

SPECIAL REPORT

WHAT ENVIRONMENTAL COVERAGE IS AVAILABLE WITH STANDARD PROPERTY & LIABILITY POLICIES (WITHOUT SUPPLEMENTAL COVERAGE) AND EXAMPLES OF CLAIMS

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A. The following is the coverage that you typically receive under the typical property insurance policy.

- The cost to clean up or remove pollutants from land, water or air at the scheduled premises is covered up to \$10,000 with most carriers, but only if as a result of specified perils.
- The insurance definition of "specified perils" varies. For example, the Chubb definition, "specified perils" constitutes:
 - o Aircraft or Self-Propelled Missiles (ISO does not include)
 - o Explosion
 - o Fire or Lightning
 - o Leakage from Fire Protection Equipment
 - o Mine Subsidence
 - o Riot or Civil Commotion
 - o Sinkhole Collapse
 - o Smoke
 - o Vandalism
 - o Vehicles
 - o Volcanic Action
 - o Windstorm or Hail
- Other insurance carriers include the above (except self-propelled missiles) and also add:
 - o Falling Objects

- o Weight of Snow, Ice or Sleet
- o Water Damage

B. Liability insurance (including umbrellas) covering injury to people or property owned by others provides limited pollution coverage.

- The definition of “pollutants” is very broad:

“Pollutants” means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.”
- Coverage is typically excluded for all environmental claims except for the following:
 - (a) Fumes or smoke from a hostile fire
 - (b) Pollution from your products
 - (c) Fumes from heating equipment on the premises
- However, even these three exceptions to the liability exclusion are excluded when an insurance carrier adds a total pollution exclusion, which is done more often than not.

SUMMARY OF ADDITIONAL COVERAGE AVAILABLE FOR ENVIRONMENTAL LIABILITY

C. Broad environmental policies are available to fill in the many gaps in the coverage provided by standard property and liability policies that most insureds purchase.

Coverage A – On-site cleanup of pre-existing conditions

Coverage B – On-site cleanup of new conditions

Coverage C – Third party claims for on-site bodily injury and property damage

Coverage D - Third party claims for off-site cleanup resulting from pre-existing conditions

Coverage E - Third party claims for off-site cleanup resulting from new conditions

Coverage F - Third party claims for off-site bodily injury and property damage

Coverage G - Third party claims for on-site cleanup costs -- non-owned locations

Coverage H - Third party claims for off-site bodily injury, property damage or cleanup costs -- non-owned locations

Coverage I - Pollution conditions resulting from transported cargo

Coverage J - Business interruption coverage -- actual loss or loss of rental value

Legal Expense and Defense

D. These are some actual examples of pollution events:

CASE SUMMARIES

Manufacturing and Other Industrial Risks

- A manufacturer's above-ground storage tanks contained fuels with connections to below-ground piping, which resulted in contamination to soils on and off site. The pollution was emanating from below-ground piping which had been leaking for an unknown period of time. Coverage was granted for defense and cleanup costs, including three contaminated plumes, groundwater contamination, and damage to a neighboring petroleum site, amounting to **\$3,400,000** for remediation costs and attorney fees.
- A manufacturer discovered oily soils with a petroleum odor during an expansion project. An investigation revealed an old, undocumented sludge-drying pit used by the previous owner in the 1940's. The manufacturer had to remove and remediate at its expense, exceeding **\$400,000**.

- A forklift operator hit a hydrofluoric above-ground storage tank releasing dangerous fumes into the neighboring community while transporting a large metal coil. Area residents and businesses were evacuated and several people were treated at a local hospital for fume inhalation. Claims for bodily injury and business interruption topped **\$94,000**.
- A manufacturer operated a machine used to punch holes in sheet metal, and a portion of the machine was located beneath the floor. Lubricating oil from the machine was released into surrounding soil for over 20 years which resulted in petroleum hydro-carbons in the drinking water of a nearby homeowner. The homeowner submitted a claim exceeding **\$40,000** for hookup to municipal water, as well as bodily injury for contaminant ingestion.
- A manufacturer stored a drum of caustic chemicals next to a drum of highly reactive acid. When a forklift disturbed the drums, their contents were released causing a violent reaction. Fumes spread over neighboring properties and damaged plants at the nursery next door. The nursery submitted a claim exceeding **\$35,000** for business interruption and loss of goods.
- The concrete secondary containment of a 10,000-gallon diesel above-ground storage tank was cracked and crumbling. A release from the tank spewed 8,000 gallons of diesel into the containment area. The diesel seeped into the underground soil and required costly excavation and removal. The total cost for investigation, removal and disposal exceeded **\$320,000**.
- Since 1965, a metal toy manufacturer had been using trichloroethylene (TCE), a common solvent, to remove oil and grease from toys prior to painting them. This process generated a liquid waste mixture of TCE and oil. In 1994, an engineering study revealed that the ground water surrounding the plant contained significant concentrations of TCE and other solvents. The cleanup of the site was estimated to exceed **\$900,000**.
- An aerosol packaging plant located on a 17-acre site manufactured hair spray, spot remover and oven cleaner. The facility is near a

river that runs through a neighboring town. The town discovered contamination in their municipal water supplies and was forced to close their wells. The town sued the packaging plant and settled for **\$780,000.**

