Environmental and Professional Risk Overview

Residential Contractor / Custom Home Builder

Residential contractors can face environmental exposures from various operations they perform as well as from the activities of their subcontractors. Environmental exposures can include spills or leaks of hazardous materials, fumes from construction activities, off-gassing from materials used or installed, the disturbance and stockpiling of soils, and the inadvertent disturbance of existing pollutants including asbestos and lead-based paint. Improper installation of building materials or their exposure to weather elements can lead to the growth of mold and bacteria. Additional exposures can stem from the disposal and transportation of materials and wastes. Residential contractors can also face professional liability exposures through their involvement in design aspects, field changes to design and the selection and supervision of subcontractors.

Environmental and Professional Exposures May Include

- Failure to properly locate underground utilities such as gas lines, water and sewage pipes, or unknown hazards such as septic tanks, could result in striking a line or causing an accidental puncture and release of pollutants like fuel oil, chemicals, toxic gases or sewage.
- Disturbance, relocation or stockpiling of soils could result in unknown pre-existing contaminated soil being collected and spread to clean areas of a site or being improperly disposed. Fugitive air emissions, such as dust and particulates, could also be released.
- Improper erosion controls or stockpiling of soils could allow a runoff of silt and sediment. Exposure to storm water or a water pipe break could lead to surface runoff of these soil particles, which could impair proper functioning of storm water drainage systems and cause ecological damage to streams and rivers.
- Leaks in sewer lines can result in the migration of sewer gases into living/work areas and utility conduits and/or the release of sewage contaminants, including pathogens, chemicals and nutrient pollutants, into nearby subsurface utilities and water systems.
- Hazardous materials may be used during construction and stored at a job site. Spills and leaks of materials such as adhesives, sealants, solvents, paints, coatings and curing compounds could result in extensive cleanup liability. Air emissions from fumes, overspray or mixing incompatible chemicals can release toxic vapors that pose an inhalation hazard to third parties.
- Fumes and hazardous air emissions can be released from construction activities such as welding (manganese), concrete cutting (silica dust) or combustion engines (carbon monoxide).
- Equipment brought to and stored on a job site may be powered by diesel fuel and require petroleum-based hydraulic fluids and lubricants. Release of fluids can occur from leaks or spills during refueling or maintenance, or during transport to and from a job site.
- Wastewater from equipment wash out may contain toxic, caustic and corrosive materials. Improper washouts or leaks can impact adjacent properties or enter storm drains which discharge to surface waters and can damage natural resources and aquatic life.
- Leaks or spills can occur during the transportation or loading/unloading of chemicals, paints, waste or debris to and from a job site or disposal facility. Exposures may be from the insured operating their own vehicles or contingent liability through those they hire.
- Improper design or installation of plumbing and HVAC systems or building materials, including windows, insulation and drywall, could result in leaks, condensation or water intrusion into building materials and cause the growth of mold and bacteria. Work to existing systems during renovation or exposure of installed raw material to moisture conditions could also result in mold growth.
- Unhealthy indoor air quality could result from many newly installed materials or from poorly designed or faulty building ventilation. Contaminants that can affect the health of building occupants include mold and bacteria; volatile organic compounds, which can emit from adhesives, paints and preservatives; formaldehyde, which can be in engineered wood products and adhesives; and combustion products such as carbon monoxide.
- Inadvertent disturbance during installation, repair or renovation could release asbestos particles from asbestos-containing materials such as insulation, floor tiles, or ceiling tiles; lead particles from lead-based paint; or mold or mold spores from areas where water intrusion has occurred.
- Once work has been completed and put to its intended use, contractors can still be liable for pollution exposures, at least through the statute of repose, for construction defects or from products or materials installed or installed incorrectly.
- Hazardous waste may be inadvertently mixed with construction debris/waste and then disposed of improperly. Hazardous materials or waste contaminated with pollutants may require special disposal procedures. Improper disposal of wastes can lead to cleanup costs and environmental tort liability.
- Contractors may provide design services that can result in professional liability. This may include performing all in-house design work, hiring design firms through a joint venture or providing professional opinions on design aspects. Associated errors and omissions can result in time delays, budget overruns and rework.
- Contractors may make modifications to design specs while at the job site. Malfunctions arising from these changes create a direct professional responsibility for the contractor.
- Proper selection and supervision of subcontractors can be a professional exposure for the contractor. Contractors may have to defend themselves against claims relating to work for which they were responsible due to the hiring of the sub.

Contractors Pollution & Professional Liability Policy Can Provide Coverage For

- Contracting operations done “by or on behalf of” the insured
- Contracting operations performed at a job site
- Third-party claims for bodily injury and property damage
- Third-party claims for cleanup
- First-party emergency response cost
- Mold, legionella, bacteria, fungi, lead, asbestos and more
- Sudden and accidental coverage for owned/leased locations
- Non-owned disposal site liability
- First and third-party transportation pollution liability
- Loading and unloading
- SIlt and sedimentation
- Mitigation/rectification
- Excess/contingent design
- Defense of third-party claims

Claims Scenarios & Examples

- A general contractor hired an architect in a design/build delivery system to design and construct a structural retaining wall at a residential subdivision. A drainage system behind the wall was not included in the design, so the wall settled and cracked from hydrostatic pressure. Because of necessary underpinnings for structural correction of the foundation, the owner sued for damages in excess of $500,000. The general contractor ended up being responsible for $200,000 in damages.

