
Pollution Liability Insurance: A Guide to Help Manage Your Changing Exposures

Pollution is a serious and ever-changing risk to many businesses, and it is not covered by standard insurance policies. A pollution insurance policy can protect businesses from unexpected, potentially devastating costs.

Provided by: Millhiser Smith Agency, Inc.

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Introduction

Pollution and environmental conditions are growing exposures for many businesses, exposures that are not covered under standard insurance policies. A steadily increasing focus on the environment paired with an expanding list of known pollution sources have led to many recent costly law suits that companies never saw coming. Due to the unknown nature of many environmental conditions, a pollution claim can arise at any time, for nearly any type of company, and the cost could prove devastating.

Luckily, pollution insurance is available as a separate policy to protect companies from the risk of environmental conditions and cover the many potential costs of those exposures.

History of pollution insurance

Environmental insurance products date back to the mid- to late-1980s, and have evolved since then to keep pace with changing trends, new exposures and greater coverage needs. The first policies, known as pollution legal liability insurance, covered third-party bodily injury, property damage and cleanup cost claims that resulted from the offsite release of environmental contaminants from the insured's property. These policies, though better than nothing, had obvious shortcomings: they didn't cover any claims resulting in onsite contamination and they didn't cover any first-party cleanup costs.

The early 1990s brought expansions to pollution policies, as they began to cover claims for onsite contaminant releases and claims for first-party cleanup costs due to a newly discovered environmental condition. Most carriers did limit this first-party coverage to cleanup costs that the site owner was legally obligated to pay, such as to stay in compliance with local, state or federal standards.

In addition, newer pollution policies cover site owners for the entire lifespan of a property – from “cradle to grave” (as long as the owner has coverage throughout this entire period). This lifespan begins when the property is acquired, lasts throughout its useful purpose and ends when the property is abandoned or sold – because the property owner could be liable for environmental exposures during any phase of the property's lifespan.

Many of the recent pollution policies also include previously known exposures, such as asbestos, lead-based paint, or specific contaminant levels that

were previously below legal standards. Such known exposures used to be widely excluded.

Pollution policies today

Currently, there are several types of pollution coverage available, and most policies are customizable to fit a company's unique risks and exposures. They often offer ancillary coverage options too, such as contamination during the transportation of goods.

The pollution insurance sector will likely continue to evolve and expand as environmental trends and expectations change.

Who is covered?

Traditional pollution policies covered only the site owner, but today, many parties could be liable for environmental conditions. During the sale of a property, both the seller and purchaser could have potential liability. They could address this shared liability somehow in their contractual arrangements, but both could protect themselves with a type of pollution coverage.

Lenders whose loans are backed up by actual real estate also face a potential liability if they foreclose on a property and then an environmental condition is discovered. Not only will this make the value of the property plummet, but the lender would then be responsible for the costs of the pollution. Lender liability coverage was created to protect lenders from this unique environmental risk.

The tenant of a property, whether the owner or renter, also faces liability for pollution claims, particularly if their business operations or personnel caused the pollution.

Why purchase pollution insurance?

The risk of pollution may seem like somewhat of an obscure one, but it is one that could arise at any time. New forms of pollution and contamination are frequently being discovered, often with the result of a large (and generally successful) lawsuit due to third-party bodily injury or property damage.

In addition, due to the widely variable and uncertain nature of environmental and pollution factors, this risk is an economically uncertain liability – but one that could be financially disastrous. Costs could exceed even the value of the property itself. Many risk managers feel more comfortable paying a fixed amount in premium than gambling with potentially catastrophic costs in the future.

Potential costs are so high because there are many aspects to pollution exposures. For instance, a third-party claim could include bodily injury, property damage and/or hefty cleanup costs, both for contaminants that traveled offsite or were released onsite. Plus, the company would be responsible for the court costs associated with defending itself. A first-party situation arises when a company experiences a spill or contamination situation that requires cleanup, often due to a violation of local, state or federal environmental standards. In both of these instances, business interruption is also a consideration, as any cleanup could be quite time-consuming as well. Pollution insurance can cover all of those exposures.

In addition, pollution insurance can help a property transaction go quicker. If an environmental condition exists prior to or during the sale of a property, the process can be dragged out while the condition is cleaned up. Even if no known condition exists, environmental tests and investigations to find potential pollution sources can be lengthy. A pollution insurance policy can help the sale move because the buyer knows an existing environmental condition would be taken care of, without needing to hold off the sale until that point.

Pollution policies tend to be flexible, making it easier for businesses to tailor their coverage to fit their company's particular exposures. The experts at Millhiser Smith Agency, Inc. can help you find the right policy for your company.

What qualifies as a pollution source?

There are countless possible pollutants, environmental conditions and contaminants in any building or property, and more could be discovered at any time. Many claims that insurance companies classify as pollution-related are ones that you may think would be covered under your commercial general liability (CGL) policy. Due to the sweeping pollution exclusion on these standard policies, you may find yourself surprised when a claim is classified as pollution and not covered.

The following are just a sampling of possible pollution exposures that may affect your company:

- Chinese drywall (defective drywall containing unsafe levels of sulfur that has been released into the air)
- Toxic mold, fungus or other bacterial contamination
- Silt runoff from construction sites into public water sources (liability for both contractor and

property owner)

- Certain green construction techniques that can cause unforeseen pollutants
- Nanotechnology
- Asbestos
- Lead-based paint
- Any contaminants or chemicals that could be released into the air or public water supply (this list could be endless, including solvents, degreasers, paints, cleaning products, fuels, pesticides, herbicides, etc.)
- Aboveground or underground storage tanks
- Improper waste disposal (including medical waste)
- Building or car exhaust/fumes
- Malfunctioning of HVAC or ventilation equipment
- Malfunctioning, crumbling or leaking of older buildings and pipes, causing contamination

Conclusion

Pollution is an unpredictable, costly exposure that your business needs to consider as part of its risk management program. While a lot of pollution-related incidents can be prevented, there is always the possibility for an unexpected spill, contamination or environmental condition to occur or surface. That is why pollution insurance is absolutely vital to protect your company. Call Millhiser Smith Agency, Inc. to learn more about pollution coverage today.

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