



2515 Moody Blvd. • Flagler Beach, FL 32136
Phone: 386/439-3378 • Fax: 386/439-3376

www.eckerins.com

Pollution Claim Examples

Concrete Contractor - Laid an undercoat of slag while creating a new runway for a large international 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 - 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.

HVAC Contractor - A contractor removed ductwork from a hospital's HVAC system. It was later determined that the ductwork was home to a dangerous fungus. The dismantling activities and the on-site storage of dismantled ductwork caused the fungus to spread into the hospital. Patients became infected with the fungus; some were even critically infected. The contractor was found liable for the spread of the fungus and faced bodily injury and property damage claims in excess of \$1 million.

Paving Contractor - After laying the "tack" coat of Naphtha in preparation for the final coat of blacktop on a new road job, a heavy rain hit, washing the toxic material into a drainage ditch along the road and, subsequently, into a stream. The clean-up of this claim cost over \$150,000.

Mechanical Contractor - A contractor was called to a site where an underground storage tank was being removed. He was contracted to loosen a heavy coupling for which the tank removal company did not have the adequate tools. Several days after leaving the site, having shaken the pesky coupling free, the contractor was notified that he was being sued for the tank leaking underground, spilling hundreds of gallons of gasoline into the soil. It seems that the contractor dropped a heavy wrench down the intake spout of the fiberglass tank, cracking the bottom, and causing the leak. Total costs to defend himself (He alleged that there was no way of knowing whether something else caused the leak.) and pay damages exceeded \$250,000.

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 venting overcame them. Total claim was over \$200,000.

Pipeline Contractor - A contractor suffered a large claim when he installed a new storm water drainage system for a municipality in MI. Not long after completion a very heavy rain struck the city, causing a backup of water with human waste into the basements of over 100 high-priced homes. The contractor was sued for installing an inadequate system and the environmental insurance carrier paid over \$800,000.

Renovation Contractor - A contractor was reconditioning a tile floor in a building undergoing extensive renovations. Several workers in the building filed bodily injury claims totaling \$25,000 against the contractor. The workers had inhaled toxic vapors from the sealants used in the reconditioning process.

Renovation Contractor - A residential contractor used solvent to remove paint from a residential structure and improperly disposed of the materials on-site. A group of residents filed a \$10 million toxic vapor inhalation suit against the contractor, citing bodily injury, trespass of pollutants and adverse effects to their quality of life.

Renovation Contractor - A contractor disposed of sealants and solvents containing toluene in a covered commercial dumpster. After climbing into the dumpster, two 10-year-old children were overcome by fumes and died. The contractor faced a claim in excess of \$2 million for inadequate disposal of the waste toluene.

Maintenance Contractor - A contractor was employed to control the vegetation along an overhead power line right of way. A herbicide was applied to reduce the vegetation, following which, a heavy rainstorm occurred and washed herbicide on to adjoining farmland. The farmer's crops and land were severely damaged, and the contractor was held liable for the damages.

Utility Contractor - A utility contractor undertaking construction of a new overhead power line employed a sub-contractor for installation of the power poles. The sub-contractor hit an underground sewer while undertaking this work which resulted in damage to the sewer and the spillage of a significant volume of raw sewage. The utility contractor was held vicariously liable for the actions of the sub-contractor and for costs in respect of repair to the sewer and clean-up of the spilled sewage.

Grading Contractor - Inadequate erosion control measures implemented during construction of an abutment for a highway bridge resulted in petroleum-impacted sediment being released into a pristine waterway. The contractor was required to pay significant clean-up costs.

Grading Contractor - A contractor was constructing a road in an area where the water table was extremely shallow which necessitated extensive dewatering to allow excavation to the sub-grade level. After the dewatering wells had been drilled and pumping had been in progress for two days, the contractor detected petroleum hydrocarbon odor in the groundwater being extracted. Petroleum hydrocarbons had leaked from an underground tank near the project site into the groundwater. This was then exacerbated by the dewatering operations for the new road which was pulling the contaminated groundwater underneath the site. In a pump and treat remediation program lasting several weeks, the contractor was required to clean up both the soil and groundwater in respect of the exacerbation of pollution conditions arising from his actions.

Excavation Contractor - A contractor was hired to perform grading operations for roads at a new sub-division. The contractor was following the engineering plans provided by the engineering firm. Unfortunately, the plans were incorrect, leading to an improper slope. When the first rain storm occurred, storm water ran off into the basements of several homes causing property damage. The excavation contractor was named in the lawsuit as well as the engineering firm. The end result: The excavation contractor was eventually dismissed, but not until \$100,000 was spent on defense costs.

Maintenance Contractor - A contractor was lifting temporary barriers following completion of a permanent crash barrier repairs when a crane overturned spilling hydraulic oil and diesel into a wetland area adjacent to the road. The regulator responded to complaints from members of the public of oil on the water as well as water fowl coated with oil. The contractor was liable for substantial response costs and wetlands restoration.

Janitorial Contractor - Working at a mall, a cleaning company inadvertently mixed cleaners, one ammonia based, the other chlorine based. The result was a toxic cloud of ammonia chloride that caused respiratory distress in dozens of shoppers. Total cost of this claim: \$175,000.

Flooring Contractor - A contractor (GC) installed new carpeting in an office building. One week after installation, the building owner informed the contractor that employees were complaining of headaches and dizziness. This was attributed to the odors from the new carpets. The general contractor could not prove that the manufacturer of the carpet or the carpet adhesive was responsible; thus, the contractor was left with the claim. The GC filed a claim with their general liability carrier. The claim was denied due to the fact that "hazardous materials" such as formaldehyde and volatile organic compounds associated with the carpeting and adhesives are pollutants.

