

## Premises and Contracting Services

### Environmental Claim Scenarios That Could Impact Your Bottom Line



Great American Insurance Group provides coverage for bodily injury, property damage, legal expenses and cleanup costs resulting from pollution conditions arising from contracting services on an occurrence or claims-made basis. There is liability coverage for both ongoing contracting services, as well as, completed operations coverage to provide protection after the job is finished.

Great American Insurance Group also provides coverage for bodily injury, property damage, legal expenses, business interruption, contingent business interruption and cleanup costs resulting from pollution conditions arising from covered locations. Pollution liability associated with non-owned disposal sites, transportation of products or wastes, and contracting services are also covered.

As you review the following claim scenarios, think of the types of contractors you service or the facilities your clients own or operate. **Do you represent companies performing similar operations who are not protected for their environmental exposures?**

### Road Work Stirs Up a Dust Claim

A street and road contractor was engaged in a long-term reconstruction project of a major highway. A nearby resident filed a lawsuit against all entities working on the project for damage to her home and bodily injuries allegedly from exposure to construction dust from the highway project.

### Mold Arising from Construction Defects

A general contractor completed the construction of a senior care facility in 2009. The owner's recent inspection revealed water intrusion and mold contamination throughout the building with damages expected to exceed \$1.3 million. Experts were retained and inspections revealed multiple construction defects. \$575,000 in damages were determined to be attributed to mold.

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## Water Pipe Impact

During excavation of a trench for the installation of an underground pipe, the excavation contractor struck a 3-inch water line, resulting in the release of 30,000 gallons of water. The water ran to a storm drain and eventually to a local creek, causing increased turbidity, pH and chlorine levels. The event was reportable to the local environmental agency and may result in monitoring, cleanup costs and fines.

## Demolition Activities Cause Release

A redevelopment project was underway where all existing structures were being razed and the site was to be regraded. During demolition activities, the general contractor punctured an unknown heating oil tank. Residual heating oil was still located within the tank and was released when the tank was punctured. Due to sandy soils and a shallow groundwater table, the oil was able to spread quickly. Although the tank was only 500 gallons, the cleanup became very involved due to the required excavation of impacted soils and the regular monitoring of groundwater until closure could be granted by the environmental regulators.

## Janitor's Mistake Forces Evacuation

While working at a shopping center, an employee of a janitorial company inadvertently mixed ammonia- and chlorine-based cleaning products. The mixture resulted in a toxic cloud of ammonia chloride that caused respiratory distress in dozens of shoppers and a shutdown of the center for a period of time. The contractor was held responsible for the defense of the bodily injury claims. Additionally, numerous business interruption claims were filed by the tenants.

## Soil Spill

During construction of a new office building, an excavation contractor collected several tons of contaminated soil for off-site disposal. Unbeknownst to the driver of one of the dump trucks, the rear dump gate of his truck was ajar allowing soil to spill throughout the trip before being pulled over by the police. Soon after, it was determined that the soils had been contaminated with PCBs. The soil spillage caused a road closure of several hours and the excavation contractor was held responsible for the emergency hazmat cleanup of the soil.

## A Dumpster Surprise

A municipal garbage company maintained a contract with a public entity for waste pickup and composting services. While in the midst of loading waste from a dumpster on a commercial property, a container with an unknown liquid was encountered resulting in a spill from the insured's vehicle onto the pavement and into a storm drain. Even though the waste collection employee acted quickly to deploy a spill kit, the quantity of the material was too great and resulted in a release that affects both the soil around the vehicle and the adjacent storm drain. Emergency response expenses to vacuum out the storm drain and excavate impacted soils reached \$110,000.



## Fire Triggers Release

A street and road contractor was excavating soil in an active intersection for the purpose of replacing storm water inlet boxes. During the course of the work, the excavator overheated and caught fire. The ensuing fire severely damaged the excavator releasing its hydraulic fluids and diesel fuel. Water from firefighting activities spread the oils and fuel to surrounding soils and into an adjacent stream via the storm water inlet. Costs to delineate the impacts and remediate the soils and stream exceeded \$85,000.

