



GUEST ESSAYS

Pollution Exclusion Means All Types of Consultant/Contractor are Open to Liability

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I have gone to great pains to try and communicate to our insureds that most, if not all, liability policies now contain what is known as absolute pollution exclusion. Unfortunately, many insureds still feel that they do not have a pollution exposure because they are not remediation type consultants or contractors. Unfortunately, this can create a false sense of security as the broadness of the pollution exclusion makes it applicable to every single insured performing any type of consulting or construction service.

Let me reiterate that most liability policies contain the following exclusion: "This insurance does not apply to bodily injury or property damage arising out of the actual, alleged or threatened discharge, disposal, release or escape of pollutants at or from the premises owned, rented or occupied by the named insured. And the insurance does not apply to any loss, cost or expense arising out of governmental direction or request from the named insured to test for, monitor, clean-up, remove, contain, treat, detoxify or neutralize pollutants."

To make matters worse, the definition of pollutants is usually: "Any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed..."

Thus, it doesn't take a rocket scientist to realize that the insurance industry is trying to tell everyone that if you use any type of a pollutant, as defined by the liability policy, and it's inside or outside the confines of its acceptable use, then this exclusion probably will be used against you on any claim that arises out of bodily injury, personal injury, property damage or loss of use allegations.

The chart will identify some of the generic names of the chemicals and other substances that are commonly used in the consulting/construction industry today. It also identifies the physical hazards that they possess that could be found on a typical job site. Please note that these are everyday chemicals and substances that are used by most involved in this area. Unfortunately, they could be considered a pollutant if they cause a problem when being used; hence, claims arising out of this area are excluded.

The obvious solution is to give serious consideration to consultants/contractors pollution liability coverage, which is readily available and affordable for activities that occur on premises or at various job sites. With a \$1,000,000 each claim/ \$1,000,000 annual aggregate policy and a reasonable deductible, the estimated annual premium for this particular coverage for the typical consultant/contractor is \$3,500-5,000 annually.

Chemical & Physical Hazards Found on a Typical Work Site

| Name of Chemical | Generic Class | Product & Usage | Target Organ | Health Hazard | Physical Hazard |
|--------------------------------|----------------------------------|---|--|------------------------------|----------------------------|
| Hydrochloric Acid, Nitric Acid | Acids | Cleaners & Concrete etchers | Skin/Eyes Respiratory System | Corrosive Irritant | Oxidizer Reactive |
| Asbestos | Carcinogen | Fire Proofing Insulation | Skin/Eyes Respiratory System | Lung Disease Cancer | |
| Carbon Monoxide | Chemical Asphyxiants | Fuel Emmission | Blood | Toxic | |
| Argon Carbon Dioxide | Simple Asphyxiants | Welding Fuel Emmission | Central Nervous & Respiratory Systems | Toxic | Compressed Gas |
| Fiberglass Silica | Dust & Fibers | Insulation Wood Products | Skin/Eyes Respiratory Systems | Toxic Irritant Carcinogen | Explosive Flammable |
| Gasoline Kerosene | Flammable & Combustible Solvents | Fuel, Cleaner Degreaser | Central Nervous System, Liver, Skin/Eyes, Lungs Kidneys | Toxic Irritant Carcinogen | Explosive Flammable |
| Acetylene | Flammable Gases | Welding Fuel | Respiratory System Eyes | Toxic | Explosive Flammable |
| Lead, Mercury Cadmium | Toxic Metals | Pipe Lining Paint Pigment Wall Paper Glue | Central Nervous & Reproductive Systems Blood, Kidneys, Intestines | Toxic | |
| Baygon Malathion | Pesticides | Insecticides Herbicides | Respiratory System Skin | Toxic | |
| Oxygen Chlorine | Oxidizers | Welding Water Treatment | Respiratory System Skin, Eyes | Corrosive Irritant | Compressed Gas Reactive |
| Cutting Oils Epoxy Resins | Sensitizers | Lubricants Degreasers | Respiratory System Skin, Eyes | Irritant Sensitizer | |
| Benzene Lead Ethanol | Teratogens | Fuel Additives Linings, Paints Alcohol Drinks | Reproductive System | Reproductive Toxin | |



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NOTE: This article is intended for general discussion of the subject, and should not be mistaken for legal advice. Readers are cautioned to consult appropriate advisors for advice applicable to their individual circumstances.