

# ENVIRONMENTAL INSURANCE

*Your Coverage Portfolio is Likely Incomplete Without It*

CONNER  
STRONG &  
BUCKLEW

By Mary Anne Sander  
Account Executive, Major Accounts  
Environmental Practice Group



Pollution conditions are a serious and ever-changing risk affecting countless businesses every year. Often times, these exposures are concealed until a loss is realized, and many decision-makers are unaware that standard insurance policies do not address these issues.

## LIMITED COVERAGE IN STANDARD POLICIES

There are many pollutants, environmental conditions and contaminants found in properties or within business operations. Many of the claims insurance companies consider pollution-related are ones you may think are covered under your Commercial General Liability policy (or other in-force policies). The exclusions, however, in standard policies and the restrictive endorsements most carriers add to commercial policies result in "pollution incident" claims not being covered, exposing claimants to indemnity payments, defense costs and clean-up costs. To cover your business from such exclusions, you should add either Pollution Legal Liability, Contractors Pollution or Environmental Casualty to your current insurance program.





## HIDDEN EXPOSURES

Concealed exposures can pose a serious threat to the health of your company. To put it in perspective, think of this: the average cleanup cost of a Superfund National Priority List site is \$30 million. The Exxon Valdez oil spill in Alaska is reported to have cost in excess of \$3 billion in cleanup costs and \$1 billion in third-party claims. Now, these large-scale scenarios may be few and far between, however, even the average cleanup cost of a leaking underground storage tank is \$130,000 according to EPA sources. Environmental Coverage is a catastrophic/severity based coverage. One claim could result in a seven figure loss which directly impacts the balance sheet.

On top of that, many environmental remediation laws were drafted in accordance with a “let the polluter pay” funding concept. Under these laws, organizations and individuals can be held retroactively liable, without having been at fault, for bodily injury, property damage, cleanup expenses, and natural resource damage. There is also a danger that courts will award multiplied damages, fines, and criminal prosecution under these laws.

Pollution policies can help protect businesses from these potentially devastating hidden or unexpected exposures, and the first step is to identify them. Often times pollution exposures are overlooked for five key reasons:

**1. Exposures Are Difficult to Identify:** Many environmental loss exposures arise from activities that

were conducted years in the past or may be created by extremely small quantities of hazardous substances that are difficult to detect or measure. They also tend to elude traditional exposure identification methods. For example, reviewing summaries of historical losses may not reveal any information on potential environmental claims. Similarly, physical inspections of facilities do not always reveal possible causes of environmental damage that may be buried underground or otherwise hidden from view.

- 2. Exposures Lack a Direct Cause-and-effect Relationship:** Due to the long latency period of some injuries or diseases associated with toxic exposures, there typically is no apparent cause-and-effect relationship between exposure to a substance and measurable injury. Similarly, there is often no direct relationship between a release of pollutants and actual damages. The amount of the loss may be difficult to measure at a particular point in time.
- 3. Exposures May Be “Perceived” or Stem From Fear:** Environmental liability claims may result from a perceived, rather than real, exposure to a toxic material or from a fear of future injury due to an actual exposure.
- 4. Exposures May Change as Technology Advances:** As detection equipment is developed that can measure smaller quantities of contaminants, the loss exposure increases. For example, if current state-of-the-art equipment can measure concentrations of contaminants only to ten parts per million, a new machine with detection capabilities of ten parts per billion would change the detection threshold a thousand fold. In a cleanup project, in which the goal is to achieve undetectable levels of a particular contaminant, a change in measuring technology could dramatically change the costs of the cleanup.
- 5. Exposures May Migrate Over Time:** The amount of the loss can increase substantially over time as the contamination migrates farther from its source. Consider a leaking underground storage tank. If the leak is discovered on day one, the remediation could be as simple as removing the tank and one shovel full of contaminated soil. If, however, the leak is not discovered until after the material has contaminated the groundwater, the remediation could take more than 25 years to complete.

## MITIGATE THE RISK

---

While the risk of pollution may seem obscure, it is one that could arise at any time. New forms of pollution and contamination are frequently discovered and often result in large (and typically successful) lawsuits due to third-party bodily injury or property damage.

In addition, due to the variable and uncertain nature of environmental and pollution factors, this risk is both uncertain and potentially financially disastrous. Costs could exceed even the value of the property itself. Many Risk Managers feel more comfortable paying a fixed premium than gambling with potentially catastrophic costs in the future.

Potential costs are so high because there are many aspects of pollution exposures. For instance, a third-party claim could include bodily injury, property damage and/or hefty cleanup costs, for both contaminants that traveled offsite or were released onsite. On top of damages, the company would be responsible for its court costs. A first-party situation arises when a company experiences a spill or contamination situation that requires cleanup, often due to a violation of local, state or federal environmental standard. In both of these instances, business interruption is also a consideration, as any cleanup could be quite time-consuming. Pollution insurance can be designed to address all of these issues.

Pollution insurance is also important during many property transactions. If an environmental condition exists prior to or during the sale or lease of a property, the transaction can be stalled until the condition is addressed. Even if no known pollution condition exists, environmental due diligence, tests and investigations to find potential pollution sources can be lengthy. A pollution insurance policy can allow a sale to proceed as both the buyer and seller have the policy as security.

Pollution policies tend to be flexible, making it easier for businesses to tailor their coverage to fit their company's particular exposures.

## INDUSTRIES WITH INHERENT POLLUTION EXPOSURES:

- › Manufacturing and Processing Facilities
- › Healthcare Entities, particularly Hospitals
- › Municipalities and Utility Authorities
- › Contractors / Remediation Contractors
- › Commercial and Habitational Property Owners and Developers
- › Any operation that utilizes storage tanks (USTs and ASTs)
- › Agricultural Businesses
- › Disposal and Recycling Facilities

## POTENTIAL POLLUTION EXPOSURES:

- › Biologic pollutants, including mold, fungus or other bacterial contamination, such as Legionella, facility-borne viruses and bacteria (MRSA, SARS, Ebola, etc.)
- › Toxic materials such as asbestos and lead
- › Chemical pollutants, such as pesticides
- › Indoor air quality
- › Defective construction materials, such as Chinese drywall
- › Runoff from construction sites into public water sources (both contractor and property owner)
- › Nanopollution (waste generated by devices or during manufacture process)
- › Aboveground or Underground storage tanks
- › Contaminants or chemicals that could be released into the air or public water supply (such as solvents, degreasers, paints, cleaning products, fuels, etc.)
- › Improper waste disposal (including medical waste)
- › Building exhaust/fumes
- › Malfunctioning HVAC or ventilation equipment
- › Contamination from crumbling or leaking of older buildings and pipes
- › Products Pollution

At first glance, your company may not appear to be at risk for pollution liability losses, but a closer look may cause you to think again. Conner Strong & Buckelew's Environmental Practice Group can help you find the right protection for your company.