



Insurance Coverage For Emerging Contaminants

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**Jennifer C.
Baker**
Of Counsel

Never heard of that chemical? It could be an emerging contaminant, which calls for careful consideration as to whether there is insurance coverage for environmental investigations and remediation that may be required due to its presence in the environment.

What are emerging contaminants?

Emerging contaminants are chemicals that have been determined to be widespread, persistent in the environment, and not currently commonly monitored during environmental investigations and remediation. They consist of industrial chemicals, pesticides, surfactants, and pharmaceuticals. [1,2,3-Trichloropropane](#), [2,4,6-Trinitrotoluene](#), [Dinitrotoluene](#), and [1,4-Dioxane](#) are a few examples of the various compounds categorized as emerging contaminants by US EPA.

Environmental regulators continuously evaluate new contaminants for their risks to human health and the environment. As those risks are calculated, environmental regulatory agencies add the emerging contaminants to the list of compounds that are required to be monitored and remediated as part of environmental cleanups. However, the approaches taken by the U.S. Environmental Protection Agency and the states have not been uniform – which has resulted in different requirements depending on where your site is located.

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Can insurance cover the cost of cleaning up and remediating emerging contaminants?

In a word, yes. It is worth evaluating the [entire historic insurance program](#) that was in place for sites with property damage. A good place to start is reviewing historic comprehensive general liability (CGL) policies. Those insurance policies typically apply on an “occurrence,” rather than “claims-made” basis. That means the policies in place when there was property damage during the policy period should continue to apply, even if the liability for the property damage does not appear until decades later.

So for substances that now are seen as “emerging contaminants,” but have been in soil, groundwater, or otherwise since the 1960s, 1970s, or 1980s, CGL policies from those years [may pay for environmental investigations and cleanups](#) involving emerging contaminants. Therefore, it is in the interest of policyholders to conduct an exhaustive search for historic CGL policies and have them reviewed professionally, if faced with current demands from regulators related to emerging contaminants.

Policyholders also may be able to obtain coverage for future demands related to investigating and remediating emerging contaminants with various types of site pollution or environmental impairment liability policies. These types of products particularly have the potential to reduce the uncertainties for policyholders associated with brownfield redevelopment projects. Due to the ambiguities regarding which new compounds environmental regulators may demand investigation and remediation of in the future, it is a best practice to engage in a careful review of past uses of the property and facility to ensure that specific potential contaminants are not being excluded from these new policies.

Takeaways for insureds and policyholders considering insurance for emerging contaminants

These are some best practices for insureds and policyholders considering whether insurance could cover their costs and liabilities for remediating emerging contaminants:

1. Consider whether historic insurance policies might apply
2. Gather and evaluate historic policies, including those policies that could have been transferred to the current owner
3. Evaluate general liability, pollution and contamination insurance policies
4. Put insurance carriers on notice and seek coverage under potentially relevant insurance policies

Although there are a number of uncertainties involved with insurance coverage for emerging contaminants, such coverage may exist and, if available, may substantially assist with the costs associated with environmental cleanups related to those contaminants.