowner submitted a claim totaling more than \$40,000 for the hookup cost, as well as a bodily injury claim for contaminant ingestion.
- c. A manufacturer had above ground storage tanks that contained fuels with connections to below ground piping. Fuel contamination to soils on and offsite was discovered. The source of the pollutants was identified as emanating from the below ground piping which had been leaking for an unknown period of time. Coverage was granted for cleanup costs and defense expenses. The extent of the damage includes three contaminated plumes emanating offsite, groundwater contamination and damage to a neighboring petroleum site. \$3.4 million in indemnity was paid for remediation costs and attorney fees.
  - d. A manufacturer began expansion of a production line area. During excavation, oily soils with a petroleum odor were discovered. Further investigation uncovered an old, undocumented sludge drying pit that the previous owner used back in the 1940s. The manufacturer had to remove and remediate the soils at his expense. Cleanup costs exceeded \$400,000.
  - e. A manufacturer stored a drum of caustic chemicals next to a drum of highly reactive acid. When a forklift disturbed the drums, their contents were released causing a violent reaction. Fumes spread over neighboring properties and damaged plants at the nursery next door. The nursery owner submitted a claim totaling more than \$35,000 for business interruption and loss of goods.
  - f. The concrete secondary containment of a 10,000 gallon diesel above ground storage tank was cracked and crumbling. A release from the tank spewed 8,000 gallons into the containment area. The diesel fuel seeped into the underground soil and required costly excavation and removal. The total cost for investigation, removal and disposal exceeded \$320,000.

- g. Since 1965, a metal toy manufacturer had been using trichloroethylene (TCE), a common solvent, to remove oil and grease from toys prior to painting them. This process generated a liquid waste mixture of TCE and oil. In 1994, an engineering study revealed that the groundwater surrounding the plant contained significant concentrations of TCE and other solvents. The cleanup of the site was estimated to exceed \$900,000.
- h. An aerosol packaging plant located on a 17 acre site manufactured hair spray, spot remover and oven cleaner. The facility is near a river that runs through a neighboring town. The town discovered contamination in their municipal water supplies and was forced to close their wells. The town sued the packaging plant and settled for \$780,000.
- i. During Midwest floods, manufacturers paid to cleanup contamination caused when chemical tanks floated down river j. A truck owned by a manufacturer struck a utility pole causing a transformer explosion that released carcinogens and smoke into homes in the area.
- j. A cloud of chlorine was released during a fire.
- k. Tenants of a manufacturing building complained of headaches, nausea and fatigue. Twenty individuals had to be hospitalized.
- l. Carbon monoxide from a defective hi-lo caused injury to employees and third parties.
- m. An employee mistakenly opened a valve controlling the hot water flow to an ammonia vaporizer causing 3,800 pounds of ammonia to escape causing hundreds of nearby residents to be hospitalized.
- n. An independent contractor working on piping that contained a toxic chemical was splashed in his eyes and became blind.

## **II. Securing the Appropriate Coverage for Pollution / Environmental Liability**

Coverage under standard property and liability policies is quite limited.

## 1. Standard Property Insurance Policies

Property insurance policies will cover cleanup of some types of pollution conditions that occur but only if as a result of specified causes of loss. This means if the pollution event is caused by fire, lightning, explosion, windstorm or hail, smoke, aircraft, self-propelled missiles or vehicles, riot or civil commotion, vandalism, leakage from fire protective equipment, sinkhole collapse or volcanic action that results in damage to the building or personal property, claims would likely be covered up to the respective limits on many property insurance policies. If, however, as a result of those events your land or water at the described premises is affected because of the dispersal, seepage, migration, release or escape of pollutants, you would typically only have \$10,000 in cleanup coverage under a standard insurance policy.

## 2. Standard General Liability Insurance

General liability policies also have pollution exclusions that exclude claims by third parties for injury or property damage arising out of a pollution event.

Pollution is very broadly defined as including any solid, liquid, gaseous or thermal irritant or contaminate including smoke, vapor, soot, fumes, acids, alkalis, chemicals and wastes. Coverage is excluded whether or not the pollution event is gradual or sudden and accidental.

The standard commercial general liability policy does make certain exceptions. Typically, pollution arising from your products would be covered. Also, pollution from a hostile fire, and pollution such as fumes from heating systems within a building are covered under many policies. All other events would not be covered. For example, there is no coverage in most cases for fumes from environmental spills or emissions from cooling systems, mechanical equipment, mobile equipment, storage of pollutants, or any other event that causes injury to third parties.

### **III. Supplemental Pollution Policies Are Available to Cover a Variety of Pollution Incidents**

These policies are generally inexpensive for commercial enterprises that do not have an obvious pollution exposure. The following is a summary of many available insurance policies covering environmental type claims.

#### **1. Pollution Legal Liability:**

Site-specific, third-party liability insurance for claims (and defense costs) resulting from gradual or sudden releases of pollutants from an insured site. These policies can include coverage for releases from underground storage tanks, thereby satisfying financial responsibility requirements of the Resource Conservation and Recovery Act (RCRA) and for cleanup of the insured site.

#### **2. Contractors Pollution Liability:**

Third-party liability insurance written for environmental remediation, general or trade contractors covering claims, including cleanup expenses, arising from a release caused by a contractor's work. This type of policy is intended to fill the gap in the liability policy created by the Absolute Pollution Exclusion. The contractor must still purchase a liability policy to insure non-environmental risks. While contractors' pollution liability policies have been available only on a claims-made basis, occurrence coverage is now available.

#### **3. First-Party Environmental Remediation:**

Coverage to reimburse the property owner for the cost of cleanup and remediation of the insured's property when required to do so by order of a governmental agency with jurisdiction over environmental regulations.

#### **4. Property Transfer Insurance:**

First-party cleanup coverage for contamination that is discovered subsequent to the sale of property when the cleanup is ordered by a governmental authority. Policies also can be written for financial

institutions to cover the loss in asset value of the property or the outstanding balance of the real estate loan. Third-party bodily injury, property damage and cleanup claims may also be covered.

5. Asbestos and Lead Paint Abatement Liability:

Third-party liability protection for bodily injury, property damage and cleanup cost claims arising out of or following asbestos or lead paint abatement activities. Insurance can be written for property owners and/or the contractors working on their behalf, and may cover the removal or encapsulation of asbestos.

6. Underground and Aboveground Storage Tank Insurance:

Third-party liability coverage for bodily injury, property damage and cleanup expense claims arising from the release of hazardous materials from underground or above ground tanks (meets financial responsibility requirements of the EPA). On-site cleanup also may be insured by these policies.

7. Automobile Coverage for Hazardous Materials Transportation:

Third-party liability coverage for bodily injury, property damage and cleanup cost claims arising from a release of hazardous materials resulting from transportation activities including loading and unloading of vehicles.

8. Remediation Cost Overrun Coverage:

Coverage for property owners against cost overruns for onsite remediation expenses. Coverage is often written in conjunction with pollution legal liability insurance and may require a self-insured retention or co-payment feature. This coverage has been useful to firms involved in brownfield remediation projects since they can “cap” the costs of remediation.

9. Remediation Warranty Coverage:

Insurance providing property owners coverage for pollution conditions discovered after environmental remediation has been completed.



This insurance is often written in conjunction with real estate transfer liability and/or remediation cost overrun coverage for sites that are sold to third parties before or after cleanup (including brownfield projects).

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