

Federal District Court Clarifies “Sudden and Accidental” Pollution Exclusion

The United States District Court for the Western District of Michigan has held that a leak of a hazardous substance from an engineered landfill cell, rather than the initial placement of the waste into the landfill, is the relevant point of discharge for purposes of determining whether the resulting environmental damage was “sudden and accidental” under an insurance policy. The court also held that an objective standard should be applied when determining whether such leak is “sudden and accidental,” rather than the subjective expectations of the insured.

Facts

The City of Albion (City) owned and operated the Albion-Sheridan Township Landfill (Landfill) from 1966 through 1981. During that period, the City accepted for disposal industrial sludge that contained high concentrations of heavy metals, such as chromium zinc, nickel, and lead. In 1981, the United States Environmental Protection Agency (EPA) began investigating the Landfill and, in 1989, placed it on the Superfund National Priorities List because of the significant volume of toxic chemicals and industrial sludge contained in the Landfill. EPA eventually sued the City under the Comprehensive Environmental Response, Compensation and Liability Act to clean up the Landfill. EPA and the City settled that lawsuit by entering into a consent decree that required the City to conduct certain cleanup activities and reimburse EPA for its past costs.

City’s Lawsuit Against Insurers

The City had requested its insurers to defend it in the suit brought by EPA and to indemnify it for any liability arising from releases of hazardous substances from the Landfill; however, all of the insurers denied the City’s request, claiming that the policies excluded coverage for such releases of pollutants. After the City settled the suit with EPA, the City sued its insurers for a declaration that they were liable under the policies for the City’s damages.

In the City’s suit against its insurers, the City moved for summary judgement regarding the interpretation of the “pollution exclusion” clauses contained in the policies. These clauses excluded coverage for releases of pollutants to the environment, with the exception of releases that were “sudden and accidental.” The City acknowledged that the initial placement of waste into the Landfill was neither sudden nor accidental; however, the City argued that the “sudden and accidental” exception to the pollution exclusion clauses should be applied to the discharge of pollutants from the Landfill, rather than the initial placement of the waste. Further, the City argued that, whether a release from the Landfill to the environment is “sudden and accidental” should be based on the City’s subjective intent or expectation, rather than on an objective standard. The insurers argued that, because the initial placement of the waste into the Landfill was neither sudden nor accidental, the pollution exclusion clauses excluded coverage under the policies without regard to when the pollutants actually leaked from the Landfill.

Court's Decision

Relying on prior decisions by the Michigan Court of Appeals, the federal district court agreed with the City's interpretation of the "sudden and accidental" exception to the pollution exclusion clauses, provided that the City could demonstrate that the Landfill was properly constructed to prevent releases and that the any releases were from discrete, identifiable events. That court stated:

Based upon the *Kent County* and *South Macomb* cases, the Court concludes that for purposes of the "sudden and accidental" exception, the relevant release in this case will be the release from the Landfill into the environment if the City is able to establish that the Landfill was licensed by the State of Michigan and designed and constructed in accordance with then-contemporary standards in order to contain the contents that were to be placed in the Landfill. Moreover, in order to demonstrate that the discharge from the Landfill comes within the "sudden and accidental" exception, the City must present evidence of isolated discharges "apart from the overall continuous leaking of the [L]andfill." (Citations omitted.)

The federal district court distinguished an earlier Michigan Appellate Court case that held that the initial placement of waste in an abandoned gravel mine constituted the relevant point of release for purposes of applying a pollution exclusion clause because that waste was placed directly into the environment and was not initially confined to an engineered landfill cell. The federal district court, however, declined to rule on whether the releases from the Landfill were covered under the City's insurance policies because discovery was not complete regarding the design of the Landfill and whether there were any discrete releases from the Landfill.

With respect to the determination of whether a release from the Landfill was "sudden and accidental," the court disagreed with the City's interpretation that such determination should be based on the City's subjective intent regarding the waste. The court held that "an objective standard [is] appropriate under the 'sudden and accidental' language because the language focuse[s] on the release rather than on the knowledge, intent, or expectation of the insured." Accordingly, the court denied the City's motion with respect to its contention that a subjective standard should be used in applying the "sudden and accidental" exception to the pollution exclusions contained in the insurance policies.

City of Albion v. Guaranty National Insurance Co., No. 1:98-XC-676 (W.D. Mich. Oct. 15, 1999).

This article was prepared by Jeffrey L. Woolstrum, a partner in our Environmental Department, and previously appeared in the February, 2000 edition of the Michigan Environmental Compliance Update, a monthly newsletter prepared by the Environmental Department and published by M. Lee Smith Publishers.

