



PARTNERSHIP FOR COMMERCIAL INSURANCE & RISK MANAGEMENT

CONTRACTORS POLLUTION LIABILITY

THE USI  ONE ADVANTAGE®
www.usi.com



Executive Summary

Contractor's Pollution Liability (CPL) Coverage is essential for Contractors or Subcontractors, even if your business operation is not directly related to environmental construction activities.

CONTROL



COST



COVERAGE



Why is it Important

- Every contractor has some level of exposure to environmental losses even if they are not in the business of removing hazardous waste, asbestos abatement or other types of environmental construction.
- Many contractors fail to understand the significance of the pollution exclusion on a general liability policy, and some contractors only obtain pollution liability coverage if the written contract specifications from the owner (or general contractor) require this, not realizing that their normal construction operations could be exposed to an uncovered event.
- Given the CGL pollution exclusion and the rise in environmental awareness over the last decade, contractor pollution liability requirements have been included in many construction contracts.



Impact and Benefits to Clients

- Understanding your pollution liability exposure will allow you to effectively balance contract compliance while maintaining adequate protection of your company's assets.
- Contractors Pollution Liability (CPL) provides third-party bodily injury, property damage and cleanup coverage for unintentional pollution caused by covered operations performed at job sites that are not owned or occupied by the named insured.
- Lack of this coverage could expose a contractor to losses up to \$1M – \$2M, which are limits under a traditional General Liability Policy.

Comprehensive Review Process

USI assists in identifying and designing a Risk Financing program that most effectively manages your cost of risk.

USI'S COMPREHENSIVE REVIEW:



Assess your pollution liability exposures based on the scope of work and contracts being considered.



Negotiate appropriate contractor's pollution liability policy based on analysis.



Continue to monitor scope of work and types of contracts contemplated to modify/enhance policy to provide additional coverage when needed.

Assessing Your Pollution Liability Exposure

Contractors who work in the following areas generally need Contractor's Pollution Liability Coverage.

Tier I	Tier II	Tier III
▪ Site/dirt work (excavation, paving, landscaping, and digging) ▪ Drilling or any subsurface work ▪ Moisture protection (roofing, sealants, and siding) ▪ Mechanical/HVAC ▪ Plumbing ▪ Environmental services/work ▪ Demolition ▪ Any building envelope work	▪ Drywall ▪ Doors and windows (doors, frames, hardware, glass, and glazing) ▪ Curtain wall ▪ Concrete ▪ Masonry, stonework, plastering ▪ Sprinkler System contractors ▪ Landscaping	▪ Wood and plastic (carpentry, millwork, and vanity tops) ▪ Structural steel ▪ Non-concrete flooring ▪ Painting ▪ Electrical ▪ Specialties (markerboards, toilets/accessories, and lockers) ▪ Furnishings ▪ Equipment (kitchen, theater, library, and athletic) ▪ Conveying systems

Assessing Your Pollution Liability Exposure

It is important to review a company's operations to determine the level of pollution liability exposure.

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Are you working in structures which are more than 20 years old?

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As part of the scope of your work will you need to excavate soil and move to another part of the project site and/or to a disposal site?

?

Is the project site you are working on considered a brown field construction site meaning something else was there before?

?

Do you have subcontractors or independent contractors working for you?

Key Observations

- Focus should be on the scope of work not the risk.
- Pollutant—as defined in standard liability insurance policies, an irritant or contaminant, whether in solid, liquid, or gaseous form, including—when they can be regarded as an irritant or contaminant—smoke, vapor, soot, fumes, acids, alkalis, chemicals, and waste.
- This definition encompasses more than those contractors engaged in environmental or hazardous removal services.

Addressing the General Liability “Gap”

- Despite its “absolute pollution exclusion,” the standard Insurance Services Office, Inc. (ISO), commercial general liability (CGL) policy provides insured contractors with some coverage for third-party bodily injury and property damage caused by pollutants and arising out of their operations.
 - Pollution liability coverage exists for operations away from the contractor's premises (i.e., at a non-owned construction site), completed operations, and smoke or fumes from a “hostile fire.”
- Some insurers, however, may attach a total pollution exclusion to all contractors’ policies, including general contractors and trade contractors whose operations are not tied in any way to the handling or disposal of pollutants.
- Contractors may be able to extend the CGL policy to include time-element coverage, but this provides limited coverage for sudden and accidental events and does not address claims that are gradual in nature arising from contracting operations performed by or on behalf of a contractor.

CONTRACTORS POLLUTION LIABILITY

Assessing Your Pollution Liability Exposure

Determining the most appropriate coverage begins with an analysis of scope of work and type of contracts being signed by the company.



