



AHT SCHOOL RISK REPORT:
Pollution Exposures in Private
and Independent Schools

When most people think about pollution exposures many minds turn to images of smoke stacks in manufacturing plants or of oil cans leaking fluid and underground storage tanks. Hardly any minds turn to that of a school. But what about those exposures that often can't be normally prevented or even seen?

Many schools plan to rely on their property and general liability policies in the event of a pollution instance, but few understand the danger in that assumption.

When assessing the need for pollution coverage, the first question that often comes to mind is how much exposure does my school really have? We frequently hear comments such as "We don't have any storage tanks to worry about" or "Our maintenance procedures are well established and reduce our chance of any pollution exposure." While these can be very accurate statements, significant exposure still remains.

Let's look at some common claims examples that apply specifically to schools:

SCHOOL EXPANSIONS / RENOVATIONS: NOT ALWAYS AS CLEAN AS YOU HOPE

During a planned expansion project, in order to build a new school a school district demolished a middle school built in the 1940's. During excavation activities, a previously unknown underground storage tank was discovered. Findings from an environmental study noted soil contamination from the tank. Localized groundwater contamination was also found on the school's property and at two adjacent residential locations that used wells.

The adjacent residents filed bodily injury and property damage claims against the school district (due to the pollution coming from the schools premise). Contaminated soils were excavated and a specialized hazmat contractor was utilized to properly dispose of the soil. Meanwhile, the two adjacent residents were provided hotel accommodations. Groundwater remediation and monitoring continued until the State provided clean closure of the site.

I FEEL SICK: MOLD CLAIMS AND THE IMPORTANCE OF GOOD MAINTENANCE PLANS

Claims of bodily injury from mold have consistently hit the headlines, some as recent as 12/8/14 when W.W. Robinson Elementary School in Woodstock, VA received a report from concerned parents cited sickness of their children due to poor indoor air quality and mold.

Another claim example: City inspectors received notice of possible building violations at a private boarding school. Inspection of the facility found the building's roof and interior were in violation of city codes. The violations were serious in nature include signs of water damage on ceilings, light fixtures, and electrical switches. Additionally, several students reported a mold/mildew odor. A further investigation discovered black mold within the ceiling tiles, under layers of peeling paint, and in areas of noticeable water leakage. Resident students were showing symptoms of rashes, headaches, asthma, and difficulty breathing. The facility had to be temporarily shut down and the resident students relocated before clean-up of the extensive mold could begin. Claims for bodily injury followed shortly thereafter.

WHAT'S THAT SMELL? CARBON MONOXIDE AND OTHER FUMES

Carbon Monoxide is perhaps one of the most complicated frequent pollution claims in determining how the courts will decide. Washington State has proposed several laws around Carbon Monoxide Alarms (RCW 19.27.530), but has not outright ruled on a carbon monoxide claim from a pollution perspective.

In other areas of the country the results have been a mixed bag, but the majority of jurisdictions have found that carbon monoxide is outside the definition of a "pollutant." The majority of these cases have focused not on the definition's wording but on the more abstract concept of "reasonable expectations." This is not a definitive response, nor an indication on how Washington will decide.

Courts have found cases involving exposure to toxic fumes as challenging as their natural counterparts. Much of the confusion in this area relates to whether a normal everyday product can become a "pollutant" through improper use and when that pollutant becomes such.

The Washington Supreme Court has addressed some of these issues in regards to fumes from everyday materials. An example is in *Quadrant Corp. v. American States Insurance Co.* In *Quadrant*, the claimant was injured by fumes emanating from waterproofing materials being applied to her building. The court not only looked to the plain meaning of the term pollutant but also whether it was acting as a pollutant with respect to the harm alleged in the claim. The court held that the fumes were pollutants and that it was their irritating, contaminating, or polluting qualities that caused the injury.

THIS TASTES FUNNY: UNTREATED WASTEWATER ACCIDENTAL RELEASE

A process tank at a wastewater treatment plant malfunctioned, discharging a large volume of untreated wastewater into a nearby stream. This discharge killed fish as well as damage to many aquatic plants. The local regulatory authority issued fines to the operator of the wastewater treatment plant for the unauthorized discharge. In addition, several local residents as well as environmental groups filed suits for loss of enjoyment of the creek.

While some schools and universities have their own wastewater treatment center (for use or for education), other schools have utilized a form of treated wastewater in the irrigation of their premises or have taken field trips to wastewater treatment facilities themselves. Claims of bodily injury to students from inhaling or ingesting these wastewater contaminants have occurred. Examples include a group of high school students were running track while the football field was being irrigated and in the course of their track practice inhaled some of the water from the sprinkler system resulting in sickness claims from the students.

