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Welcome to the latest edition of the Environmental Advisor. In this issue we would like to specifically focus on the environmental exposures faced by contractors. From mold and asbestos to a sudden pollution release from a damaged underground utility —contractors face a myriad of environmental exposures everyday. Fortunately Great American's Environmental Division offers products to help protect a contractor from environmental liabilities.

In addition to our broad contractor's pollution coverage form, the Environmental Division is also supported by a national network of consultants and remediation contractors able to respond 24/7/365 to emergency situations. Please do not hesitate to contact us with any questions you may have and we look forward to our continued success together.

Our Contracting Services Environmental Liability Policy is ideal for contracting companies including:

- General Contractors
- Demolition Contractors
- Drilling Contractors
- Electrical Contractors
- Environmental Consultants and Contractors
- Environmental Labs
- Fixed Base Operators
- HVAC Contractors
- Industrial Cleaners
- Masonry/Concrete Contractors
- Mechanical Contractors
- Painting contractors
- Plumbing Contractors
- Street and Road Contractors
- Roofing Contractors
- Steel Erection Contractors
- Utility Contractors

John Reynolds

Contractors Exposure to Natural Resource Damage



Shelli Hamilton
Divisional Vice
President

A jury awarded a total of \$1.4 million dollars in damages to two residents in Chester County Pennsylvania when a contractor removed trees and excavated soil at a large construction site without effective erosion controls in place. It was determined that sediment run-off from the development site caused the death of fish due to lack of oxygen and possible pollutants in the run-off water. In order to restore the ponds to their previous condition, dredging will be needed.*

Preserving natural resources is not a new concept, so what has changed? Environmental agencies, courts and environmental groups have become more aware of the impact construction sites can have on our environment. Contractors are being subjected to stricter standards with regards to the control of storm water runoff associated with job sites. In addition to this runoff, a release of pollution from equipment and vehicles used during contracting operations could contaminate nearby bodies of water. Services performed by contractors can have a direct impact on the environment. Natural Resource Damage can come with a high price tag, including the cost to assess the extent of the damage, determine the best course of action to correct the problem and mitigate the damage. Expensive long-term monitoring can be required as part of efforts to fully restore a damaged natural resource back to its original ecological condition. Other costs can include property damage and fines and penalties assessed to the contractor.

Contractor's project controls are the first line of defense. When an event does occur, an urgent and appropriate reaction is crucial. Having pollution coverage in place to help the contractor handle the emergency, along with providing protection against third party property damage claims and fines and penalties, will be the key to protecting the contractor. Great American's Contracting Services Environmental Liability (CSE) insurance policy provides emergency response coverage for sudden pollution conditions at a job site in addition to loss, clean-up cost and related legal expenses because of a pollution condition. Our definition of Property Damage includes Natural Resource Damage. We are here to assist contractors with claims services including a 24/7/365 capability to respond to your environmental emergencies nationwide.



* Pickering, A. (2009). Jury awards \$1.4 million for damage to 2 ponds. *Daily Local News*. Retrieved from <http://www.dailylocal.com/articles/2009/01/02/news/srv0000004393876.txt>

Spotlight: Street and Road Contractors



Mark Vuono
Divisional Senior
Vice President,
Chief Under-
writing Officer

When you think of street and road contractors and their associated pollution exposures, the first thing that comes to mind may be the potential of causing or creating a pollution event at a job site. However, many of us do not consider the potential pollution exposures associated with the contractor's owned or leased locations, ranging from truck yards and offices to asphalt plants and quarries, as well as from their transportation activities or waste disposal practices. Each of these has the ability to cause a pollution loss that most likely would not be covered under a standard General Liability or Property policy, and may also not be covered under a typical Contractor's Pollution Policy unless the policy is specifically enhanced.

Street and road contractors face exposures at job sites such as fuel spills from the equipment or fueling truck, accidental striking of underground piping or tanks that may contain chemical or petroleum products, or the runoff of asphalt or even mud/sand during a rainstorm into a nearby waterway or storm drain. Each of these events may lead to significant clean-up costs incurred

to remediate the damaged environment and may also result in bodily injury or property damage claims against the contractor in certain circumstances. A standard Contracting Services Environmental Policy would normally afford coverage over a retention amount for such losses, including any Legal Expenses associated with the defense of such claims.

Exposures faced by street and road contractors at their owned or leased locations include spills of fuel and chemicals from on-site storage tanks or drums, leaks from vehicles parked usually over bare ground, the discharge of wastewater from on-site vehicle maintenance operations, and potential indoor air quality issues associated with office buildings, such as mold growth. Further, for those contractors that operate asphalt plants or quarries, additional exposures may include items such as dust cloud releases onto neighboring property and the potential contamination of surface or groundwater from the on-site operations. While many of these plants or quarries are located in rural areas, there are a growing number that are surrounded by suburban, commercial or residential areas with a greater potential to adversely affect third-parties or cause property damage to neighboring sites. Coverage for owned or leased locations is not typically included in a Contractors Pollution policy and would need to be added upon request.

Last but not least are the various exposures associated with the contractor's transportation or waste disposal activities. Standard auto policies may provide coverage for the spill of contents from a vehicle that may create a pollution event, but most auto policies do not provide pollution coverage from a vehicle that is not involved in an accident. Such events may include a leaky valve while the truck is parked at a job site or on the side of the road, or a fire to a piece of equipment that results in a release of oils into the ground that may then be spread by water used to put out the blaze. In addition to the transportation issues, any waste materials

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created by the contractor either at a job site or at their owned or leased location that are required to be disposed of at a waste site such as a landfill creates the potential for “superfund” liability as a potentially responsible party should a problem arise at the waste site that results in remediation or litigation. Great American’s Environmental Division has developed a comprehensive

approach to providing the appropriate pollution coverage that addresses all of the above exposures that exist. Using our Contracting Services Environmental Liability Insurance Policy, we can offer “one stop shopping” to contractors of all types and sizes to address their potential pollution liability exposures.



