

# Environmental Liability Insurance for Commercial Real Estate

## What you need to know.

**A**s an owner or operator of a commercial property or facility, you are responsible for any existing pollution condition at the property or any that might migrate through the property. This seems like a simple enough premise, but the devil is in the details. The following breaks down these details and explains when and why you need environmental liability insurance, otherwise called Pollution Legal Liability (PLL) policies.

### Owner or Operator:

Under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or Superfund) and its amendment and reauthorization (more commonly known as SARA), you are liable as an owner or an operator. This means if you own the property you are liable, but you don't have to own the property to be liable under CERCLA. You can merely be present on the property, leasing or otherwise conducting operations, and be equally if not more liable than the property owner.

### Responsibility:

Environmental liability is "Strict Liability," which is liability that attaches without regard to fault. This means you don't have to be the cause or have anything to do with or even know about the environmental conditions at the property in order to be liable for these.

### Pollution Condition:

Environmental liability policies are expressly designed. The phrase is defined broadly as "any liquid, gas, solid, thermal irritant" in order to capture all circumstances where a condition occurs in a property's soil or groundwater or in the air above from any emission that does not occur naturally. Therefore, there are circumstances under these policies where hot water could be a covered pollution condition. Thus, you don't need a toxic or hazardous substance at your property to benefit from this coverage.

### What Does a PLL Policy Cover?

Pollution Legal Liability (PLL) policies are expressly designed to cover the risk of pollution conditions on the property, as well as those that migrate to it. The policy language provides the desired coverage expressly; only by exclusions can coverage be restricted.

Exposures covered by these policies include, but are not limited to: 1) cleanup of pollution conditions; 2) bodily injury and/or property damage allegedly caused by pollution conditions; 3) pollution conditions caused by transportation of cargo or waste; 4) pollution conditions occurring as a result of the arrival and/or disposal of cargo or waste at its ultimate destination; 5) and business interruption caused by pollution conditions.

### How Might Having a PLL Policy in Place Benefit Me?

These policies are put in place for a myriad of reasons, not just as a protection against CERCLA liability. These can often facilitate real estate transactions by taking environmental conditions out of the equation and can even increase the value of such transactions by making otherwise questionable properties more desirable, for both buyers and sellers. In addition, sometimes forgotten but extremely important in today's economy, is that these policies provide defense coverage. This means that regardless of the ultimate outcome of a claim, the insurance carrier will defend you. If you end up in a legal battle, this will undoubtedly save you the untold legal expenses. Nobody can plan for that expense, and it can be the greatest expense associated with an environmental liability claim.

### Now You Know:

If you own or operate a facility on commercial real estate, you are strictly liable for the environmental conditions associated with that property, regardless of whether you caused or had reason to know of the conditions. Even if you are certain you will not ultimately be liable for any harm caused by these conditions, or that you have no pollution at your property, and you have the utmost confidence in your attorneys, why not have your defense paid for by an insurance carrier? The cost of these policies is far lower than the risk, even on a "green" property. A creative environmental liability specialist will negotiate the right coverage and the right premium to serve the risks you face. ■

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