GOOD TO KNOW

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AMERICAN RISK MANAGEMENT RESOURCES NETWORK, LLC.
ENVIRONMENTAL INSURANCE TOOLBOX

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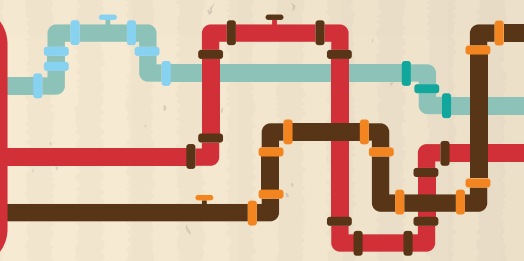
DEC 2016

PLUMBER'S EDITION

5 Key Things to Know About Contractor's Environmental Liability



1 The 3 Categories of Water

a less dry topic than you thought

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coverage every plumber needs

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more significant for plumbers than you might think

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Other Environmental Prospects We Can Help With!

- General Construction Firms
- Fire & Water Restoration Contractors
- Mold/Asbestos/Lead Contractors
- Asphalt and Paving Contractors
- Environmental Contractors
- Waste Water Treatment Plants
- Landfills
- Farms
- Municipalities
- School Districts
- Plumbers, Roofers, and Artisan Contractors
- Hotels, Condo & Apartment Building Owners or Managers
- Property Transfers Including Purchase & Sales, Mergers & Aquisitions
- Roustabouts, Freshwater Haulers, & Fracking Support Contractors

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1 The 3 Categories of Water

a less dry topic than you thought

If you're not an IICRC-certified contractor, odds are you aren't overly familiar with the three categories of water. They are categorized just as interestingly as the topic itself sounds: Category 1 water, Category 2 water, and Category 3 water. However, despite the perceived tedium of it, this is no dry subject (pun most definitely intended).

The categories of water refer to the range of contamination in water. The higher you go, the more contaminated it is. Category 1 water, as you would expect, originates from a sanitary source and does not pose a risk from dermal, ingestion, or inhalation exposure; think supply line water. Category 2 water contains significant contamination and has the potential to cause discomfort or sickness if contacted or consumed by humans.

The final category of water, Category 3, is grossly contaminated and can contain pathogenic, toxigenic, or other harmful agents. Examples can include but are not limited to sewage, toilet backflows that originate from beyond the toilet trap, and many other examples. The key distinguishing factor for Category 3 water from the first two is contamination from bacteria. Category 1 and 2 water can quickly become Category 3 water as bacteria and other microorganisms are present in basically all environments.

2 The Undervalued Fungi or Bacteria Exclusion on General Liability Policies

One exclusion found on almost all General Liability (GL) policies that does not get the attention it deserves is the Fungi or Bacteria Exclusion. Most commonly included as an added endorsement to the policy, what it does is as far as you can get from adding coverage. While exact wording may differ from carrier to carrier, the exclusion usually consists of two parts:

- One section contains anti-concurrent causation language that strips away coverage for claims of bodily injury (BI) or property damage (PD) resulting from or essentially in any way related to fungi or bacteria.
- The other section knocks out full coverage under the policy for any loss, cost, or expense arising out of the contractor dealing with (e.g. abating, testing for, cleaning up, removing, etc.) fungi or bacteria.

Below is an example of the exclusion for you to see the language commonly used:

This insurance does not apply to:

1. "Bodily injury" or "property damage" which would not have occurred, in whole or in part, but for the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of, any "fungi" or bacteria on or within a building or structure, including its contents, regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to such injury or damage.
2. Any loss, cost, or expenses arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to, or assessing the effects of, "fungi" or bacteria, by any insured or by any other person or entity.

The easiest way to conceptualize this exclusion is to think of it as a pollution exclusion on steroids. The anti-concurrent causation language applying the exclusion for fungi and bacteria to the entire loss if any of these materials is even partially involved in any sequence to the loss is the steroids part of the analogy.

