

Environmental Risk Resources Association



"Expanding the use of environmental insurance as a risk management tool through education, technology, resources, innovation and networking."

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Hot Tips: Mold Risk Management

Summarized from the Mold - Practical Risk Management and Insurance Solutions seminar held on September 17 - 18, 2002 at the Sheraton Meadowlands.

Mold Creates Unprecedented Professional Liability Exposures For Risk Advisors

New exclusions for mold related losses in millions of insurance policies combined with mold claims measured in the hundreds of thousands per year have the insurance companies and risk advisors on a collision course with their customer base. If current trends continue, there will be one uninsured mold loss for every 2 1/2 licensed insurance agent/brokers in the US next year.

Each uninsured claim holds the potential for a professional E&O claim against the insurance advisor if appropriate insurance covering the loss could have been procured. Advisors include insurance agents, brokers and potentially lawyers. Unlike historical asbestos and Superfund losses, appropriate insurance for mold is available today on most commercial accounts. The combination of uninsured losses when insurance coverage was available in the market place will create unprecedented professional liability exposures to risk management advisors who fail to address these loss exposures in their customer base.

The professional liability exposure of risk advisors can easily be mitigated through a four step process which is detailed in An Insurance Advisors Survival Guide to Mold Exclusions which was presented at the conference.

Many Mold Remediations Disturb Asbestos and Lead in Existing Structures

Although it takes different remediation protocols to remediate living organisms, mold remediators need to remember that buildings constructed prior to 1978 are likely to have lead paint and asbestos in them. Simple items like dry wall and the drywall mud may contain up to 15% asbestos. Prior to 1978 most oil based paint contained lead. Mold remediators that are disturbing these surfaces need to be aware of exposures to their workers to these hazardous materials and of the special regulations relating to the abatement of lead and asbestos.

Advice to insurance practitioners: It would be good to consider higher limits in the debris removal section of the fire insurance policies to assure adequate limits for the increased costs in older buildings. In a recent fire loss the entire limit of the policy was exhausted in the debris removal costs due to wet asbestos laden drywall that began to grow mold.

Insurance Claims Adjustors Could Face Personal Liability for Cross Contamination of Mold

We can all imagine a naive contractor walking through a home with a moldy piece of drywall or a fire restoration contractor's dryers cross contaminating a building. But how about an insurance claims adjuster facing personal liability for cross

contaminating a home with mold spores on his clothing.

An insurance claims adjuster after inspecting mold in an attic walked through the home to a door. The homeowners are alleging cross contamination from the attic to the living room from the adjusters clothing. Although the science is weak for the alleged damages, the personal liability is of great concern for the adjuster.

Risk management advice for the adjusters: Make sure you have appropriate insurance covering mold if you are working water damage claims. The standard GL and Professional Liability policies without mold exclusions should address this type of claim, but it will be a whole new ball game if mold exclusions are added to the adjusters E&O and General Liability insurance policies.

This problem could be especially critical to independent adjusters without an indemnity from the insurance company they are working for.

Mold Exclusions are Working There Way into Professional Liability Policies

Realizing that mold exclusions in property policies may reappear as liability claims for the contractors, designers, building materials suppliers/manufacturers and their risk advisors, some savvy reinsurers are adding mold exclusions to professional liability policies. Insurance agents are already seeing some of these new exclusions. Although a major underwriter of professional liability for designers has observed that mold claims have not surfaced in this class of business at this time. Professional liability exclusions for mold are not universal.

Hot Tips: Environmental Insurance

Summarized from the Environmental Insurance Forum held on September 18, 2002 at the Sheraton Meadowlands.

Environmental Underwriters Face Internal Competition for Capacity

Environmental underwriters are reporting that they have to compete within their organizations and in the reinsurance market for capacity. With the prices being raised dramatically for traditional lines of insurance, environmental insurance products are no longer the hands down favorites of the insurance companies. Top managers may decide that marine insurance at a 300% pricing increase is more attractive than the relatively new environmental insurance coverages. Some senior insurance executives still think that today's prospective environmental insurance are somehow related to asbestos and Superfund claims, although most outside experts find it difficult to compare these completely unrelated items.

