

Toxic Business

Pollution Liability Insurance to the Rescue

by Andrew Fereday, CLS

The extensive devastation caused by the recent British Petroleum oil spill in the Gulf of Mexico captured the world's attention and, in doing so, shed light on the often-overlooked environmental risks frequently faced by companies throughout the United States.

Although such risks are commonly associated with oil, petroleum and chemical industries, environment-related accidents and claims can impact any business.

As concern for the environment grows and the list of known pollution sources expands, environmental issues have become an escalating concern for many businesses. The broad spectrum of environmental risk means that a pollution claim can arise at any time, for any type of business. And, because most of these risks are not covered under standard insurance policies, a company may be blindsided by a costly lawsuit with potentially devastating consequences. However, companies can protect themselves from these exposures by carrying pollution insurance, which is readily available and can be specifically tailored to meet individual business needs.

Common exposures

Did you know that you could be working in a "sick" building? Or that a mild rain storm could do more than simply create a gloomy view outside your office window? Environmental exposures lurk in a wide variety of circumstances. Business owners need to become familiar with these risks so they can protect their companies from unexpected loss. Following is a list of environmental exposures that can bear significant consequences:

Sick building syndrome – occurs when mold and bacterial air are released due to faulty heating, ventilation or air conditioning systems, causing individuals to experience a wide variety of ailments, including headache, dry cough, dry/itchy skin, dizziness, nausea, difficulty concentrating, fatigue, sensitivity to odors, or eye, nose and throat irritation.

Leaky storage tanks – these receptacles, whether under- or above-ground, have the potential to release heating oil or fuel, which can impact the insured's property or neighboring properties, ultimately resulting in remediation expenses or claims for bodily injury.

Carbon monoxide poisoning – caused by machinery malfunctions, which can lead to serious bodily injury and death. This toxic gas is colorless, tasteless, odorless and non-irritating, and is therefore very difficult to detect.

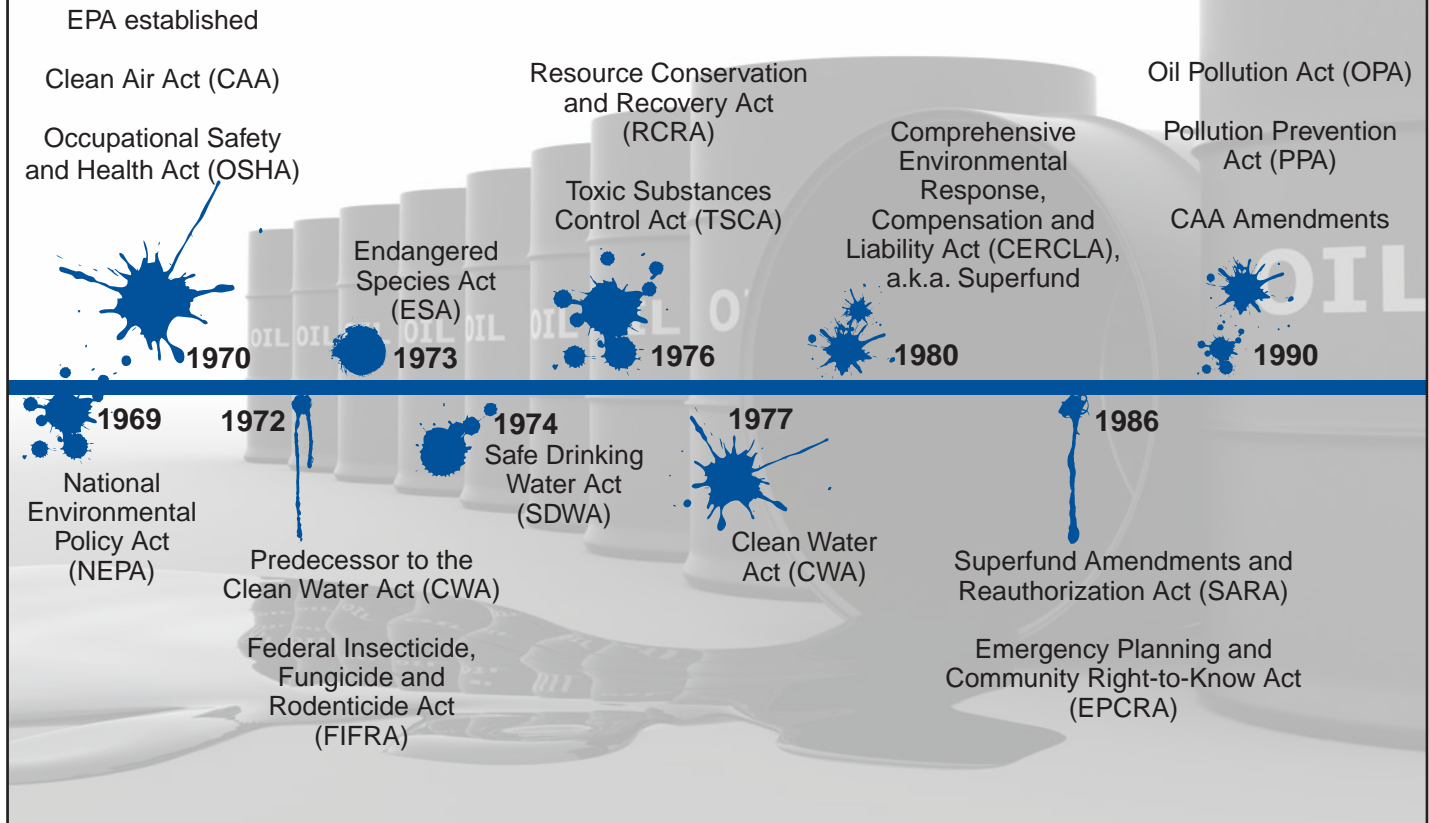
Contaminated drinking water – when drinking water becomes polluted, bodily injury claims may result (regardless of whether the water was contaminated on or offsite). Remediation expenses may be sought to neutralize contamination that impacts drinking water.