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3 Why the Fungi or Bacteria Exclusion Spells Bad News for Plumbers

There are a lot of leaky drains and backed up toilets in the United States, many of which are being attended to by a plumber. It's important to note that every drop of water in a drainpipe after the trap will be Category 3 water by definition. So, it's safe to say that plumbers hold a significant exposure to Category 3 water.

We know from the first section on the categories of water that Category 3 water is classified as Category 3, because of the contamination of bacteria and other microorganisms that it contains. But wait, we also know that fungus- and bacteria-related losses are specifically excluded by the Fungi or Bacteria exclusion on almost all GL policies. So any loss involving Category 3 water should trigger the exclusion. With plumbers having a large Category 3 water exposure it seems pretty clear that there is a big coverage gap for any plumber with this exclusion on their GL policy.

Unfortunately, this is an area where insurance agents and brokers are particularly misinformed and misguided. As a result, an awful lot of plumbers are needlessly underinsured or blatantly uninsured.

4 Contractor's Environmental Liability: coverage every plumber needs

So, we've identified there is a problem, but now what is the solution? As in other forms of excluded pollutants as a cause of loss, the most reliable insurance coverage solutions for Category 3 water losses will fall within the insurance products offered by the environmental insurance marketplace.

The most effective way for plumbers to mitigate their exposure to Category 3 water losses is through the use of a well-designed Contractor's Environmental Liability (CEL) policy. A lot of times this coverage line is referred to as Contractor's Pollution Liability (CPL). A proper CEL policy should fill the gap created by not only the Fungi and Bacteria exclusion, but also the one created by exclusion f. Pollution Exclusion on the GL.

Environmental insurance policies have to be specifically modified to address fungi and bacteria loss exposures. As a word of warning, off-the-shelf environmental insurance products are usually not well suited for insuring fungus/mold/bacteria/Category 3 water risks, because the insurance policies were not originally created for indoor environmental loss exposures. Therefore, special attention needs to be paid to adapting environmental insurance policies for indoor environmental loss exposures.

5 Completed Operations Exposure more significant for plumbers than you might think

Another exposure for plumbers that is well underplayed is their completed operations exposure. Plumbers are dealing with, you guessed it, plumbing all day every day. While there is still a good chunk of exposure related to actual on-the-job-work like accidentally breaking a pipe and flooding someone's basement, some of the biggest claims for plumbers come from completed work. We're talking about a pipe that leaks in someone's wall for months before it is discovered. Or a shower drain that isn't properly installed allowing water to leak and pool in between the shower and the sub-floor. These are the types of situations where you get mold growth that creates property damage and possibly even bodily injury claims, because someone gets sick from the mold and bacteria that grew and developed from the leak.

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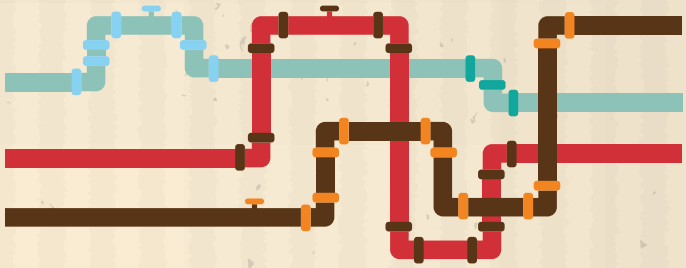
For this reason, it's important to ensure that your plumbers are properly insured for their completed operations exposure. This is a big deal when it comes to environmental and pollution claims like the ones described above. As described, it can take months, even years, for pollution claims to be discovered, which allows a lot time for bad conditions to develop.

GOOD TO KNOW



Meet Your Contractor's Environmental Liability Specialists at ARMR.Network LLC

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Your Production Team:

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American Risk Management Resources Network, LLC is a wholesale brokerage firm that can help with many different environmental insurance placements not just Contractor's Environmental Liability! There are many hidden opportunities in many classes of business!

Other Environmental Prospects We Can Help With!

- General Construction Firms
- Fire & Water Restoration Contractors
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