

Shopping/Retail Centers



Shopping and retail centers can face many environmental exposures from the property as well as from store operations. Various pollutants can enter building materials, be used and stored on site by either the property owner/manager or tenants or be abandoned on site, resulting in environmental cleanup and third-party liability. Leaks of hazardous materials can occur from onsite storage tanks, diesel generator systems and delivery trucks which can leach into soil and groundwater or collect in storm water runoff. Collected wastes may contain materials classified as hazardous and require special disposal procedures. Since pollution laws are strict and joint and several, the property owner can be named as a responsible party even if there may not have been negligence on their part. The mere ownership of property creates liability.

Environmental Exposures May Include

- Mold growth can result from water and wastewater releases into building materials and subsurfaces due to leaks, overflows and blocked drains or pipes. Mold may also develop in other water systems such as refrigeration or HVAC systems and water features.
- Legionella is a bacterium that causes a form of potentially fatal pneumonia. Legionella can thrive in water-containing systems like air conditioning, water heating and cooling systems and water features. It can accumulate in warm, stagnant, pooled or infrequently drained water. Poorly maintained systems and inadequate corrosion control or sanitization can result in Legionella exposure.
- Older buildings may contain asbestos, lead and PCBs. Asbestos-containing material (ACM) can be found in areas such as ceiling and floor tiles, insulation, around wiring and in fireproofing on structural steel. PCBs can be found in areas such as window caulk and light ballasts. Lead could be present in paint or pipes. Lead claims may result from inadvertent disturbance or alleged exposure during renovation, construction or interior remodeling.
- “Sick Building Syndrome”, where building inhabitants suffer health problems while in a building, is often attributed to poor building design, maintenance or a faulty ventilation system. Along with asbestos, lead, mold and bacteria, other exposures that can contribute include chemicals stored onsite or found in building materials, combustion products such as carbon monoxide, pesticides or volatile organic compounds which can emit from various sources, including routine cleaning and building maintenance.
- Leaks from delivery trucks of fuels, oils and other automotive fluids on the property can leach into the ground or discharge into water systems by runoff or collection in storm water. Runoff from paved surfaces, such as parking lots, can also collect fuel, oil and chemicals and discharge them into water systems.
- Tenants may use and stock materials that contain chemicals, such as paints, solvents, lawn care and automotive products. Leaks or spills from improper handling or storage could result in environmental liability. Chemicals could also be abandoned by a tenant when they vacate.
- Leaks, spills or over-application of pesticides, insecticides and rodenticides can contaminate soil, surface water or groundwater and impact adjacent properties and storm water runoff. Inadequate ventilation or insufficient time before building re-occupation can affect third-parties with respiratory issues or systemic toxicity.
- Shopping centers can have current or past dry cleaning tenants, who utilize chemicals such as perchloroethylene or “Perc” in their operations. Spills or leaks from equipment can migrate into soil and groundwater. Vapors from released chemicals can also intrude into buildings. Improper handling or disposal by the tenant, including the discharge of cleaning solvents and waste into a drain, can expose the property owner to environmental liability.
- Restaurants and fast food establishments may have grease traps onsite. Leaks or spills from poor maintenance, or during loading/unloading of grease wastes, can contaminate soil or groundwater, clog drains or sewer lines, cause natural resource damage and expose bacteria and infectious diseases to third parties.
- Tenants, such as restaurants and grocery stores, use refrigeration systems, chillers and walk-in coolers. These units may use chemicals, such as ammonia, hydrofluorocarbons (HFCs) or chlorofluorocarbons (CFCs), and their release can cause serious health hazards to third parties, including respiratory illness and even death.
- Above and underground storage tanks are often utilized to store potential pollutants such as fuels, heating oil and lubricants. Tenants may also install tanks for storage, including gas stations, auto repair shops and dry cleaners. Leaks or spills can result in soil and groundwater contamination and pollute storm water runoff.
- Centers may require the use of energy back-up systems. The use of diesel generators can create diesel soot or particulate, which is an airborne carcinogen, and require storage tanks for fuel which can leak. Leaks can be caused by loose components, deteriorated gaskets or cracks or holes in fuel lines.
- Illicit abandonment is the illegal dumping of pollutants on a property. 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.
- Collected waste must be properly characterized and segregated based on the type and hazards associated with them. Wastes that are collected can contain hazardous materials or materials that require special disposal procedures, and improperly segregated and disposed of wastes can result in regulatory fines or lead to cleanup and environmental tort liability. This can include fluorescent light fixture ballasts, fluorescent light tubes and bulbs, paints, paint and floor strippers, solvent soaked rags, used oil and construction debris containing asbestos, lead or PCBs.

