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Mitigating Environmental Risks in Life Science Leases

A lot of hazardous material passes through these facilities, so caution is necessary.

■ By Michael Pollack, Barton LLP

Life science industries span a range of uses — clinical research and trials; biologics; medical devices; pharmaceuticals; vaccines research, development, manufacturing and distribution; plant and animal technology; and veterinary products, to name just a few. Leases for life science facilities can present unique challenges and considerations for building owners. Besides the special demands life science uses place on electrical capacity, HVAC, floor loads and waste removal, the activities within these facilities can pose many other risks.

Inherent in many life science facilities is the utilization, storage and/or distribution of materials considered hazardous or toxic under applicable environmental laws. Of course, most common leases will contain standard indemnification clauses allocating responsibility to the tenant for losses resulting from its activities.

When it comes to environmental issues, though, there are heightened concerns for owners of life science properties. These include the environmental indemnity the principal owners provide to their lender (which typically comes from a well-funded source other than the property owner) and the strict liability imposed under federal law on anyone in the chain of title for clean-up and other costs, whether or not they caused the contamination.

New & Noteworthy

240,000 sq. ft.

Meritex recently completed **Meritex Lenexa Executive Park Buildings 1 and 2**, two 120,000-square-foot industrial buildings in **Lenexa, Kansas**. The new buildings each feature clear heights of 28 feet and eco-friendly, insulated wall panels. The site is located minutes away from I-35, K-10 and I-435 highways. **Merit General Contractors Inc.** served as the contractor and **Colliers** will be the listing broker.



176,000 sq. ft.

Carroll Industrial Development, a division of **The Carroll Companies**, is developing the **Rockingham Business Park**, a 176,000-square-foot **spec industrial building** in **Stokesdale, North Carolina**. The space is designed for light industrial, assembly, warehouse or distribution companies. It will offer 34-foot heights and 44 dock doors in a location adjacent to Interstate 73 and about 13 miles from Piedmont Triad International Airport.



111,000 sq. ft.

Goldenrod Companies is developing **The Van Zandt** in **Fort Worth's** popular West 7th District. It is the first **speculative office development** in Fort Worth since 2017. The project will include approximately 99,400 square feet of Class AA office space, 147 multifamily units, and 11,600 square feet of street-facing retail and dining space. Goldenrod has selected **Stream Realty Partners** to provide office leasing services for The Van Zandt.



A Look Ahead

This is exacerbated by the fact that the owner would normally only have recourse from the tenant for a breach of the lease's environmental restrictions. (While the lease may include a security deposit, it is unlikely that it will be sufficient to address the costs that may be incurred.) When the tenant is an established pharmaceutical company or medical device maker, the owner may feel comfortable with the financial stability that can support these obligations. However, many life science companies are startups, often backed by private equity or venture capital funds. These firms have more limited operating histories and capital reserves, as well as more uncertain future earnings.

Typically, the tenant has the most control over what is brought to the



Dangerous chemicals and infectious diseases are among the many hazardous materials that are handled inside life science facilities.

property and how it is handled there, while the owner is more removed from day-to-day operations. Given the disconnect between the parties' relative degree of control and potential for

personal liability should environmental contamination occur, the owner of the life science project should include additional guardrails and mechanisms in the lease document to monitor

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operations at the property and protect against environmental exposure. Examples of steps owners may take to manage these risks include:

Upfront disclosure. Identify and limit the hazardous materials that may be brought into the premises and in what quantities. Independent environmental professionals should review this list of materials to confirm they are necessary and reasonable. Where the property or material being handled is subject to a “right to know” law, ownership may need to provide notice to other tenants or neighbors of the materials being brought into the building.

Monitoring. The owner must be able to enter and inspect the premises periodically to confirm compliance with applicable covenants and requirements.

Environmental insurance. Ownership should require the tenant to carry pollution-related legal liability insurance that covers the owner and the tenant against property damage, bodily injury, cleanup costs and claims. The

New & Noteworthy

58,258 sq. ft.

C.W. Driver Companies recently broke ground on a 58,258-square-foot mixed-use multifamily product for **Begonia Real Estate Development** in **Temple City, California**. The four-story podium structure will feature 74 market-rate apartments, 11,000 square feet of commercial space and a subterranean parking garage. The project is expected to be completed in June 2023. The unit mix will offer one-bedroom, two-bedroom and three-bedroom options with floorplans ranging from 732-1,251 square feet.



55,670 sq. ft.

Ware Malcomb has finished construction on **Toyota Financial Services (TFS) Experience Center East**, a dealer service center in **Alpharetta, Georgia**. Creating a connection between people and nature — known as biophilic design — was a priority. A green biophilia wall covers 28% of the first-floor lobby wall, and two 18-foot-long biophilia walls, comprised of 70% wood pieces and 30% greenery, are found on the second and third floors.



Benny Chan, Fotoworks

22,000 sq. ft.

LPA Design Studios designed the recently completed headquarters for **Traffik**, a global marketing firm in **Irvine, California**. The company's new two-story, 22,000-square-foot workplace is in an outdoor shopping center in a space originally intended for a steakhouse. The retail component is highlighted by street views of the firm's glass-enclosed podcast studio and main conference room. Elsewhere, metal frames, brick, wood floors and leather furniture define the space.



LPA

A Look Ahead

terms and limits should be satisfactory to the owner. The term of this insurance should extend beyond the end of the lease.

Reporting. If not already in hand, the owner or the tenant may want to perform a baseline report establishing the environmental condition of the property at the beginning of the lease term. Periodically throughout the term, the owner may want the tenant to provide (or ownership may want the right to perform) an updated report, with the responsibility for the cost of the update being a negotiable item. (The owner will certainly want the tenant to perform and deliver such a report to the landlord, at the tenant's expense, if a release or contamination occurs and again, at the end of the lease term, whether or not a release has occurred.)

Decommissioning. At the end of the lease term, the tenant should dismantle and remove any equipment used to handle hazardous materials, remediate any contamination and restore the affected areas to a satisfactory condition.

These suggestions are in addition to the usual lease provisions requiring indemnification, compliance with laws, notice of claims and survival of liability.

Other lease provisions may also warrant special attention in this context. One example is the assignment and subletting provision. There, ownership may want to make sure that successors to the original named tenant, whether by merger or assignment, maintain adequate liquidity and net worth to meet the tenant's obligations under the lease. Elsewhere, ownership

may want to require periodic financial reports from the tenant to confirm that it maintains adequate liquidity and net worth to meet its lease obligations, whether or not a merger or assignment has occurred.

In light of the severe consequences should a violation of environmental covenants occur, the owner must understand the nature of the activities being conducted by the life science tenant in advance and include provisions in the lease protecting it accordingly. Besides having these provisions crafted by qualified legal counsel, the substance and nature of the activities to be conducted by the prospective life science tenant will need to be reviewed by environmental professionals. ■

Michael Pollack is a partner with the Barton LLP law firm in New York.

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