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AMERICAN RISK MANAGEMENT
RESOURCES NETWORK, LLC.
ENVIRONMENTAL
INSURANCE TOOLBOX

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**FEB
2018**

ARMR MGA

5 Contractors with Underrated Environmental Exposures



of Berkley Specialty
Environmental/Restoration Program
written on Nautilus Insurance Company paper

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Fire & Water Restoration Contractors



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Mold, Lead, or Asbestos Abatement Contractors



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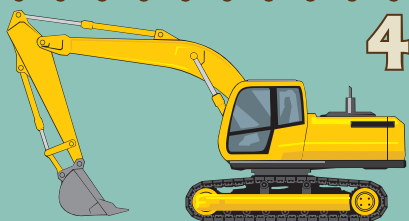
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OTHER ENVIRONMENTAL PROSPECTS WE CAN HELP WITH!

- 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, & Artisan Contractors
- Hotels, Condo & Apartment Building Owners or Managers
- Property Transfers Including Purchase & Sales, Mergers & Acquisitions
- Roustabouts, Freshwater Haulers, & Fracking Support Contractors

All too often, when people hear pollution or environmental in relation to contractors they think nuclear bombsite cleanup contractors or Superfund site remediation contractors. While these are good examples of risks that possess environmental loss exposures, it's important not to develop a pinhole when it comes to assessing whether a contractor has environmental loss exposure.

Most Commercial General Liability (CGL) policies contain at least one pollution exclusion that precludes coverage for bodily injury and property damage arising out of the *actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants"*. Many people get hung up on the term "pollutants". They think dangerous chemicals, acids, and hazardous waste. However, in most definitions of what constitutes a "pollutant", the key terms are *irritant and contaminant*. That may seem vague and make you question what could be considered a pollutant. The answer is anything. Anything that gets somewhere it shouldn't (contaminates) and/or causes issue in a particular space or environment (irritates). For example, there are cases where milk has been ruled as a "pollutant". Perhaps a bit more familiar, asbestos has been recognized as an irritant and lead a contaminant in case law across the U.S.

In the following sections, we look at how this broad application of pollution exclusions translates to environmental loss exposures for contractors that, in the classic sense, are thought not to possess this type of exposure.



Fire and Water Restoration Contractor

Fire and water restoration contractors are the saviors that come in after a home or commercial building has experienced some kind of loss from, you guessed it, fire or water. A few common examples of losses that fire and water restoration contractors will respond to and remediate are kitchen fires, flooding from storms, and water intrusion from a tree falling on a house.

Due to the types of losses fire and water restoration contractors are commonly responding to, they face a significant number of environmental loss exposures. Perhaps the two most prominent are mold and bacteria in the form of Category 3 Water. Any job that involves water on drywall has the proclivity to become a moldy mess. In fact, water on drywall can result

in mold in as little as 72 hours in the right conditions.

For fire and water restoration contractors performing water extraction services, which is most of them, their job is to remove any standing water, bring down the humidity levels in the structure, and dry it out. Failure to do so quickly enough or correctly, can result in mold growth. Category 3 Water is water that is grossly contaminated with bacteria; a few examples include any water escaping from a drainpipe, wet fire suppression systems, or all water that comes into contact with soil. So, a good number of flooding events within a structure involve Category 3 Water.

Both mold and bacteria fit nicely into the terms *irritant and contaminant*, because of their abilities to infiltrate environments and also to make people sick. In many states, case law labels bacteria as a "pollutant". Mold and bacteria are dangerous enough in the eyes of insurance companies to warrant their own, separate exclusion on many CGL policies, commonly called the Fungi or Bacteria Exclusion.

Fire and water restoration contractor also may be exposed to other "pollutants" such as asbestos or lead given their work in the built environment. Given their exposure to "pollutants", they carry the risk of causing some kind of escape, dispersal, or release, which coverage is excluded for on most CGL policies. Therefore, it is important that they carry the appropriate insurance. CGL, Contractor's Pollution Liability, and Professional Liability combine form policies exist for the class of business and can be tailored to cover them for their various environmental loss exposures.

Mold, Lead, or Asbestos Abatement Contractors

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Mold, Lead, or Asbestos Abatement Contractors

Segueing from fire and water restoration to mold, lead, or asbestos abatement contractors, the environmental loss exposures are similar and probably more obvious with this class of business. Abatement contractors are called in when the presence of a contaminant is discovered and, therefore, it is known. For example, no one is calling an asbestos abatement contractor to come out and perform work unless they've found asbestos that needs to be removed and properly disposed of.

Asbestos and lead are almost uniformly labeled as "pollutants" across the U.S. and there can be separate exclusions for them on CGL policies. Similarly, as discussed above, mold is often litigated as a "pollutant" and many CGL policies have a separate exclusion for fungi (mold). So, pretty much every job a mold, lead, or asbestos abatement contractor shows up

to involves a "pollutant".

Given this considerable exposure, abatement contractors are constantly at risk for causing a pollution condition or incident (i.e. the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants"). It's incredibly important that these contractors are properly insured to provide coverage for the various "pollutants" they are exposed to in their work that could turn into third party claims for bodily injury, property damage, or cleanup costs. There are specialized programs available in the environmental insurance marketplace for abatement contractors.



