

**MODEL LEASE
CLAUSE****Require Tenant to Submit to
Environmental Audit Before Lease Ends**

Standard commercial leases require tenants to comply with applicable environmental laws and refrain from using or storing hazardous chemicals or substances on the premises. They also give the landlord remedies for environmental offenses and damage that tenants commit. However, there's one key protection they often don't include, namely, the right to have an environmental consultant audit the leased premises at the end of the term to detect the presence of such pollution. This can be a crucial right to the extent it enables landlords to not only discover environmental damage proactively but also determine which tenant is responsible for causing it.

Here's a Model Lease Clause prepared by an environmental attorney in New Jersey, where commercial litigation over contamination to leased property happens all the time. Ask your attorney to tailor it to your own situation and on the basis of the actual circumstances, including the tenant's business and the location and size of the property.

ENVIRONMENTAL AUDIT OF LEASED PREMISES

- a. Landlord Right to Audit Before Lease Ends.** Landlord shall have the right to conduct an environmental audit at the premises prior to the termination of the Lease and to enter upon Tenant's premises to conduct such environmental audit.
- b. Landlord Right to Decide Whether to Audit.** The decision whether or not to conduct the environmental audit provided for above shall be within the sole discretion of Landlord to make.
- c. Scope of Audit.** The environmental audit provided for herein shall consist of such examinations, tests, inspections, sampling and sample testing, reviews, and other evaluations as Landlord shall in its sole discretion determines to be advisable.
- d. Landlord Right to Select Auditor.** The environmental audit provided for herein shall be performed by a consultant of Landlord's choice to be selected in accordance with Landlord's sole discretion.
- e. Tenant Duty to Pay for Audit.** Tenant shall be solely responsible for the payment of the conduct of the environmental audit provided for herein.
- f. Failure of Audit Does Not Release Tenant from Liability.** Failure to conduct the environmental audit provided for herein or, if such audit is conducted, failure to detect conditions attributable to Tenant or Tenant's operations shall in no fashion be intended as a release of any liability for environmental conditions subsequently determined to be associated with Tenant or Tenant's operations.
- g. Tenant to Remain Liable After Lease Ends.** Tenant shall remain liable for any environmental condition(s) related to its operation regardless of when such condition(s) is/are discovered and regardless of whether or not Landlord conducts an environmental audit at the termination of the Lease, such that the obligations set forth in this clause shall survive the termination of the Lease.
- h. Escrow.** Tenant shall deposit at the commencement of the Lease term \$ ____ into an escrow account held by Landlord to defray the costs and expenses of the environmental audit provided for herein. Monies will be paid out of the escrow account for these purposes upon receipt of bills by Landlord. Any escrowed funds remaining in the escrow account after the payment of all costs and expenses associated with the environmental audit shall be returned to Tenant. In the event that audit costs and expenses exceed the amount being held in escrow, Tenant shall pay any such excess costs and expenses immediately upon receipt of bills.