## Unexpected Asbestos

A general contractor was renovating an older apartment building when their flooring subcontractor noticed that there was old tile underlying a plywood subfloor. During the initial process of ripping up the subfloor, some of the tile underneath was disturbed. The project was stopped in order to test for possible asbestos in the tile. Subsequently, the analysis revealed the tile did contain asbestos and that the building had been contaminated. The project was immediately halted while an asbestos abatement contractor remediated the building due to the disturbed asbestos floor tile. The general contractor was responsible for the costs incurred in abating the asbestos its subcontractor had released and fortunately had environmental insurance to cover the costs.



## Regulatory Reopener at Apartment Complex

An owner of an apartment complex constructed in 1998 discovered that the apartment was built on previously contaminated property. The historical use of the site included a gas station. Prior to construction of the apartment complex, the underground storage tanks were removed and 22,000 tons of contaminated soil were excavated. A No Further Action letter was received from the state. In 2012, the owner received a letter from the state's Department of the Environment (DOE) explaining that the case had been reopened. The reopener required the owner to hire an environmental consultant to review the details of the past cleanup activities in light of new groundwater and soil vapor regulations. The review was submitted to the DOE who determined additional sampling of the groundwater and soil vapor would be required. The DOE required two additional wells to be installed and sampled on a quarterly basis. Total costs to date exceed \$93,000.

## Meth Lab

During the process of divesting an apartment property, the due diligence investigation revealed a tenant who had been arrested on illegal gun sale charges and suspected of methamphetamine manufacture and sale. Despite the fact that the unit had been repainted several times, environmental testing confirmed that it was tainted with methamphetamine residue, which permeates wallboard, wood, carpeting and flooring, and remains of concern to human health for years.



## Apartment Complex Impacted by Plume

While performing due diligence in the course of selling an apartment building, the owner of the apartment building learned that an underground plume of contaminants from a neighboring property had impacted their site, resulting in vapor intrusion into several of their buildings. Unfortunately, the source of the plume was an orphaned site so the owner of the apartment building was stuck paying the entire cost for the vapor mitigation system, and faces the real possibility of future bodily injury claims from tenants.

## Redevelopment Hits a Snag

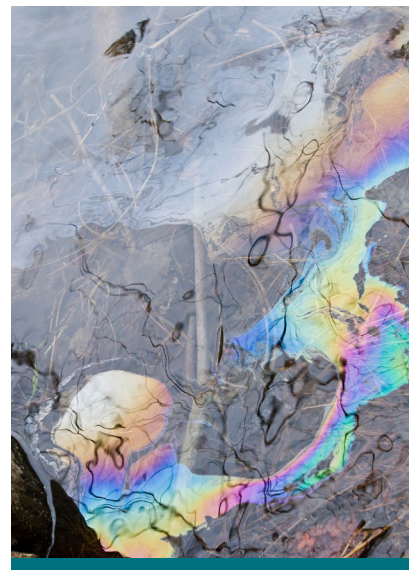
A former mill site was being redeveloped into a condominium complex. The original mill structure was to be preserved while the interior of the building was gutted and renovated. The site was located within a former industrial area and was built on top of a historic fill. Additionally, the site was located adjacent to a property involved in the state's remediation program. The proposed redevelopment triggered environmental regulators to request that another environmental assessment of the property be completed. Through the assessment, additional investigations were completed to evaluate contaminant pathways. Ultimately, a sub-slab depressurization system was required to be installed to address elevated concentrations of contaminants detected in the soil vapor and indoor air samples.

## Financial Institution Takes a Hit

Recently, a large Financial Institution (FI) was forced to pay the USEPA \$80,000 in past response costs. These costs were incurred by the USEPA to remove hazardous waste drums at the facility of a defunct borrower. The FI conducted an auction of equipment and inventory, but left behind plating vats, tanks and associated piping full of hazardous wastes and corrosive materials, as well as wastes and chemicals associated with the wastewater treatment plant. The FI also failed to maintain the facility. This resulted in a waterline break that prompted a response by the county environmental agency. The county called in USEPA because of the presence of thousands of gallons of liquid hazardous wastes. The USEPA conducted a removal action and alleged that releases of hazardous substances had occurred due to improper management and storage of hazardous substances during the time the FI controlled the property. As a result, the USEPA deemed the FI responsible for the costs.

