

# Environmental Risk Overview

## Restoration Contractors

Restoration contractors respond after a catastrophic events, such as fires, floods, mold incidents, natural disasters, etc. to clean up properties, extract water or sewage, remove debris, disinfect and sanitize, and ready properties for repairs. These contractors may encounter many different circumstances that could lead to the releases of hazardous chemicals, incompatible materials, or materials that are easily diffused. Improper handling, containment breach and failure to fully abate pollutants are leading causes of environmental bodily injury and property damage. The transportation, storage and disposal of pollutants or contaminated materials also generates liability exposures for the restoration contractor.



## Environmental Exposures May Include

- Restoration activities can impact utilities, like electrical transformers, gas lines, water and sewage pipes, and above and below-ground tanks such as fuel and septic tanks. The accidental release of fuel oil, chemicals, toxic gases or sewage from broken pipelines, utilities and stationary and mobile tanks can contaminate soil and groundwater and release hazardous air emissions.
- During restoration, contractors may encounter biohazards, as well as existing lead (in paint or pipes) and/or asbestos-containing materials, such as insulation, floor tiles, or ceiling tiles. Improper handling and disposal of the materials may lead to significant bodily injury, property damage or clean-up liability.
- Mold can be encountered in non-visible areas such as insulation, attics or roofs, crawl-space conduits, behind wallboard or on sheet rock, under carpeting, and in piping or duct runs. When mold-impacted areas are disturbed, small spores and fragments are readily released. Without careful containment and cleanup, these mold particles can disperse further and expose building occupants. Failure to identify, dry or remove all moisture impacting building materials allow for continued or subsequent mold growth, which may lead to additional property damage and health issues.
- Failure to properly seal off, decontaminate and remediate a job site, or failure to properly use equipment could cause a release of contaminants to spread and contaminate surrounding areas and lead to third-party and environmental cleanup liability.
- A variety of chemicals may be found in products used at job sites such as antimicrobials, disinfectants, deodorizers, mold stain removers, fungicides and preventative coatings and sealers. Chemicals used at improper application rates or concentrations, in combination with other chemicals, or with incorrect delivery systems can cause residues to remain in the building or create hazardous air emissions. Human health can be impacted by direct surface contact or inhalation.
- Releases during transportation, or loading and unloading, to and from job sites or disposal locations of any hazardous material, including chemicals, disinfectants, fungicides, coatings and sealers, as well as job site wastes contaminated with asbestos, lead or mold, can lead to environmental liability.
- Hazardous waste requires proper handling and disposal procedures. Hazardous wastes must be properly segregated to avoid being accidentally mixed with non-hazardous waste and improperly disposed. Job site wastes could be contaminated with biohazards, mold, asbestos or lead-based paint. Improper disposal of hazardous materials can lead to cleanup and environmental tort liability. Environmental issues at a disposal site can result in potential liability for all parties that manifested waste to the facility.
- Restoration contractors may store stock supplies, including chemicals, solvents, paints and sealers in concentrated form at their own facilities or work yards, and leaks or spills may cause environmental impacts. Restoration contractors may also transport and store asbestos-contaminated wastes at their owned site or at temporary storage facilities pending final disposal, which can expose them to third-party bodily injury claims.
- Restoration contractors will often be contracted for re-build activities. Improper repair, installation or sealing procedures could allow mold and bacterial growth in building materials and result in environmental liability. Build-back activities may also involve making recommendations on drawings, structural specifications, introduction of green building materials and changes to HVAC systems, creating potential professional liability exposures.
- Professional inspections and analysis may be performed. 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 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
- First and third-party transportation pollution liability
- Sudden and accidental coverage for owned/leased locations
- Restoration 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
- Mold, legionella, bacteria and fungi
- Non-owned disposal sites
- Lead and Asbestos
- Loading and unloading

# Claims Scenarios & Examples

- A water pipe ruptured in a condominium complex, causing major water damage to many units. A restoration contractor was hired to cleanup and remediate the damage. Several months after the cleanup was completed a tenant became ill and had difficulty breathing, and she alleged it was from odors emanating from her suite. The condominium committee investigated and discovered that areas of drywall and insulation were wet and covered with toxic mold. A claim was made against the restoration contractor, alleging that he created a dangerous environment by failing to properly dry the area. The tenant sought to recover costs associated with bodily injury from the mold exposure. The restoration contractor's General Liability insurance did not provide coverage due to the mold exclusion in the policy.
- Charges were brought against 31 companies, including a restoration contractor, that had sent waste to a non-owned disposal site, which later was named as Superfund site. The government sought cleanup costs for dumped toxic waste on the 60-acre property. Court documents showed that the 31 companies that had used the site agreed to fund the \$20 million cleanup.
- Owners of an apartment building hired a restoration contractor to apply a waterproofing sealant to the surface of a deck. As a result of the company's failure to properly ventilate the area, toxic fumes entered a tenant's apartment, causing her to become ill. The contractor and the building owners settled the personal injury claim with the tenant and then sought to recover under the contractor's Commercial General Liability policy. The insurance company denied the claim due to the absolute pollution exclusion clause, which excluded from coverage injuries arising from the discharge, dispersal, seepage, migration, release or escape of pollutants.
- Insurers and others have agreed to pay \$7.2 million to settle a lawsuit, after a couple and their household staff were sickened by toxic mold that spread through their home. It is alleged that restoration contractors failed to properly clean up mold growth that occurred from water damage from a broken pipe. Instead, the contractor painted over the mold.
- A restoration contractor and their insulation subcontractor were sued for bodily injury due to mold. The contractors were hired to clean up and remediate a condominium complex after a water pipe ruptured and caused water damage to many suites. The claim was made against the contractors for failure to remove wet insulation. The tenants sought to recover remediation costs, re-insulation and hospital related expenses for exposure and ongoing air monitoring.
- A hub drain installed for a soda machine back-flowed at a retail center. The property manager hired a restoration contractor to clean up the resulting back flow. Due to improper clean up, the claimant alleged he was exposed to raw sewage and contracted meningitis, which led to a rare bacterial infection called Lemierre's syndrome. The contractor's Commercial General Liability insurer denied the claim citing the pollution exclusion. The basis of the exclusion is that pollution includes bacteria and communicable disease. The jury awarded \$766,300.
- A homeowner hired a restoration contractor to dry out a house from water damage. The contractor started and finished the dry out process without testing for asbestos and inadvertently disturbed asbestos which released asbestos fibers into the air. After the job was complete, an industrial hygienist hired by the homeowner, tested for asbestos and found that it had spread throughout the house due to the dry out process. This resulted in cleanup costs and allegations of bodily injury resulting from asbestos inhalation, including associated legal defense expenses.
- A dishwasher leak caused extensive water damage to a home, leading to mold growth. A restoration contractor was hired to remediate and restore the damaged areas. The contractor failed to fix the damaged areas properly and left exposed cavities in the wall and ceiling. Major floor settling in the kitchen and large cracks in the foundation walls were found after the work was completed, and the chimney broke away from the wall and collapsed. The house eventually had to be torn down due to the issues, and the contractor faced significant legal costs.

## 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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