



## ENVIRONMENTAL EXPOSURES

**DRYWALL CONTRACTORS** Liabilities associated with environmental exposures can devastate your business. Environmental claims are costly and time-consuming. They can range from business interruption to bodily injury, property damage and cleanup expenses. Because pollution losses are low-frequency, high-severity events, your bottom line may be severely compromised if you do not have adequate protection.

Protect your business by understanding your environmental exposures and how the XL Insurance companies can help you effectively manage your risk and protect your bottom line.

### COMMON ENVIRONMENTAL EXPOSURES FOR DRYWALL CONTRACTORS

Through operations, drywall contractors face a number of environmental exposures that could impact a profitable business:

#### OPERATIONAL EXPOSURES

- Inadvertent disturbance of pre-existing contamination, such as asbestos-containing materials, lead-based paint, mercury and/or mold
- Dust resulting from cutting and sanding activities especially in environments with sensitive populations including schools and hospitals
- Water/mold damage due to installation before completion of building envelope
- Mold resulting from closing up wall cavities with moisture present
- Installation of wet materials due to inappropriate material storage practices or elevated moisture levels of delivered materials
- Water/mold damage resulting from punctured piping
- Improper disposal of waste materials
- Spills from equipment brought on-site

*This list is intended only to outline some typical environmental exposures common to drywall contractors and is not all-encompassing.*

### CLAIM SCENARIOS INVOLVING DRYWALL CONTRACTORS

The following examples demonstrate some of the many ways in which drywall contractors can incur environmental liabilities.

#### Multi-Million Dollar Settlement On School Mold Claim

A plaster subcontractor was assigned almost equal liability with the General Contractor in a settlement of a California school project claim in 2002. Initially, the contractor filed an acceleration claim against the school district that awarded them \$1 million; however, the school district filed a counter claim alleging defective work resulting in water intrusion. In preparation for the construction defect claim, mold was identified in the walls of the school, which resulted in the school being closed for a week for evaluation. After the school district filed an amended complaint, the acceleration claim award was overturned and the plaster subcontractor and the general contractor were assigned \$2.2 million and \$2.3 million of liability respectively, with other contractors, including the window and sheet metal contractors contributing over \$1 million each. This settlement was reached with no bodily injury claims by students.

### **Contractor's Mold Management Knowledge Is A Competitive Edge**

An interior renovation firm won a HUD contract to renovate 56 townhouses/row homes that had been vacant for more than three years. While removing damaged drywall, a tremendous amount of mold growth was discovered due to leaks in the roof, bathrooms, and kitchen. The contractor, who was very knowledgeable about mold exposures, proper mold management techniques and remediation, did not exacerbate any conditions and was able to renegotiate the contract that resulted in an increase in contract value. Failure to be proactive could have resulted not only in the loss of additional fees but also a significant claim for the cost of exacerbating the condition.



### **Completion Of High School Project Delayed Another Year**

To achieve the completion date on a school project, the general contractor accelerated its schedule and the drywall contractor agreed to start drywall installation before the building envelope was completed. Rain damaged the majority of the installed drywall as well as the materials stored on site. This resulted in \$2 million in repair and

associated delay costs. Although these costs were borne by the general contractor, they have initiated subrogation claims against the drywall subcontractor.

### **Hospital Investigates Deaths Caused By Construction Dust**

A Denver hospital is investigating the infection by a common mold of at least two patients, one of whom eventually died. Experts believe the exposure occurred during their heart surgeries in an operating

room adjacent to a construction area. Although it appears that all proper precautions were implemented, dust is a very effective transporter of airborne bacteria. The highly litigious potential for this type of claim indicates the high risk nature of hospital and healthcare projects, thus increasing the liability of not only the project's general contractor but also any contractor who generates dust during their work. The contractor continues to prepare for future litigation and has placed their subcontractors on notice of the claim.

### **Contractor Needs To Manage Project For Potential Future Claims**

The principal of a school, where a new construction project was in progress, was driving by the project site and observed dry wall stored outside in a puddle on the site. Photographs were taken of the storage practice and the client contacted the general contractor, notifying them that they would be held liable for any future mold claims on the project.

### **Lead Dust Contaminates Building**

During renovation work, lead-based paint was identified while removing old walls. Although the contractor erected containment to isolate the work areas, the HVAC system was not sealed and disconnected prior to discovering the lead-based paint. The dispersal of the lead-laden dust through the HVAC system clogged the heating coils. The contractor was required to replace the HVAC as well as pay for business interruption claims totaling \$150,000.

### **Settlement Reached In Elementary School Mold Case**

The contractor agreed to pay a \$650,000 settlement in a lawsuit involving a new elementary school that had to be closed, gutted, cleaned and reconstructed to remove mold that had grown throughout the building. It was determined that damp interior walls

and other moisture problems had not been corrected during construction. This settlement followed an earlier settlement in which the contractor forgave \$484,000 in construction costs to the school district. Contributions from subcontractors on the project were not released.

*The examples above are intended to illustrate the wide variety of environmental exposures faced by utility contractors and the many ways in which those exposures can arise. Insurance coverage in any particular case will depend upon the type of policy in effect, the terms, conditions and exclusions in any such policy and the facts of each unique situation. No representation is made that any specific insurance coverage would apply in the above examples. Please refer to the individual policy forms for specific coverage details.*

## **ABOUT XL INSURANCE**

The environmental unit of the XL Insurance companies focuses on the construction and environmental services industries, providing our clients with *integrated environmental risk management*<sup>®</sup> solutions. With unparalleled technical expertise and knowledge, the XL Insurance companies provide clients with integrated underwriting, loss control and claims management services.

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*Accurate as of September, 2008.*

