

The Need for Contractor's Pollution Liability

In recent years, concern for the environment has become a key topic for discussion on a global scale.

Environmental accidents have been put in the spotlight and repeatedly scrutinized by the media, regulators and governments of all levels. Contractors of all disciplines and sizes must be aware of the potential impact of environmental exposures on their businesses.

WHY CONTRACTORS NEED THE COVERAGE:

1. RISK MITIGATION:

While contractors may assume that environmental accidents will be covered under their Commercial General Liability (CGL) policy, the reality is that all CGL policies contain pollution exclusions that leave contractors uninsured in the event of most pollution incidents. Some CGL policies provide limited coverage for Sudden & Accidental Pollution (i.e. not gradual /seepage occurrences), however, coverage is significantly restricted, and the pollution event must be detected and reported within a short period of time, which is often not possible.

2. CONTRACTUAL OBLIGATIONS:

Increasingly, we are seeing contract specifications from project owners and lenders requiring contractors to obtain Pollution Liability insurance and failure to secure the insurance, where required, would constitute a breach of contract. The CCDC requirement states "Contractor's Pollution liability insurance shall have limits of not less than \$5,000,000 per occurrence for bodily injury, death and damage to property."

3. IMPACT ON THE BUSINESS:

Regardless of the nature of the work, every construction project carries some environmental risks. A single pollution incident can seriously damage a contractor's operations, balance sheet and reputation, all of which can have significant effects on a contractor in both the short and long-term.

POLLUTION COVERAGE INSURANCE SOLUTIONS

A Contractors Pollution Liability (CPL) policy provides insurance coverage for liability due to pollution conditions arising from operations performed by, or on behalf, of the contractor at a job site. Coverage includes third-party bodily injury, property damage, cleanup, and legal defence. Policies can also include coverage for mould arising from the contractor's work, and other pollution conditions related to the transportation of hazardous materials to or from a job site or waste disposal location. Coverage may also extend to third party business interruption, reduced property value, damage to natural resources, and even some fines and penalties.

A pollution policy is either purchased on a per-project basis, or on an annual basis. A project-specific policy will cover work performed only for that specific project, for the duration of the work and will continue in force for a specified time period following project completion (12 or 24 months). An annual policy is much like the contractor's general liability policy; it is procured annually and covers all projects undertaken by the contractor during that year. From a pricing standpoint, an annual policy will cost more than a single project pollution policy, but is generally more cost effective than 2 or 3 project specific policies, and has the additional benefit of covering all the contractor's projects. It is the recommended route.

POLLUTION RISKS

Particularly hazardous classes are those where contaminants are brought on to a job site by the contractor or their trades (i.e. civil contractors bring fuel, hydraulic fluids, chlorine, and other pollutants, plumbers bring glycol and other contaminant liquids, etc.), as well as contractors whose work may lead to water leaks or infiltration, resulting in subsequent mould growth (roofing,

building envelope trades, plumbing, HVAC, and general contractors, for instance). Other examples include:

- Spills and unintentional releases of chemicals stored and/or used at a job site (including those caused by acts of vandalism). Examples such as fuel, tar, solvents, curing agents, compounds, and sealers.
- Exposure to hazardous materials such as fiberglass, asbestos, lead paint and mercury.
- Liability for mould contamination of buildings resulting from dampness, plumbing leaks, and water infiltration
- Exacerbation of pre-existing contamination. This can include worsening conditions that arise as a result of stirring up or spreading contaminants.
- Inadvertent fracturing of pipelines or underground tanks causing the release of hazardous material.
- Contamination from run-off on project sites, including erosion.
- Improper hookup of air handling units, diesel containers, air lines, or ventilation equipment.

CLAIMS EXAMPLES

The following sample claims are examples of the sorts of pollution events that a Contractors Pollution Liability Policy would cover which the general liability policy would not:

1. A general contractor is hired to construct a mixed-use building. During construction, the contractor's subcontractor improperly installs flashing around the windows and doors of the building. After completion, water seeps into the exterior wall cavity of the building and causes significant mould growth. The resulting costs for business interruption, legal defense expenses, as well as costs for property damage, mould remediation and restoration results in hundreds of thousands of dollars in costs incurred by the general contractor, whose subcontractor is no longer in business.

2. A local excavation contractor is hired to excavate a new foundation as part of a building addition. The excavator hits a below-ground oil tank and the damage is not discovered at the time. The tank leaks slowly and after some time, and having migrated below the slab on grade, the property owner files a suit against the excavation contractor. The contractor's General Liability policy denies the claim due to the Pollution Liability exclusion. The contractor incurs significant defense costs in what becomes a legal action and is held liable for the protracted and expensive soil remediation.
3. A general contractor is hired to perform extensive interior renovations to a University faculty building, and part of the scope included enhancing the fire protection of the building by spraying fire retardant material to the underside of a metal deck and concrete floor, above the acoustic ceiling tiles. After putting everything back together, higher than expected moisture levels and mould spores were detected in the ceiling. Despite the fire retardant material being advertised as mould resistant, mould was rampantly spreading in the space above the tiles and all the fire retardant material had to be removed from the entire space in order to remediate the mould spores and restore the space. Thankfully, the \$200,000 cost was borne by the general contractor's CPL policy Insurer.

CONCLUSION

Almost every construction project is exposed to some sort of pollution hazard (whether coverage is contractually required or not), and a well constructed Contractors Pollution Liability Policy can eliminate a significant gap in coverage where pollution risks are involved. Pollution Liability coverage should not be considered only for special situations, or when required by the contract, but rather as an essential part of the contractor's sound insurance program and risk mitigation strategy.

If you have questions specific to your business, or would like additional information, please reach out to your HK Henderson Advisor.

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