



Property Developers

Property development, or real estate development, is a process that involves a wide range of activities from the renovation and resale of existing buildings, to the purchase and improvement of vacant, undeveloped land and the subsequent sale of developed properties or parcels to others. Property development involves many potential environmental hazards and pollution risks for the property owner and the contractors working at the site. Releases of contaminants at a site could enter storm drains, onsite drywells and sewer systems that could lead to third-party claims for property damage. Sites with buildings present may receive third-party claims for bodily injury from mold or other pollutants, and the accidental disturbance of asbestos and lead-based paint during renovation or demolition of the building.

Environmental Exposures May Include

- Prior land use, such as manufacturing, industrial facilities, gas stations and dry cleaners could have contaminated soil and groundwater at the site with heavy metal, chemicals and petroleum products. Aboveground storage tanks (ASTs) and subsurface structures, including underground storage tanks (USTs), may have also operated on the site or get discovered during property development. Pollutants could migrate and enter dry wells and storm drains, damage sewer systems and contaminate soils and groundwater on the site and neighboring properties. Since pollution laws fall under the doctrine of Strict Liability, there is no negligence standard required and the property developer may be held responsible for addressing cleanup and/or remediation of the property, even without prior knowledge.
- Property developers may be held responsible for contamination and cleanup of any pollutants from previous activities. A release of hazardous materials could have resulted from improper storage, containment breaches and leaks or spills of materials. Hazardous materials may also be left behind from previous occupants.
- Heavy equipment and mobile refueling tanks may be brought to the property. Release of fuels, lubricants oils and chemicals resulting from accidental spills or leaks or from vandalism can discharge pollutants into the soil and groundwater and require cleanup.
- During excavating and grading work, there could be a large proportion of bare ground and exposed earth that leaves soil highly vulnerable to erosion by wind and water. Improper erosion control can lead to surface runoff of silt and sediment, which can impair proper functioning of storm water drainage systems, cause ecological damage to streams and rivers and cause adjacent property damages.
- Radon gas could be discovered during development of the site and may require mitigation to remove it. Radon gas is the second leading cause of lung cancer in humans. Radon gas could be discovered in the newly constructed homes and/or buildings on the developed property. Construction techniques will need to be employed to help mitigate the radon in new structures, such as homes, apartments or office buildings.
- Existing buildings could be contaminated with asbestos-containing material (ACM) and/or lead. ACM may be present in older buildings in duct insulation, piping, furnaces, boilers, tank and fireproofing insulation. ACM may also be present in ceilings, walls, flooring tile and mastic. Lead could be present in paint or from water pipes and solder used during construction of the buildings. Tort claims may result from inadvertent disturbance during demolition, renovation, construction or interior remodeling.
- Wastes collected from the site or generated during development operations could be considered hazardous. Improperly segregated and disposed of wastes can result in regulatory fines or lead to cleanup and environmental tort liability.
- Mold may be present in buildings from moisture intrusion due to storms and flooding or from leaking water pipes, sprinklers and HVAC systems. Mold could also develop in HVAC systems, such as air handling units, coils and ductwork, or from improper building ventilation or humidity management of climate-controlled storage while the building was in use.
- A fire at the buildings located on a site could emit toxic fumes and smoke from the materials stored in the buildings or due to a mix of materials that occurs as a result of the fire. Firefighting solutions such as water and foam could create contaminated runoff that spreads to nearby storm drains or properties and results in environmental cleanup and tort liability.
- Illicit abandonment is the illegal dumping of pollutants on a property by a third-party. It can become the burden of the property owner for cleanup and third-party bodily injury or property damage if law enforcement cannot find the originator of the waste.
- Although unlikely, a situation may occur where the property may have been an abandoned landfill. Contaminants from landfills have the potential to migrate off-site and contaminate neighboring properties, causing third-party property damage third-party bodily injury claims against the developer.

