

# Environmental Risk Overview



## General Contractors

General Contractors can be brought into claims, lawsuits or regulatory actions for their own work as well as activities of their subcontractors; therefore, they must be aware of the environmental liability issues that might stem from subcontractor activities. This document highlights a few of the environmental exposures faced by General Contractors which can lead to claims and financial loss. This can range anywhere from pollution conditions due to work operations, releases from equipment or materials brought to a job site, disturbance and release from existing contamination and transportation and disposal liabilities.

## Environmental Exposures May Include

- General contractors may hire subcontractors for whom they are responsible. Actions of subcontractors and hazardous material exposure can become the liability of the project general contractor. Since pollution laws are joint and several, general contractors can be held liable for more than the percent of work performed by them of the actual activity that created the loss.
- Chemical releases related to spills or leaks can contaminate soil and groundwater. Exposures can include fuel or hydraulic fluid from construction equipment or potentially toxic materials such as solvents, paints and sealants used and stored at a job site. A release could contaminate runoff and can get into storm drain systems, drinking water wells or off-site streams and rivers leading to extensive cleanup liability and potential natural resource damage.
- Release of contaminants in the air, such as fumes from various chemical sources, including aerosol cans, adhesives, sealants, curing compounds and cleaning solutions can expose third parties to hazardous air emissions and lead to environmental tort liability.
- Improper erosion controls for work involving the disturbance, relocation or stockpiling of soils, such as excavating, trenching or grading, can lead to contaminated runoff of silt and sediments, which are fine grained soil particulates. These particulates are readily carried off from rain, accidental pipe breaks or excessive watering from dust suppression and can impair proper functioning of storm water drainage systems, cause ecological damage to streams and rivers and result in adjacent property damage.
- During excavation or site preparation, unknown pre-existing contaminated soil could be collected and spread to clean areas of the site or contaminate ground and surface waters.
- Subsurface work can impact underground utilities, like gas lines, sewage pipes or unknown hazards such as abandoned storage and septic tanks. Accidental puncture and release of fuel oil, chemicals, toxic gases or sewage can contaminate soil and ground water and release hazardous air emissions, resulting in clean-up costs and third-party bodily injury and property damage claims.
- Installation, demolition and renovation work can disturb existing asbestos, lead-based paint and PCBs. Asbestos can be found in areas such as ceiling and floor tiles, insulation and around wiring. PCBs can be found in areas such as window caulk and light ballasts. Mold may also be disturbed where water intrusion has occurred. Improper identification and inadvertent disturbance of these materials may cause a hazardous release that can lead to third-party bodily injury claims and remedial and disposal liabilities.
- Installation of some building materials, including flooring, windows, insulation and drywall, as well as work on systems such as plumbing and HVAC, can generate moisture intrusion issues either in the form of condensation or leaks. This can result in the growth of mold and bacteria which pose health hazards to building occupants and can absorb into building materials creating cleanup liability.
- 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.
- Transportation creates a wide range of exposures. Spills may occur while chemicals, waste debris, raw materials or equipment are being transported to and from the job site or disposal facility, or during loading and unloading. Transportation exposures may be from the insured operating their own vehicles or through contingent liability through those they hire.
- Improper disposal of wastes can lead to cleanup costs and environmental tort liability. Materials, such as chemicals and solvents, or contaminated wastes such as soils or asbestos containing materials, may be classified as hazardous waste and require special disposal procedures. Businesses are required to determine whether the waste they generate is hazardous. Hazardous waste may also be inadvertently mixed with construction debris/waste and then disposed of improperly. Investigations for improper disposal at a disposal facility can result in potential liability for all parties that manifested waste to the facility.

