



Environmental Claim Scenarios

In our article, [Unseen Pollution Risk? Insurance Claims Can Help Identify Industry Exposures](#) we examine claims scenarios where the right environmental insurance coverage might have mitigated out-of-pocket expenses for the insured.

The following are additional claims scenarios that illustrate the variety of environmental exposures commercial insureds often face.



Manufacturing/Industrial Claims

Products Pollution

- An industrial facility had their air pollution control equipment updated by a third-party contractor who installed new scrubbers. Over the next week, neighbors of the facility complained of dizziness, nausea and several had to be hospitalized due to fumes coming from the facility's exhaust stacks. It was determined the scrubber was installed properly, however the scrubber itself was manufactured incorrectly. The scrubber manufacturer was sued and forced to pay over \$500,000 in damages.

Site Pollution Claim

- A homeowner's down gradient well used for potable water was tested and found to contain total petroleum hydrocarbons. After further investigation, it was discovered that a nearby manufacturer's property was the source of the pollutant. For more than 20 years, the manufacturer had cut sheet metal on a machine that was partially located beneath the floor of its building. During that time, lubricating oil from the machine's moving parts had been released into the surrounding soil. Total cost of remediation and third-party bodily injury claims exceeded \$5 million.

Products Pollution Claim

- A manufacturer of fuel tanks and piping was pulled into a lawsuit after a former client discovered a leak at one of the tanks they had installed. The leak was determined to come from the flexible piping, leading to several thousand gallons of fuel escaping over a period of three years. After months of defense and investigation, it was determined the fault lay with the installation contractor who failed to use enough epoxy at one of the joints. The manufacturer's out of pocket defense expenses were well into six figures, all self-insured as they had absolute pollution exclusion on their policy.

Distribution Facility – Chemical Release

- Over the weekend, vandals climbed the fence at a chemical distribution facility. Besides breaking a few windows, they also damaged a valve on a 10,000-gallon tank of chemicals. The damaged valve leaked until Monday morning when it was discovered

by facility employees. While most of the contents of the tank just needed to be removed and disposed of from the containment area, local environmental officials required subsurface testing of soils and groundwater with total costs exceeding \$90,000.

Transportation Pollution

- A plastics manufacturer had a waste hauler transporting its used materials to a third-party disposal site. During transportation, the hauler got into an accident, causing the truck to overturn and spill its load into a nearby stream. Under CERCLA, the commercial insured must contribute for its apportionment of the load for cleanup cost since federal law states that you own your waste from cradle-to-grave. Cost to settle the claim for the plastics manufacturer was \$700,000.

Terminal Fire

- Recently a terminal caught fire and due to the chemicals being stored, the fire needed the use of firefighting foam which contain PFAS to extinguish the flames. The mixture of water, foam, and chemicals left after the fire lead to a cleanup, business interruption and third-party claims led to limits loss. Fortunately, the terminal purchased \$100 million worth of Environmental Impairment Liability which paid for most of the loss.

NOTE: Fire departments are immune to pollution claims arising from their work while putting out fires.

Non-Owned Disposal Exposure

- A manufacturer sent spent solvent to a landfill 10 years ago. It doesn't currently send any waste to this landfill and hasn't done so for the last 10 years. The manufacturer received a letter from the U.S. Environmental Protection Agency (EPA) advising that it was a potentially responsible party to the cleanup of this landfill. The manufacturer's share of the cleanup was \$2.4 million.



Manufacturing/Industrial Claims (continued)

Contaminated Fill

- A gravel quarry provided material for a jobsite, which contained unknown pollutants. The excavation contractor unknowingly spread the contaminated material across a project site. Later during the project, the contamination was discovered and determined to have originated from the material provided by the gravel mine. Project delays, cleanup costs and property damage claims exceeded \$600,000.



Hospitality Claims

Hotel Mold

- A new hotel was built in Florida. After being open for three months, improper moisture levels were detected in one of the hotels towers. As a result, there was mold growth throughout the building and the ventilation system. The issue was further exacerbated by the use of vinyl wallpaper which trapped moisture allowing mold to spread. The resulting third-party claim expenses were minimal, but the cleanup costs were excess of \$500,000.

