

Environmental Risk Overview

Assisted Living Facilities

Assisted living facilities face many potential environmental exposures including the use and storage of cleaning materials and chemicals for sanitization, the growth of mold due to water intrusion or environments prone to high humidity, and the development of bacteria, such as legionella, in plumbing facilities, water pipes and air conditioning systems that could lead to illnesses like Legionnaires' Disease. Additional exposures include the presence of bodily fluids, bed bugs and infectious viruses, and the handling and disposal of medical wastes. Based on the age of the premise and the historical use of the property, preexisting contaminants, including asbestos and lead, could also create environmental liability for the facility owner. Due to their age and potential for underlying health conditions, occupants of assisted-living facilities can be more vulnerable to the exposure of pollutants at a facility.



Environmental Exposures May Include

- Mold growth can result from water and wastewater releases due to leaks, overflows, poorly installed building materials and blocked drains or pipes. Mold may also develop in water systems, such as refrigeration or HVAC, and in indoor pools, spas and water features due to improper maintenance, dehumidification or ventilation. Exposure to mold may pose health hazards to occupants, including severe respiratory issues and systemic toxicity, and mold can absorb into building materials and subsurfaces creating cleanup liability.
- Sick Building Syndrome" refers to a situation where building inhabitants suffer from health problems that occur and are aggravated while in a building. It is often attributed to poor design or maintenance or a building's faulty ventilation system. Chemical contaminants, including combustion products such as carbon monoxide, and biological contaminants such as bacteria, molds, pollen, and viruses can be contributing factors to Sick Building Syndrome.
- Legionella is a bacterium that causes a form of potentially fatal pneumonia. Legionella can thrive in water containing systems like HVAC and plumbing, and in water features. Poorly maintained systems and inadequate corrosion control or sanitation can result in Legionella growth and dispersal through mist and airborne droplets. Exposure can result in illness such as Legionnaires' disease and severely complicate existing respiratory diseases.
- Hazardous materials stored at a facility can include solvents, cleaning agents, disinfectants/sanitizers, pharmaceuticals, petroleum products, chemicals and pesticides. Improper storage, containment breaches or leaks or spills during loading and unloading can result in a release of these materials. Incompatible chemicals are prone to react violently or produce toxic byproducts/gases when stored together or mixed. Flammable products may result in a fire that releases other contained materials, producing hazardous vapors.
- Lead could be present in paint or pipes. Lead in pipes can get into drinking water, and paint chips and dust from lead based paint can be ingested. Exterior lead based paint can also leech into soil around the structure. Lead exposure can cause significant bodily injury including brain damage, nervous system problems, digestive issues and muscle and joint pain. Extremely high levels of lead can cause more severe bodily injury that could even lead to seizures, coma and death.
- Wastes generated such as bio-medical, pharmaceutical or other wastes that contain chemicals, heavy metals, mercury or other toxic materials can be categorized as hazardous waste. Infectious wastes must be bagged appropriately, sterilized and taken to an approved and licensed disposal facility. Improper labeling, waste storage, transportation and disposal can result in environmental liability.
- Emergency generators may be diesel-powered and require storage of fuel in aboveground or underground storage tanks. Leaks of fuel, exhaust fumes, tank/piping deterioration and inadequate or no secondary containment can result in a release that contaminates soil and water systems or can enter into the facility.
- Refrigerants in air conditioning and refrigeration systems can include ammonia, hydrofluorocarbons (HFCs) or chlorofluorocarbons (CFCs). Improper use or maintenance of systems can result in a hazardous release of these chemicals. Inhalation exposure to third parties may result in serious health effects or even death.
- Illicit abandonment is the illegal dumping of pollutants on a property by a third-party. It can become the burden of the property owner for cleanup and third-party bodily injury or property damage if law enforcement cannot find the originator of the waste.
- Older buildings may contain asbestos-containing material(ACM). ACM may be present in duct insulation, piping, furnaces, boilers, fireproofing insulation, ceilings, walls, flooring tile and mastic. Leading tort claims may result from inadvertent disturbance or alleged exposure during renovation, construction or interior remodeling.
- Facilities with swimming pools store and use chemicals for cleaning and sanitization, including water disinfection and scale removal chemicals. These chemicals are highly concentrated and typically very reactive. Accidental reactions with incompatible materials or vapor build up in enclosed areas may result in fire or impaired air quality.
- Existing soil and/or groundwater contamination may be present and abandoned underground storage tanks may also be discovered on the property, resulting in expensive removal activities and potential cleanup of releases. The owners could be held responsible for addressing the cleanup and/or remediation of the property.

