

Evolving Environmental Risks From Wilder Weather

Law360, New York (June 17, 2011) -- The serious environmental damage from recent natural disasters such as the earthquake in Japan, tornadoes and flooding in the heartland states and wild fires out West may not be readily apparent. More traditional environmental damage caused when potentially hazardous materials inadvertently are released during natural and man-made disasters often is overshadowed by more immediate concerns like loss of life or released radiation. Nonetheless, over the longer term, this environmental contamination could have equally as profound consequences.

Environmental hazards can give rise to all kinds of covered losses, which generally fall into four broad categories:

First, alleged property damage and bodily or personal injury may give rise to lawsuits which must be defended under most liability insurance whenever "any possibility" of coverage exists.

Second, environmental hazards associated with natural (and man-made) disasters inevitably give rise to so-called Time Element losses for business interruption or contingent business interruption. Policyholders that suffer interference with business operations and that purchased appropriate coverage should give notice and preserve evidence of the scope of any loss.

Third, traditional property coverage may be implicated to off-set losses for damage to one's own property.

Fourth, directors and officers may find themselves the targets of lawsuits arising out of managerial decisions involving the management or clean-up of hazardous materials before, during and after a disaster. These environmental matters can give rise to allegations that managerial decisions caused shareholder losses and, hence, to covered D&O claims.

This article discusses some of the often-overlooked environmental damage associated with disasters and those types of business operations most prone to potential environmental losses. Whatever the recent severe weather is caused by, natural disasters appear to be on the rise. Stakeholders of all stripes charged with managing risk, now more than ever, need to be aware of potential environmental hazards.

Managing risks necessarily includes identifying them before the worst happens; once aware, managing them effectively, including with insurance; and then being prepared to immediately pursue and secure one's existing coverage rights.

Types of Environmental Damage

Less readily apparent environmental damage in the wake of natural or man-made disaster includes releases of liquid fuels, solvents, cleaning fluids and other chemicals from damaged or crushed vehicles or containers, including drums and tanks. These liquids can contaminate both surface and groundwater, especially where large amounts of debris pile up over large volumes of source materials or where heavy rains cause flash flooding fouling local waterways. Demolished buildings too may contain asbestos or develop toxic mold, potentially damaging the health of residents as well as response personnel.

Fires caused by lightning or broken gas mains, etc. can burn unabated for hours or days and may generate smoke containing particulates such as soot, toxic chemicals such as dioxins and other air-borne pollutants. Dangerous household, industrial and medical wastes can be distributed over wide areas by high winds or flooding. In fact, research has shown that tornadoes can suck up debris and deposit it more than 200 miles away. Another potential hazard is oil spilled from downed electrical transformers, some of which, especially the older ones, may contain toxic polychlorinated biphenyls, or PCBs.

Potential Source Areas

Residual environmental impacts may be especially acute following damage to gas stations, other petrochemical operations, heavy industry and even hospitals. Other places that may be sources of environmental damage after disaster strikes include power-generation facilities, known hazardous waste or Superfund sites, and mining operations.

Farm-related run-off, including fertilizers, pesticides and herbicides, is another source of potentially significant contamination that can have wide-ranging impacts. The New York Times recently reported that releases of such contaminants because of Mississippi-River flooding are "expected to result in the largest [oxygen-free] dead zone ever in the Gulf of Mexico." The largest dead zone to date was 8,500 square miles in 2002 — or about the size of New Jersey.

Dead zones can result when nitrogen and phosphorous from crop fertilizers and animal waste cause blooms of algae that eventually starve other fish and aquatic animals of oxygen. Nine states along the Mississippi River reportedly are responsible for 75 percent of these types of chemical releases.

Exposure During Cleanup

Some of the greatest long-term environmental risks from tornadoes and other natural or man-made disasters, such as the World Trade Center attacks, arise during the cleanups. Property owners and emergency workers would be well advised to use caution when removing debris. Lead and other toxic exposures can happen simply by accidental ingestion of contaminated soil from dirty hands — a particular danger for children — as well as the breathing of contaminated dust and fumes from burned plastic or cable coatings.

Environmental regulators often enact temporary waivers of some solid waste and air pollution regulations for the hardest hit areas or simply look the other way under emergency circumstances. Landfills may be allowed to accept contaminated debris, including brush, yard waste, appliances and other materials that normally would not be accepted. In addition, limited burning of materials including tree and brush waste under certain conditions may also be permitted as can unsupervised asbestos removal.

Relaxing these kinds of rules and regulations during an emergency often makes common sense, but improper handling or disposal of waste material can make a bad situation even worse. When plastics, asbestos material or treated wood find their way into brush fires, they can produce emissions, including toxic volatile organic compounds and heavy metals that are particularly dangerous for people with asthma or respiratory diseases.

In addition, the chaos that follows disasters of all kinds may lead to dangerous mixing of wastes and chemicals which can cause explosions and releases of toxic gas. Segregating different types of waste so they can be disposed of properly in landfills approved for specific types of waste is an important way to avoid exacerbating environmental degradation when the worst happens.

Increasingly Severe Weather

Some natural disasters are simply random, but even people who deny the existence of global climate change are having trouble dismissing the evidence of more severe weather over the last year. In the U.S. alone, nearly 1,000 tornadoes have crisscrossed the nation's mid-section, killing more than 500 people and reportedly causing \$9 billion in damage.

Recently, a significant tornado occurred in Massachusetts. Moreover, other uncommon weather events appear to be on the rise as well. According to weather data, the Midwest recently suffered the wettest April in 116 years, causing serious flooding, even as parts of Texas experienced the driest month in a century. According to Newsweek, weather extremes are on the rise, worldwide. 2010 was the hottest year on earth since weather records began. The 2010 heat wave in Russia killed an estimated 15,000 people. Floods in Australia and Pakistan killed 2,000 and flooded large swaths of each country. A months-long drought in China has ruined millions of acres of farmland.

By some reported estimates, the burning of fossil fuels has raised atmospheric levels of heat-trapping carbon dioxide by 40 percent above what they were before the Industrial Revolution. Emissions of other so-called greenhouse gases are also on the rise. The hotter atmosphere retains more moisture, changes the energy dynamics in global atmospheric and oceanic circulation systems, including the Jet Stream and El Niño, and incites more severe extreme weather.

Conclusion

Managing the risks associated with more severe weather and latent pollution caused by resulting natural disasters represents a huge challenge. This challenge is made even greater when property, casualty and liability insurance cannot be counted on to offset losses associated with valid claims.

Corporate directors and officers too need to consider the potential liability and insurance-coverage implications associated with these challenges as shareholders increasingly refuse to tolerate business decisions that do not properly take the environmental consequences of disasters into account.

Whatever the future holds, policyholders of all stripes need to better understand the potential environmental risks they may face if such risks are to be managed properly.

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