Environmental insurance is a relatively stable market with some smaller players pulling back capacity and restricting underwriting guidelines in the past 12 months. Rates are going up 30% with much larger increases in the automobile area.

Pricing for next year should not be shocking. Expect more restrictive terms for multi-year

policies and more prorated pricing for multi-year placements. Limit capacity will likely exceed the demand in the market for ultra high limit placements.

Wholesalers Report Surprising Benchmarks

At the Environmental Insurance Forum wholesalers reported surprisingly reasonable pricing for some environmental insurances. Mold coverage on a chain of hotels with over one hundred locations was priced at \$100 per million of coverage purchased, per hotel, per year with a \$500,000 retention. A roofer with \$2,500,000 in revenue and a \$125,000 mold claim paid \$23,400 for a \$5,000,000 CPL policy covering mold. A restoration contractor with \$6,300,000 in receipts and three mold claims to date, paid \$25,000 for a CPL policy covering mold with a \$1,000,000 limit. Mold coverage is not price prohibitive in these classes, but matching the account to the underwriting guidelines of individual insurance companies remains very challenging for the producers. The underwriting guidelines of the major environmental underwriters can be found on the Members Only section of the ERRRA website.

Phase I's Being Phased Out by Environmental Insurance

By: Charles Perry, President, Environmental Warranty

A fundamental shift is underway in the field of commercial real estate lending, a swift movement by financial institutions toward environmental insurance policies and away from Phase I site assessment reports. In fact, major lenders have moved so quickly to change their standard operating procedures that industry experts see environmental insurance soon becoming as common as lenders' title insurance for commercial real estate transactions.

Environmental insurance, which protects lending institutions from financial loss and liability when a loan defaults and real estate collateral is contaminated, has three upsides for lenders: risk transfer, processing speed, and possible favorable treatment on the commercial mortgage-backed securities (CMBS) market.

Insurance vs. Phase I Due Diligence

Historically, real estate developers, owners, lenders, and trustees have relied on engineers to do property site assessment reports as the primary method of managing environmental risk. For buyers, the "site assessment" was thought to assist in assuring a clean property, but it carried no guarantees. If needed, the Phase I report was also believed to provide grounds for an "innocent landowner" defense. Court interpretations over the years, however, have pierced this veil, giving credence to insurance products that transfer the risk from owner and lender.

This kind of insurance has drawn praise from lenders' customers, who, after all, are the ones who have to purchase it. Many borrowers are seeking out lenders who accept environmental insurance in place of Phase I due diligence because, unlike Phase I's, borrowers do not have to pay for environmental insurance unless their loan is approved.

The History

For twenty years, Phase I site assessment reports have accompanied commercial real estate loan applications not because they are better, but because they have become a

twenty-year tradition. Phase I's inability to address future risk over the term of the loan has compelled lenders to find a way that makes more sense. That way is environmental insurance.

The goals for environmental risk management are four-fold: protect assets, maximize asset values, shield from liability claims, and create redevelopment opportunities. This is now obtainable with the recent breakthroughs with environmental insurance.

In '98-'99, about 5,000 commercial real estate transactions included environmental insurance policies. In 2001 that number had grown to more than 100,000, with projections for 2002 in excess of 250,000. Lenders that now use environmental insurance in tandem with, or in place of, Phase I due diligence include commercial banks, thrifts, REITs, life insurance companies, and pension funds.

While environmental damage and its associated liability are not new to commercial real estate owners and lenders, many state and federal laws have added to the complexity and pitfalls of virtually every commercial real estate transaction. Add to this, the evolution of local governmental regulations, which have accelerated discovery of problems and the increased movement of potential liabilities into real liabilities. Clearly, the awareness of environmental damage and potential liability has rapidly accelerated, as has the resultant need for a cost effective environmental risk management tool.

Lenders are concerned that the real estate developers' cash flow to service a redevelopment loan may be significantly impaired due to unforeseen environmental cleanup expense. This concern has broadened over the last ten years. Lenders are now recognizing the need to maintain the liquidity and resale or redevelopment value of real estate collateral. When a loan secured by real property is in default and subsequently found to be contaminated, a lending institution must

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face the decision to forego foreclosure --- rather than take title and become responsible for future remediation of the property and possibly neighboring properties.