- A semiconductor manufacturer contaminated adjacent property with chlorinated solvents. The manufacturer was sued, resulting in a **\$10,000,000** settlement. The insurance carrier's Environmental Site Liability Insurance helped protect the manufacturer against a potentially huge loss.
- A tank failure caused the release of 1,000 gallons of #4 heating oil into the basement of a manufacturing operation. Contamination was widespread and resulted in the shutdown of all operations until cleanup was complete and the machinery was repaired. The insurance carrier's Environmental Site Liability insurance pays for the business interruption and extra expenses, as well as the remediation costs to restore operations.
- A manufacturing facility generated waste filter cake containing precious metals and shipped the waste to a metal recycler. Before shipping, the filter cake needed to cool to an ambient temperature. The filter cake was accidentally shipped hot and caught fire at the waste facility which resulted in the evacuation of several area businesses. The insurance carrier's Environmental Site Liability insurance pays for bodily injury, property damage and remediation costs as a result of the waste at a non-owned facility.
- During Midwest floods, manufacturers paid to clean up contamination caused when chemical tanks floated down river.
- A manufacturer's truck struck a utility pole causing a transformer explosion that released carcinogens and smoke into homes in the area.
- A cloud of chlorine was released during a fire. Tenants of a manufacturing building complained of headaches, nausea and fatigue. Twenty individuals had to be hospitalized.

- Carbon monoxide from a defective hi-lo caused injury to employees and third parties.
- Employee mistakenly opened a valve controlling the hot water flow to an ammonia vaporizer causing 3,800 pounds of ammonia to escape and hundreds of residents to be hospitalized.

Residential Homebuilder – Stormwater Violation – **\$800,000** EPA penalty.

- Pulte Homes in Southfield, Michigan, was ordered to pay over \$800,000 to the United States Environmental Protection Agency (EPA) for stormwater runoff violations. The EPA stated that Pulte was letting silt and stormwater leave its construction sites and enter nearby waterways. Pulte was ordered to pay \$800,000 in EPA penalties and improve its practices on stormwater control. The EPA also settled with three other national home-builders over the issue.

Commercial Real Estate and Building Owners – Bodily Injury, Mold Contamination – **\$1,800,000** in claims, remediation, and defense costs.

- A commercial building tenant failed to properly maintain his windows and roof. After a rainy season, the windows leaked, resulting in extensive mold contamination. Four other tenants sued for health conditions resulting from mold exposure. Claims from other tenants resulted in \$800,000 in defense costs and more than \$500,000 in bodily injury claims. Mold remediation alone cost nearly \$500,000.
- Water Damage – **\$650,000** property damage and remediation cost. An office building sustained water damage during a severe storm. The HVAC equipment malfunctioned creating an environment conducive to mold growth. The real estate owner was found liable for the property damage as well as the remediation costs to mitigate the mold, resulting in a \$650,000 claim.
- Overspray of Pesticides – **\$75,000** for medical treatment. A building maintenance employee treated an office building with pesticides due to an infestation of termites. The employee oversprayed, and many tenants complained of breathing disorders

and skin rashes. The commercial real estate owners received a claim for \$75,000 for medical treatment.

Office Building Owner – Worker Error, Ventilation System – \$180,000 in settlement/defense costs.

- During one of the office building management company's routine maintenance of the building's radiant gas heaters, the management company accidentally shut off the ventilation system. Tenants complained of nausea and headaches, which led to a total evacuation of the building. An environmental engineer found that the carbon monoxide level exceeded the state's limits. An office building tenant sued the management company for the costs associated with the interruption in business. The property damage claim settled for nearly \$30,000, and the management company incurred more than \$150,000 in defense costs.

Real Estate Management Firm – Tank Failure – \$425,000 property damage, business interruption, and remediation costs.

- A tank failure caused the release of 1,000 gallons of heating oil into the basement of a building. Contamination was widespread and resulted in the damage of a tenant's furniture and inventory. Cleanup of the spill and repair of damaged equipment also required the building to shut down operations for one week. The management firm was liable for \$200,000 in property damage and \$125,000 in remediation costs; plus the company incurred a \$100,000 claim for business interruption and extra expense due to the loss of rents.

Retail Shopping Center – Third-Party Property Damage, Tank Failure – \$135,000 claim settlement.

- The owner of a pool supply store in a strip mall stored liquid chlorine in a 500 gallon above-ground tank behind the store. Although the storage tank had the necessary protections, someone inadvertently left the valves in the "open" position, causing a leak that seeped into neighboring stores and destroying metal equipment and inventory. The shopping center was shut

down, evacuated, and quarantined during cleanup. Claims were settled for more than \$100,000 in property damages, plus \$35,000 for cleanup and emergency response.

Maintenance Garage – Soil and Groundwater Contamination – **\$1,000,000** in claim settlements.

- A maintenance garage stored barrels of waste products, such as used petroleum and solvents, in a fenced-in area behind the garage until it was removed for disposal. Within six months, the waste was loaded onto trucks and disposed of at an EPA-approved facility. A concrete pad partially covers the loading area to protect it from spillage and leaks. Five barrels slipped off the forklift during loading and saturated the ground with waste motor oil, metal cutting oil, paint thinners and solvents.