Environmental Pollution Liability Can Provide Coverage For

- On-site cleanup of new and pre-existing pollution conditions
- Off-site cleanup of new and pre-existing pollution conditions
- Third party claims for bodily injury and property damage
- Third party claims for clean up
- Both sudden and accidental pollution conditions
- Aboveground and underground storage tanks
- Mold, bacteria, viruses, legionella and more
- Civil fines and punitive damages where allowed by state law
- Business interruption resulting from pollution conditions
- First and third-party transportation pollution liability
- Loading and unloading
- Defense costs for third party claims
- Illicit abandonment
- Natural resource damage
- Civil fines and penalties
- Non-owned disposal sites

Claims Scenarios & Examples

- A few years following construction of an upscale apartment community, the property owner began receiving complaints from multiple tenants about mold in bathrooms. An investigation revealed that construction defects associated with showers and the HVAC systems resulted in severe water intrusion and moisture build-up, leading to widespread mold growth. Through litigation, loss of rent, cleanup costs, and settlements with injured tenants, the property owner was left with a bill for over \$2 million.
- Current and former residents brought a lawsuit against a developer after residents discovered their homes were built on contaminated ground, causing their home values to plummet (Diminution in Value). When the contamination was discovered, home values plummeted and residents reported a variety of health problems, including asthma, cancer and birth defects. As part of a settlement reached, the developer agreed to pay out \$7.2 million, which will be shared by the affected residents.
- A housing development project was delayed because it was discovered that the land was contaminated from a prior hazardous waste landfill on the site. A state required environmental assessment of the site discovered chemicals in the soil. The property developer, along with the state health department and EPA were involved in testing and removal of the hazardous waste, which consisted mainly of chemical solvents. There were additional concerns for potential ground water contamination. The property developer had to pay for the removal of the chemical waste.
- During excavation and dewatering activities on a previously undeveloped parcel of land, contaminated groundwater was discovered. State regulatory authorities required the developer to collect, test and treat groundwater pumped out during the excavation process. Contaminated soils were also discovered at the site, and it was determined that the contamination had migrated from a nearby manufacturing facility from several years prior to the development project. This caused construction delays and additional expenses, totaling over \$1 million for the developer.
- During the development and construction of a residential community, excessive soil erosion and site run-off from the work site contaminated a local creek. Several local groups filed suit against the general contractor and development owner and alleged the defendant's method to control soil erosion contaminated the site with phosphates and caused excessive algae to grow. The development owner then sued the general contractor for breach of contract.
- A project owner hired an environmental contractor to remove waste from a project site. While consolidating and packaging chemicals prior to off-site transportation and disposal, incompatibles were mixed, resulting in an explosion and release of toxic vapor cloud. The explosion and ensuing vapor cloud contaminated the project site and surrounding residential properties. Site owners and numerous third parties were sued for resulting bodily injury, physical damage and clean-up costs.
- A property developer had converted an older building into a mixed-use retail center with a restaurant, retail shopping center and condos. After several months of occupancy, the employees of the restaurant and stores as well as the residents began to notice increased nausea, headaches, etc. After investigation, the state environmental agency determined that the problem was gasoline vapors from contaminated groundwater originating from a gas station next door. While mitigating the vapor intrusion issue, the property developer/owner incurred hundreds of thousands of dollars in lost income, living expenses for displaced residents, clean-up and property improvements as well as the alleged bodily injury to those exposed to the harmful vapors.
- A real estate development firm acquired property previously used for farming on which they planned to build a mall. The firm hired a consultant to conduct a Phase I ESA. The property was determined to be clean. However, when excavation for the mall began, 100 drums of buried pesticides and herbicides were unearthed. The chemicals contaminated the soil and had to be removed at the firm's expense. Remediation and drum disposal costs exceeded \$750,000.

Final Consideration

As a property owner you can be faced with the cost to defend yourself against allegations or legal action from pollution related events, regardless if you are at fault or not. Having the proper insurance coverage in place will help fund the expenses incurred to investigate or defend against a claim or suit and provide you with environmental claims handling expertise.

This environmental risk overview has been developed by Environmental Risk Professionals on behalf of J. Loos & Associates. It is intended to provide the reader with a broad range of potential risks they may encounter and may not reflect all risks associated with their business. To verify available insurance coverage, please consult your insurance representative.

© 2020 Environmental Risk Professionals



J. LOOS & ASSOCIATES
Daniel Loos
919-256-6860
daniel.loos@jloosins.com
www.jloosins.com