



ENVIRONMENTAL ISSUES FOR COMMUNITY ASSOCIATIONS

Public awareness about environmental issues continues to grow. Community association members know that the quality of their surrounding environment is important to their health and their property value. Along with the problems of environmental damage are those of liability:

- Who will pay to clean up groundwater contaminated by toxic runoffs?
- Who will pay for wetlands ruined by pesticides?
- Who is responsible for chemicals leached into the soil from the community's asphalt pavements or the shingles on roofs?

Associations need to identify pollution risks before they occur and learn how to control them. This will reduce these risks and make the community association safer. Some risks might be eliminated altogether, and others will be managed more effectively.

What environmental issues should community associations be concerned about?

Community associations have several environmental concerns: mold, underground storage tanks, chemical spills, and gas and vapor issues.

What should we know about mold?

The most effective way to deal with mold is to develop effective moisture and mold management plans and follow them. If you have mold growth in your community association, you must clean up the mold and fix the water problem. If you clean up the mold but don't fix the water problem, then, most likely, the mold problem will come back. Controlling excess moisture is the key to preventing and stopping indoor mold growth.

From the insurance perspective, damage from mold is specifically excluded in most standard property insurance policies. Property insurance policies provide coverage for damages that are sudden and accidental. They are not designed to cover the cost of cleaning and maintaining a home.

However, if mold is caused as a direct result of a covered peril, such as a burst pipe, the policy could cover the cost of eliminating the mold. But mold caused by water from excessive humidity or condensation is a maintenance issue for the property owner, like

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Mold growing on the surface of a unit ventilator. Moisture control is the key to mold control. If items are kept dry, mold does not grow.

(Photo courtesy of Environmental Protection Agency.)

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rot and termite infestation, and generally is not covered by the policy. Most people routinely clean up mold before it grows large enough to become a hazard.

To avoid confusion, many insurers are now inserting clarifying language or an absolute exclusion in their policies. Some companies may decide to cover all mold claims and price the policy accordingly. Most major insurers have announced some form of coverage exclusion or limitation.

Environmental policies, which can include coverage for mold, are available, but unless the community association has a mold protocol in place, the policy will include language saying if a construction defect or maintenance issue causes the mold, the community association will not be covered. One issue with these policies is that maintenance is not clearly defined.

Do we need special protection if we have an underground storage tank?

Community associations that own underground storage tanks (USTs) should have each tank evaluated for its age and for the last time it was inspected. Tank inspectors are available to conduct this inspection.

In addition to inspection, tanks need to have some sort of secondary containment, such as a trench large enough to accommodate the liquid in the tank, or a retaining wall to contain leaks.

Securing USTs should be a priority for community associations. The cost of cleaning up a leaky UST is enormous: to clean up the soil from a spilled 55 gallon drum of oil is \$250,000–\$350,000; to clean up groundwater from a similar spill is more than \$1 million.

If a community association does own USTs, we recommend that a UST pollution liability policy be purchased.

Ignoring the many regulations and procedures required by law will only spell trouble later on. It is best to be familiar with the many, and changing, environmental laws and safety procedures so that your association is in compliance and able to handle contingencies as they arise.

What should we know about chemical storage?

All of the chemicals used by a community association should be given special attention. Consider where they are stored, who is using them, and whether they follow the proper procedures for handling chemicals. Since chemicals can react with one another, someone on-site should have training on how chemicals should be stored.

Most of the cleaning agents a community association uses should be biodegradable—they should be citrus-based solvents instead of petroleum-based solvents. Citrus-based products are not hazardous to workers or residents.

What gas and vapor issues are important to community associations?

HVAC—Community associations should use a licensed and insured independent contractor to recover gas in the system when servicing HVAC units. Gas may no longer be released into the air.

Plumbing—A licensed and insured plumber should make sure all vents work properly, so that methane gas, which is colorless, odorless, and highly explosive, is not leaking.

Vapor Intrusion—Vapor intrusion is the migration of volatile chemicals from the subsurface into overlying buildings. In extreme cases, the vapors may accumulate in occupied buildings to levels that may pose near-term safety hazards, acute health effects, or aesthetic problems. If your community association is built on or near a former industrial site, an old landfill, or a refining or petrochemical factory, vapor intrusion may be a concern. Site investigators can be hired if your community association suspects vapor intrusion.

Radon—Radon is a radioactive, invisible, odorless gas that comes from the decay of naturally occurring uranium in the earth's soil. It can accumulate in buildings in dangerous



levels. Radon is the second leading cause of lung cancer in the United States with about 20,000 lung cancer deaths each year related to radon exposure. Simple, inexpensive do-it-yourself radon test kits are available at local hardware stores.

