

Environmental RM

Who Really Needs Pollution Coverage?

by Chuck Eckert

Trying to understand your organization's environmental exposures can be a challenge, especially when you consider yourself to be a "clean company."

A truck jackknives on an icy road, bursts open and spills its contents onto the roadway. The liquid seeps into a nearby waterway, causing a significant assault on the ecosystem. The Environmental Protection Agency and other regulatory agencies are brought in to clean up the waterway. The final cost? Over \$800,000. The contents of the truck? Milk. Something as simple and as pure as spilled milk can cause an enormous environmental headache.

Because most businesses are not required to carry pollution coverage, business owners may not be aware of the types of actions that can result in pollution liability. The example above illustrates the challenge a company faces when trying to understand how it could incur pollution liability or why it should carry pollution coverage.

So many unexpected ways to pollute...

Nearly every business faces some type of environmental exposure, although most don't realize the potential risk. For instance, a contractor working on a small remodeling job might tear down a wall, which results in a costly asbestos cleanup; or a painter repairs a crack in a wall and the paint disrupts asbestos fibers inside the wall. Both the contractor and the painter are responsible for the damages, and without the coverage afforded by a contractor's pollution liability policy, each could face steep defense and remediation costs. A creative attorney can build a pollution case involving almost any substance, so it's important to remember that just because one hasn't incurred an environmental claim does not mean that one doesn't need coverage. "Absence of loss" doesn't mean "absence of risk."

Because Federal legislation is written in broad terms, insurance companies, unsuspecting property owners and

most organizations can easily be pulled into environmental liability lawsuits. Regardless of whether an organization is held legally liable for payments, defense costs are inevitable.

..but protection is at hand

Since the identification of Superfund sites in the 1980s, insurance carriers have developed specialized policies to mitigate environmental risk. Subsequent environmental litigation has forced carriers to pay claims for previously unknown risk - risks that carriers never originally intended to cover. The insurance industry has tightened the language in general liability policies to create absolute pollution exclusions and has developed new policies to address those excluded risks.

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Risk assessment is critical

While environmental risk assessment is generally focused on a particular industry, all businesses should ask a few basic questions as they assess their need for environmental coverage:

1. Do we produce a product that can be used or misused in a dangerous way? Does it contain anything toxic?



(A case in point: manufacturers of lead paint never expected that children would be poisoned after ingesting dried chips of their product.)

2. What services do we perform? Do we work with products that are potentially toxic? Could work, done properly or improperly, unleash a pollutant?
(A worker stacks pallets of laundry detergent too high in a grocery warehouse. They fall and several packages leak phosphorus onto the warehouse floor and into a drain that empties into a nearby pond.)
3. Do we manage property?
(The manager of a 30-year-old apartment complex might be unaware that mold has entered and spread throughout the building on his/her watch.)
4. What are our contractual obligations?
(A contract may require proof of environmental insurance to demonstrate financial responsibility. This is especially common for contractors who build or renovate schools and other government buildings.)
5. Who owned this property previously and how was it used?
(A luxury hotel rests on an old toxic dump; or a shopping center is built on the site of a former gun factory. Contaminates could be present just below ground, invisible but dangerous if accidentally uncovered.)
6. Where is our business located?
(Courts in some venues are more likely than others to punish those accused of pollution infractions, so robust limits are a good choice. Compliance standards are often higher for business done for the government, municipal, state or federal agencies.)

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Because pollution liability encompasses much more than site pollution alone, business owners need to be aware of all potential environmental liability exposures. Examples of businesses that are more prone to these types of liabilities include the following:

- Office buildings with on-site oil tank boilers or indoor air quality problems

- Strip malls where dentists' and doctors' offices use X-rays
- Photo labs or drycleaners using chemicals
- Gas stations with underground tanks

Building and strip mall owners should require their tenants to have pollution liability insurance so that property owners are not held liable for the burden of remediation. If the owners plan to sell the property, a bank could require collateral in the form of insurance to make certain money will be available to pay for any post-sale cleanup that may be required.

Available coverages

Environmental insurance includes both first-party and third-party forms, which address activities and operations that create or unleash pollution. Because pollution liability is a specialty niche, insurance companies create their own proprietary policies, some taking a leaner approach and others a broader approach.

The major types of pollution liability coverage now offered by carriers include the following:

- Site pollution
- Contractors' pollution
- General liability for environmental contractors and consultants
- Professional liability for environmental consultants
- Storage tank pollution

The following specific liability coverages are available either as special add-ons or as features included as part of a broad policy:

- Transportation pollution
- Products pollution
- Microbial matter (mold)
- Asbestos, lead or silica
- EIFS (exterior insulation finish systems)
- NODS (non-owned disposal sites)

Business owners may believe that environmental coverage is expensive and difficult to find. The reality is that environmental coverage is readily available from a multitude of insurance carriers with premium levels that vary by the size and type of business you operate. Every business should include a pollution liability policy in its overall insurance and risk management program.