Starting in the mid-'90's, lenders have had a new tool, one that allows them to transfer risk of known contaminants as well as undiscovered pollution, essentially receiving a warranty that the site assessment is correct and a documented environmental history of the property. If not correct, the insurance pays for the cleanup, the owner has a clean property, and the lender has marketable collateral. There is no need to litigate to establish liability, or to search out the nearest available "deep pocket" to have the site remedied.

In recent years, lenders have unwittingly taken possession of contaminated properties, only to be faced with extraordinary cleanup expenses. These lenders and often investors, found that their financial risk management process had made no provisions for such occurrences. Now, with the use of insurance, they are able to transfer the risk of pollution, essentially receiving a financial guarantee that the site is without liability.

Liability under environmental legislation is "joint, strict, several and retroactive." Currently, there are over 50 pieces of federal legislation from multiple jurisdictions covering environmental issues, along with a bewildering array of state and local laws and regulatory enforcement styles.

Risk Transfer

For the first time, lenders can transfer future risk. A Phase I does not have eyes; it cannot look forward and anticipate a new environmental event during the term of the loan. Unlike environmental insurance, Phase I's do not protect the lender in case of loan default and environmental damage. Essentially, Phase I's provide no comfort or protection to the lender. Lenders who now accept environmental insurance include JP Morgan Chase, Credit Suisse First Boston, Wachovia/First Union, Wells Fargo, AmSouth, Commerce Bank, People's Bank, and Legacy Banks.

Processing Speed

It normally takes two to three weeks for a Phase I site assessment to be performed by an engineer, usually costing the borrower \$2,000 to \$3,000. Typically, environmental insurance can be provided for a loan application within one to three days for a cost to the borrower of \$300 to \$1,800, depending on loan size and property type.

As the commercial real estate market turns around from its 2001-slide, lenders and borrowers are looking for any fuel to get the engine started again. Environmental insurance's quick turnaround time helps borrowers and lenders step on the gas when it comes to approving the majority of commercial real estate loans.

CMBS Advantage

While all the major ratings agencies state a preference for environmental insurance along with site assessments as a requirement for underwriting CMBS collateral, they have also stated their acceptance of an insurance policy in lieu of due diligence for smaller loans. For Standard & Poor's, that means loans of \$20 million or less; Fitch has called environmental insurance "a good idea" on loans up to \$3 million; and Moody's stated in a recent report that "environmental insurance is an acceptable substitute for due diligence and in some cases can be credit positive."

Lenders' push to accept environmental insurance on commercial real estate loan transactions prompted the agencies to develop criteria for it. Why have the ratings agencies made the adjustment? Because due diligence on securitizations is not required to be ongoing, whereas environmental insurance is protection for the lender over the life of the loan. Investment banks that now use environmental insurance in the CMBS market include Goldman Sachs, Morgan Stanley, Lehman Brothers, Bear Stearns, and JP Morgan.

Conclusion

Once the logic of environmental insurance hits lenders and borrowers, they find it impossible to go back to the old way. The vision has always been to create the environmental equivalent of title insurance, and now it appears we have done exactly that.

Distinguishing Perceived From Real Facility Hazards

The Increasing Need to Manage Risk in the Indoor Environment

*By: Daland R. Juberg, Ph.D., Human Health Assessment
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Used by permission Environmental Bankers Association.

At the time this article was originally published, Dr. Juberg was affiliated with the International Center for Toxicology and Medicine (ICTM).

Underground storage tanks, contaminated soil, leaking drums - As recently as five years ago, most environmental liabilities typically associated with property transfer assessment concerned the outdoor environment. Rarely was the indoor environment, save for asbestos and lead, evaluated as closely for environmental, financial, or litigation-related liabilities. Yet, the headlines today reveal a changing story:

"Is Your Office Killing You? Sick Buildings are Seething with Molds, Monoxide, and Worse," (Business Week cover story, June 5, 2000)

"Danger! Mold: Is Your School Infected? Your Child's Classroom May be Toxic. Across America Kids are Suffering Nosebleeds, Headaches, Asthma, and Worse" USA Today, Weekend Magazine, cover story, August 18, 2000.