EPA officials determined that the potential for exposure to contaminants existed through ingestion or direct contact with the contaminated groundwater and soil for the industrial park and the trailer park that bordered the garage. Cleanup included excavating the contaminated soil and hauling it to an approved facility for leaching, and the garage was ordered to build a protected storage and loading area with retaining walls. The garage also settled claims with 40 trailer park residents for property damage and bodily injury. The garage's costs including claim settlements totaled **\$1,000,000**.

Underground Storage Tanks

- An insured operates an oil storage terminal with four on-site storage tanks. During excavation to remove two of the fuel tanks, the insured discovered soil contamination caused by the leaking of one of the tanks. Accordingly, the insured notified the state environmental agency, which inspected the site and discovered elevated levels of petroleum hydrocarbons and methyl tert-butyl ether which required cleanup. After review of the pollution coverage and facts presented, coverage was provided with total cleanup costs estimated at **\$550,000**.

- An insured owned a gasoline station complex that consisted of an office building, four underground storage tanks, four dispenser islands and underground piping. A gasoline leak was discovered and the site was closed until the line was repaired. Additionally, investigation revealed off-site contamination. Remediation costs are estimated at **\$900,000.**
- Gasoline odor in the water supply was reported, prompting an investigation by the County health department and State environmental department. Testing indicated that one of the insured's storage tanks was leaking gasoline and resulted in contamination of the potable water supply used by both residential and commercial properties. The State issued an Administrative Order requiring remediation and the township instituted a civil suit to recover costs of extending the municipal water system to properties affected by the contamination. There were also two claims of property damage. Coverage was granted under the Insured's Pollution Legal Liability policy, which paid costs exceeding **\$600,000.**

Engineers/Consultants (E&O)

- A commercial property owner hired an engineering firm to prepare a site assessment of its facility which the buyer relied upon when purchasing the site. Subsequently, the buyer filed a suit against the seller alleging deficiencies including PCE and asbestos contamination at the site. The seller filed a cross-complaint against the insured seeking indemnification, as well as damages for breach of contract, negligent misrepresentation and negligence. The buyer then filed a separate lawsuit against the engineer for fraud and misrepresentation. The engineer notified the insurer of the claim and the insurer agreed to defend the insured subject to the \$100,000 deductible. Defenses costs and indemnity are expected to exhaust the **\$2,000,000** policy limit.
- An insured entered into a contract with a school district to provide supervisory services for an asbestos and lead abatements project. The abatement contractor alleged that the insured did not perform an adequate investigation of the lead and asbestos at the site. The

abatement contractor alleged over \$1,000,000 in damages that he suffered due to the contractor's reliance on the insured's negligence reports. Coverage was provided, including defense of the lawsuit. The claims were eventually settled for **\$610,000**.

- An insured's employees conducted an underground storage tank (UST) and line test at a client's service station to determine whether it was leaking gasoline. Thereafter, the station owner alleged that the insured's personnel did not tighten a leak detection device on one of the product lines leading from the UST when testing was complete and that resulted in hundreds of gallons of fuel contaminating the soil and groundwater. The service station sought reimbursement from the insured for fuel loss and remediation. Coverage was provided, including defense of a lawsuit. The claim was eventually settled for **\$176,250**.

Golf Courses

- During the re-grading operations at a golf course, several containers of pesticides were uncovered that had been buried by the previous property owners. The containers caused extensive soil contamination and resulted in cleanup costs exceeding **\$400,000**.
- A golf course routinely applied phosphorous-rich fertilizer to fairways, tees and greens for growth enhancements. During a heavy rain, the phosphorous was washed into a pond on a neighboring property, causing an algae bloom and harmed aquatic life. Property damage and remediation costs exceeded **\$55,000**.
- A residential community located adjacent to a golf course received its water supply from groundwater wells. Over time, the application of herbicides and pesticides to the golf course caused groundwater contamination. Bodily injury claims were filed by local residents for alleged injuries from drinking contaminated water. Likewise, property damage claims were filed because the groundwater system was no longer a suitable drinking water source. Total claims exceeded **\$700,000**.

- A golf course was being constructed on a former municipal landfill. During construction, a subsurface methane gas vent pipe collapsed. The collapsed pipe caused a dangerous buildup of methane in the neighboring residential community. Neighbors were forced to evacuate their home, and they submitted claims for bodily injury, property damage, loss of value and trespass.
- A golf course sent all of its waste golf cart batteries to an off-site facility for disposal. Over a period of several years, the 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.**
- A golf course stored gasoline and diesel fuel in steel underground storage tanks (UST's) for use in tractors, lawn mowers and golf carts. Tank corrosion led to a discharge of petroleum products which contaminated the surrounding soil and groundwater. The golf course hired a consultant to assess the removal of the UST's, conduct sampling, and prepare a remedial action plan. Remediation expenses for the investigation and cleanup of the site amounted to **\$350,000.**

Colleges and Universities

- A large Midwestern university disposed of its science lab wastes in a 50-year-old, 20,000 gallon underground storage tank. The tank leaked and contaminated the soil, private drinking wells, and associated groundwater. Several third parties sued the school with claims in excess of \$500,000. In addition to the **\$500,000** in claims, the cost to clean up the contamination amounted to **\$1,100,000.**
- Experiments were being conducted under an old hood within the chemistry lab of a small college when the hood filters failed and released toxic fumes to the environment. As a result, there was a limited evacuation of the adjacent neighborhood with some residents being admitted to the hospital. The college was sued for third party claims along with a **\$220,000** property damage claim for contingent business loss.

