

# What Lurks Beneath: Mitigating Environmental Risk



As redevelopment projects turn former industrial areas, gas stations and failed strip malls into vibrant community resources, contractors need to remain mindful of what may not turn up on a routine property inspection. For example, a recent project inspection in Virginia included several borings that failed to uncover a swath of petroleum from a midnight dumper. The pollution insurer paid \$750,000.

Most projects in urban areas involving excavation run the risk of encountering petroleum or other environmental constituents. Dangerous and costly environmental risk can come from the subsurface, but it also can lurk behind a wall or even in the composite of construction materials. Older building renovations often uncover asbestos or mold behind ceiling tiles or walls. Paints, solvents and asphalt all contain toxic elements.

## REAL RISK OF COSTLY CLAIMS

A construction company's balance sheet could be ruined in the event of a pollution release without adequate coverage to protect its assets. Most general liability policies contain either an absolute pollution exclusion or limited pollution coverage for a "sudden event" reported in a specific

time period, but often that coverage is not enough.

Recent claim scenarios drive home the financial pitfalls of environmental risk:

- A university athletic coach died and his estate sued the flooring contractor for the new field house he worked in at the time of his death. The estate alleged the chemicals used in the new flooring exacerbated his pre-existing amyotrophic lateral sclerosis (ALS). The claim settled for nearly \$300,000.
- A general contractor developed a subdivision where sinkholes subsequently appeared. The residents determined the general contractor used unknown debris in developing the land. The debris was determined to be contaminated, and the cleanup cost exceeded \$1 million.
- During excavation work on a project in Tulsa, Okla., an abandoned oil well was struck near a tributary to the Arkansas River. The contractor was responsible for cleanup and damage to natural resources.
- In California, the cost of one mold cleanup case in the education sector exceeded \$1.8 million.

Similar claim scenarios continue to play out across the country. For proactive contractors, the way to prevent these financial disasters is a comprehensive environmental risk management plan.

The plan should include training the labor force, creating awareness of potential issues before they arise and developing an action plan in the event pollutants are discovered. Above all, construction firms need to make sure they are insured in the event of a pollutant release or alleged release.

## COMPREHENSIVE COVERAGE A MUST

Environmental coverage has existed for decades through a few specialty insurers, but in the last five years the environmental insurance market blossomed with new competitors, resulting in comprehensive

coverage, competitive pricing and mold coverage at bargain rates.

A soft property/casualty market coupled with a down construction market has kept insurance rates low, but construction firms still need to protect their balance sheets by procuring a contractor's pollution liability (CPL) policy. These vital policies should cost most firms less than \$50,000.

When evaluating a CPL policy, contractors need to make sure it offers the most comprehensive protection possible and that their broker or agent offers an occurrence-based option in lieu of claims made. Savvy buyers also require the policy to cover all operations, rather than define specific operations by name. If possible, shop operations and equipment storage and maintenance facilities should be included in the coverage.

Contractors need to read the definition of pollutants in the specimen policy and review the exclusions and endorsements to ensure asbestos, lead and mold are covered at a realistic limit of liability. The policy should provide coverage for defense, bodily injury and property damage; coverage also should extend to work done by subcontractors on behalf of the owner or general contractor.

Companies that transport materials should add an endorsement for environmental incidents resulting from transportation, and hazardous material disposal companies need to obtain coverage that extends to non-owned disposal site liability.

Contractors should require a CPL option from their broker or agent. Environmental insurers are prepared to handle the coverage, and most contractors can't afford to do business without it.

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