The Benefits of a Portfolio Pollution Policy

With environmental claims steadily increasing year over year, our real estate clients continually inquire about pollution coverage for their assets. While our clients strive to take proactive measures to ensure assets are well maintained, often even the best maintained assets can experience pollution incidents that create circumstances typically insurable by a site pollution policy. If due diligence yields positive results regarding targeted assets, underwriters will embrace opportunities to provide best-in-class environmental coverage at attractive prices.

Many purchasers rely too strongly upon the results of a Phase I Environmental Site Assessment report and have a false sense of security that the information contained therein is all encompassing. Regrettably, although Phase 1 reports provide a good overview of site conditions at the time they're conducted, they don't tell the full story. Any data gaps exist in site history are most often noted but not explored. The Phase 1 may not do a good job of addressing changes in zoning and how this will or can impact potential remediation or use standards. Furthermore, environmental consultants are human and do make mistakes. Limitations of liability protect your consultant and expose you to risks not previously contemplated. For more on this topic please refer to my previous article, "Why a Clean Phase I Doesn't Mean You're All Clear."

Claims do occur and claims vary by use. Portfolios of multi-family, office, retail and hospitality tend to see claims associated with mold and legionella while portfolios of industrial or manufacturing tend to encounter more spills and releases. These claims can be costly and the primary driver of claims cost is legal defense followed by remediation expenses, business interruption. Legal defense expenses mount quickly and many do not realize costs to mount a legal defense resulting from a pollution incident are insurable. Remember, the duty to defend is much broader than a duty to indemnify.

Most portfolio policies have provisions in place to include newly acquired assets at a fixed cost, much like a commercial property policy. Many carriers provide an automatic acquisition clause which provides coverage for newly acquired assets and provides a built in hedge against unintentional errors or omissions that might arise from not reporting in a timely manner.

Portfolio policies are another tool in a risk management toolkit that asset purchasers should have in place just in case. No one wants to have a claim, but when one occurs, it's better to know pollution losses can be remedied without crippling consequences to cash flow.

COMMON COVERAGE OFFERINGS

Coverage for pre and new conditions is typically standard as long as proper due diligence information is provided.

Some coverages offered typically include:

- Legal defense
- On and off-site remediation
- First-party business interruption
- Third-party bodily injury
- Third-party property damage
- Contingent business interruption
- Diminution in value

- Coverage for inadvertently omitted locations
- Transportation
- Non-own disposal sites
- Coverage for mold and legionella

Fortunately, the appetite for real estate portfolios remains strong with primary capacity of up to $50,000,000 available in the market place. The standard policy term for a portfolio is three years, however, some carriers are willing to provide up to five years depending on the property type and usage. If you do not currently have a portfolio policy covering all of your assets, we strongly recommend reaching out to discuss how we can help you place one.

For more information, please contact Jared Dubrowsky at jared.dubrowsky@nfp.com or Gary Pestana at gary.pestana@nfp.com.