- A New England university was discharging liquid lab wastes to the campus wastewater treatment plant. When the plant failed, the untreated chemical wastes contaminated the municipal sewer system. The school reimbursed the City **\$75,000** in cleanup cost.
- A contractor ruptured two abandoned 10,000 gallon underground storage tanks containing gasoline and diesel fuel while constructing a new sports stadium at a West Coast university. Since the land was donated to the school by a private company and the contractor did not have pollution insurance, the school was charged **\$200,000** for the environmental cleanup.
- A large Southeastern university decided to place a new building on the site of a former parking lot. During excavation, petroleum hydrocarbon contamination was discovered, which the university had no previous knowledge. Investigation and sampling revealed the source and extent of the contamination. Onsite treatment and cleanup costs exceeded **\$300,000**.
- While dismantling laboratory piping at a university in Ohio, a contractor discovered an existing mercury spill that resulted in mercury contamination throughout the building. Cleanup costs and restoration of the building to its original condition amounted to **\$350,000**.

Contractors

- Contractor – A contractor suffered a large claim when he installed a new storm water drainage system for a municipality in Michigan. Not long after completion a heavy rain struck, causing a backup of water with human waste into the basements of over 100 homes. The contractor was sued for installing an inadequate system and the environmental insurance carrier paid over **\$800,000**.
- Concrete contractor – A contractor laid an undercoat of slag while creating a new runway for an airport in the Midwest. After the runway was complete, it was discovered that the slag was

contaminated and was leaching pollutants into a tributary of one of the Great Lakes. The claim exceeded **\$400,000**.

- HVAC contractor – A contractor installed an HVAC system in a new office building. Within weeks after opening, the building had to close due to occupants being overcome with breathing problems and headaches. The contractor was one of many parties sued. During discovery, it was determined that the HVAC system was installed exactly as the specs described. However, the contractors had to absorb over \$250,000 in uncovered defense costs because he had no environmental coverage; therefore, no defense costs.
- Paving contractor – A road contractor sprayed a tack coat on a parking lot prior to paving. During the evening, a major thunderstorm caused the toxic material to wash off and flow into a nearby stream. The general contractor was responsible for cleanup costs exceeding **\$200,000** because the general liability carrier denied reimbursement based on the pollution exclusion.
- A street/road contractor was constructing a road in an area where the water table was close to the surface, which required the contractor to perform de-watering operations. After wells were drilled and groundwater was being extracted, the contractor smelled petroleum in the groundwater. The contractor was unaware of an abandoned leaking underground tank near the project site. The contractor was obligated to clean up the soil and groundwater since the owner of the tank was unknown.
- Mechanical contractor – A contractor was called to loosen a heavy coupling at a site where an underground storage tank was being removed. Several days after leaving the site, the contractor was notified that he was being sued for the tank leaking underground, spilling hundreds of gallons of gasoline into the soil. The contractor had dropped a heavy wrench down the intake spout of the fiberglass tank, cracking the bottom, and causing the leak. Total costs to defend himself and damages exceeded **\$250,000**.
- Mechanical contractor – Years after a mechanical contractor had installed a heating/air conditioning system, mold and mildew

growth in the duct work had caused poor indoor air quality. Claims against the contractor for bodily injury and property loss exceeded **\$100,000.**

- Painting contractor – While painting the interior of a nursing home, the contractor was sued by over a dozen residents alleging that fumes as a result of inadequate ventilation overcame them. Total claim was over **\$200,000.**
- Janitorial contractor – A cleaning company working at a mall inadvertently mixed cleaners, one ammonia-based and the other chlorine-based, which resulted in a toxic cloud of ammonia chloride that caused respiratory distress in dozens of shoppers. The claim cost **\$175,000.**
- Utility contractor – A contractor excavated a sewer trench and hit a gas line with a backhoe bucket. The gas release forced evacuation of the immediate area. Loss of business claims against the contractor exceeded **\$75,000.**
- A general contractor failed to use proper ventilation or contain emissions from gas-powered fans and equipment used during building renovations. Employees working in a nearby area complained of headaches, nausea, and respiratory problems. An air quality study revealed an increased carbon dioxide level in the building due to the construction equipment. The contractor was liable for 30 bodily injury claims totaling over **\$100,000.**
- A general contractor performed concrete etching in a building using muriatic acid. Fumes from the acid were released into the building, resulting in over **\$75,000** in property damage.
- A week after a general building contractor installed new carpeting in an office building, the owner of the office building informed the contractor that employees were complaining of headaches and dizziness. The contractor could not prove that the carpet manufacturer or the adhesives were responsible, so the contractor filed a claim with its general liability carrier. The claim was denied

by the insurance carrier since the contractor brought the "hazardous materials" such as glues and solvents onto the site.

