



## Asbestos/Lead Abatement

Asbestos is the name given to a group of naturally occurring fibrous minerals that are resistant to heat and corrosion. Pure lead (Pb) is a basic chemical element that can combine with various other substances to form numerous lead compounds. Both of these materials have been found to pose significant health risks, and contractors who perform or subcontract asbestos/lead abatement have many environmental risk exposures. Improper handling, containment breach and failure to fully abate are leading causes of environmental bodily injury and property damage. The transportation, storage and disposal of asbestos and lead containing materials also generate significant exposures.

### Environmental Exposures May Include

- Improper identification or the failure to completely identify and remove all areas of asbestos and lead may result in inadequate recommendations and remedial actions. This could lead to hazardous air from incomplete abatement, additional remediation, tort liability, punitive damages, fines and regulatory violations.
- Waste container breaches or improper handling may result in releases at either the job site, storage or during transit between the job site and disposal location. When an investigation for improper disposal occurs at a disposal facility, it can result in potential liability for all parties that manifested waste to the facility.
- Sample collection, which involves disturbance of building materials, may result in the release of asbestos containing materials or lead-based paint, along with subsequent exposures and improper waste disposal.
- Significant lead exposures can arise from removing paint from surfaces previously coated with lead-based paint such as bridges, residences being renovated, and structures being demolished or salvaged. With the increase in highway work, bridge repair, residential lead abatement and residential remodeling, the potential for exposure to lead-based paint has become more common.
- Asbestos Abatement contractors may transport and store bagged asbestos at their owned site or at temporary storage facilities pending final disposal
- Failure to properly seal off, clean up and decontaminate at a job site, or failure to properly use equipment could cause release of asbestos fibers or lead particles leading to third party liability
- Lead can damage the central nervous system, cardiovascular system, reproductive system, hematological system and kidneys. Lead exposure can be caused by ingestion or inhalation. When absorbed into the body in high enough doses, lead can be toxic. In addition, workers with lead exposure can harm their children's development. Short-term (acute) overexposure can cause acute encephalopathy, a condition affecting the brain that develops quickly into seizures, comas or death from respiratory arrest.
- Asbestos can be found in many applications in residential, commercial and industrial properties, including ceiling and floor tiles, heating duct insulation, thermal pipe insulation, roofing materials and spray flame retardants. When asbestos fibers are disturbed and released, they can be inhaled and cause serious health hazards or fatal diseases such as asbestosis, lung cancer, mesothelioma and other cancers.
- People can get an asbestos-related disease without ever working with or around the toxic mineral. Secondhand exposure, or indirect exposure, can be just as dangerous as firsthand exposure. Workers returning home might carry fibers on their hair, skin and clothes and indirectly expose their families and others living with them. Secondhand exposure is the cause for a significant portion of mesothelioma cases among women and children. If children are exposed to asbestos indirectly at an early age, they may develop an asbestos-related disease in their adult years.
- Abatement contractors perform professional inspections and analysis. An error, omission, defect or deficiency in any test performed, or an inaccuracy in the preparation and performance of work plans, diagnostic lab testing or post-abatement certification could lead to tort liability and economic losses.

### Contractors Pollution Liability 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
- Defense of third-party claims
- First-party emergency response costs
- Lead and Asbestos
- Mold, legionella, bacteria and fungi
- First and third-party transportation pollution liability
- Sudden and accidental coverage for owned/leased locations
- Abatement contractors are able to combine Commercial General Liability, Contractors Pollution Liability and Professional Liability into one package policy. Work Comp & Auto may be offered
- Loading and unloading
- Non-owned disposal sites

