

## Protecting Against Environmental Loss and Challenges

**Pollution legal liability insurance can protect property owners and developers from liability associated with pollution-related property damage, cleanup and bodily injury.**

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ENVIRONMENTAL contamination is both a huge liability and a potential deal breaker for commercial real estate developers and investors. Many investors won't even investigate properties that may be impacted by hazardous conditions. There are too many pitfalls, ranging from remediation requirements to litigation. General liability insurance typically does not cover the broad spectrum of potential environmental issues, which can range from the inadvertent disturbance of contaminants to the discovery of pre-existing conditions during construction activities or site redevelopment.

The market is currently in a state of flux, given the recent departure of a major carrier and the attempts of other players to modify existing terms and conditions to meet the needs of certain classes of business. Yet pollution legal liability (PLL) insurance continues to be the coverage of choice to protect property owners and developers from liability associated with pollution-related property damage, cleanup and bodily injury. It also offers a viable method for shielding insured parties from the timely delays and costly remediation costs associated with legacy environmental issues, including contamination of groundwater, soil, sediment and other fill materials.

Nearly 25 insurers offer a wide range of PLL policies. Tailored to address each property's specific needs, PLL policies can be structured to meet a variety of requirements and objectives. Most PLL purchases are driven



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by regulatory and financial/lender obligations, contractual requirements and the management of on- and off-site risks. They are also on the rise as a result of their ability to facilitate transactions involving contaminated properties; manage exposures during the redevelopment process; and address mold and Legionella exposure risks. In addition, these policies offer crisis management protection from potentially harmful media coverage. Companies that must satisfy federal and state regulatory responsibility requirements for underground storage tanks and hazardous waste units also generally choose PLL.

The most common risks mitigated by PLL coverage, however, include but are not limited to damages caused by the following:

- Overreliance on Phase I and II environmental site assessments.
- Contaminants from known and unknown past uses of the property.
- Inadequate containment, storage, transport, disposal, loading and/or

unloading of construction debris, hazardous chemicals or other potentially dangerous materials.

As a result, PLL has emerged as a valuable tool for helping commercial property owners facilitate transactions, satisfy federal and state financial responsibility requirements and manage operational and legacy environmental risks. Long-term policies (up to 10 years in some cases) continue to be available, with a market capacity of more than \$350 million and up to \$50 million in limits available from a single carrier.

For projects that involve remediation activities, additional terms can be added to insure against the risk that:

- Contaminants will be released from the site during the remediation process by construction activities, which could cause third-party bodily injury or property damage, or could require additional on- or off-site cleanup.
- Additional remediation activities are required because previously undetected contamination is discovered or new cleanup standards are established.
- Regulatory “re-openers” occur after the completion of remediation and receipt of a No Further Action (NFA) letter; i.e., the government re-opens the site in order to investigate potential environmental issues.

Since its introduction in the 1980s, PLL has grown into a flexible risk management tool that provides balance sheet, transactional, operational and regulatory protection against environmental loss. It is also ideal for ensuring business continuity, stability and sustainability in the face of catastrophic circumstances. This is particularly important for smaller developers confronted with either on-site or off-site challenges. It can even help support the rehabilitation and redevelopment of contaminated areas or brownfields. ■

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