"Erin Brokovich's New Target: Mold" (Washington Post, March 9, 2001).

Whether these are real health risks or largely perceived ones is an important question, one whose answer can significantly shape that nature of the investigation, response, and cost for various stakeholders. These days, it is important for lending institutions, facility managers, and property and casualty companies to recognize the growing attention of the public, media, and public health officials to the indoor environment and to learn how to assess and manage that risk in an effective and efficient manner.

In an address before the International Society of Facilities Executives (ISFE), Dr. Juberg will discuss the need to understand, assess, and manage both perceived and real facility hazards.

What are the Current Indoor Environmental Challenges?

Molds and mycotoxins lead the list of indoor environmental challenges, yet a host of other potential risks frequently confront the facility manager including asbestos, lead, photocopier emissions, pesticides, VOCs, reproductive hazards, and poor air quality, among others. Add to these the number of known clinical ailments or diseases such as allergies or asthma that have increased in prevalence or those that are hypothesized to exist including sick building syndrome and multiple chemical sensitivity and one recognizes the need to have some baseline knowledge about those indoor factors and elements that may impact human health and which present a risk.

Unresolved Concerns - What Can Happen?

One might be asking - why do I need to be concerned about such indoor environmental risks? The reasons are many and the answers vary depending on the perspective of the professional. For a facility manager or owner, if risks or claims go unresolved, a number of outcomes are possible including increased sickness/absence, increased number of claims, decreased productivity, disgruntled employees, and even closed facilities. For the lending institution, unresolved claims can lead to litigation, unfocused investigations, costly and often shotgun-approach testing, and in many cases, unnecessary or overly zealous remediation.

Asbestos and lead represent historical examples where remediation, while scoped properly in a few instances, was conducted far more often and to a much greater degree than warranted from a health perspective. Mold remediation is tracking to follow a similar path.

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Indoor Environmental Health is Real

Part of understanding the growing importance of managing indoor environmental challenges is accepting that it matters, that it is real, that it is on the minds of occupants and employees. In a recent survey conducted by ICTM, 55% of building owners who were interviewed either agreed or agreed strongly that growing public and regulatory concern about IAQ will lead to significant changes in building design and construction in the next five years (ICTM Risk Watch Report, Fall, 2000). Of those interviewed, 53% said that indoor air quality problems they had experienced were related to air conditioning, air exchange, allergies, asbestos, chemicals used in work operations, or various odors. Roughly a third of those interviewed noted that IAQ problems stemmed from molds, while new office equipment odors and cleaning chemicals were noted as contributory to IAQ issues in buildings and facilities.

Continuing Pressure on Safe Indoor Environments

Continued focus on healthy indoor environments is a certainty in the years ahead, as can be attested by trends in facility design and management - healthy homes, design for the environment, life cycle analysis and green buildings are just a few of the buzz words used today. The bottom line is that the emphasis on healthy indoor environments and the pressure to insure a safe indoor environment will only increase. The clear basis for future facility pressures can be seen by the fact that

- (a) IAQ remains one of EPA's top 5 concerns,
- (b) there is continued purchasing pressure for low hazard materials in the occupational setting,
- (c) through explosive increases in litigation, particularly for mold, and
- (d) by a rise in office equipment testing for analysis of off-gassing chemicals.

Knowledge is Power

Thus, many potential risks abound and it is important to have the tools to distinguish between a real facility hazard, one that

needs to be immediately addressed and those that are primarily perceived ones with little scientific basis or clinical support. If someone confronted you with a list of potential hazards in the indoor environment such as carbon monoxide, elevated VOCs, Legionnaires' disease, hypersensitivity pneumonitis, or multiple chemical sensitivity, could you tell which of these are real health hazards and which are largely perceived?

Examples of real health hazards (not necessarily risk) in facilities today include carbon monoxide poisoning, Legionnaires disease, neck and wrist strain from VDTs and hypersensitivity pneumonitis. What makes these real potential hazards is the fact that all are causally linked with a known and specific effector, in other words, carbon monoxide poisoning results from inhaling too much carbon monoxide. There are known and identifiable risk factors, assuming sufficient exposure or activity, for each of these disease states or symptoms.

