

# **HUNTSMAN**

## BUILDING SOLUTIONS

Risk Management for the Spray Foam Contractor  
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# Why Risk Management in Spray Foam? Reducing Your Business' Risk

Likewise, if you are a homeowner who has recently had SPF applied to your home, and you or your family have experienced coughs, asthma or other respiratory distress, headaches, sore throat, or flu-like symptoms, you may be experiencing a reaction to spray foam insulation. Pursuing legal assistance to discover your options could be a wise move.

## Lawsuits Name Makers of Spray Foam Insulation

Federal court filings in a half dozen states allege that spray polyurethane foam is defective and dangerous to homeowners



By Scott Gibson | April 26, 2013



## TOXIC AND HAZARDOUS SUBSTANCES LITIGATION

May 2014

### IN THIS ISSUE

*Bob Redmond, Chair of the IADC's Toxic and Hazardous Substances Litigation Committee, provides a brief overview of toxic tort issues related to the use of spray polyurethane foam, including its potential health effects and liability issues that may arise for manufacturers, distributors, and applicators.*

## Toxic Tort Issues Related to Spray Polyurethane Foam

## What Is Risk Management?

# Reducing Your Business' Risk

- Warranty
  - Issuance
  - Enactment
  - Audits
- Homeowner Related Issues
  - Unsolicited Requests
  - Escalations of Conflict
  - Questions about spray foam
- Assisting on Legal Matters
  - Ensuring SPF is appropriately represented to the public
- Insurance
  - Vendor Related Cases
  - Corporate Insurance Portfolio
  - Insurance Case Management
  - Worker's Compensation
- Authorized Contractor & Authorized Installer Letters
- Customer Concerns
- Contractor Contacts
  - Homeowner Concerns
  - General Contractors
  - Code Officials
  - Complaints
  - Questions
- Government Relations
  - Advocating for spray foam
  - Best practices
    - Canada
    - UK
    - Europe

# Risk Management Basics



## Risk Management Basics

# Insurance

- Comprehensive general liability
- Broad form property damage
- Personal injury insurance with coverage to include premises operations, product liability, completed operations, hazard, contractual liability (specifically insuring the liability assumed under this contract)
- Minimum limits of liability of \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate.
- Such insurance shall be issued by a company having an A.M. Best rating of A-VIII or higher.
- Protection from Tools and equipment theft, auto insurance, and etc.
  
- Understand the Exceptions Listed in Your Policies:
  - "Total Pollution Exclusion Endorsement" that excluded coverage for "bodily injury ... [that] would not have occurred in whole or in part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of 'pollutants' at any time."

# Employing Undocumented Workers



Criminal penalties

- **Imprisonment**

- Employers can face up to six months in prison for knowingly hiring unauthorized aliens.

- **Fraud**

- Employers can face up to five years in prison for making false statements or using fraudulent documents.

## Risk Management Basics

# Worker's Compensation

[All 50 States - Workers' Comp Cheatsheets](#)

### Criminal penalties

- **Criminal conviction:** Businesses can be fined up to \$50,000
- **Continuous violations:** Businesses can face misdemeanor charges, fines, or imprisonment for up to one year

### Civil penalties

- **Injured employees can collect penalties**
- **Business leaders can be held liable**
- Business leaders can be held personally liable for injuries that occurred while the business was not properly insured

## Risk Management Basics

# Safety Requirements

### [OSHA Assistance Quick Start Analysis](#)

	STANDARD	TOTAL VIOLATIONS
1	Fall Protection – General Requirements (1926.501)	4,251
2	Respiratory Protection (1910.134)	2,057
3	Ladders (1926.1053)	1,830
4	Scaffolding (1926.451)	1,785
5	Lockout/Tagout (1910.147)	1,339
6	Personal Protective and Life Saving Equipment – Eye and Face Protection (1926.102)	1,275
7	Hazard Communication (1910.1200)	1,259
8	Fall Protection – Training Requirements (1926.503)	1,091
9	Powered Industrial Trucks (1910.178)	995
10	Machine Guarding (1910.212)	907



## Best Practices: Documentation

# Documentation Retention

- Retain copies of all documents and photos of your installs for a minimum of [\(find out by state\)](#).
  - This includes permits, contracts, etc.
  - Keep copies of your insurance policies and licenses (if applicable) as well!
- Leave no question that you informed the homeowners, trades, etc.
  - Leave a copy of the homeowner packet documentation with the homeowner.
  - Dual signatures on contracts and homeowner packet.
  - Keep a copy of all these documents in your records.
- Email us for examples of forms: [risk@huntsmanbuilds.com](mailto:risk@huntsmanbuilds.com)

# Case Studies



# Case Study – 2019 Kentucky Case

Retrofit 2011 sq ft home, open cell material

Only documentation – bid and invoice. No photos, proof of information provided to homeowner, signs, etc.

Claims:

Not informed about reoccupancy / reentry, health issues, mdi sensitivity, property and personal item damage

Job cost to client: \$7,000

Profit to contractor: \$1,500

Costs to litigate: \$452,000

Damages: \$250,000 – insurance deductibles met, actual damages higher

Reputational damage: \$XXXXXX

Hours on preparation for trial, travel, etc: \$XXXXXX

## Best Practices: Documentation

# If It Were My Company

- Documentation for every job
  - Standard packet of documentation for each job type
  - Ensure that the customer signs every time
  - Contracts in place stating everyone's responsibilities – education on what it is, reocc, reentry
- Signage at every job site
- Photos from every job
  - PPE
  - Signage
  - Jobsite
  - Completed job
- Re-occupancy/re-entry times posted and in the homeowner packet