Indoor Air Quality Professionals

Indoor air quality consultants have become more and more prevalent in the past few decades. These contractors or consultants may perform asbestos air monitoring and testing, HVAC installation and analysis, radon testing, and various other services related to the built environment.

In the case of indoor air quality specialists, incorrect performance of their work can result in people getting sick and even dying. Take for example a mechanical contractor who installs and monitors the HVAC system in a nursing home. Improper installation can result in all kinds of issues including poor ventilation and humidity issues resulting in mold growth or the development of harmful bacteria such as Legionella. These things along with many of the other substances and gases that indoor air quality

professionals consistently encounter such as asbestos, lead, and radon to name a few will trigger pollution exclusions in many CGL policies.

A significant portion of the environmental loss exposures faced by indoor air quality professionals falls on their Professional Liability or Errors and Omissions (E&O) insurance. Many times, an environmental claim against them will revolve around them not doing their job correctly or following certain standards or guidelines, making it a professional claim. It's important to make sure these consultants and contractors have the right lines of coverage in place and that they are specially designed to cover what it is they do for a living.

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Soil and Groundwater Sampling, Excavation, and Treatment Contractors

Another set of contractors that have more environmental loss exposure than many people think are soil and groundwater sampling, excavation, and treatment contractors. These contractors will do testing for various contaminants in both soil and the groundwater. Some will also perform the actual removal of earth and treatment of contaminated soil and groundwater.

For the sampling and testing services, there is significant professional liability related to doing the testing correctly. However, the action of retrieving the sample also opens the consultant up to the risk of

exacerbating existing conditions or causing additional contamination. Full-on excavation has further risks; for example, an excavation and grading contractor was hired to grade an industrial site after the demolition of the existing buildings. The property was being developed into a new shopping mall. Unbeknownst to the contractor, the site contained asbestos left in the soil from the demolition. While grading the site, the contractor spread asbestos contaminated soil over 80% of the property. As a result, the contaminated soil had to be removed and disposed of properly at a cost of \$500,000.

Recall one of the operating terms in most definitions of “pollutants” is *contaminant*. When it comes to soil and groundwater sampling, excavation, and treatment contractors, they’re spending a good amount of time testing, removing, and treating various contaminants in soil or groundwater. Therefore, pollution exclusions on most CGL policies preclude coverage for a significant portion of their operations, making it imperative that specialized environmental insurance is purchased to fill the coverage gaps.



Carpet Cleaners

The carpet cleaner may be the most surprising contender to make this list. Most people think “What kind of environmental claim could a carpet cleaner create?” Many would be surprised at the environmental loss exposures that the every-day carpet cleaner faces.

Because of their work in the built-environment with liquid cleaning solutions, they have mold exposure. Use of the cleaning solutions can increase the moisture levels in a room or structure and excessive moisture can lead to mold growth in the right conditions. If they are performing work post any kind of flooding or drain backup, they have bacteria exposure, because of Category 3 Water, which we discussed in a previous section.

Carpet cleaners can also experience environmental claims unrelated to the development of harmful organisms. For example, a carpet cleaner cleaning the corporate headquarters for a large amusement park received a claim against them because of an overly potent scent from their citrus cleaning solution. They had used the cleaning solution in the past, but when cleaning the headquarters, the scent would not dissipate. Despite several failed attempts to rectify the situation, the cleaner started to receive complaints from the employees at the corporate headquarters claiming they could not come to work because of the overpowering odor and that they were developing asthma. The claim triggered the pollution exclusion on the CGL policy, which denied the loss. Fortunately, the carpet cleaner had purchased a Contractor’s Pollution Liability policy, which picked up the loss, because the claim ended up being over \$150,000.

As shown by the claim example above, it’s important for carpet cleaners to have proper environmental insurance coverage in place to fill the coverage gaps for their environmental loss exposures created by pollution exclusions on many of their CGL policies.

Conclusion:

The biggest takeaway from this is to not underestimate the environmental loss exposures for every-day contractors. The broad application of pollution exclusions as well as the introduction of other pollution-like exclusions such as the Fungi or Bacteria Exclusion have created environmental loss exposures for some of the most unlikely service providers.

From there, it's important to note that the solution to covering various contractors' environmental loss exposures is **not** to just purchase any off-the-shelf environmental insurance policy. Environmental insurance policies such as Contractor's Pollution Liability were originally designed for hazardous waste cleanup contractors, so many policies must be adjusted to work for every-day contractors such as fire and water restoration contractors, abatement contractors, and carpet cleaners. In addition, environmental policies are not regulated and can vary drastically from carrier to carrier. This is where the use of a specialized environmental insurance specialist is necessary. This means working with someone who takes time to understand the risk, research coverage, and provide a solution – not just someone with market access who can provide a bunch of quotes.

At ARMR.Net, we pride ourselves on being our clients' knowledge resource and not just a market access point. The ARMR MGA is no exception. Consisting of team members with considerable experience in the environmental insurance market, they possess the knowledge to properly insure your clients for what they do for a living. Because of this experience and knowledge, they have capacity to underwrite all of the risks discussed above. Learn more about the ARMR MGA by visiting www.armrmga.net or calling (608) 836-0551.

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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!

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