## Secured Creditor Exemption Falls Short

A large FI entered into a settlement agreement where it agreed to reimburse the USEPA for \$1.28 million in removal costs incurred at a former wood processing facility. The FI was the successor to the trustee who had held title to the property while the wood treating operations had resulted in releases of hazardous substances. Although the secured creditor exemption of CERCLA provides liability limitations, it does not extend to a fiduciary who negligently causes or contributes to a release. Given the length of time that the spills occurred, the risks posed by the contamination and that the bank had been notified by the USEPA about the contamination, it is possible the



bank could have been exposed to potential contribution actions by other responsible parties. In an effort to limit their exposure to additional third party claims, the FI entered into the settlement agreement with the USEPA, which encompassed covenant not to sue and contribution protection.

### Faulty Valve Leads to Evacuation

The operator of a small wastewater treatment plant was in the process of receiving a bulk shipment of chlorine bleach used in the treatment process at the facility. Unfortunately, the valve connecting the hose to the tank was not secure. Before the vendor and operator realized what had happened, a significant amount of chlorine bleach was released. The liquid chlorine ran down the parking area and into a small culvert on a neighboring property. The vendor was able to close the valve but the spill had caused the culvert and surrounding soil to be contaminated. Fumes from the release caused an adjacent manufacturing operation to be evacuated. The cost to neutralize the chlorine and remediate the spill was significant and the company was fined as well. The facility had environmental coverage which covered both clean up and fines and would respond to third party bodily injury and business interruption claims should they arise.



### Slow Leak Causes Big Problems

A manufacturer operated a machine press to form metal parts for the automotive industry. A portion of the machine press was located beneath the concrete slab floor. For more than 20 years, lubricating oil from the machine press was released into the soils under the building. When the soil was tested during a potential buyer's due diligence, it was found to contain petroleum hydrocarbons. The contamination was determined to be from the leaking machine press. The manufacturer was held responsible for the cleanup of the soil contamination and the sale of the property stalled.

### Rainstorm Causes Grief

During a particularly heavy storm, rainwater gathered in a puddle on the roof of an office building. Due to a clogged drain, the water level rose higher than the installed protective flashing and entered the drywall behind office furniture. Over time, mold began to grow in the obscured area and was not discovered until odors were noticed, leading to a costly cleanup and the potential for bodily injury claims from tenants.

### Phase I Missed the Mark

Looking to expand their operations, a company purchased a large piece of property that seemed suitable for redevelopment. Prior to their purchase, the company went through all the proper due diligence including conducting a Phase I site assessment. Although the Phase I did not note any known contamination onsite, the company soon discovered petroleum contamination from an unknown heating oil tank as they began construction. As a result, construction halted as the company had to invest their time and additional money into remediating the contamination.



## Nice Greens Cause Loss

A luxury resort operated a golf course near a popular lake that was used by the local community for fishing and swimming. Storm water runoff from the golf course routinely flowed into the lake. Over time, the lake became contaminated due to excess application of pesticides and herbicides onto the golf course. The environmental regulatory agency fined the golf course and ordered immediate cleanup of the lake.

## Hidden Mold

An apartment management company was notified of a water leak in the ceiling of one of their units during a heavy rainstorm. After the storm, the property management company sent out their repair contractor to inspect the damage and to provide a cost estimate for the repairs. During the investigation, it was determined that the roof had been leaking for a long period of time but not in large enough quantities to escape the insulation above the ceiling. The absorbent nature of the insulation made things worse by promoting higher humidity at relatively warmer temperatures. Both factors helped support active mold growth.

## Mold Hits Senior Care Facility

During recent interior room renovations at a highly rated senior assisted living facility, mold contamination was encountered on the surface and behind vinyl wall coverings. After inspection of over 35 rooms, the cause was determined to be increased humidity levels brought on by occupants opening windows and allowing humid outside air to mix with air-conditioned room air creating excessive levels of humidity. The vinyl wall covering acted as a vapor barrier, causing the walls behind to become impregnated with mold. The cost to remediate and perform indoor air quality monitoring was \$150,000.



The claim scenarios in this newsletter are provided to illustrate the variety of environmental exposures faced by your clients. The facts of any situation which may actually arise and the terms, conditions, exclusions, and limitations in any policy in effect at that time are unique. Thus, no representation is made that any specific insurance coverage applies to the above claim scenarios.

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