Dumpster Contamination at Hotel

- An unknown party illegally placed a container of hazardous liquid waste into a dumpster outside a hotel. The container leaked and contaminated the contents of the load which in turn contaminated the waste on the tipping floor of the transfer station. Clean-up costs and legal fees exceeded \$150,000.

Carbon Monoxide Poisoning at Hotel

- A multimillion-dollar settlement was reached in the death of an 11-year-old boy who died from carbon-monoxide poisoning at a Best Western hotel in North Carolina. In this instance, carbon monoxide leaked from a swimming pool heating system located on the floor below.

Hotel: Legionella \$3M

- A \$3 million settlement was obtained for the family of a woman who died after contracting Legionnaires'

disease at a Las Vegas Hotel. The victim was celebrating her 40th wedding anniversary with her husband and inhaled the Legionella bacteria while using the hotel suite's Jacuzzi. Lawyers for the victim's family were able to prove that the hotel knew that the bacteria was present in the building's water system months prior to the victim's stay.

Golf Course Non-Owned Disposal

- A golf course sent its waste golf cart batteries to an off-site facility for disposal. Over a period of several years, the disposal facility did not adhere to applicable federal and state environmental regulations, and the golf course was found jointly liable for pollution conditions caused by the battery disposal facility. The settlement for cleanup exceeded \$175,000.

Major Fire

- A major fire broke out at a hotel. The fire department's high-pressure hoses forced melting plastics, metals, insulation, roofing, drywall, chemicals, and other materials to build up inside the building's foundation, creating a toxic "sludge". Some of the "sludge" escaped the building and migrated onto neighboring properties. The hotel owner was responsible for clean-up, third-party property damage, business interruption, and natural resource damages, which totaled over \$3.5 million.





Real Estate Claims

Hotel Mold

- While visiting one of their properties, a commercial real estate owner discovered several piles of unidentified waste that had been illegally dumped on the site. The owner had the piles tested, at a cost of several thousand dollars. The piles were determined to contain hazardous waste, and the owner's cost to dispose of it exceeded \$250,000.

Contractor

- A restaurant was subject to cleanup costs and business interruption expenses when a contractor they hired to build an addition ruptured an unmarked petroleum pipeline. The contractor did not have Contractor's Pollution Liability insurance so as the property owner,

the restaurant was responsible. Total costs exceeded \$700,000. In addition, lawsuits filed against the contractor caused for the contractor's bankruptcy.

Phase I Misses the Mark

- An environmental consultant performed a phase I site assessment for property that was in the process of being sold. The consultant submitted a report saying that negligible contamination had not been found. The property was subsequently sold. During excavation an unregistered underground storage tank was discovered on the site that had been leaking. The buyer sued the consultant and former property owner for \$1.2 million for remediation expenses, lost profits, and diminution in value.

Agricultural Claims

Site Pollution - Lagoon

- During an unusually heavy rainstorm, the wall of a farms on site lagoon used to treat pig waste collapsed. More than 150,000 gallons of fecal waste flowed offsite onto neighboring properties and into a river. Waste cleanup costs exceeded \$350,000, while third-party damage claims exceeded \$75,000.

Site Pollution - Clean Water Act

- A slaughterhouse disposed of its waste down a floor drain. Over time the floor drain eroded and cracked allowing the waste to flow into a nearby stream. A fish kill occurred as a result of high biological oxygen demand in the stream. Under the Clean Water Act (CWA), a local environmental group filed a suit for loss of the stream. The slaughterhouse spent \$750,000 remediating the problem.

Fertilizer Leak

- Authorities evacuated a small farming town after a noxious cloud drifted in from a 30,000-gallon tank leaking anhydrous ammonia which is used as fertilizer. Police said the open valve on the tank made them suspicious somebody might have tried to steal some fertilizer and left the valve open. Anhydrous Ammonia can also be used to make the drug methamphetamine.

Farming-PFAS Contamination

- A farmer used treated wastewater biosolids as a fertilizer in a land application process. After several months of application, heavy metals and high counts of e-coli and PFAS (polyfluoroalkyl substances) were found in the soil. The farmer was required to pay remediation costs in excess of \$965,000.





