

Defining the Doctrine

Strict liability is a legal doctrine that makes a person or company responsible for their actions or products which cause damages regardless of any negligence or fault on their part. Pollution liability falls under this doctrine. In this case a plaintiff filing a suit does not need to show intentional or negligent conduct, only that there is bodily injury, property damage, or most common when it comes to pollution – cleanup costs.

Illicit Abandonment

Illicit abandonment is the illegal dumping of pollutants on your property or job site (commonly called midnight dumping). This is typically done by someone looking to avoid the high costs of hazardous material disposal, but it can become your burden if law enforcement cannot find the originator of the waste. The strict liability nature of pollution, and the fact that there is no other person to hold responsible, leaves the pollutant squarely in your hands to dispose of.

It becomes a unique pollution insurance issue because “pollution conditions” have historically been defined using motion words such as dispersal, escape, release, migration or seepage because carriers had to clarify that properly contained pollutants didn’t constitute a “pollution condition.” It creates a problem in the case of illicit abandonment because the pollutants are often contained in drums or tanks of some kind and therefore don’t have the requisite motion. Some carriers have specifically added illicit abandonment to the definition of “pollution conditions” to address this issue.

Non-Owned Disposal Sites

Environmental laws make you responsible for your potentially hazardous waste even after it has been properly disposed of at an approved facility. Another aspect of environmental liability is what is commonly referred to as “cradle-to-grave” when it comes to waste and pollutants. The idea is fairly simple, if you create a pollutant, then you “own” it forever. No matter where that pollutant goes in the future, you can still be found liable for it – even if you handle and dispose of it legally and properly. The doctrine of strict liability means that you can still be found liable for that pollutant, even if you disposed of it properly.

In the case of a waste disposal facility, recycling facility, or landfill this still holds true. If the disposal site has environmental problems, the EPA or other regulators will first review the manifest and can require the originators of the waste to pay for a portion of the cleanup.

Environmental insurance policies can provide coverage for hazardous waste you dispose of at a site that is properly permitted for treatment, storage or disposal of such waste.

UCPM & True & Associates Recommendations

Many business owners feel that they have little or no exposure when it comes to pollution liability. Their practices and process are solid, and their risk control measures are adequate. But the doctrine of strict liability when it comes to pollution means that there are outside forces that can negatively impact your business – through no negligence or fault of your own. Managing that risk with a pollution policy just makes sense.