## Contractors Pollution Liability Can Provide Coverage For

- Third-party claims for bodily injury and property damage
- Third-party claims for cleanup
- Defense of third-party claims
- First-party emergency response costs
- First and third-party transportation pollution liability
- Mold, legionella, bacteria, fungi, lead, asbestos and more
- Sudden and accidental coverage for owned/leased locations
- Crisis/publicity management
- Loading and unloading
- Natural Resource Damage
- Silt and sedimentation
- Non-owned disposal sites

# Claims Scenarios & Examples

- A general contractor (GC) hired a refrigeration contractor to upgrade a cold storage warehouse's refrigeration system. An ammonia leak occurred, and it was traced back to a valve in the refrigeration system that failed. Seventeen people that were nearby had to be hospitalized from the leak, and the warehouse had to be shutdown. Because of contract indemnification, the GC incurred \$1.75 million in third-party bodily injury and property damage claims along with defense expenses.
- While working on a school project, a general contractor (GC) accelerated the schedule to meet the planned completion date. The GC allowed the drywall contractor to start work even though the building envelope was not complete. As a result, rain damaged a majority of the installed drywall along with onsite materials. The GC was subsequently responsible for \$2 million in repair and delay costs.
- Two years after the completion of a new high school, it was discovered that the installed window system was allowing water to infiltrate the building. Due to the faulty installation, mold was discovered. The subcontractor who installed the windows was no longer in business, so the general contractor and window manufacturer were held responsible for the remediation costs. The general contractor did not have pollution coverage and had to pay \$900,000.
- A general contractor was overseeing the installation of a new roof for an office building and shopping center. A chemical reaction occurred from the roofing materials decomposing that emitted fumes into the office building. A \$400,000 property damage and loss of use claim was filed against the contractor.
- A construction manager was in charge of an office building construction project. The manager hired a mechanical contractor to design the heating and ventilation systems for the project. The contractor incorrectly calculated the building's heating and cooling needs which caused mold in the building. The system had to be replaced, the building needed mold remediation, and the tenants had to be relocated during the process. Claims totaling \$450,000 were filed to cover these expenses.
- A general contractor was part of a redevelopment project. During demolition and re-grading activities, the general contractor punctured an unknown heating oil tank, releasing residual heating oil into the subsurface. Due to sandy soils and a shallow groundwater table, the oil spread quickly and migrated into the groundwater. The cleanup and remediation was extensive and required regular monitoring of the groundwater until closure could be granted by environmental regulators. Remediation and project delay costs exceeded \$750,000.
- 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 contaminating the site and causing 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 Laws. The development owner then sued the general contractor for breach of contract.
- A general contractor constructed a senior care facility. After completion, the owner's inspection revealed water intrusion and mold contamination throughout the building with damages of more than \$1.3 million. Experts were retained, and inspections revealed multiple construction defects.
- A general contractor (GC) was working on a renovation project for an older apartment building. During the project, the flooring subcontractor found old tile underneath the plywood subfloor. When the subfloor was initially ripped up, some of the tile underneath was disturbed. They stopped the project to test if there was asbestos. The analysis found that the tile did have asbestos and the building had been contaminated. An asbestos abatement contractor was brought in to remediate the building. The GC was held responsible for the asbestos abatement costs incurred as his subcontractor had released the contamination.
- A general contractor had laid a coat of Naphtha, which is a flammable hydrocarbon mixture, before laying a final coat of blacktop on a new road job. A rainstorm came into the area and caused the chemicals to migrate into a nearby stream.
- A general contractor was responsible for overseeing a hospital wing renovation. After two patients died in the intensive care unit adjacent to the construction zone, they determined the cause of death to be an organic fungus found in the ventilation system that was disturbed during demolition activities. The contractor was sued for inadequate monitoring and containment of the construction zone and was responsible for \$10 million in damages.
- A General Contractor used gas powered generators and equipment while working on building renovations. In the course of the work, the contractor did not properly vent or contain the emissions from the equipment. Employees working in the building began complaining of headaches, nausea and respiratory problems. An air quality study found increased carbon dioxide levels in the building that were a result of the emissions from the construction equipment. The contractor was found liable for over 30 claims from the building-related illnesses that totaled over \$100,000.

## 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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