OPERATIONAL

Operational exposures relate to the construction services performed, such as paving, mechanical or excavation/grading.

- Excavation through spreading unknown pre-existing contaminated soil
- Disturbing naturally-occurring asbestos
- Fuel or chemical spills brought to project sites
- Completed operations from improper line hook-up
- HVAC construction or maintenance errors that release airborne bacteria or mold
- Impacting surface water or wetlands from excavation or drilling



PREMISES

Exposures will be found through property ownership. These exposures could be pre-existing.

- Leaking underground or above-ground storage tanks
- Unidentified, pre-existing contamination from previous site owners
- Contamination from spills of oils, fuels, lubricants, etc.



TRANSPORTATION

Transportation exposures typically relate to the movement of remediated or hazardous materials from a construction site to a disposal site.

- Spills during transport to an off-site depository
- Pollution resulting from collisions
- Spills due to vandalism
- Leaks from externally-mounted fuel tanks



DISPOSAL

Disposal issues arise if the contract calls for you to dispose of material from the project sight and it is done improperly.

- Inappropriate product disposal
- Mishandled delivery of unidentified contaminated fill
- Retroactive liability under Superfund for past disposal practices
- Signing a hazardous waste manifest document as an agent for the owner

Case Study: Operational

3rd Bodily Injury and Property Damage

Situation



Mechanical contractor was contracted to install a new heating, ventilation, and air conditioning (HVAC) system in a new commercial office building.

Client Challenge



After three years, mold and mildew growth caused the release of airborne bacteria throughout the entire building resulting in poor indoor air quality.

Claims against the contractor for bodily injury and loss of property use exceeded \$100,000.

In addition, the contractor was responsible for decontaminating the HVAC system.

USI Solution

- USI reviewed company operations to determine pollution exposure.
- Currently, company only purchases CPL coverage when it is required by contract.
- USI recommended the purchase of a \$1M contractor's pollution liability policy for company's entire operations.

Impact:

\$100,000 covered loss plus additional decontamination cost of \$25,000.

Case Study: Premises

Cleanup Costs and Defense

Situation



Excavating/Grading contractor was hired to prepare pads for a new housing development. The scope of work included rough grading to shape the site. It also included moving soil across the project site to make leveled pads for the new homes.

Client Challenge



The contractor unknowingly spread petroleum contaminated soil across a project site during fill operations for a housing project.

The contractor was named in a lawsuit for exacerbating the extent of contamination.

After lengthy deliberations, the contractor spent \$250,000 in cleanup costs and his defense.

USI Solution

- Upon review of the contractor's pollution liability policy, USI discovered the contractor was only carrying sudden and accidental pollution coverage via endorsement to their CGL policy.
- USI recommended purchasing a CPL policy for their operations with minimum limits of \$1M.

Impact:

\$250,000 coverage cleanup costs and defense obligations.

Case Study: Transportation

Cleanup Costs

Situation



A street and road contractor was hired to repave a 25-mile section of highway by the Department of Transportation (DOT).

Client Challenge



During the project, one of the subcontractor's dump trucks accidentally backed into and ruptured a mobile refueling tank and 300 gallons of diesel fuel were released onto the surface and into a nearby storm drain.

The DOT sued the street and road contractor for costs to clean up the fuel spill which were in excess of \$75,000.

USI Solution

- USI had secured a CPL policy for the contractor which included vicarious liability for actions of their subcontractors.
- Contractor's CPL carrier provided defense and successfully tendered the claim to the subcontractor for the costs of the claim.

Impact:

Avoided \$75,000 of subcontractor's claim plus an additional \$60,000 in defense costs recovered through subrogation.

Case Study: Disposal

Cleanup Costs and Defense

Situation



As part of their scope of work for the building of a new 15 story hotel, an excavation contractor had to remove dirt from the site to a landfill in order to build the underground parking garage.

Client Challenge



It was found out that the soil which was moved to the landfill contained a variety of contaminants including asbestos.

Even though the contractor was unaware that the material was contaminated, the landfill filed suit against the contractor for improper classification and disposal of waste material with a demand of \$500,000.

USI Solution

- USI had secured a \$1M Contractor's Pollution Liability (CPL) policy with a \$25,000 deductible.
- The policy was endorsed to include non-owned disposal site coverage (NODS) with no sublimit.

Impact:

\$475,000 coverage cleanup costs and defense obligations.



Conduct analysis to determine Pollution Liability Exposure

- Description of scope of Services anticipated to be provided
- Sample Contract



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