- An excavation contractor ruptured an unmarked petroleum pipeline, subjecting them to cleanup costs and business interruption expenses in excess of **\$500,000**. The contents were released into the subsurface soils and groundwater due to the contractor's inadequate response to the rupture which exacerbated the extent of contamination.
- An excavation/grading contractor unknowingly spread contaminated soil across a project site during fill operations for a housing project. The contractor was sued for exacerbating the extent of the contamination, and spent **\$250,000** in cleanup and defense costs not covered by his general liability coverage.
- An excavation contractor stockpiled soil on property adjacent to their jobsite. The contractor had excavated a 350-foot-long trench before dioxin contamination was discovered in the soil. The U.S. Environmental Protection Agency investigated and issued an administrative order mandating cleanup costs of the adjacent property exceeding **\$250,000**.
- While a subcontractor was performing sandblasting on a bridge, lead-containing paint chips and dust became airborne and migrated onto nearby residential properties. The residents filed property damage claims against the street/road contractor for the dust caused by the subcontractor, resulting in claims totaling **\$400,000**.
- An insured was retained by a retailer to conduct an underground storage tank (UST) compliance inspection. During the process, the insured punctured a diesel fuel line resulting in a spill of 11,655 gallons of diesel of which only 4,000 gallons were recovered. Extensive on-site soil contamination resulted, as well as some off-site contamination. A claim was made for the claimant's lost profits attributable to the shutdown of the service station where the pollution incident occurred. Coverage for the cleanup was granted

under the insured's Contractors Pollution Legal Liability policy, which is expected to cost between **\$600,000 and \$800,000**.

- An excavation contractor was responsible for a portion of the cleanup costs at a landfill after material they discarded unknowingly contained a variety of contaminants, including asbestos. Despite the contractor's lack of knowledge of the contaminants, the landfill filed suit against the contractor for improper classification and disposal of waste material.
- The insured was the main contractor on a PCB transformer removal project at a warehouse. A subcontractor working on the warehouse roof spilled PCB oil through a manhole on the roof and splattered it over the interior of the building. Immediately after the accident, the subcontractor agreed to indemnify the insured for all costs incurred in remediating the spill through their own insurance policy. Thereafter, the subcontractor denied responsibility for the incident, claiming that the insured's operations caused the accident, and sued the insured. Additionally, the warehouse owner sought indemnification costs and expenses associated with the incident. After review of the policy and facts, coverage was granted for the suit brought by the subcontractor as well as claims for costs by the warehouse owner. Cleanup costs were estimated at **\$250,000**.
- A contractor was responsible for fueling airplanes at a major airport. A fueling tank hose ruptured, resulting in a 5,000-gallon jet fuel spill that covers the ground. The insurance carrier's Contractors Pollution Liability insurance provided the needed remediation coverage, thereby avoiding a devastating loss for the contractor.
- A paving contractor sprayed an oil-based binding layer on crushed aggregate, planning to complete the asphalt roadway the following day. A heavy overnight rain caused the binding layer to run off into the groundwater supply, contaminating residential wells. The insurance's Contractors Pollution Liability policy paid all property damage claims and cleanup costs.

Corporate Acquisitions and Purchasing

- An international chemical corporation was selling a manufacturing facility. Because of concerns over possible soil and groundwater contamination, the buyer included in the purchase and sale agreement a requirement that the seller obtain an Environmental Site Liability policy. The insurance carrier issued a policy within limits of \$10,000,000 and a 10-year policy term, naming both buyer and seller as insureds and allowing the sale to proceed.
- A buyer wanted to purchase property with a flower shop located on it. Phase 1 assessment revealed that the site had once been a retail gas station. The seller was required to provide an indemnity agreement to pay for pollution that might be discovered. The purchase was in doubt until the insurance carrier provided a five-year Environmental Site Liability policy insuring the buyer against future claims for on-site cleanup of historical but unknown contamination.
- A large corporation purchased a former quarry site, and soil testing indicated high lead levels stemming from operations decades ago. The insurance carrier's Environmental Site Liability Insurance paid for remediation and follow-up testing that results in a "no further action required" status from the state environmental protection agency.
- A lender approved a mortgage loan for a commercial property. The borrower defaulted, and the lender contemplated foreclosure proceedings, including a site visit that does not uncover contamination. But a previously unknown discharge from fuel tanks is later confirmed. The insurance carrier's Collateral Impairment Insurance policy reimburses the lender for site cleanup of the contaminated soil.
- A regional bank approved a loan for a shopping center. The borrower defaulted, and, during the bank's pre-foreclosure, due diligence revealed the presence of significant chemical contamination of the soil beneath the floor of a film processing shop. Once foreclosure was complete, the insurance carrier's

Collateral Impairment policy paid the bank for site cleanup and restoring the film shop floor.

Case Law -- Significant Claims, Verdicts and Settlements

Olden v. Lafarge – \$2,600,000 (\$1,900,000 settlement, plus \$700,000 for remedial measures)

- A plant's manufacturing process produced hazardous toxic waste and created emissions with hazardous byproducts. The parties agreed to a \$1,900,000 settlement. The plan owner also agreed to allocate an additional \$700,000 to install pollution abatement equipment and pave roads as a means of reducing off-site emissions.