Environmental Pollution Liability Can Provide Coverage For

- On-site cleanup of new and preexisting pollution conditions
- Off-site cleanup of new and preexisting pollution conditions
- Third-party claims for bodily injury and property damage
- Third-party claims for cleanup
- Both sudden and gradual pollution conditions
- Aboveground and underground storage tanks
- Non-owned disposal sites
- Mold, bacteria, viruses, legionella and more
- Business interruption resulting from pollution conditions
- First and third-party transportation pollution liability
- Loading and unloading
- Defense of third-party claims
- Illicit abandonment
- Natural resource damage

Claims Scenarios & Examples

- A dry cleaner tenant located in an upscale shopping center was found to have been illegally operating by failing to maintain adequate containment of spent perchloroethylene (PCE) solvent canisters. The canisters were stored in an exterior trash container, and over time the PCE leaked onto the cracked macadam surface and eventually migrated off-site. The plume traveled with the flow of groundwater and contaminated several adjacent residential properties requiring extensive cleanup. The residents filed bodily injury and property damage claims against the dry cleaner and the owner of the shopping center.
- 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. The developer/owner originally suspected a natural gas leak but the local fire department confirmed that was not the case. After further investigation, the state environmental agency and an environmental engineer determined that the problem was vapor intrusion. This was due to gasoline vapors from contaminated groundwater originating from a leaking underground storage tank (LUST) from a gas station next door. While taking care of the problem, the entire building's operations were shut down. As a result, the property developer/owner was out-of-pocket 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 well written Environmental Liability policy would have covered the bodily injury, property damage and clean-up costs.
- An unknown third-party dropped off methamphetamine lab waste in the parking lot of a shopping center at night. The next morning when employees arrived, they noticed the containers and contacted the local fire department. Local Hazmat crews arrived and discovered that the containers contained the extremely hazardous waste material. This resulted in costs to properly dispose of the hazardous waste at an appropriate disposal site.
- The owner of a retail shopping center had a gas station situated at one of the center's out-parcels. A leak occurred at one of the gas station's underground storage tanks. The petroleum contamination from the leak came in contact with groundwater and migrated off-site. The shopping center owner incurred significant remediation costs and associated defense expenses.
- At a shopping center, the floor drains separated from the sanitary sewer lines. This was discovered during renovations. The defective sewer system caused over \$750,000 in remediation costs and loss of rental income.
- A building owner leased space to a dry cleaning facility. The dry cleaner went out of business and ceased operations. Tetrachloroethylene (PCE), a solvent used in dry cleaning, was subsequently detected on-site, in the groundwater, and at an adjacent shopping center. With the dry cleaner out of business and no pollution liability insurance, the building owner was responsible for the \$460,000 in cleanup costs to remediate the contaminated soil and groundwater.
- 8 people died and 97 others were sickened by a Legionnaire's disease outbreak. Cooling towers at five buildings tested positive for Legionella, including a shopping mall plaza. The cooling towers had to be decontaminated and the facilities had to submit long-term plans as to how they would maintain their cooling towers to protect against any future growth of legionella.
- A mold problem at a retail mall center affected the breathing of students and instructors at a karate studio located there. The karate studio used a large garbage can to catch rainwater and the studio had the distinct smell of mold. The studio lost students due to the mold. An inspection of the building, built in the 1970s, found mold, mildew, holes in the ceiling and tell-tale black splotches. The mall's owner was cited for failing to properly maintain the rooftop parking deck, which caused water to seep into the second floor. The landlord was sued for failing "to keep the premises in a clean, safe and sanitary condition."

Final Consideration

Your property can be faced with the cost to defend itself 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.

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