



# ENVIRONMENTAL INSURANCE PRODUCTS

## POLLUTION LEGAL LIABILITY

Pollution Legal Liability (PLL) provides protection for site owners and operators for liabilities or claims arising from bodily injury, property damage, cleanup costs and defense costs as a result of a pollution event on, at, under, or emanating from an insured's scheduled location. This coverage can also be extended to pollution conditions resulting from the transportation of waste or products, as well as to non-owned disposal site-related environmental liabilities.

Pollution Legal Liability helps provide protection against environmental risk and offers a solutions for:

- Lender requirements
- Landlord requirements
- Shareholders' needs
- Contract requirements
- Board of Director objectives
- Regulatory obligations

PLL is also a strategic risk-management mechanism. It provides coverage that can help protect buyers and sellers from environmental liabilities in business transactions, such as those that can delay an acquisition, merger or divestiture.

### Target Classes

<ul style="list-style-type: none"> <li>• Agricultural Operations</li> <li>• Brownfield's Redevelopers</li> <li>• Bulk Storage Terminals and Distribution Facilities</li> <li>• Chemical Manufacturers</li> <li>• Electroplating Operations</li> <li>• Food Processing Facilities</li> <li>• Hazardous Waste Landfill Operations</li> <li>• Incinerators</li> <li>• Industrial Facilities</li> <li>• Laboratories</li> <li>• Lessees and/or Lessors</li> <li>• Manufacturing Facilities</li> </ul>	<ul style="list-style-type: none"> <li>• Medical Facilities</li> <li>• Mining Operations</li> <li>• Municipal Facilities and Operations</li> <li>• Paint and Coating Facilities</li> <li>• Power Industry</li> <li>• Printers</li> <li>• Property Managers (Commercial, Industrial and Residential)</li> <li>• Real Estate Developers</li> <li>• Recycling Facilities</li> <li>• Refineries</li> <li>• REIT's</li> <li>• Waste Treatment, Storage &amp; Disposal Facilities</li> </ul>
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### Highlights

- A PLL policy can respond to a gap in coverage created by a property policy that excludes coverage for business interruption related to pollution conditions. PLL provides first-party business interruption coverage for losses due to pollution conditions.
- The policy can be endorsed to meet compulsory financial responsibility requirements for hazardous waste treatment, storage and disposal facilities imposed under the Resources Conservation & Recovery Act (RCRA) as well as those prescribed by state law.
- Coverage applies to sudden and gradual pollution conditions.

- Provides assurance to unknown environmental liabilities in asset transactions.
- Policy is commonly accepted in lieu of environmental indemnities or can be structured to wrap around indemnities.
- First-party diminution-in-value coverage is available.
- Defense coverage is provided within the limit of liability.
- Provides coverage for punitive damages, fines, or penalties where allowable by law
- Definition of bodily injury includes mental anguish
- Natural resource damages can be defined and covered in the definition of property damage.
- Policy terms up to 10 years are available.
- Enhances financing prospects by allowing creditors/lenders protection.
- PLL is a transferable asset to future investors or buyers.

#### **CLAIM EXAMPLE(S):**

1. Discovery of impact during due diligence for pending purchase/sale: The insured has owned and operated a site since 1993. In December 1998, during a site assessment conducted in anticipation of the pending sale of property, arsenic contamination was discovered. Subsequent investigation confirmed that the soil and groundwater on the site had been impacted. The historic use of herbicides on the site likely caused the arsenic contamination. The agency required the insured to conduct a cleanup. Cleanup costs associated with arsenic contaminated soil and groundwater on the insured property are estimated to be \$825,000.
2. Impact caused during redevelopment activities: Construction debris containing friable asbestos material was found in the soil during grading activities at an industrial park. The contractor, prior owner of the site, neglected to remove asbestos-containing material present in the buildings prior to demolition. Further, the contractor plowed the construction debris into the ground instead of disposing it at an appropriate hazardous waste facility. The oversight agency ordered the insured to excavate and properly dispose of the hazardous debris and soil. Cleanup costs associated with excavating soil contaminated with friable asbestos are approximately \$2,300,000.
3. Historical orchard cause of homeowners finding pesticides in topsoil: An orchard that produced from 1903 until 1988, was sold and became a subdivision. When one new resident had her well water tested, contaminants were detected. Later DDT, lead, and arsenic were found in the soil. Pesticides had been sprayed for decades on the orchard. The EPA has declared the subdivision a Superfund site and has replaced topsoil on 28 lots. More cases like this orchard may await others who build on former agricultural land.