Stanley et al. v. United States Steel Corp. – \$4,450,000

- A class-action lawsuit was filed on behalf of residents near the Great Lakes steel plant in Ecorse and River Rouge near Detroit. Air-quality tests found excessive levels of manganese emissions which causes neurological disruption and symptoms similar to those associated with Parkinson's disease. The claim amounted to \$4,450,000.

Koszewski v. General Motors – \$1,200,000

- Property owners complained of property damage to their homes caused by a General Motors plant when an underground storage tank leaked, entering contaminants into ground water. The resulting claim was \$1,200,000.

Mahaffy v. Maple Creek Apartments -- \$925,000 jury verdict

- An apartment tenant suffered mold-related allergies and asthma due to mold that had materialized in her bathroom. A jury awarded the apartment tenant \$925,000.

Caines v. Marathon Oil – \$12,000,000 settlement and injunctive relief

- A class action suit alleged that the company discharged noxious odors into the surrounding residential communities as a result of its industrial operations, causing loss of use and diminution of property value. The settlement included both monetary and injunctive relief requiring the company install substantial air

pollution abatement equipment to preclude further discharges of noxious odors.

Guglielmetti v. Pittsburgh Corning Corp – \$1,200,000 jury award

- The plaintiff was exposed to asbestos in the 1960's at the General Motors Cadillac plant in Detroit. Thirty-plus years later, he was diagnosed with mesothelioma and died thereafter. A jury awarded economic damages, pain and suffering, and loss of society and companionship for over \$1,200,000. Pittsburg Coming was found 80 percent at fault and General Motors, 20 percent at fault.

Etherridge, et al. v. City of Grosse Pointe Park, et al. – \$3,800,000 in damages plus injunctive relief

- Owners and occupants of about 350 properties in Detroit alleged that the City of Grosse Pointe Park's discharge of combined sewer overflows into Fox Creek was a trespass-nuisance that caused their homes to be invaded by human sewage and noxious odors, and constituted a contractual breach by failing to maintain Fox Creek to ensure that sewage overflow would not invade nearby properties. The owners and occupants received monetary damages, as well as injunctive relief which ultimately resulted in the cessation of the Park's long-standing practice of discharging sewer overflows into the Creek.

Dep't of Envir. Qual. v. Waterous Co., – \$1,250,000 settlement, plus injunctive relief

- The Michigan DEQ filed a lawsuit against Waterous for soil, groundwater, surface water, and sediment pollution caused at a former foundry and manufacturing operation in Traverse City. The DEQ sought monetary, declaratory, and injunctive relief, including investigation and remediation of the contamination under the NREPA, and common-law public nuisance relief. Further, the DEQ's claims against Waterous for "all response activity costs, including attorneys' fees and interest" were resolved before trial by stipulation and order, which required Waterous to pay \$1,250,000. Thus, Waterhouse agreed to pay \$1,250,000 to the DEQ to dismiss the DEQ's claims for *natural-resources* damages, thereby leaving for trial a determination on the issues regarding injunctive and declaratory relief.

Wolverine World Wide, Inc. v. Liberty Mut. Ins. Co. – \$1,423,890 in settlement and remediation costs

- A dispute arose as to whether two umbrella policies covered damages caused by contamination and pollution after a manufacturer of footwear produced a toxic sludge from its tannery operations. The manufacturer disposed of the sludge at two sites: the Butterworth Landfill site and at the Northeast Gravel site. The Michigan Department of Natural Resources (DNR) informed the manufacturer that it may be liable for contamination at the Northeast Gravel site. Although the manufacturer denied liability, it cooperated with an investigation. The investigation confirmed that manufacturer's tannery sludge was not responsible for the contamination. Nonetheless, Northeast Gravel sued the manufacturer for the cost to clean up the pollution and contamination. It cost the manufacturer \$199,339.20 to resolve the matter related to that site.

Thereafter, the Environmental Protection Agency (EPA) notified the manufacturer that it may be potentially liable for contamination at the Butterworth site. The manufacturer partook in an allocation mediation process with other potentially responsible parties. The mediator determined that the manufacturer was liable for 1.306% of the fault. The manufacturer disagreed, but after conducting a cost benefit analysis, it decided to pay over \$1,224,550.84 in remediation costs. The manufacturer filed suit against its umbrella policy carrier seeking the defense and settlement costs incurred in relation to both landfill sites. The Court found that the insurance company only owed a portion of the costs incurred, and was only triggered once the underlying policy limits had been exhausted, which it had not been for the Northeast Gravel site.

Anonymous

- Asbestos was inhaled at an auto dealership, leading to a resulting claim for **\$3,600,000**.

Additional Judicial Opinions

Auto-Owners Insurance Co. v. Ferwerda Enterprises, Inc. (d/b/a Holiday Inn Express)

- Guests of the Holiday Inn Express Ludington were overcome by a cloud of gas released in the swimming pool area during repairs. An endorsement to the insurance policy contained an exception to the pollution exclusion where an injury was caused by "smoke fumes, vapor or soot from equipment used to heat a building." Because the unit that released the cloud of gas heated the pool building, the Court held that the endorsement provided coverage. Thus, the Michigan Supreme Court reinstated the sanction award against the insurer on the ground that the insurer's "arguments were inappropriate and void of arguable legal merit."

Watson v. Travelers Indemnity Co.