- A general contractor was working on a large window replacement project for custom-built condominiums. During the project, the interior window seals were damaged, and it was later found that the former window sills contained asbestos, and the caulking contained PCBs. Further testing found that asbestos was airborne and PCB contamination was present. The condominium association and unit owners sued the general contractor for cleanup costs, project delay and loss of use.

- After purchasing a new beachfront home for $2.5 million, the couple began to experience health issues. The husband had some minor respiratory issues and headaches from exposure to Stachybotrys mold, and the wife, who had an underlying condition, experienced flu-like symptoms including diarrhea, dermatitis, and general malaise. Home repair costs were $662,000. The couple sued, and they were able to recover $1,353,000.

- During development of a residential community, a contractor’s method of controlling soil erosion failed, resulting in excessive runoff of soils into a local creek. Additionally, the erosion control method used resulted in elevated levels of phosphates in runoff that caused excessive algae growth. A lawsuit was filed against the owner of the development and the contractor claiming that they violated the Clean Water Act and state water statutes. The development owner then sued the general contractor for breach of contract.

- Prior to moving into their newly, custom-built 7,000 square foot home, the roof experienced some leaks and ultimately caved in. Stachybotrys, a mold known to be harmful, was also found throughout the home. The owners sued the builder and reached a settlement of $900,000.

- An excavation/grading contractor was working on a housing project and unknowingly spread petroleum-contaminated soil across a project site during fill operations. The contractor was named in a lawsuit for contributing to the extent of contamination. After deliberations, the contractor was eventually removed from the lawsuit; however, he had invested $250,000 in his defense.

- Within a few years of moving into her “dream home,” a women experienced “sick-home syndrome” and was forced to leave her home and everything in it. She sued the builders and all those involved in building the home. She won three of the verdicts for a total that exceeded $340,000.

- While working on a sewer installation project, a residential subcontractor improperly tied in piping, which resulted in sewage leaking into the ground. Raw sewage migrated into the underlying groundwater and contaminated residential wells. Bodily injury and property damage claims exceeding $400,000 were filed against the contractor, who was subject to indemnity and defense costs.

- A GC/developer was working on a high-end residential project and hired a civil engineering firm to delineate the wetlands that the project was building by. The project was in an early phase when it was discovered that the engineer had a miscalculation that placed seven homes in an incorrect area of the wetlands. Because additional property far enough from the wetlands was not available to purchase, the seven custom homes had to be demolished and re-situated. The GC faced demolition and reconstruction costs along with interest and delays, which all totaled around $600,000.

Final Consideration

As a contractor you can be faced with the cost to defend yourself against allegations or legal action from pollution or professional related events, regardless if you are at fault or not. Having the proper insurance coverage in place will help fund the expenses incurred to investigate or defend against a claim or suit and provide you with claims handling expertise.

This environmental risk overview has been developed by Environmental Risk Professionals on behalf of J. Loos & Associates. It is intended to provide the reader with a broad range of potential risks they may encounter and may not reflect all risks associated with their business. To verify available insurance coverage, please consult your insurance representative.
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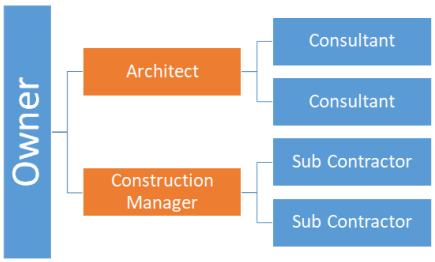
Professional Risk in Relation to Contractor Delivery Methods

Design – Bid – Build

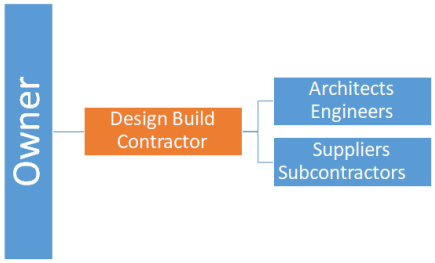
In traditional project delivery (design-bid-build), an architect or engineer provides design services while actual construction or implementation of the design is carried out by the contractor. Under this scenario, the potential liabilities facing the design professional and contractor are fairly well defined.



Design Build

Today, contractor responsibilities are often expanded beyond construction to include professional risk associated with construction management, design delegation, hiring design firms and actually self-performing design.

Project owners look to contractors to provide a single point of responsibility for design and construction. Contractors hold design contracts, and the design privity is between contractor/architect & engineer.



Self-Performed Design

Some contractors have an in-house design staff consisting of legally qualified architects, engineers, land surveyors and landscape architects who have the responsibility of reviewing and stamping drawings.

Design Delegation

Based on “performance” specifications, specialty subcontractors have effectively designed curtain walls and sprinkler systems for years. In addition, the contractor’s mechanical and electrical subcontractors are often engineering the heating, ventilating and air conditioning (HVAC) and other systems.

Hiring Design Firms as Subcontractors or Architect/Engineer Joint Venture

A growing number of projects are utilizing design-build project delivery where the contractor is acting as the lead design-builder or enters into a joint venture with a design firm. When a contractor assumes a single point-of-responsibility role for an owner by use of the design-build project delivery, they are now responsible for project design in addition to their construction obligations. Along with design-build project delivery, the project owner may hire separate design consultants to provide the interior design, landscape architecture or other services and then assign these contracts to the contractor.

Construction Management Responsibilities

A contractor may perform construction management services as the owner’s agent (agency construction management) or they may also hold separate contracts with the trade subcontractors (at-risk construction management). In both situations, the contractor takes on responsibility for supervision of the subcontractors, scheduling and cost estimating. All these activities create a recognized standard of care by the construction manager and a corresponding professional liability risk.