Environmental Pollution Liability Can Provide Coverage For

- On/Off-site cleanup of new and preexisting pollution conditions
- Third-party claims for bodily injury and property damage
- Third-party claims for cleanup
- Business interruption resulting from pollution conditions
- First and third-party transportation pollution liability
- Both sudden and gradual pollution conditions
- Mold, bacteria, legionella, asbestos, lead and more
- Aboveground and underground storage tanks
- Disinfection expense
- Non-owned disposal sites
- Civil fines and penalties
- Natural resource damage
- Defense of third-party claims
- Illicit abandonment

Claims Scenarios & Examples

- A nursing home began expansion to add more beds. During excavation, oily soils with a petroleum odor were discovered and allowed fumes to enter the existing building via vapor intrusion. Further investigation uncovered an old undocumented sludge drying pit on a neighboring property, which the previous owner used in the 1940s. The nursing home was required to remove and remediate the soils at an expense exceeding \$400,000.
- The concrete secondary containment of a 10,000 gallon diesel aboveground storage tank used at an assisted living facility for emergency power was cracked. A release from the tank spilled 8,000 gallons into the containment. The diesel seeped into the underlying soils, and the cost to remediate exceeded \$320,000.
- A mechanical contractor installed an HVAC system in an assisted living facility for seniors. The system was constructed improperly, which caused mold growth in a portion of the residences. The facility was forced to relocate several patients during the system repair and the renovation of the moldy building materials. A claim for cleanup costs and property damage was filed.
- City inspectors received notice of possible building violations at a nursing home facility. Inspection of the facility found the building's roof and interior were in violation of city codes. The violations were serious in nature including signs of water damage on the ceilings, light fixtures and electrical switches. Additionally, several employees reported mold/mildew odor. A further investigation revealed black mold within ceiling tiles, under layers of peeling paint, and in areas of noticeable water leakage. Residents of the facility were showing symptoms of rashes, headaches, asthma and difficulty breathing. The facility had to be temporarily shut down and the residents relocated before cleanup of the extensive mold could begin. Families of several of the residents filed suits for bodily injury against the owners of the facility.
- A nursing home maintenance staff was performing a routine check of the emergency back-up power system. The back-up power generator was located on the roof of the facility and the diesel fuel to run the generator was in a 5,000-gallon underground storage tank (UST). After testing was completed the generator was shut off, but a faulty valve allowed diesel fuel to continue to be pumped from the UST. Approximately 3,000 gallons of fuel pumped from the tank, flowed onto the roof and down drain spouts before it was discovered. Diesel fuel ran into a nearby stream and storm sewer. Cost to remediate exceeded \$700,000.
- An assisted care living company with several multi state locations purchased property to build a new nursing home. Once construction began the excavation contractor punctured an unknown 10,000 gallon underground storage tank. The tank contained hazardous waste that had been illegally disposed of by a former property owner that was now deceased. The contractor did not have Contractors Pollution Liability (CPL) insurance so the assisted care living company had to pay for cleanup costs which exceeded \$400,000.
- An assisted living community had an ammonia refrigeration system valve fail causing a gas release. Neighboring businesses were evacuated until the gas dissipated. A few of the neighboring employees complained of headaches and nausea, and the businesses filed claims against the assisted living company for business interruption and bodily injury, which totaled \$190,000.
- A nursing home had a waste hauler transporting its medical waste overturn and spill its load. Some of the waste ran off into a nearby tributary and a major roadway was shut down for the better of eight hours. Cost of cleanup and business interruption claims totaled more than \$1,000,000. The nursing home was required to contribute for their apportionment of the cleanup cost since federal law states that generator owns their waste from cradle to grave. Cost to settle the claim for the nursing home was \$150,000.
- Five cases of Legionnaires' disease were reported at a senior living facility, including one person who died. The facility had to undergo action to investigate and mitigate the outbreak to prevent additional exposure to legionella bacteria. Legionella bacteria was detected in one apartment, a pool filter, an irrigation system and a decorative water fountain. Preventative measures, including point-of-use filters were installed, and thermal disinfection and hyperchlorination of the water system were performed.
- A mechanical contractor removed ductwork from an assisted living facility's HVAC system. It was later determined that the ductwork was home to a dangerous fungus. The dismantling activities and the on-site storage of dismantled ductwork caused the fungus to spread throughout the nursing home. Patients became infected with the fungus and some even critically. The contractor was found liable for the spread of the fungus and the bodily injury and property damage claims in excess of \$1,000,000. Even though the nursing home was not at fault, they had expenses of \$100,000 for legal defense and \$50,000 for claims management.

Final Consideration

Your property can be faced with the cost to defend itself 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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