

Environmental Considerations for FBO Operators

How FBO operators can minimize their environmental liability

Environmental issues relating to fuel contamination have become an increasingly important issue for FBOs when leasing space at an airport. Airport lease agreements, more often than not, include a clause stating the FBO is solely responsible and fully liable for any and all fuel leaks or spills, as well as any damage resulting from same. Many lease agreements also include indemnification clauses requiring FBOs to hold harmless and indemnify the airport, the city, the county, or any other governing entity, thereby effectively releasing these parties from liability for the FBOs' tenants' spills, and perhaps even spills that originate elsewhere on the airport property and migrate onto or under an FBO's leasehold. As fuel spills and leaks are a very real possibility, whether on an FBO's own leasehold or elsewhere at an airport, there are some important steps FBOs need to take to minimize their legal liability.

ESTABLISH A BASELINE

Prior to signing a lease at an airport, familiarize yourself with the history of the airport. Specifically, research for what purpose(s) the land has been used in the past and whether there have been any previous fuel spills or other potential sources of contamination. The FBO should also conduct testing of the underlying

ground to establish a baseline contamination level with respect to its leasehold. Knowing whether contamination is present will allow the FBO to disclaim liability for any pre-existing conditions rather than being liable for contamination the FBO did not cause. If pre-existing contamination is present and not documented and disclaimed by the FBO at the outset of a

tenancy, it is possible that the FBO could be liable for the costs associated with remediation.

KNOW ENVIRONMENTAL CONDITIONS

Underground contamination is a moving target, particularly if there is water flowing under a leasehold. Thus, it is important to be aware of waterflow patterns under your leasehold (if any), the environmental conditions surrounding your leasehold and the airport, and to be cognizant of whether those activities can impact your baseline contamination level. To this end, FBOs should consider establishing a periodic audit with respect to its own potential sources of contamination, as well as those potential sources external to it. FBOs should document identifiable fuel spills and contamination events on adjacent properties and, as required, undertake interim monitoring to determine if the same impact the soils and groundwaters under their own leaseholds.

PUT A RESPONSE PLAN TOGETHER

An FBO that deals with fuel in any capacity needs procedures in place to address fuel spills. Knowledge of the local environmental regulations and compliance with same can protect the FBO from additional penalties and fines when a spill occurs. The FBO should have a written fuel response plan that is consistent with the local regulations with respect to reporting requirements, immediate clean-up and remediation, and post-incident monitoring. Lack of or insufficient environmental response procedures can expose the FBO to additional governmental penalties. Further, improper waste handling, storage and disposal can result in regulatory fines, as well as negative publicity for the FBO.

LIMIT LIABILITY TO YOUR CONTAMINATION

WHEN negotiating the lease, limit your liability to the contamination you cause. Provide the airport with the results of the baseline testing in order to disclaim contamination caused by a previous tenant. Further, establish procedures for tracking the contamination you cause. In addition to the tracking your own contamination, FBOs should monitor changes on the airport as well as any other fuel spills.

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