#### **CONTRACTORS POLLUTION LIABILITY (CPL)**

Contractors Pollution Liability (CPL) protects contractors against claims for third-party bodily injury, property damage, cleanup costs and defense costs arising from pollution conditions caused during the performance of contracting operations. This coverage is intended to cover all types of contracting operations from general contractors who construct new buildings to environmental firms that remediate polluted sites.

CPL provides coverage for damages due to pollution conditions arising from the performance of covered operations by the insured or their subcontractors. These claims include alleged improper supervision of subcontractors and coverage for claims arising out of environmental work performed by the Insured or their subcontractors.

The CPL is offered with both occurrence and claims made “triggers”. The occurrence trigger of the policy may be restricted depending on the type of services being performed.

## TARGET CLASSES

<ul style="list-style-type: none"> <li>• Street and Road Contractors</li> <li>• Environmental Abatement/ Remediation Contractors</li> <li>• Electrical Contractors</li> <li>• Demolition Contractors</li> <li>• General Contractors</li> <li>• HVAC Contractors</li> <li>• Pipeline Contractors</li> <li>• Marine Contractors</li> <li>• Construction Managers</li> <li>• Aboveground and Underground Storage Tank Contractors</li> </ul>	<ul style="list-style-type: none"> <li>• Trade Contractors</li> <li>• Site Restoration and Cleanup Contractors</li> <li>• Mechanical Contractors</li> <li>• Restoration Contractors</li> <li>• Home Builders/Developers</li> <li>• Industrial Contractors</li> <li>• Maintenance Contractors</li> <li>• Response Action/Emergency Spill Response Contractors</li> </ul>
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## HIGHLIGHTS

- Blanket or project-specific coverage is available
- Contractual liability coverage for the Named Insured that is assumed by contract with their client including subcontracted operations
- Financing mechanism for environmental losses/claims
- Increased limits are available to meet contract requirements for specific projects
- Does not exclude work performed on Superfund sites
- Natural resource damages can be defined and covered in the definition of property damage
- Fulfill contractual obligations
- Multi-year policies are available
- Coverage for pollution conditions arising from transportation
  - Coverage applies for loading and unloading performed in the course of covered operations by owned vehicles and third-party carriers
- The Insured Property Pollution Liability Coverage Endorsement is available as an enhancement providing claims made coverage for scheduled properties owned or operated by the Insured. (maintenance shops, batch plants, quarries, landfills, office buildings, etc)
- Mold liability coverage can be included- typically offered with a claims made trigger
- Non-owned disposal site coverage
  - Provides on and off-site bodily injury, property damage and cleanup costs arising from designated sites
- Punitive damages (where allowable by law) can be provided

## CLAIM EXAMPLES:

1. A general contractor (GC) installed new carpeting in an office building. One week after installation, the building owner informed the contractor that employees were complaining of headaches and dizziness. This was attributed to the odors from the new carpets. The general contractor could not prove that the manufacturer of the carpet or the carpet adhesive was responsible; thus, the contractor was left with the claim. The GC filed a claim with their general liability carrier. The claim was denied due to the fact that “hazardous materials” such as formaldehyde and volatile organic compounds associated with the carpeting and adhesives are pollutants.

2. A general contractor (GC) renovating a bank hired an asbestos abatement contractor. As part of their final cleanup process on a Friday, the abatement contractor utilized a high-pressure wash, resulting in saturated carpets, ceilings and walls. Materials remained saturated over the weekend while the HVAC system remained turned off. The GC was greeted with extensive mold growth throughout the building on Monday morning, and ultimately a \$600,000 bill to correct the damage. Although the GC ensured that the subcontractor retained pollution insurance, the subcontractor had a mold exclusion on their policy, leaving the entire cost on the shoulders of the GC.
3. A street/road contractor was subject to \$35,000 in cleanup costs after vandals opened an on-site mobile refueling tank. Approximately 250 gallons of diesel fuel were released to virgin soil. Fortunately, the groundwater was not impacted by the release. This helped to control the cost of the cleanup.
4. An excavation contractor was hired to perform grading operations for roads at a new sub-division. The contractor was following the engineering plans provided by the engineering firm. Unfortunately, the plans were incorrect, leading to an improper slope. When the first rain storm occurred, storm water ran off into the basements of several homes causing property damage. The excavation contractor was named in the lawsuit as well as the engineering firm. The end result: The excavation contractor was eventually dismissed, but not until \$100,000 was spent on defense costs.

