



## **environmental Risk Assessment (eRA) For ABC Members**

●**Fact:** Every ABC Member is impacted by environmental exposures.

The ABC environmental Risk Assessment (eRA) comes in three parts:

1. Review of specific environmental exposure impacting ABC Members.
2. Environmental loss examples.
3. Environmental risk transfer options utilizing environmental insurance products appropriate for ABC Members to consider.

**1. Common environmental exposures** impacting ABC Members include: Storm water runoff; Vapor intrusion; Mold; Release of oils/fuels from equipment as a result of vandalism; Spills from mobile storage tanks; Excavating through and spreading of unknown preexisting contaminated soil; Lead; Asbestos; Ground water contamination; Impacting underground utilities; Puncturing unknown underground storage tanks, barrels or other illegally disposed pollutants; Silica; Use of fertilizers, herbicides; No auditing of waste handling and disposal companies; Unknowingly using contaminated soil as fill, Natural resource damages; CCA treated lumber; fumes, emission and spills of chemicals applied during construction (finishers, sealants); Impacting wetlands, endangered species; Sick building syndrome; Parking equipment over unsealed surfaces; Renovation, Repair and Painting (RRP) Federal Law; Transportation of raw materials and waste; Warehousing raw materials; Storage, use and disposal of oil, anti-freeze, hydraulic fluids, batteries...; Blending, mixing, use of asphalt, cement...; Foreign employees; Welding rod fumes; Completed operations exposure....

### **2. Claims Examples For Contractors**

1. An excavation/grading contractor unknowingly spread petroleum-contaminated soil across a project site during fill operations for a commercial office building. The contractor was named in a lawsuit for exacerbating the extent of contamination. After lengthy deliberations, the contractor was eventually removed from the lawsuit. However, they incurred \$90,000 in defense costs.
2. A utility contractor had to pay cleanup costs and business interruption expenses in excess of \$500,000 when they ruptured and unmarked petroleum pipeline.

3. A mechanical contractor removed ductwork from a hospital's HVAC system. It was later determined that the ductwork was home to a dangerous fungus. The dismantling activities and the on-site storage of dismantled ductwork caused the fungus to spread into the hospital. Patients became infected with the fungus; some were even critically infected. The contractor was found liable for the spread to the fungus and faced bodily injury and property damage claims in excess of \$1 million.
4. An asphalt paving subcontractor paved a parking lot for a new commercial structure. At the end of the day, the tack coat was sprayed onto the sub-base prior to paving. During the evening, a major thunderstorm caused the tack coat to wash off and flow into a nearby stream. The contractor was responsible for cleanup costs, which exceeded \$200,000.
5. A general construction company was sued when mold was discovered in a commercial building constructed by the contractor and its subs. The general contractor was ordered by a court of law to pay mold remediation costs in excess of \$600,000 and the contractor had legal fees of \$250,000.
6. An electrical contractor was using an aboveground storage tank (AST) to store gasoline for their trucks and equipment. One morning, they discovered that vandals had shot a hole in the tank, releasing thousands of gallons of gasoline from the AST. This spill was the subject of a Government-mandated excavation and disposal of the contaminated soils.
7. An excavation contractor was subject to defense costs exceeding \$25,000, in addition to property damage and bodily injury claims exceeding \$400,000 from a residential community. During sewage installation, a subcontractor improperly tied in piping. This caused raw sewage to migrate into the underlying groundwater and contaminate residential wells.
8. A general contractor performing concrete etching in a commercial building used muriatic acid. The highly corrosive fumes from the acid were released into the building. Over \$75,000 in property damage to chrome fixtures resulted from the fumes.
9. A residential contractor disposed of sealants and solvents containing toluene in a covered, enclosed dumpster after performing routine finish work. Acting like a confined space, the dumpster trapped the toluene fumes. These fumes depleted the oxygen levels in the dumpster. After climbing into the dumpster for unknown reasons, two 10-year-old children were overcome by fumes and died. The contractor faced a claim in excess of \$2 million for inadequate disposal of the waste toluene.
10. Faulty Pump Contaminates Local Creek and Pond. During routine transfer of diesel fuel from a fuel truck to an onsite job fuel storage tank, a pump malfunctioned releasing approximately 4,500 gallons of diesel fuel. The product migrated along the edge of the tanks into a culvert, spilled into an adjacent creek, and pooled in a pond. The state

department of environmental management was notified and the company's spill response plan was initiated. Approximately 644,300 gallons of contaminated water was removed from the creek and pond at a cost of \$63,000.