Contractual Liability and Third-Party-Over Action Claims Involving Pollution



Bill North,
Assistant
Vice President

When an independent contractor's employee gets injured on the job, the contractor's (employer's) workers compensation coverage is normally the first and may be the only remedy. And while the employee usually cannot collect under worker's compensation coverage and also sue their employer, there are some states whereby employees can also bring suit against their employer's client if it is determined that the client somehow contributed to the injury.

In many cases, the potential liability of the contractor's client is transferred to the contractor by an indemnification provision within the client-contractor contract, considering that generally speaking contractual indemnification provisions are very broad. A claim that results from an employee of a contractor suing the client who in turn seeks indemnification from the contractor (employer) is referred to as a third party over action claim. Depending on the nature and allegations of the claim, coverage may be afforded under the contractor's commercial general liability policy. However, if

the general liability policy has a total or absolute pollution exclusionary provision or endorsement (which most will have) a potential gap in coverage may exist.

This gap in coverage can be filled by a Contracting Services Environmental Liability Insurance (CSE) policy. Although the CSE policy primarily provides coverage for pollution conditions which arise from Construction and Contracting activities and contains an Employer's Liability/Worker's Compensation exclusion, it may provide coverage for the above referenced contractual liability exposure. This exposure is typically higher for any contractor performing environmental remediation work or contracting services at a jobsite where hazardous chemicals may be present, including general or trade contractors.

An example of a third party over action claim may be as follows: an employee working for a mechanical contractor is exposed to a chemical release from a vessel or pipe at the contractor's client's industrial site. As part of the client's responsibility, the vessel and piping should have been free of product prior to the start of the work. Another example would be if a general contractor hired a subcontractor to perform demolition and renovation and unidentified asbestos material was released potentially injuring the employee of the subcontractor. In either case, the injured employee after seeking workers compensation could sue the employer's client (whether is be the site owner or the general contractor) for additional compensation. The client could in turn make a claim against the contractor due to the indemnity clause in the contract. Contractor's pollution coverage varies, so it is important to note the contractual liability and workers compensation exclusions contained within the policy to see if they would allow for this type of situation to be covered.

Mold: Is The Hysteria Over?



Jenny Han,
Assistant
Vice President

As I was preparing to write this article about mold, which I thought was yesterday's news, I did a quick search on the internet to see what's going on. By typing in "mold", you get 34 million hits. By typing in "mold news", you still get 13 million hits. Many of the links take you to useful sites such as the Environmental Protection Agency or Center for Disease Control websites, but other links still bring you to "toxic mold", "black mold", and plaintiffs' attorney websites.

So what's really the latest on mold? An associate of mine and an expert in the subject recently opined: the hysteria is over. The bodily injury issues are still out there but the property damage issues for mold have become an accepted environmental risk management issue much like asbestos and lead-based paint. Mold has now become just another issue that must be addressed and while the hysteria has certainly died down, the issue has become an identified risk along with the many other environmental issues. For the last few years, general contractors and trade contractors have learned through training

and real-life experiences the importance of water and mold prevention. They understand the importance of having a third party review during the pre-construction phase, inspection of building materials upon arrival at job sites, moisture testing after installation, and proper documentation. They also understand that they need to respond promptly and appropriately to identify the cause of loss and repair, and retain qualified third parties for evaluation and remediation. But is that enough? No matter how real or frivolous, or how well you manage and respond to situations, some claims cannot be prevented. Contractors should seek further protection for their business and their assets from these claims.

Our Contracting Services Environmental (CSE) Liability product offers protection to contractors for exposures related to mold or fungi as well as a variety of other pollution conditions. Our policy will provide coverage for clean-up costs, third party bodily injury, property damage, and legal defense expenses for pollution claims including mold. The policy will provide coverage to the extent recommended by an Environmental Professional, which is important in the case of mold since there are no regulatory levels established for clean-up or human health risk exposures. We will work with the insured to designate such a certified or licensed third party Environmental Professional to identify and address these issues.

In a challenging economic time such as ours, it is expected that these claims will likely increase. While saving money is on top of everyone's mind, utilizing insurance as a risk management tool, along with proper management and prevention, is a win-win decision.

EnviroMoments



Pete Pantalone

Update - Where's Pete?

Great American Insurance Group has recently been named one of the Healthiest Companies in America by Interactive Health Solutions, the nation's premier provider of health awareness and preventative care programs for U.S. employees. Great American's innovative incentives to encourage its employees to change unhealthy lifestyle habits debuted in 2008 and has proven very successful! Great American is sponsoring its second corporate GreatHealth Challenge to promote the health and well-being of its employees. One way employees can participate is by purchasing pedometers with the goal of walking 1,000,000 steps by September 30th. Congratulations to Bill North for leading the Environmental team with 1,670,365 steps – that's 843 miles!

Great work by the entire team - All of the Environmental participants were able to beat the 1,000,000 step goal!

Here are the final stats:

Name	Step Count	Aerobic Steps	Distance (miles)
Bill North	1,670,365	793,737	843
Doug Stepenosky	1,434,736	304,801	679
Pete Pantalone	1,200,389	110,698	500
Jenny Han	1,179,149	375,819	465



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