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Managing Environmental Liabilities with Insurance

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Managing environmental risks has long been an industry problem for dry cleaners. Whether operating, buying, or selling a dry cleaning business, the potential risks associated with historical or future environmental contamination can adversely impact the operations or sale of your business.

In the past, operators, buyers and sellers of dry cleaning businesses have used traditional risk shifting tools to attempt to manage environmental risks. These tools have included the use of single purposes entities, indemnification agreements, and escrow accounts. However, these tools have been ineffective in managing legacy or future exposures related to the handling of hazardous materials. Too often, environmental uncertainties remain that can impair a dry cleaner's ability to grow, sell and obtain financing.

Environmental insurance has emerged as an effective alternative to these traditional risk-shifting tools helping to manage the long-term exposures associated with these types of businesses. Initially it was designed to provide much needed protection for dry cleaning owners and operators when insurance companies introduced pollution exclusions into standard general liability policies. At first, the policies offered limited coverage with high premiums reducing their appeal. Today, Insurance carriers, utilizing gained underwriting experience combined with increased market competition are offering broader coverage with more attractive pricing. Numerous products are now being offered such as pollution legal liability, remediation cost cap and secured creditors.

Pollution legal liability is the most flexible of these policies and can be tailored to accommodate a wide variety of situations typically encountered in the dry cleaning industry. The policy can be structured to include some or all of the following features and coverages.

Policy Features

- Policy terms up to 10 years
- Policy limits up to \$50,000,00

- Covers both historical and future conditions
- Claims-made policy form
- Coverage Triggers: Discovery, Third Party or Government Mandate
- Flexible Deductible/Premium Structure
- Transferability to future owners

Standard Coverages

- On-site cleanup of historical conditions
- On-site cleanup of new conditions
- Off-site cleanup of historical conditions
- Off-site cleanup of new conditions
- Third party claims for bodily injury and property damage
- Legal defense expenses

Optional Coverages

- Diminution of adjacent property value
- Business interruption - actual loss or rental income
- Underground & above ground storage tanks
- Bodily injury caused by lead based paint
- Bodily injury caused by asbestos
- Environmental liability assumed under contract
- Natural resource damages

In a recent lease renewal negotiation between a mid-size dry cleaning business and an institutional owner of a 98,000 square foot shopping center, it was required that the dry cleaner convert to a dry drop operation or provide financial assurance relating to environmental exposures. The dry cleaner wanted to continue his operations on the premises and offered to indemnify the landlord. Ultimately, the owner was unwilling to accept the environmental indemnification from the tenant citing a variety of concerns with the indemnification.

The owner and tenant turned to environmental insurance as the solution.

A Pollution Legal Liability policy was structured providing the following:

- On-site and off-site clean-up of new conditions
- Third party coverage for bodily injury and property damage claims
- Legal defense expenses

Liability Limit: \$2,000,000

Deductible: \$10,000

Policy Period: 5 years

Policy Term Premium: \$19,500

Both the dry cleaning business and shopping center owner were named as insureds on the policy. The dry cleaner was able to renew the lease and continue operations on the premises. In addition, provided the assurance that the environmental liabilities associated with the dry cleaning operation were diligently managed ultimately assisting the operator and the owner in future re-financing and sale.

When facing the unique challenges of owning or operating a dry cleaning business with known or potential environmental exposures or if you are considering the acquisition, sale or financing of a dry cleaning business with environmental concerns, environmental insurance can deliver innovative solutions that manage the risks and long-term liabilities associated with your business.