### **3. Environmental Risk Transfer Strategies**

Contracts, bonds, letters of credit, insurance policies..., are risk transfer strategies available for ABC members. As a general rule, Construction companies lack the financial strength to self-insure their environmental liabilities. Since every ABC member is impacted by environmental exposures, consideration needs to be given to the economies of scale afforded with environmental liability insurance as part of your risk transfer strategy versus self-insurance.

The **three main benefits** environmental liability insurance offers:

1. **Defense Costs:** Environmental liabilities are relatively new and very litigious. Even if you do nothing wrong you can still get named in a suit and have to expense defense costs i.e. legal fees, environmental investigations, .
2. **Claim Management:** All ABC CPL pollution policies come with specialists to assist you in handling a claim. Who is in charge of communications, public relations, emergency response, government compliance, financial management, third party claims, natural resource damages....?
3. **Third Party Liability:** The majority of the time the cost to clean up the environmental problem/s is far less than the associated claims that come in from third parties for bodily injury, property damage and business interruption. You need to look at your client's and neighbors that can be impacted if you or a sub-contractor/vendor cause an environmental loss.

#### **Environmental Risk Transfer Products**

##### **ABC CONTRACTORS POLLUTION LIABILITY (CPL)**

Contractors Pollution Liability (CPL) insurance protects the insured should they cause or exacerbate an environmental condition while performing their covered operations. CPL protects the insured for covered operations performed by or on behalf of the insured, while operating away from any premises they own, rent, lease or occupy.

CPL can be offered on a claims made or occurrence basis. Coverage can be written on a job specific basis, on a blanket basis to cover all the work performed by the insured or on an owner controlled basis . Most policies can be endorsed to cover transportation pollution liability, mold, lead, asbestos, defense outside the limits, off-site disposal coverage ....

Contractors incorporating CPL coverage as part of their risk transfer strategy, drive their growth and profits by marketing the benefits CPL coverage affords in reducing job interruption due to environmental issues.

A major environmental liability exposure faced by all contactors lies in who they are doing business with. If there is an environmental loss at a job site, innocent contractors can and do get named in lawsuits. Do your subs/vendors have CPL insurance if they cause an environmental loss?

### **ENVIRONMENTAL IMPAIRMENT LIABILITY (EIL)**

EIL is for contractors that own, rent, lease, operate or have any other insurable interest in real property (a fixed site facility such as a shop, batch plants, cement manufacturing/mixing plant....) that can be susceptible to pollution liabilities that actually or allegedly originated from the insured property.

Coverage can include: Pre-existing unknown pollution, new pollution conditions, first party on-site clean up, third party bodily injury, property damage, business interruption and extra expense, off site cleanup costs, legal defense expenses, transportation pollution liability, offsite disposal coverage.... Multi year term policies can be negotiated.

### **TRANSPORTATION POLLUTION LIABILITY (TPL)**

Generally, Business Auto or Truckers policies will exclude pollution losses arising from spills or other releases of transported cargo. Transportation pollution liability affords coverage during the loading, unloading and transportation, for a spill, release or sudden upset and over turn of transported cargo.

### **UNDERGROUND STORAGE TANKS (UST)**

Financial responsibility requirements ensure that owners and operators of underground storage tank systems have the ability to financially handle a release from an underground storage tank. The responsibility encompasses the ability to pay funds for corrective action and third party bodily injury and property damage from non-sudden and sudden and accidental releases from a regulated underground tank system.

### **PROPERTY TRANSFER LIABILITY**

When buying or selling property there can be unknown preexisting environmental conditions. Since a Phase I or Phase II survey cannot guarantee uncovering all potential environmental liabilities, insurance companies have created property transfer insurance. This coverage protects the new owner or any party with an insurable interest, against

unknown environmental conditions that may be discovered during the policy period, that were not caused by the new owner.

Property transfer coverage assists to keep the property at its maximum value while allowing the insured to negotiate more favorable loan terms than property not supported by this coverage.