Naturally Occurring Substances Can Expose Construction Firms to Environmental Liability

What do silica, mercury, arsenic, pyrite, and asbestos have in common? They all are recognized as toxic substances, or contain toxic substances as defined by the U.S. Environmental Protection Agency. Their very presence on a construction site presents a serious exposure for a construction contractor.

There are potentially hazardous consequences when these toxic substances are uncovered during construction:

· Mercury - is a human neurotoxin; meaning it acts specifically on neurons or nerve cells. It is most hazardous to developing fetuses and small children. Eating mercury-contaminated fish is the way most humans become exposed. When mercury enters water, certain conditions can cause it to convert to methyl mercury. Methyl mercury is ingested by aquatic creatures and becomes more concentrated as it moves along the food chain. Humans receive the highest forms of concentration because they are at the end of this food chain.

· Pyrite - has a high sulfur content, which if exposed to oxygen or water will form sulfuric acid. When a construction project releases significant amounts of pyrite into the surrounding area, it can result in high amounts of acid drainage, which enters surrounding bodies of water. The acid drainage contaminates streams and water wells of area residents.

· Asbestos - has little or no impact on the environment and human health if left undisturbed. However, when construction releases natural asbestos fibers into the atmosphere, it exposes workers and residents of the surrounding area to respiratory hazards. Asbestos is known to cause cancer of the lungs and of the lining of internal organs.

· Silica - is most dangerous in the crystalline form known as silicon dioxide. People who have been exposed to silica and contract silica-related respiratory conditions usually have inhaled tridymite or crystobalite contained in the dust released during construction. Although all forms of crystalline silica are different in chemical structure, all can eventually be deadly.

· Arsenic - has been linked to cancer of the bladder, lungs, skin, kidney, nasal passages, liver, and prostate. Non-cancer effects can include thickening and discoloration of the skin, stomach pain, nausea, vomiting, diarrhea, numbness in hands and feet, partial paralysis, and blindness.

What specific implications does the presence of these toxic substances have on environmental liability insurance? Many of these policies contain wording that excludes these naturally occurring substances from the coverage. In Contractor's Pollution Liability Insurance (CPL), there are several ways exposure to naturally occurring hazards may be excluded. For example, the insurer could include a specific exclusion for naturally occurring substances in the exclusions section of the policy. No coverage would apply to claims based upon any naturally occurring substances in their unaltered form, or in an altered form due to naturally occurring processes.

A second way to exclude these substances from coverage is to exclude them by definition. In the policy's definition of covered pollution conditions, the definition does not include naturally occurring substances. Pollution conditions are defined as the emission, discharge, dispersal, release or escape of pollutants, which are not naturally occurring. This negates coverage for these substances.

Does this mean you shouldn't purchase a CPL policy? The answer to that question would be "no." There are a number of different policy forms. Talk to your insurance agent to get the one that is best suited to your needs.