- A roofing company contractor was laying the foundation for a new roof on a residence hall building. During the process, a laborer knocked over a drum that contained five to ten gallons of an adhesive/diesel fuel mixture. The drum fell over the edge of the roof and its contents splashed on the side of the residence hall and through the open window of the plaintiff's dormitory room. The company informed its insurance carrier of the plaintiff's potential claim, but the insurance carrier denied coverage based upon a pollution exclusion within the policy. The Michigan Court of Appeals affirmed summary disposition in favor of the defendant insurance carrier, holding that the pollution exclusion applied and barred coverage.

Michigan Civil Fines

The Michigan Department of Environmental Quality (DEQ) Enforcement Unit is responsible for conducting all escalated enforcement actions taken by the bureau. These actions are conducted in response to violations of state water pollution control statutes and rules, violations of surface water discharge permits, and any violations of administrative or judicial orders. The unit serves as the bureau's liaison with the Michigan Department of Attorney General and also works with the United States Environmental Protection Agency and the U.S. Department of Justice on joint state/federal enforcement cases.

Examples of Civil Fines paid to Michigan DEQ for environmental and pollutant violations (above \$25,000 only):

• 03/13/1991	The Upjohn Company	\$25,000.00
• 04/14/1991	Mead Paper Company	\$40,000.00
• 04/17/1991	National Steel Corp-Grt. Lks. Div.	\$160,000.00
• 05/31/1991	General Motors Corporation	\$25,000.00
• 08/06/1991	Ford Motor Company	\$235,000.00
• 08/06/1991	Rouge Steel Company	\$820,000.00
• 10/24/1991	City of Mackinac Island	\$75,000.00
• 11/26/1991	Quanex Corporation	\$45,000.00
• 12/23/1991	McLouth Steel Corp-Trenton	\$850,000.00
• 01/03/1992	Ada Beef	\$50,000.00
• 02/25/1992	Mueller Brass	\$2,000,000.00
• 04/29/1992	Spartan Stores, Inc.	\$25,000.00
• 08/18/1992	Coca-Cola Enterprises North	\$60,000.00
• 12/01/1992	General Motors-Powertrain, BC	\$1,200,000.00
• 12/21/1992	Bluewater Constructors, Inc.	\$52,000.00
• 03/29/1993	Target Stores	\$65,000.00
• 04/14/1993	Wayne Co/Detroit Metro	\$150,000.00
• 05/03/1993	PACE Membership	\$75,000.00
• 10/21/1993	Consolidated Stores Corporation	\$80,000.00
• 02/11/1994	Wayne County/Wyandotte	\$413,000.00
• 12/05/1994	The Kroger Company	\$50,000.00
• 01/20/1995	City of Holland	\$45,000.00
• 04/12/1995	Medusa Cement Company	\$25,250.00
• 12/05/1995	UpJohn Pharmaceuticals	\$350,000.00
• 08/28/1996	City of Bay City	\$30,000.00
• 08/30/1996	Dow Chemical - Michigan	\$100,000.00
• 11/04/1996	Murco, Inc.	\$35,000.00
• 02/27/1997	Bil Mar Foods	\$300,000.00
• 04/03/1997	Great Lakes Tissue	\$25,000.00
• 09/03/1997	Central Wayne County	\$37,500.00
• 09/04/1997	AE Goetze (T & N Indust)	\$35,500.00
• 09/09/1997	Great Lakes Pulp Company	\$350,000.00
• 10/30/1997	Shane Steel	\$25,000.00
• 12/29/1997	National Steel- Ecorse/Zug Island	\$45,000.00
• 06/02/1998	City of Bay City WWTP	\$200,000.00
• 07/22/1998	DSC Ltd.(Trenton)(McLough Steel)	\$56,250.00
• 08/18/1998	TPI Petroleum (Roosevelt	\$125,000.00
• 11/02/1998	National Steel - 80" Mill	\$200,000.00
• 12/01/1998	Lafarge Corporation	\$125,000.00
• 08/31/1999	City of Menominee	\$30,000.00
• 09/01/1999	City of Midland	\$40,000.00

• 09/16/1999	Forest Lawn Landfill (WMD lead)	\$25,000.00
• 12/16/1999	City of Flint ACO-SW99-013	\$25,000.00
• 01/27/2000	Muskegon County WWTP	\$80,000.00
• 02/09/2000	MacDonald's Industrial Products	\$100,000.00
• 02/15/2000	H. Hirschfield Sons Company	\$30,000.00
• 02/16/2000	Fairchild Development Company	\$25,000.00
• 03/03/2000	Clinton Township	\$200,000.00
• 05/03/2000	Wico Metal Products	\$80,000.00
• 05/22/2000	City of Three Rivers	\$35,000.00
• 08/03/2000	City of Detroit DWSD	\$1,500,000.00
• 02/16/2001	Rock-Tenn Company	\$75,000.00
• 04/30/2001	Grosse Ile Township	\$40,000.00
• 08/20/2001	Tri-City	\$25,000.00
• 08/24/2001	Center Line, City of	\$25,000.00
• 10/29/2001	Great Lakes Tissue	\$125,000.00
• 11/08/2001	George Gordon	\$25,000.00
• 01/18/2002	Target Corporation	\$180,000.00
• 02/20/2002	Genesco	\$3,350,000.00
• 03/28/2002	Fraser, City of	\$60,000.00
• 06/24/2002	Oakland County	\$30,000.00
• 08/06/2002	Cemex, Inc.	\$100,000.00
• 08/10/2002	Williamsburg Receiving & Storage	\$50,000.00
• 08/15/2002	Cone Drive Textron	\$100,000.00
• 08/16/2002	Williamsburg Receiving & Storage	\$25,000.00
• 05/23/2003	Welchs	\$38,865.00
• 05/28/2003	Lifetime Fitness	\$30,000.00
• 08/21/2003	RVP Development	\$125,000.00
• 01/09/2004	City of Lansing	\$27,250.00
• 01/16/2004	South Huron Valley Utility Auth.	\$25,000.00
• 06/08/2004	South Huron Valley Utility Auth.	\$25,000.00

