



## 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.*