Conversely, some alleged health hazards, which remain largely perceived, include "bad" air, multiple chemical sensitivity, sick building syndrome, and office equipment emissions. The distinguishing characteristic with each of these is that causation between a specific agent or exposure and a disease state or toxicological effect has not been demonstrated. While these latter concerns often dominate the work of the risk manager, in contrast to more significant and real health risks, these perceived risks can be very difficult to manage and resolve.

Determination of health risk, whether exposure to a chemical or a biological agent such as anthrax involves two important factors - hazard and exposure. Without one of these, there is no risk. It is important toxicologically to learn and know about the hazard characteristics of a potential chemical, substance, or agent of concern and then to determine under what conditions of exposure these materials constitute a risk. Fortunately, the practice of risk assessment can help in this determination. Risk assessment can be either qualitative or quantitative, but

essentially involves, four distinct parts - hazard characterization, dose-response evaluation, exposure assessment, and risk characterization.

- Use effective, open communication for all parties involved
- Achieve resolution and follow-up in a timely manner

While this tool has been used universally in matters involving environmental chemicals (e.g., Superfund Site exposures), it can just as easily be used to evaluate concerns in the indoor environment, whether the situation involves offgassing emissions from a photocopier, mold in the stairwell, or lead dust in the HVAC system.

Ultimately, it is necessary for the environmental professional or risk manager affiliated with a facility to recognize some of the more common contributing factors or activities that can lead to perceived or real facility hazards. In our experience, the following are ones that historically have caused such concerns:

Aside from the technical aspects of evaluating and resolving indoor environmental health issues and concerns, we have encountered over the years both common pitfalls and appropriate actions that accompany indoor environmental health investigations. First some of the common pitfalls that can result in costly and time-consuming reactive efforts include:

- Remediation activities
- Renovation
- Odors
- Indoor air quality
- HVAC issues
- Office equipment emissions
- Building materials
- Chemicals
- Water incursion

- Management unconvinced of the concern
- Reliance on unsubstantiated or unqualified information
- Random, unfocused consultation
- Non-medical or non-scientific professionals reaching medical and health conclusions
- Over or under analysis and testing
- Development of data that cannot be interpreted or explained
- Uninformed employees/occupants (i.e., lack of communication)

With any of these factors or activities, if site management or a risk manager can identify potential hazards, minimize or mitigate exposures, provide adequate ventilation, and maintain the HVAC system, these steps will go a long ways towards minimizing occupant or employee concerns.

As a logical counter to some of these pitfalls, we recommend and encourage the following actions when investigating an indoor concern:

While both perceived and real health hazards can involve issues other than IAQ, we find that indoor air concerns and issues dominate much of the field today. This systematic process for effective management of concerns entails (1) prevention assessment and management; (2) problem resolution, and (3) crisis management and communication.

- Respond to complaints, concerns in a timely and professional manner
- Employ a multidisciplinary, investigative team
- Seek focused analytical testing if appropriate
- Integrate environmental findings with medical information and data

Ultimately, through the understanding, assessment and management of both perceived and real facility hazards, one can reduce the risk of illness, reduce the risk of financial loss, and reduce the risk of a public relations disaster. All are critically important in today's heightened atmosphere and concern related to facility hazards and the potential impact to personal health.

About the Environmental Risk Resources Association

What is ERRA?

The Environmental Risk Resources Association is a independent nonprofit association dedicated to helping risk management professionals utilize environmental insurance products to better server the needs of their customers.

What are the benefits of membership?

Through a knowledge managed website, focused environmental forums, quarterly newsletters, and access to specialized risk management resources, ERRA members have a valuable resource at their fingertips.

How do I join ERRA?

From the ERRA website at www.erraonline.org, click on the Become a Member button to find a membership registration form. The form can be completed online on our secure server or printed and mailed back to us. A small membership fee of \$225 per person or an office membership (6 people) of \$1,000 can be paid by check or credit card.

How do I get more information?

Contact ERRA at 877-735-0800 or email cindy@erraonline.org

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Anne Simmons, Editor

Comments, suggestions and articles are welcomed. Potential guest columnists are encouraged to submit a brief topic outline and biographical summary to Anne Simmons at anne@erraonline.org.