Renovation Contractor - General contractor (GC) renovating a bank hired an asbestos abatement contractor. As part of their final cleanup process on a Friday, the abatement contractor utilized a high-pressure wash, resulting in saturated carpets, ceilings and walls. Materials remained saturated over the weekend while the HVAC system remained turned off. The GC was greeted with extensive mold growth throughout the building on Monday morning, and ultimately a \$600,000 bill to correct the damage. Although the GC ensured that the subcontractor retained pollution insurance, the subcontractor had a mold exclusion on their policy, leaving the entire cost on the shoulders of the GC.

Paving Contractor - A city hired a contractor to finish six roads, two primary and four cul-de-sacs. The size of the job required that the contractor apply 2800 gallons of oil-based sealant. However, before the sealant could dry, precipitation washed it off the roads and into the city's storm drains and a nearby stream. The oil-based sealant was found to be potentially harmful and the city inspector ordered the contractor to clean it up. Fifty property owners who lived along the stream filed suit for bodily injury and property damage as a result of the washout. The contractor paid all costs associated with the cleanup and, settlements for approximately \$600,000.

Claim Scenarios for Products Pollution

Distributor - A small distributor of silicone sealer was named in a suit alleging that fumes from the sealer had entered the ventilation system of a major department store forcing the evacuation and two-day closing of the establishment. Damages of \$210,000 were being sought. The distributor, relying on vendor's coverage from the manufacturer, did not own a products liability policy. After putting the manufacturer on notice, the distributor was dismayed to find that the manufacturer's insurer denied coverage based on an absolute pollution exclusion that excluded any loss arising out of the actual, alleged or threatened discharge of any solid, liquid, gaseous, or thermal irritant or contaminant including chemicals. Based on the inadequacy of the manufacturer's insurance, the vendor's coverage was worthless, and the distributor was left with an uninsured loss of \$210,000.

Recycler - A reconditioner of industrial drums was sued by a prior customer for contamination of the product the customer stored in the drums. The end user was putting hydraulic fluid in the reconditioned drums, and then delivering it to commercial job sites for on site upkeep of heavy equipment. Rust on the inside of the drums contaminated the fluid, causing significant damage to the machinery it was used in. The GL carrier declined the claim citing the absolute pollution exclusion on the policy.

Manufacturer - An industrial facility has their air pollution control equipment updated and a 3rd party contractor installs new scrubbers. Over the next week, neighbors of the facility complain of dizziness, nausea and several have to be hospitalized due to fumes found to be coming from the facility's exhaust stacks. It is determined the scrubber was installed properly- the problem was the scrubber itself had been manufactured improperly. The scrubber manufacturer was sued and forced to pay over \$500,000 in damages.

Manufacturer - A manufacturer of fuel tanks and piping was pulled into a law suit 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.

Manufacturer - Insured manufactures barrels that are used for containing acids and chemical solvents. During the manufacturing process, there is a problem arising out of the welding of the seams. A chemical distributor uses these barrels to supply product to his customers. A customer advises that several of these barrels fail at their facility while being moved. The resulting chemicals are discharged on the customer's premises and subsequently into the storm drains resulting in an expensive clean up.

Manufacturer - A manufacturer of fuel tank dispensers was brought into a claim when a customer who was fueling their car suffered bodily injury and property damage overflowing gas. The nozzle did not shut off properly, and the overflowing gas caused damage to the vehicle as well as alleged bodily injury to the person. Additionally, they claimed damages arising from failure to continue their trip etc. The claim was ultimately settled for a negligible amount, but legal expenses alone cost the manufacturer over \$50,000.

SITE POLLUTION CLAIM EXAMPLE(S):

Discovery of impact during due diligence for pending purchase/sale: The insured has owned and operated a site since 1993. In December 1998, during a site assessment conducted in anticipation of the pending sale of property, arsenic contamination was discovered. Subsequent investigation confirmed that the soil and groundwater on the site had been impacted. The historic use of herbicides on the site likely caused the arsenic contamination. The agency required the insured to conduct a cleanup. Cleanup costs associated with arsenic contaminated soil and groundwater on the insured property are estimated to be \$825,000.

Impact caused during redevelopment activities: Construction debris containing friable asbestos material was found in the soil during grading activities at an industrial park. The contractor, prior owner of the site, neglected to remove asbestos-containing material present in the buildings prior to demolition. Further, the contractor plowed the construction debris into the ground instead of disposing it at an appropriate hazardous waste facility. The oversight agency ordered the insured to excavate and properly dispose of the hazardous debris and soil. Cleanup costs associated with excavating soil contaminated with friable asbestos are approximately \$2,300,000.

Historical orchard cause of homeowners finding pesticides in topsoil: An orchard that produced from 1903 until 1988, was sold and became a subdivision. When one new resident had her well water tested, contaminants were detected. Later DDT, lead, and arsenic were found in the soil. Pesticides had been sprayed for decades on the orchard. The EPA has declared the subdivision a Superfund site and has replaced topsoil on 28 lots. More cases like this orchard may await others who build on former agricultural land.

Temporary Fuel Tank Leaks impacting project site and adjacent properties. - The ABC Construction maintains a construction yard with a 5,000-gallon above-ground storage tank used to store diesel fuel, which a worker fails to fully secure. Over the weekend, 800 gallons of diesel fuel drips undetected from the nozzle and onto the ground. The fuel leaks onto the lot of an adjacent business and into a stream running through that property(s) onto the lot of an adjacent business and into a stream running through that property.

Transportation Pollution - BC Construction's tanker trucks are used to transport waste oil. One of their tanker trucks overturns on Highway 50. As a result of the crash, waste oil spills from the vehicle's 500-gallon storage tank.