

# ENVIRONMENTAL INSURANCE FOR THE CONSTRUCTION INDUSTRY

The construction industry is ranked by the U.S. Environmental Protection Agency as one of the sectors with the highest polluting potential. Statistics confirm that construction activities present a wide range of pollution-related risks to general, trade and sub-contractors, architects, engineers and project owners.

Pollution events can derail projects and generate significant losses bankrupting potentially otherwise viable businesses. Losses may include bodily injury or property damage claims, cleanup costs and defense costs. Consequential losses may include fines and penalties, project delays and associated cost overruns.

Firms involved in any aspect of project design, construction management or providing professional advice can be held legally liable for losses, including pollution losses, arising from errors or omissions in the rendering of professional services, or sub-contracted professional services.

What can be done? Most General and Professional Liability policies contain comprehensive pollution exclusions. Fortunately, there are flexible insurance solutions available to address these risks; but first, companies must understand the nature of the pollution exposures they are facing.

## CONSTRUCTION INDUSTRY EXPOSURE EXAMPLES

### POLLUTION RISKS

- Releases and spills of chemicals stored and used at a job site, such as fuel, finishers, sealers, solvents and curing compounds (includes releases resulting from acts of vandalism)
- Exposure to hazardous materials such as asbestos, fiberglass, light fixtures containing lead paint and mercury (including consequences of inadequate ventilation or negligent handling, etc.)
- Liability for water infiltration, dampness problems and mold contamination of buildings
- Exacerbation of existing contamination conditions as a result of disturbing/remobilizing contaminants
- Storm water and silt run-off from project sites
- Inadvertent disturbance of underground pipelines or tanks causing release of hazardous materials

### PROFESSIONAL EXPOSURES

- Losses attributed to design errors introduced by the contractor as a result of field changes to construction drawings and blueprints
- Contractual or contingent liability imposed by subcontracted architects/engineers
- Liability imposed upon the contractor due to inadequacy and/or deficiencies of the architect/engineer's insurance program
- Construction management services, including project scheduling and change order authorization

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## REAL SOLUTIONS

Environmental insurance policies are readily available to address risk exposures faced by the construction industry. It is important to evaluate existing insurance programs, paying particular attention to the pollution exclusions in General Liability and Professional Liability policies, and then consider the use of Environmental insurance to address those gaps.

Two primary types of policies for contractors and construction companies are available in the marketplace:

- Contractor's Pollution Liability
- Combined Professional and Pollution Liability

**CONTRACTOR'S POLLUTION LIABILITY** policies provide coverage for liability due to pollution conditions arising from operations performed by or on behalf of the contractor at a job site. Coverage includes third-party bodily injury and property damage claims, cleanup, and legal defense. Policies can include coverage for mold, legionella, silica, pollution conditions related to transportation of materials or wastes to or from a job site, and non-owned disposal locations. They can also include coverage for third-party business interruption, diminution in property value, natural resource damages, and fines and penalties. Coverage can be written on an occurrence or claims-made basis.

**COMBINED PROFESSIONAL AND POLLUTION** policies provide coverage for errors and omissions in the rendering or failure to render professional services, as well as liability due to pollution conditions arising from operations performed by or on behalf of the contractor at a job site. All coverage enhancements available on a contractor's Pollution Liability policy are also available on a combined professional and pollution policy. Professional coverage is written on a claims-made basis. Pollution coverage can be written on an occurrence or claims-made basis.

These policies can be arranged to cover all projects during the policy period or can be written on a project-specific basis. In some cases, it may be more practical or economical for the project sponsor or main contractor to arrange coverage on behalf of all project contractors within an Owner Controlled Insurance Program (OCIP) or a Contractor Controlled Insurance Program (CCIP). Such a design helps ensure consistency of coverage, terms and conditions. In addition, project owners have the added protection of dedicated limits of liability for their projects.

## CASE STUDY

A contractor was hired to excavate utility trenches at a residential construction site. Excavated soil was temporarily stockpiled on an adjacent industrial property. When the trenches were backfilled, excess soil was spread across the site for grading purposes. Shortly after completion of the construction works, dioxin was discovered in other soils at the adjacent industrial site. Subsequent investigation also found dioxin contamination in the soil the contractor spread across the construction site.

It was also determined that contamination had seeped from the surface soils into a shallow aquifer used for water supply. A number of parties, including the contractor, were determined to be jointly liable for the multimillion dollar cleanup.

## CONTACT

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