

# DOS & DON'TS: [û] Do Ensure Insurance Covers Pollution Related Claims



Companies must have insurance to protect themselves in the event of, say, a fire at company facilities. But if you think that your insurance policy will cover the costs of remediating contamination or that your insurer will defend you if you're sued for polluting someone else's property, you may be in for a rude awakening. Many insurance policies have pollution exclusions that specifically omit such events from coverage. So when buying insurance for your operations, it's important to ensure that it *doesn't* have a pollution exclusion, especially if your company's operations could expose it to environmental liability.

Here are just a few examples of companies that learned the hard way about the consequences of having pollution exclusions in their insurance policies:

- A used car business leased property. The landlord sued it, claiming that a spill of waste oil caused significant property damage, resulting in cleanup and repair costs, and losses due to the delay in re-leasing the property after the end of the business's lease. The business's insurer refused to defend it in the lawsuit due to the pollution exclusion in its policy. The court agreed, ruling that all of the landlord's claims arose out of the spill of a 'pollutant', that is, waste oil, and so fell within the policy's pollution exclusion [*Mississauga Motors Mart Inc. v. Sovereign General Insurance Company*, [2013] ONSC 6360 (CanLII), Oct. 10, 2013].
- An above-ground storage tank leaked fuel oil, which contaminated a vacation home and its surrounding soil. The home owner claimed the spill was covered by his insurance. But the insurer said the spill fell under the policy's pollution exclusion. And the court agreed. The exclusion wasn't ambiguous or overly broad. It covered the release of contaminants or pollutants, which would include a spill of fuel oil, ruled the court [*Corbould v. BCAA Insurance Corp.*, [2010] BCSC 1536 (CanLII), Nov. 1, 2010].
- A landlord leased property to a company for use in its sandblasting business. When the lease ended, tests revealed that the soil contained concentrations of antimony and chromium that exceeded acceptable limits. The landlord remediated the land and then sued the company for over \$160,000 in remediation costs. The company asked the court to require its insurer to defend it in this lawsuit under its insurance policy. The court noted that the company's insurance policy excluded claims for the cost of

remediating the effects of pollutants. And the landlord's claim was that the company had contaminated the land and then failed to remediate it. So the court said the claim fell directly under the terms of the pollution exclusion and was thus excluded from coverage. And because the pollution exclusion applied, the insurer didn't have to defend the company in the lawsuit [*Dave's K. & K. Sandblasting (1988) Ltd. v. Aviva Insurance Company of Canada*, [2007] BCSC 791 (CanLII), June 4, 2007].