Likewise, parents of students visiting a local wastewater treatment facility claimed bodily injury as the result of their child getting sick from the fumes at the plant. As this was a sanctioned school trip, the school was sued as well as the wastewater treatment plant.

ARTIFICIAL TURF: CHEAP TO MAINTAIN, BUT POTENTIALLY HARMFUL TO USERS

Artificial turf is consistently replacing grass fields across schools and universities; however, there are hidden dangers in the chemical compounds used in such alternatives that have been a heated topic of late due to health hazard concerns.

A recent study on artificial turfs and their chemical compounds have raised serious health and regulatory concerns. Scientists found harmful chemicals in virtually every sample tested, including PAHs, chromium and lead. Arsenic and cadmium were detected in most samples. The toxic chemicals found in the study are known to harm human health. Exposure to PAHs can cause cancer. The metals studied are known to damage the brain, kidney, liver, skin and bladder.

The hidden dangers of these chemicals do not lie just in the fields themselves. Many of these chemicals tend to migrate out of the field's boundaries and into people. Athletes playing and rolling on the fields could get the small bits of rubber in their mouths and digest them. The study however did not characterize exposure through breathing contaminated air, dust and particles.

SO...DO MY PROPERTY & GENERAL LIABILITY RESPOND TO THESE CLAIMS?

Most General Liability policies exclude coverage for claims arising from pollutants, including fumes and fungi. A standard ISO General Liability policy excludes such coverage, but provides an exception for claims arising from a hostile fire (for bodily injury claims from smoke or vapor inhalation). Some General Liability markets are attaching Total Pollution Exclusions to remove that exception, which can cause a serious gap when a fire loss occurs.

Similarly, most individuals (insureds and brokers alike) tend to focus on the third party liability claims from pollution policies and forego the first party property coverage analysis.

Claims for Debris Removal and Clean Up as a result from pollution related events, as well as Business Interruption losses due to temporary suspension of operations during the cleanup process can, and often should, be endorsed onto a pollution policy as they are normally excluded under a traditional Commercial Property Policy. For example, did you know that the “period of restoration” (the period of time that determines when your business interruption coverage starts and ends) does not apply in a scenario when the EPA requires you remain closed after the property is restored for further monitoring of “pollutants” due to the contamination?

The most important aspect in all this of course is to have your trusted brokerage firm/advisor help navigate you and your board through this exposure to plan for accordingly.

AHT Insurance is one such brokerage firm that has deep experience in the area of addressing such exposures with their clients. Contact your AHT broker today to discuss your pollution exposures.

ABOUT THE AUTHORS

Derek Symer

Principal, Senior Vice President
dsymer@ahtins.com

Derek Symer brings a special understanding of independent schools to AHT Insurance, thanks to more than a decade of experience in this space. Derek has helped grow AHT's Education practice and his work within this sector has given him insight into the multitude of risks facing educational organizations today. These risks range from management and professional liability, to campus safety, cyber and international risks. Derek is a Principal at AHT and earned his CPCU designation in 2008.



Outside of AHT, Derek has served president of the Dartmouth Club of Washington, D.C., which earned the 2006 Dartmouth Club of the Year Award under his leadership. He also has been honored as the Dartmouth Club "President of the Year" and has served on the Dartmouth Alumni Council. His other interests include playing the guitar, painting and tennis.

Prior to joining AH&T in 2003, Derek worked in the office of historical research at the Holocaust Memorial Museum in Washington, D.C.

Brian King

Assistant Vice President
bking@ahtins.com

Brian King is deeply involved in AHT's Education practice in the Northwest. Brian focuses on insurance and risk management solutions for technology based clientele, independent school organizations and other nonprofits. He is particularly experienced at helping his clients identify, plan, and design innovative risk management solutions addressing their exposures across all avenues of their operation.



Outside of the office, Brian's interests include hiking, drawing, golf and being with his wife and newborn daughter.

Brian joined AHT in 2014 with five years of experience across all aspects of the insurance industry including retail, underwriting, and wholesale insurance brokerage capacities at multi-national corporations.

REFERENCES

- Keelor, Josette. "School District Investigates Air Quality, Black Mold Claim" December 8, 2014. www.nvdaily.com
- Great American Insurance. "Twenty-Eight Premises Environmental Claim Scenarios You May Not Have Thought About".
- Quadrant Corp. v. American States Insurance Co. April 28, 2005.
- Hessler, Wendy & Basu, Niladri. "Athletes kick up hidden toxic chemicals from artificial turf." October 28, 2008. www.environmentalhealthnews.org