



Environmental Insurance for Leased Properties: Is It Necessary?

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Environmental exposures exist for both tenants and landlords and the costs for cleaning up contamination can be significant and timely.

Leased premises such as offices, dry cleaners, auto repair facilities, gas stations and more create hazardous conditions that can leak into soil and groundwater if left unmonitored. Indoor air quality poses risk in office buildings specifically where bacteria grows and is easily transported through ventilation systems. When bacteria grows, the risk for third party bodily injury claims increases and a pollution liability policy can reduce this risk for both tenants and landlords.

Lessee Liability

Landlords do their best to insulate themselves from tenants' environmental responsibilities. There are a few methods to mitigate environmental risk, including prohibiting a tenant from storing or utilizing hazardous materials. Another method is to contractually obligate tenants to indemnify and hold landlords harmless in the event an environmental release occurs due to a tenant's operations (in this context, "release" is a general term for various types of pollution or contamination).

Challenges can arise when tenants do not have financial means to honor environmental indemnity obligations. Pollution liability insurance policies can assume counterparty environmental risk which

If you're a tenant storing or utilizing hazardous materials in your business operations, make sure you're adequately protected from unexpected pollution exposures. Our Environmental practice can help.

provides additional balance sheet protection. This important nuance tends to be overlooked. It is important for landlords to remember that they are ultimately responsible for releases which occur on, at or from their titled locations regardless of who caused the release.

Environmental Due Diligence

During my experience as an environmental consultant, I was often tasked with assessing environmental conditions at properties under contract. Tasks were clearly defined, and consultants were governed by access which is typically articulated in purchase and sales agreements. Buyers look for unencumbered access to sites and want to quantify breadth and cost of suspected contamination, both on- and off-site. Sellers, conversely, are looking to contain information and not look for additional evidence of contamination. Additionally, tenants should characterize known contamination prior to taking premises.

We often get asked if a tenant should perform environmental due diligence on a site prior to leasing. If the property has an operational or industrial history, the answer is usually yes. Conducting Phase I or Phase II environmental site assessments establishes an environmental baseline of the property. Understanding the environmental history of the property prior to the tenant's occupancy can help protect the tenant in the event of an environmental claim.

Environmental Insurance

Obtaining a pollution policy as a tenant helps protect the business from potential costly effects of an unintended pollution-related event. If a tenant is found responsible for causing environmental damage on a property, they can be held accountable for cleanup costs, legal fees and third-party damages. Environmental insurance can provide coverage for these expenses and protect a tenant from substantial financial losses. The coverage can be structured to respond to new pollution conditions only, which is generally the case for leased locations, or full pre-existing and new conditions. The policy can cover a single location or an entire portfolio.

Claim Examples for Leased Properties

Office

A tenant recently moved into a new office space in Florida. After a few months, improper moisture levels were detected in one of the office towers, resulting in mold growth throughout the building and the ventilation system. The issue was exacerbated by the use of vinyl wallpaper, which trapped moisture and allowed the mold to spread. The resulting third-party claim expenses were minimal, but the cleanup costs and business interruption exceeded \$1,000,000.

Auto Repair Shop

A local business leased to an auto repair shop is facing \$100,000 in clean-up costs due to the recent discovery that the hydraulic lifts in their garage facility have been leaking for several years. The contaminants in the hydraulic oil had leaked out of the pumping system and into the ground leading to soil and groundwater contamination. Fortunately, the tenant purchased \$1,000,000 in environmental impairment insurance which paid for the loss.

Restaurant

A popular chain restaurant leases a property and has been improperly disposing of cooking oil, which led to contamination of a nearby lake. A lawsuit is filed by residents and environmental organizations against the restaurant for damages. The restaurant's environmental policy covered the natural resource damage costs, legal defense costs and settlements awarded to the plaintiffs.

Questions About Your Environmental Risks?

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