



MIND THE HAZARDS

WHEN SMALL EMERGENCY RESTORATION PROJECTS TURN INTO MASSIVE FINANCIAL LEGAL LIABILITIES

BY LUKE NIENHAUS

We all know that small emergency restoration projects can turn into massive asbestos and other hazardous materials abatement jobs that could lead to significant liabilities for the restoration contractor and its insurance carrier. However, this costly scenario can be avoided by careful planning with a qualified inspector and contractor, and with the necessary knowledge of potential building hazards and regulatory requirements related to properly disturbing these materials. Here's how to make it happen.

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WHEN LOSSES GO DOWN

It happens every day: A laundry room in a home has flooded. Time is of the essence to reduce damage to the property, and the homeowner naturally wishes to restore life to normal as soon as possible. After the homeowner contacts his insurance company, a renovation company begins cleanup, and demolition of floor tiles and drywall in the laundry room prior to dry out and renovation. A simple project, it seems, fairly quickly resolved.

But what if this hypothetical home's laundry room floor tile and wall-joint compound contain asbestos, or the demolition has disturbed mold, polychlorinated biphenyls (PCBs) in floor mastics, or lead-based paint? With uncontrolled demolition during an emergency renovation, dust, debris, and airborne particulates may be generated with the potential to be distributed further by mechanical air movers and dehumidification units used to dry wet building materials.

In such a scenario, the renovation company's workers, subcontractors, and the homeowners have now been exposed and the contents of the home have been contaminated. This "simple" emergency restoration project now potentially involves unnecessary liability in the form of significant regulatory fines, litigation fees, additional consultant and abatement fees, and personal content contamination cleaning or replacement costs. A small restoration project has turned into a massive legal and extensive building-wide remediation project, and there is the potential risk of damaged reputation and loss of business due to negative media coverage and public regulatory citations.

ASBESTOS IN HOMES

A mined mineral and recognized human carcinogen, asbestos was historically used in many consumer products such as flooring materials, insulation, motor vehicle components, cements, adhesives, and caulking and glazing, mainly for its insulating and fire-resistant properties.

The 1970 EPA Clean Air Act largely banned the use of asbestos in consumer products, and the 1989 EPA Asbestos Ban and Phase-Out Rule banned major categories of asbestos-containing products and new uses of asbestos.

Homes built prior to 1980 have the potential to have been constructed with asbestos-containing building materials such as floor tiles, thermal system (pipe) insulation, ceiling tiles, and joint compounds. These building materials are commonly disturbed during a restoration project, and, due to the emergency nature of restoration work, they are often not sampled and analyzed for asbestos content prior to the start of demolition.

ASBESTOS REGULATORY BACKGROUND

The National Emission Standards for Hazardous Air Pollutants (NESHAP) requires that, prior to the commencement of demolition or renovation, the owner/operator of a demolition or renovation activity thoroughly inspect the affected facility or part of the facility where the demolition or renovation operation will occur for the presence of asbestos. Violators of the NESHAP requirements are subject to penalties and/or criminal charges depending on the severity of the violation.

However, federal and local laws regarding asbestos analysis in demolition and renovation rarely directly apply to restoration contractors, as the term "facility," as defined by NESHAP, excludes residential buildings that have four or fewer dwelling units (although some local/regional Air Quality Management District (AQMD) regulations are more stringent regarding the residential exclusion). Furthermore, these laws often have provisions related to "emergency renovations" due to an event that causes an unsafe condition, an unreasonable financial burden, or would cause equipment damage. Some state and county laws do require an asbestos inspection prior to renovation or demolition. For example, Cook County in Illinois requires an asbestos inspection to be conducted for all structures to be demolished or renovated, but there is no

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requirement for an inspection prior to restoration or clean-up work.

The Occupational Safety and Health Administration (OSHA) requires employers to implement a worker-training program for employees exposed to asbestos fiber levels (either measured or anticipated) at or above the permissible exposure limit (0.1 fibers per cubic centimeter [f/cc]) as an eight-hour, time-weighted average and/or the excursion limit (1.0 f/cc as a 30-minute time-weighted average). This training program is dependent on the type of work being performed. It is the employer's responsibility to properly train employees to recognize hazards in the workplace. Violations of OSHA regulations may result in regulatory penalties.

Companies that do not have a policy of sampling building materials for asbestos prior to a renovation project may be subjecting their employees, and the homeowners, to potentially hazardous environments, creating liability—legal and financial—for themselves and for their insurance carriers.

LEAD, PCBs, AND MOLD

Other potential environmental hazards that may be encountered during demolition and restoration activities include lead paint/dust, polychlorinated biphenyls (PCBs), and mold growth.

Lead-based paints were banned for use in housing in 1978. Therefore, homes constructed before 1978 have an increased likelihood of containing some lead-based or lead-containing paint. According to the CDC, no safe blood lead level in children has been identified, and even low levels of lead in blood have been shown to affect IQ, the ability to pay attention, and academic achievement.

The Lead Renovation, Repair, and Painting Rule (RRP) is an EPA rule that applies to contractors who might disturb surfaces painted with lead-based paint. The RRP requires firms conducting renovation, repair, and painting work that disturbs lead-based paint in homes, child-care facilities, and pre-schools constructed before 1978 to have their firm certified by EPA use-certified



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renovators trained by EPA-approved training providers. The firms must also follow lead-safe work practices.

Disturbed mold growth on building materials can produce an exposure hazard to immune-compromised individuals or individuals with mold allergies, while PCBs have been associated with skin conditions in adults and neurobehavioral and immunological changes in children.

BE PREPARED

Emergency restoration projects take place in complicated, stressful environments, and firms are often under significant reconstruction and re-occupancy timing pressures, and often have limited

resources. However, the emergency nature of the work should not prevent consideration of a potential hazardous environment, such as from asbestos, lead, mold, and PCBs. The catastrophic “laundry room” scenario initially described and scenarios like it can be avoided through careful planning.

Asbestos and lead inspections are completed by accredited/licensed inspectors. Licensed asbestos building inspectors sample suspect building materials, and bulk-sample analysis is completed by accredited and licensed environmental laboratories. Experienced and qualified inspectors should be retained to assess potentially mold-impacted areas, and to identify and sample building materials suspected to contain PCBs.

Site inspections can be completed relatively quickly, and bulk sample results can be returned within hours to avoid renovation delays. Pre-planning and efficient coordination between the restoration contractor, the inspector, and the licensed laboratory is the key to reducing potential reconstruction and re-occupancy delays.

Inspectors can be employed by the restoration contractor, however this arrangement can present obvious conflicts of interest; a third-party consultant is recommended to eliminate this potential issue. The cost of an asbestos inspection varies and is dependent on property location, the size of area of restoration, the scope of the project, the cost of laboratory bulk sample analysis, and the number of bulk samples collected.

While bringing in inspectors to sample suspect materials does add a cost to restoration projects, this cost is far lower than the unnecessary liability for the contractor, and the significant regulatory fines, legal and financial liability litigation, additional consultant and abatement fees, personal content contamination cleaning or replacement costs, and professional reputational damage. ■

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