Moreover, several Companies were required to reimburse the State of Michigan for the cost of investigations, compliance and enforcement ranging from tens of thousands, to several hundred thousand dollars.

Michigan Stormwater-Related Violations, Civil Penalty Case Summaries

H. Hirschfield Sons Co. – \$50,000 to State of Michigan for penalties/fees plus \$20,000 in corrective measures and additional costs for quarterly compliance reports.

- Oil from Hirschfield's scrap yard equipment was found on the ground and sediment was being tracked off site from the access roads. Contaminated stormwater runoff was entering catch basins from the facility scrap yard. Hirschfield agreed to submit quarterly reports certifying progress on construction of structural controls to prevent the discharge of polluting material into the storm sewer system. Hirschfield also agreed to pay a civil penalty of \$30,000 to the State of Michigan, plus reimburse the State of Michigan \$20,000 for state time. Hirschfield also agreed to spend \$20,000 to design and install an equipment wash station on site.

Associated Refrigeration Services, Inc. – \$20,000 to the State of Michigan for natural resource damage restitution, plus \$5,000 in civil penalties.

- The company was servicing refrigeration equipment at one of their plants. During the service call, approximately 10 gallons of ammonia was discharged over pavement into a storm drain catch basin that discharged into Indian Mill Creek, killing game and non-game fish. Associated Refrigeration agreed to pay \$20,000 to the Fish and Game Protection Fund of the State of Michigan for natural resource damage restitution, as well as a \$5,000 civil penalty to the state.

Fairchild Development Co. – \$28,500 to State of Michigan for penalties/fees plus cost of corrective measures.

- While Fairchild Development was constructing a subdivision in Northville Township, the company failed to hire a certified stormwater operator, maintain inspection logs, and failed to install or maintain soil erosion control measures. Sediment-laden water was discharged from the site into surface waters. Fairchild Development agreed to implement corrective measures to the current site and any sites in the future. Additionally, the company agreed to pay a civil penalty of \$25,000 to the State of Michigan plus reimburse the state \$3,500 for staff time.

Shane Steel – \$30,000 to State of Michigan for penalties/fees plus cost of corrective measures.

- Shane Steel failed to comply with a stormwater permit for industrial activity which resulted in contaminated stormwater discharge. The company paid for corrective measures to prevent discharge of polluting material into the storm system. In addition, Shane agreed to pay a civil penalty of \$25,000 to the State of Michigan and to reimburse the State \$5,000 in staff time.

Taylor Machine Products – \$23,200 to State of Michigan for penalties/fees plus \$19,000 in immediate cleanup and costs to implement preventative measures.

- Taylor Machine was discharging waste oil into a storm drain system from a retention basin on its property. The company spent more than \$19,000 cleaning up the catch basins, and also agreed to submit a Pollution Incident Prevention Plan. Taylor Machine also agreed to pay a civil penalty of \$20,000 to the State of Michigan and reimburse \$3,200 in staff time.

Anonymous, Metal Stamping – \$90,000 to State of Michigan for penalties/fees plus cost of corrective measures.

- Violations included the failure to have certified storm operators and Storm Water Pollution Prevention Plans. Non-structural controls also had not been implemented to prevent pollutants from industrial activity from entering surface waters via storm water runoff. Wico also failed to obtain a required storm water permit at a third facility. Wico agreed to perform corrective measures including cleaning the storm drains and oil-covered pavement at all three facilities. In addition to costs for corrective measures, Wico agreed to pay a civil penalty of \$80,000 to the State of Michigan for violations plus \$10,000 to the State of Michigan for staff and attorneys fees, and made a \$10,000 cash donation to the City of Warren.

Additional Resources

Michigan Department of Environmental Quality (DEQ)

Guide to Environmental, Health, and Safety Regulations (April 2012)

- http://www.michigan.gov/documents/deq/deq-oppca-caap-manufguide-all_324018_7.pdf
- Chapter 7: Sites of Environmental Contamination, Property Transfers, and Liability Issues

Michigan DEQ Facility Assessment Survey:

- Fillable Word File:
http://www.michigan.gov/documents/deq/dnre-oppca-EHSAssessmentSurvey_328520_7.doc
- PDF:
http://www.michigan.gov/documents/deq/deq-ess-caap-manufguide-assessmentsurvey_313387_7.pdf

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