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## You have an Environmental Insurance Policy. *Do you know what the fine print says?*



Lauren Ragland  
Lauren@RECDC.com  
(484) 437-4097

### THINK YOU CAN MAKE A CLAIM ON YOUR ENVIRONMENTAL INSURANCE POLICY?

You better read the fine print first.

- **Due Diligence** – The mantra is often repeated- take initiative, be proactive. For a variety of reasons a property owner may have obtained an environmental insurance policy for their property.

If you own, lease or work with real property in any way (or read the news), you are well aware of the potential impact environmental issues have on real property. With few exceptions (like downtown office buildings), it is standard for a buyer or lender, or an owner trying to lease to a national tenant, to perform a basic level of environmental due diligence. Not only is performing environmental due diligence a necessity in these transactional relationships, but it is a necessary under most environmental laws and regulations, which often contain language regarding what a liable party knew or should have known.

- **Expect the Unexpected** – So what happens when something unexpected comes up? What if the party performing environmental due diligence discovers the property is listed as non-compliant on an environmental enforcement database? The buyer, lender or potential national tenant may require the owner to remediate the contaminants or otherwise address the environmental issue. In either case, the owner may decide to contact the government and try to resolve the point of non-compliance. The owner may think that it can proceed by calling the regulatory authority to discuss what steps should be taken next, while at the same time filing a claim under its environmental insurance policy to make sure they will get their costs reimbursed.



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- **Pulling the Trigger** – Before contacting any governmental agency regarding an environmental matter, however, the owner should first check its environmental insurance policy. Very often property owners are sold a less expensive environmental insurance policy that includes an endorsement requiring that the government initiate contact or take an action against the owner before the owner can submit its claim, known in the industry as a “government trigger.” Policies that have a government trigger will deny coverage if the owner initiates contact with the government.

For environmental insurance policies that require a government action to trigger coverage, an interesting question arises. Is merely being listed on a government database, absent any further government action, enough to trigger coverage? Some carriers would say no, and conclude that merely being listing on an enforcement database is insufficient to satisfy the government action trigger.

- **Buyer be Smart** – So when deciding to purchase environmental insurance, an owner should carefully consider whether the money saved on a less expensive policy (with a government trigger requirement) is worth the risk of not being able to address environmental issues raised by a prospective buyer, tenant or lender until a sufficient government trigger occurs and possibly jeopardize the transaction.
- **Look before you Leap** – A similar concern arises when an owner takes the initiative and attempts to resolve or remediate the environmental problem without first reporting to its carrier as soon as practicable. Say an owner spends funds to remove asbestos, PVC transformers, excavate and back-fill contaminated soil, then seeks to get its costs reimbursed. Some environmental insurance policies that would otherwise reimburse the owner for those costs may deny the reimbursement (other than those costs incurred to avoid imminent harm to human life or the environment) because the carrier’s consent was not first obtained.
- **Your Transaction** – Navigating commercial real estate transactions and being environmentally due diligent requires a thorough understanding of your environmental insurance coverage. Find out in advance if you have gaps in coverage or prohibitive endorsements in your environmental insurance policy before the success of your real estate transaction hangs in the balance.

