

Environmental Risk Overview



Hazardous Materials Cleanup

Hazardous materials (HazMat) contractors provide a diverse array of services including hazmat cleanup, environmental remediation, underground storage tank (UST) removal, methamphetamine laboratory cleanup, decommissioning of low-level radioactive waste, lab packing, tank cleaning, and mercury remediation. Contractors that perform this work face potential environmental risks that may be incurred during emergency response, remedial actions, abatement of contaminated sites, or during transport of hazardous materials or wastes. These environmental risks may include such things as releases of contaminants to soil or groundwater; discharges into sewer drains that

may impact the municipal sewer system; or releases to surface water. These exposures can result in environmental cleanup, third-party liability and damage to natural resources.

Environmental Exposures May Include

- Spill or releases can occur during hazardous material cleanup activities. These could result in exacerbation of existing contamination at the job site, migration of contamination offsite, or impacts to third-parties.
- Prior to excavation activities, 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 such as natural gas, fuels, or sewage.
- Disturbance, relocation or stockpiling of soils that were not adequately characterized could result in unknown pre-existing contaminated soil being collected and spread to clean areas of a site. Cleanup claims, natural resource damage claims, or third-party suits could result.
- Improper identification or failure to completely identify contaminants, hazardous materials or hazardous wastes could result in a release to soil, groundwater or air, leading to additional remediation, tort liability, punitive damages, fines and regulatory violations.
- Failure to properly seal off, cleanup and decontaminate a job site can allow contaminants to spread beyond the original area of impact at a job site, which can lead to environmental cleanup and third-party liability.
- Soil remediation activities may involve excavations that can disturb soils and leave them highly vulnerable to erosion by wind and water. Improper erosion control can lead to surface runoff of these soil particles, which can impair proper functioning of storm water drainage systems, cause ecological damage to streams and rivers and cause adjacent property damages. Control of silts/sediments is required under the Clean Water Act, and contractors may face regulatory action such as clean-up orders and/or fines and penalties. Fugitive air emissions, such as dust, particulates, or volatile organic compounds, could also be released, resulting in third-party claims for bodily injury or property damage.
- Incompatible hazardous materials or wastes could be mixed during a hazmat contractor's activities, resulting in fires, explosions, or releases of toxic air emissions, which could contaminate a job site, impact neighboring properties, or cause bodily injury or property damage to third-parties.
- 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.
- Vehicles and equipment used in hazardous materials cleanup may need decontamination and cleaning prior to driving on public roadways or removal from the site. Power washing or steam cleaning vehicles and equipment generates wastewater that can contain contaminants, oil and grease, suspended solids, phosphates, and detergents. If the wash water is not properly managed, contaminants may impact the site, neighboring properties, or surface waters, leading to cleanup, third-party bodily injury or property damage, fines, or natural resource damages.
- A hazmat contractor may remove contaminated materials, including soil, debris, or water and arrange for or transport the materials to a permitted off-site treatment and/or disposal facility. Improper disposal of contaminated materials or mis-delivery of unidentified contaminated wastes can lead to environmental liability for the hazmat contractor.
- Contractors performing cleanup of other hazardous materials may remove or encounter asbestos or lead based paint in many applications in residential, commercial and industrial properties. During the hazmat contractor's activities, existing asbestos or lead base paint could be disturbed and released, resulting in third-party bodily injury claims or contamination of soils.
- During removal of underground storage tanks (USTs), if tanks are not properly inerted and/or purged prior to hot work, an explosion or fire can occur. Impacts to soil, groundwater, or storm water and third-party bodily injury or property damage can occur.

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
- First and third-party transportation pollution liability
- Mold, legionella, bacteria, lead, asbestos and more
- Sudden and accidental coverage for owned/leased locations
- First-party emergency response costs
- Hazardous materials cleanup contractors may be able to combine Commercial General Liability, Contractors Pollution Liability and Professional Liability into one package policy. Worker's Compensation and Auto may also be offered
- Loading and unloading
- Non-owned disposal sites
- Defense of third-party claims
- Natural resource damage

Claims Scenarios & Examples

- An environmental contractor was hired to remove chemical waste from a large industrial facility. While consolidating and packaging waste prior to off-site transportation and disposal, incompatible chemicals were mixed, resulting in an explosion and release of a toxic vapor cloud. The explosion and ensuing vapor cloud contaminated the project site and surrounding residential properties. Site owners and numerous third parties were sued for resulting bodily injury, physical damage and clean-up costs.
- An environmental contractor was operating an incinerator to burn hazardous waste at a remote site. Due to cold, inclement weather at the project site, a makeshift tent was constructed to enclose the site equipment and office space. When a power failure caused the air pollution control equipment to shut off, a plume of hazardous air emissions entered the tent. Personnel from various on-site subcontractors were subsequently overcome with fumes and required medical attention. Settlement costs amounted to \$635,000.
- During remedial activities at a Superfund landfill site, a hazardous materials contractor inadvertently crushed several drums that were improperly classified as empty. As a result, several gallons of hazardous contents were released, causing soil contamination. The contractor failed to notify the EPA of the release, which resulted in both criminal and civil actions against the contractor. The contractor was held liable under CERCLA and was required to pay penalties exceeding \$6.1 million.
- An environmental contractor was hired to perform excavation, transportation and disposal of contaminated concrete and soil at a manufacturing plant. The excavated materials were segregated as non-hazardous and hazardous and placed into roll-of bin containers. During removal of the containers from the site, the contractor mixed up two containers of broken concrete and inadvertently transported hazardous waste to a non-hazardous waste landfill. Due to the time that passed between the discovery of the mistake and disposal date, the landfill estimated the material was buried under at least 60 feet of waste. A risk assessment was required by the state environmental agency and the manufacturing plant was fined in excess of \$100,000 for improper disposal of hazardous waste. The manufacturing plant sued the contractor to recoup costs associated with the fine and legal fees.
- An emergency response contractor responded to a chemical tank leak. In the process of venting the tanks, the contractor inadvertently pumped toxic gas into the space. Several of the facility's employees died from the fumes. The contractor's CGL policy declined the claim citing the pollution exclusion in the policy.
- A hazmat contractor's soil incineration plant had a malfunction that sent approximately 761 pounds of ash onto cars and homes in the nearby neighborhood. The whole four-block radius around the incinerator was totally covered in ash. The state found high levels of metals in soil in and around the neighborhood. A class action suit was filed against the contractor.

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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