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The purpose of a truly effective risk management program is to identify those exposures that your company faces and then utilize some form of risk transfer (avoidance, risk retention, insurance) to address that risk. The area of Pollution Legal Liability is one exposure that many property owners overlook when structuring a risk management program.

Pollution Legal Liability typically does not top the list of perceived exposures for most property owners when they are establishing a risk profile for the everyday operations of their business. Developers may periodically get involved in this area of liability when acquiring/developing a site that may have some pre-existing conditions. General contractors obviously keep a keen eye to this area of exposure as they are working with active sites where potential pollutants are being brought to that site in the form of materials, vehicles and equipment. Property owners however, have historically been focused primarily on protecting their assets from the threats of fire, earthquake, business interruption or slip & fall.

Most standard general liability policies have absolute pollution exclusions, with the exception being a coverage carveback for hostile fire only (smoke from a fire in your building damaging or injuring a third party.) Don't look to your insurance policies to cover exposures such as:

- Existence of lead (paint and pipes) or asbestos (insulation and tiles) creating liability for third parties occupying or working in or around the property
- Surface water run-off, resulting in the spread of contamination to neighboring properties
- Water intrusion/moisture build up and mold growth resulting from a variety of causes: landscaping errors; improperly positioned sprinkler systems; poor concrete work in basements; wallpaper that prevents the movement of air in the building and traps moisture, etc.
- Midnight dumping of drums or containers of waste at vacant land sites or unsecured facilities presents a very real scenario for a potential problem
- Release by Tenants from improper or inadequate storage/disposal of lubricant oils, primer and lab waste materials
- Inadequate containment of loading/unloading areas that could result in the release of pollutants described above
- "Attractive nuisance" exposure of waste containers that may contain improperly disposed of hazardous materials, potentially harming youths
- Tenants leaving behind illegal methamphetamine labs and related chemicals that may not have been dispersed but have been abandoned. Clean-up costs for this exposure sometimes reach \$100,000
- Poor indoor air quality leading to "Sick Building Syndrome"; not only mold growth occurring in the building or ventilation system but also system releases of carbon monoxide or bacterial build up in the air conditioning or water systems
- Air emissions from ammonia-based refrigeration systems that leak and create third party inhalation exposures

Unless you want to get out of the business of owning properties and attracting tenants or you are prepared to mitigate all pollution risks yourself, you will want to craft an insurance policy tailored to address exposures. That insurance product is called Pollution Legal Liability and it comes in many different shapes and sizes.



At its basic form, it is intended to fill the environmental gap left in most general liability policies and is simply an external financing mechanism for environmental losses that would otherwise be paid by the property owner. This insurance:

- Can be structured with mold liability and mold clean-up coverage
- Provides simple asset protection from potentially catastrophic environmental events associated with day-to-day operations
- Provides coverage for past, current and future environmental losses
- Can be structured to cover the business interruption loss associated with a pollution event

As a business owner, it is critical that you understand and address the key areas of pollution exposure that your company faces. There are plenty of “pollution” situations in your everyday operations that may give rise to a claim that would typically not be covered by a standard general liability policy. Pollution Legal Liability coverage is a nice tool to have in your risk management plan to prevent potentially catastrophic events from adversely affecting the financial strength of your business. Speak to your Broker or contact one of the professionals at Parker, Smith & Feek for additional information on how this coverage works.