## **CLEAN-UP COST CAP**

Cleanup Cost Cap coverage (CCC) is an environmental insurance policy that protects owners or remediation firms from potential cost overruns associated with the execution of a cleanup and brings more certainty to the total cost of undertaking a remediation project. Companies can quantify their financial exposure on such projects by using the Cleanup Cost Cap program to insure against cost overruns when environmental remediation projects exceed the projected costs. Cleanup Cost Cap is a valuable investment strategy tool for better managing liabilities by ensuring that unexpected costs prevents investing in contaminated property from becoming an unknown financial proposition.

Without the proper risk management strategy, investing in and redeveloping contaminated property can have more risks than benefits. The potential for cleanup cost overruns can often turn an attractive real estate deal into a financial burden. Fortunately, the continued refinement of environmental insurance over the years has made investing in contaminated property far less risky. Cleanup Cost Cap coverage is designed to address the risk uncertainty associated with beginning or continuing an environmental remediation project.

## **CUSTOMER PROFILE**

- Owners, Buyers, Sellers or Operators of Contaminated Properties
- Remediation Contractors
- Parties to Mergers and Acquisitions Transactions
- Brownfields Developers
- Mining Companies
- Potentially Responsible Parties (PRP's)

## **AVAILABLE COVERAGE**

### **I. Cleanup Cost Cap:**

- Coverage for cost overruns of known remediation expenses
- Discovery of unknown pollution conditions discovered during course of performing cleanup pursuant to the remedial plan

- Coverage for higher concentration of known contamination
- Coverage for changes in regulatory remediation standards
- Coverage for costs associated with design negligence
- Coverage for greater spread of contamination
- Coverage for the failure of remediation technology

## II. Cleanup Cost Cap/ Pollution Legal Liability Coverage:

- During the remediation or redevelopment of a site a CCC policy can address the known environmental liabilities that are subject to a remedial plan, but can also simultaneously provide protection for legal liability from unknown pollution conditions. This is achieved through a single source program. By combining the Cleanup Cost Cap policy with a Pollution Legal Liability policy, this alternative approach has proven to be an efficient method for projects with planned remediation and potential third-party liabilities both at the start of the project and once remediation has been completed

### HIGHLIGHTS

- CCC responds to cost overruns associated with the implementation of a remedial plan. The policy structure allows coverage for a variety of cleanup scenarios that include fully approved plans as well as plans in progress
- CCC can help protect the financial condition of the borrower and the value of the lender's collateral by protecting against cost overruns that could impair the borrower's cash flow or overall financial position
- Covers remediation cost overruns for the cleanup of known conditions defined by a Remedial Plan, including those arising from:
  - Actual contamination that is greater than expected
  - Change orders required by Government Authorities during the policy term
  - Off-site cleanup costs for known pollutants pursuant to the performance of the covered Remedial Plan
  - CCC also offers an additional optional coverage for new found contamination that is discovered in the course of performing cleanup pursuant to the Remedial Plan at a covered location
  - Multi-site programs can be offered
  - Terms of up to ten years are available
  - CCC is an alternative solution to creating and managing costly escrow, surety or trust
  - CCC underwriters provide another level of engineering and monitoring resource to remediation projects at no additional cost to the insured

### CLAIM SCENARIO:

Residents of several counties began complaining of a bad taste in their drinking water. Since the local government failed to act, the residents had their water tested in private laboratories and found unacceptable levels of chemicals such as Trichloroethylene and PCBs. Armed with this information, the residents demanded the government pinpoint the source of the contamination and eliminate it. Assessments by the Environmental Protection Agency determined that the source of the pollution was a 600+ acre site owned by a local railroad company. Apparently, years of locomotive maintenance operations had polluted the soil and groundwater. Tests revealed that hundreds of area residents were drinking the tainted water.

As a result the railroad company was forced to construct and pay for state-of-the-art water lines, pay each homeowner's cost of hookup and water bill for one year, and pay to cleanup the polluted site. The railroad paid \$8 million for more than 1000 homes to receive water system benefits. The company paid an additional \$25 million in cleanup costs.

*Note, above examples above are intended to illustrate the wide variety of environmental exposures faced by companies and the many ways in which those exposures can arise. Insurance coverage in any particular case will depend upon the type of policy in effect, the terms, conditions and exclusions in any such policy and the facts of each unique situation. No representation is made that any specific insurance coverage would apply in the above examples. Please refer to the individual policy forms for specific coverage*