Rain water runoff – takes place when contaminants are transported through rain water from one area to another, affecting wetlands, streams and surrounding areas.

Historical issues – occurs when contaminants are present from known or unknown historical usage/operations.

As concern for the environment grows and the list of known pollution sources expands, environmental issues have become an escalating concern for many businesses.

Major Environmental Laws in the U.S. A Federal Perspective



Environmental insurance products date back to the early 1980s, following the creation of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). This act not only placed a tax on the chemical and petroleum industries, but it also granted greater federal authority to respond to risks threatening public health or the environment. Shortly after CERCLA's enactment, the "Absolute Pollution Exclusion" began to appear in liability policies, which all but eliminated coverage for the majority of pollution incidents. As a result, the first pollution policies written in the 1980s were expensive, lacked significant coverage terms and were used primarily by larger companies to meet regulatory requirements.

Pollution policies today

The past ten years have ushered in dramatic changes for the environmental insurance marketplace. The latest coverage terms and conditions give organizations meaningful tools and resources to address environmental risks. Currently, several types of pollution coverage are available, and most policies can be customized to address a company's unique risks and exposures. Environmental insurance presently covers the following exposures:

Onsite cleanup – although the release of a chemical, solvent or hazardous toxin may seem to be an unlikely risk, accidents do happen; they can result in extensive damage and ultimately require a cleanup that will likely be excluded by most general liability policies. Whether the release is sudden and requires an emergency response, or has

occurred underground for decades, the bill for the cleanup will be sent to the company responsible for the incident.

Offsite cleanup – if a release from a business owner's site affects a nearby property, the owner is ultimately responsible for the cleanup. Damage can be far-reaching, affecting not only the neighboring property, but operations at that location as well, creating expensive consequences.

Onsite bodily injury and property damage – accidental toxic releases can have a negative impact on both employees and non-staff members. Damage can be sudden or may slowly occur over time. If emergency response is necessary, third parties who are called to assist may potentially be affected as well. Companies can be held liable for injury or damage on a multitude of levels.

Offsite bodily injury and property damage – accidental releases can negatively impact neighbors and adjoining property, but the damage may not always be physical in nature. For example, pollution conditions can cause a neighboring property's market value to crumble or even force occupants of neighboring schools, hospitals and cities to evacuate.

Non-owned locations – a company may inadvertently cause pollution exposure if it maintains a location where waste is disposed of or recycled, or where its product is warehoused. While the owner usually cannot maintain or control the exposures at the non-owned location, the company can be held liable for damages related to the

pollution caused by its product. Even the most meticulous operation cannot guarantee that its product will not pollute at a location that is not under its immediate jurisdiction.

Products pollution – a product may react unexpectedly when introduced to an environment different from the one in which it was manufactured. Companies need to ensure that products are stored correctly, thus reducing the risk of environmental accident. For example, some agents produce toxic by-products if exposed to moisture, air or other conditions. If stored improperly, such products may adversely affect everything warehoused at that location.

Transported cargo – while in transit from point of origin to another location, products are the responsibility of the manufacturer. If an accident were to occur during transit, the owner of the product could ultimately be held responsible for damages. Even if the product is non-toxic, a release in an unintended location could require cleanup. MCS-90, a required provision included in automobile policies for hazardous material/waste transporters, is commonly mistaken for pollution coverage for the insured. Rather, MCS-90 only serves to financially protect the public who may be adversely affected by trucking accidents involving hazardous materials. It is important that product manufacturers are aware of this fact and that they seek out coverage for this potential liability.

Who should consider environmental insurance?

Due to the unpredictable nature of environmental pollution, this type of risk is an economically uncertain liability that could be financially disastrous. Because damages can exceed the value of the property itself, some risk managers prefer to pay a fixed premium rather than gamble with potentially catastrophic future costs. The high price tag associated with environmental disasters is most likely related to the wide variety of possible pollution exposures. For example, 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. Furthermore, the company would be responsible for legal fees associated with defending itself. Likewise, a first-party claim arises when a company experiences a spill or contamination that requires cleanup, often due to violation of local, state or federal environmental standards. Pollution insurance can cover both exposures.

Pollution policies are flexible, making it easy for businesses to tailor their coverage to fit their needs. The unpredictability of environmental exposures makes the assurance offered through proper coverage invaluable. The experts at SilverStone Group can assist companies and help them reduce risks by embracing sound environmental management practices.