# Claims Scenarios & Examples

- An asbestos abatement contractor was doing remediation in tunnels below a correctional institution. Lawsuits were filed on behalf of inmates alleging bodily injury from exposure to asbestos. After spending \$425,000 in defense expenses, it was determined that the contractor was not liable for any damages potentially incurred.
- A family came home a day early and found the lead abatement company they hired had failed to cover furniture, close off air ducts or stay out of areas that were supposed to be sealed off. A fan was blowing right out an open window. The homeowner immediately contacted the county health department, the State Department of Labor & Industry and EPA. County inspectors arrived and observed workers returning from a fast-food lunch break. It was noted that when they got out of their car, they actually still had their lead abatement gear on. In a federal lawsuit, the family sued for repair damage plus remediation, air monitoring and future medical expenses.
- Two companies were accused for charging customers thousands of dollars for removal of asbestos-contaminated materials from their homes and buildings and then illegally dumping or abandoning the waste in local counties. They received felony charges and agreed to pay \$1 million in fines. The companies dumped, stored and abandoned waste over a three-year period. The companies acted as remediation contractors or subcontractors for asbestos removal from buildings. Instead of properly disposing of the hazardous materials, they dumped the waste in incorrectly marked bags or in several cases, abandoned the material in roll-off trash containers that belonged to other companies. They were fined \$500,000 each and their owner was fined and sentenced to 500 hours of community service with six years probation.
- A lawsuit was filed against a company for failing to follow proper procedures and safety precautions while removing asbestos-containing materials from a senior center. The complaint alleged that contractors completely gutted the first floor of the senior center and partially removed vinyl asbestos floor tiles from the basement. The complaint further alleged that the defendants did not cover, contain, wet, label or seal the asbestos-contaminated demolition debris that was stored in the container, in the parking lot or on the ground, as required by law.
- During renovation work, lead-based paint was identified while removing old walls. Although the contractor erected containment to isolate the work areas, the HVAC system was not sealed, and it disconnected prior to discovering the lead-based paint. The dispersal of the lead-laden dust through the HVAC system clogged the heating coils. The contractor was required to replace the HVAC as well as pay for business interruption claims totaling \$150,000.
- Children attended cooking classes and music classes in a classroom that may have exposed them to dangerous asbestos. After the abatement had been completed, all the materials that had been left in the room during the abatement process were covered with dust, as were the floors, walls, cabinets and shelves. New books, games and other school supplies had been brought back into the room and were sitting on the floor. The asbestos tiles were ripped from the floor, revealing a black layer of mastic (adhesive) attaching the tiles to the flooring beneath. The contractor failed to set up containment. Pulverized floor tile and residual dusts were found post abatement under carpeting.
- A residential contractor renovated the interior of a residential house built in the 1950s. The renovation involved paint removal from interior walls, window trim and door jambs. During the course of renovation, the contractor used a plastic barrier to seal the areas where he was working. The homeowners continued to occupy the house during renovations. Additionally, the wife was six months pregnant. Renovation was finished prior to the birth of the baby; however, upon birth, the child tested positive for blood lead poisoning. After investigating the source of the lead, the couple sued the contractor for bodily injury as well as potential loss of future wages (due to a possible decreased IQ level for the baby) in the amount of \$500,000.
- While installing new electrical lines in a historic building the contractor used a hole saw to cut through a ceiling. Unknown to the contractor, the saw had inadvertently disturbed and released asbestos-containing insulation material. The contractor had to pay for cleanup costs for the asbestos fibers released throughout the building.
- Unsafe levels of asbestos fibers were found in a large urban hospital during an extensive renovation project. Testing found levels at more than 40 times those considered safe on three floors of the hospital and in an outpatient building. A local law firm filed personal injury suits on behalf of seven workers at the hospital with settlement demands totaling \$25 million.
- One university hired a general contractor to use machines to rip out 5,000 square feet of flooring material in the basement. Tests later confirmed that asbestos dust and fibers, which are carcinogenic when inhaled, swirled into the basement air. Workers carted the contaminated tile through the food court and upstairs to open-air trash bins, potentially leaving a toxic mist throughout the university's busiest building. University officials deny wrongdoing and blame an outside contractor that they argue removed the tile without approval.

## Final Consideration

As a contractor you can be faced with the cost to defend yourself against allegations or legal action from pollution 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 environmental 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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