New Structures—New community associations should be allowed a certain “burn in” time before residents are allowed to move in. New products contain volatile organic constituents, such as resins, solvents, and binders, which “off-gas”

volatile organic compounds for a period of time. Whenever possible, obtain information on emissions from potential new products to be installed in the building and select lower emitting products when available.

ASK THE EXPERT

“Ask the Expert” is a regular column in *Insurance Focus*, featuring an interview with an expert about an important insurance issue facing community associations. This month our expert is Win Houdeshell of CFM Management, a leader in the management of condominiums and cooperatives in the Washington, DC area. Mr. Houdeshell has three decades of experience in property management and engineering/maintenance and is an Authorized OSHA Outreach Trainer. He may be reached at 703-941-0818, ext. 40, or at whoude@cfmmanagement.com.

Q: What should community associations know about Occupational Safety & Health Administration (OSHA) requirements regarding chemicals?

A: Community association work places fall under the Department of Labor’s Occupational Safety & Health Administration (OSHA), General Industry Regulations & Standards 29 CFR 1910. Under these regulations, each and every work place that has hazardous chemicals/materials for use by their employees is required to have an OSHA Hazard Communication written program on their site. This program serves to inform employees regarding the presence of hazardous items, how to work safely while using them, and what protective measures, such as personal protective equipment (PPE), are to be used.

A HAZCOM coordinator has to be identified at each work site. This person is responsible for administrating the HAZCOM program daily, maintaining the required information, and overseeing overall OSHA work place requirements within the work site. The coordinator must identify and inventory all hazardous chemicals/materials that are used. The inventory must include the location, the amount, and the department/area the chemicals are used. The inventory must be readily available to employees, and it must be

updated annually and kept in your OSHA file and with your MSDS sheets.

Material Safety Data Sheets (MSDS) must be obtained for each hazardous chemical/material purchased and used in your work place. Your supplier will provide them free of charge. Keep the MSDS sheets in a binder in alphabetical order by product name in an accessible location for all employees. Also obtain MSDS sheets from any contractors using/storing hazardous items in your work place. Training for these MSDS sheets must be presented to your employees.

Labeling all hazardous chemicals/materials is another integral part of your HAZCOM program. All chemicals/materials used or stored in your work place must be labeled. Most items today come with some sort of label from the manufacturer. If you use plastic portable containers or spray bottles, these must also be labeled stating the contents, hazardous information, and any personal protective equipment that should be used.

In addition to the above, you may be required to have additional training, inspections, and safety meetings.



What is pollution insurance?

Pollution insurance is designed to cover losses and liabilities arising from pollution-related damages. It covers the potential for bodily injury, property damage, cleanup costs, and natural resource damages that are on, under, or in a particular property. Pollution insurance is usually written on a claims-made basis, which insures for claims made during the policy period, regardless of when the alleged negligent act occurred.

Pollution insurance can cover third-party, off-site exposure, if pollution from a community association migrates somewhere, and it covers on-site exposure. Community associations can obtain coverage for new-found conditions, such as when a problem is found when an association digs a hole for a pool.

Before pollution insurance will be written, a community association will need to go through an environmental risk assessment, which evaluates the potential for past, present, and future environmental liabilities. The result of this assessment will determine what coverage will be offered at what price.

What should we know about compliance?

Several important steps should be followed in order to comply with the many federal, state, and local environmental laws:

1) Know environmental conditions at your community association.

Inspect records and walk through the facility on a regular basis. Make an inventory of current hazardous materials. Document steps taken.

2) Learn the law. Consult state, federal, and local laws, statutes, and ordinances to determine if you are in compliance. Be sure Occupational Safety & Health Administration requirements are being met for

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worker safety and health. Obtain the services of an environmental attorney if you feel you may have problems in this area, particularly if you have reason to believe your community association may be the subject of an investigation.

3) Bring your community association into compliance. It may be necessary to hire technical and legal advice

to be sure your association complies with the many complicated environmental restrictions and rules.

4) Develop a plan to keep your association in compliance. Classes, lectures, and educational seminars are helpful to employees, residents, and board members, all of whom should be encouraged to report any safety violations immediately.

Where should we go for further information?

Ignoring the many regulations and procedures required by law will only spell trouble later on. It is best to be familiar with the many, and changing, environmental laws and safety procedures so that your association is in compliance and able to handle contingencies as they arise.

With environmental issues, it is particularly important to obtain appropriate legal assistance and information and to make sure your insurance is up-to-date and complete. If you have any questions or need further information, please contact Steve Dickerson 703-205-8788 or Steve.Dickerson@usi.biz) or Theresa Swan 703-205-8753 or Theresa.Swan@usi.biz).

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