Contracting Claims

Hotel Mold

- Several office employees became ill from legionella. The cause of the legionella was the improper sealing of the ducts during the installation of a new HVAC unit which allowed condensation to build up. The employees sued the property owner and the contractor.

Industrial Contractors

- An industrial contractor dropped a piece of heavy equipment from a crane onto a pipe leading to a hydrofluoric acid tank. Acid was emitted into the surrounding atmosphere, creating a vast vapor cloud. Approximately 3,000 nearby residents were evacuated and 1,000 were treated for respiratory injuries. The court entered judgment holding the contractor 95% liable for the accident. To date, 4,500 claims have been filed in excess of \$23 million. The claims include bodily injury, property damage, lost profits and emergency response costs.
- An HVAC contractor installed a new AC unit in a condo in Florida. The lines to the unit contained a mixture of water and glycol. Two years after installation a coupling failed that was installed incorrectly and caused a flood

of water/pollution mixture through the condo and parking deck. The cleanup costs \$1.2 million and which was paid from the Contractors CPL policy.

- An excavation/grading contractor unknowingly spread petroleum contaminated soil across a project site during fill operations for a housing project. The contractor was named in a lawsuit for exacerbating the extent of contamination. After lengthy deliberations, the contractor was eventually removed from the lawsuit. However, they spent \$250,000 in defense costs which were covered by a CPL policy.
- A ready-mix contractor on a jobsite washed out the chute from his truck into a nearby creek. Vegetation and aquatic life were damaged as a result. Natural resource damages totaled more than \$200,000.
- A plumbing contractor was subject to defense costs exceeding \$25,000, in addition to property damage and bodily injury claims exceeding \$400,000 from a residential community. During sewage installation, a subcontractor improperly tied in piping. This caused raw sewage to migrate into the underlying groundwater and contaminate residential wells.



Transportation Claims

Chemical Leak from Accident

- A Chemical Distributor transporting totes of anhydrous ammonia closed a freeway when the truck overturned. Toxic fumes required evacuation of a one-mile area. Several businesses are forced to close, resulting in lost revenue (a property damage claim) and several people are taken to the hospital for respiratory problems resulting in bodily injury liability. Total cost exceeded \$1.5 million.

Equipment Failure

- A vehicle developed a minor breach in the seam of a tanker carrying the chemical toluene. The driver placed a bucket under the tanker to catch the dripping chemical and called for another truck to offload. The offload truck, however, broke down enroute. Meanwhile, the stranded tanker continued to drip toluene to the point where it exceeded one gallon and reached reportable spill status. State and local officials closed the Interstate between two exits and re-routed traffic 35 miles. A nearby trailer park had to be evacuated. Costs for state and county local response units, temporary relocation of residents and remediation amounted to \$285,000.

Transportation Pollution & Natural Resource Damages

- *Shelby County Train Derailment* - In May 2006, a CSX train derailed in Shelby County, Alabama, resulting in a soybean spill into Little Creek, which flows into Yellow Leaf Creek. According to the state, this led to the damage of aquatic life, including fish, mussels, and snails. A cooperative settlement resulted in payment of \$491,976 by CSX to the Fish and Wildlife Division of ADCNR, which will be used to compensate for the investigation and value of the aquatic loss. Additionally, a portion of the settlement will support propagation and stocking efforts of freshwater species such as mussels and snails.
- *Adak Petroleum Diesel Spill* - On January 11, 2010, while the T/V Al Amerat was offloading #2 diesel fuel to Adak Petroleum LLC's underground storage tank, the fuel overflowed into secondary containment. The fuel allegedly overwhelmed the containment sump unit, resulting in a release of approximately 142,000 gallons into Helmet Creek and Adak's small boat harbor. In September 2013, Adak Petroleum entered into a consent decree with trustees—the National Oceanic and Atmospheric Administration, DOI, and the state—which included payment of \$277,027 for past NRD costs and held Adak Petroleum liable for stream restoration and future monitoring costs of same. Birds, fish, their habitat, and lost recreational services were the resources potentially affected.

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