



## Landscaping Contractors

Landscape contractors perform activities and use materials that can pose significant environmental liability. Earthwork operations like excavation and grading could damage underground utilities, causing a hazardous release or leading to runoff of silt and sediment that can pollute water and threaten ecological systems. Pesticides, herbicides and fertilizers can contain toxic materials that pose environmental and human health hazards. Improper application, or leaks and spills during transportation can cause contamination to soil or water systems and lead to cleanup and third party liability. Due to the potential toxicity, these materials can also be classified as hazardous waste and require special disposal procedures.

## Environmental Exposures May Include

- Excavation into subsurface utilities could result in accidental damage to sewer lines or septic systems, water lines, gas/electric/heating oil lines or tanks. This damage can cause hazardous releases, explosions or pressure main washouts of soil resulting in primary property or bodily casualty and cleanup liability.
- Silt and sediment are fine grained soil particles that are readily carried in surface runoff and may migrate directly or indirectly to surface waters. Improper erosion control can lead to surface runoff which can impair the functionality of storm water drainage systems and catch basins, severely damage water quality, cause ecological damage to streams, rivers and aquatic systems and damage to adjacent property. Control of silts and sediments is required under the Clean Water Act and contractors may face regulatory action such as clean-up orders, fines and penalties from federal, state or local regulators.
- Site application of fertilizers may result in ground or surface water contamination or health impairment. This may be caused by over-application, shallow water tables and storm water runoff. This is particularly true if nitrification inhibitors are present, such as nitrapyrin, dicyandiamide or carbamoyl methylpyrazole. Phosphorus, a main ingredient in synthetic fertilizers, encourages the growth of algae, which depletes oxygen out of lakes, rivers and streams and can harm aquatic life, or lead to growth of toxic blue-green algae.
- Leaks, spills or over-application of herbicides and pesticides can easily contaminate soil, surface or groundwater. Applications made prior to heavy rains or on saturated soils can also contribute to contaminated storm water runoff. Pesticides and herbicides contain toxic materials that pose health risks to humans, animals, aquatic organisms and plants. If applied to hard surfaces, such as concrete, there is nothing to absorb the pesticide and it is even more likely to cause contaminated runoff. Vegetative wastes that have had herbicide or insecticide over-applied, or that retain persistent chemicals, will also likely contaminate a disposal site.
- Pesticide and fertilizer drift is an insidious threat to human health as well as to wildlife and ecosystems in and around areas where harsh chemicals are used to treat lawns. Children are especially vulnerable to these airborne pesticides, and when pesticides are sprayed, they can drift and settle on playgrounds, porches, laundry, toys, pools, furniture and more.
- Storage at any owned/leased operational facility of pesticides, fertilizers and automotive fluids for work site equipment and vehicles carries environmental exposure. Spills, improper storage containment and exposure to rainfall can cause chemicals to runoff and contaminate surface water, groundwater and soils, resulting in cleanup and potential natural resource damage claims. Storage of concentrated ammonia-based fertilizers may react with other stored incompatible materials (e.g., lime, urea, nitrates and sulfur) if leaked or spilled. This may result in a fire or the emitting of air pollutants.
- During transportation or loading and unloading, an accident or container breach could cause a leak or spill of pesticides, fertilizers or fluids from powered equipment and lead to environmental liability. Dry particulates that are loose can also blow off during transport if they are not properly covered or secured which can cause air contamination.
- Pesticides, fertilizers and automotive fluids can fall under hazardous waste and require special disposal procedures. Pesticide waste can include rinse material from containers and spray equipment, left over spray solutions and excess pesticides. Improper handling and disposal can lead to contamination of soil and ground and surface water causing cleanup and third-party liability. Several federal and state laws regulate the disposal of pesticide waste, and improper disposal can also result in fines for the contractor.
- Improper erosion control or installation of irrigation and drainage systems, retaining walls and trenches can lead to water runoff that causes moisture intrusion conditions and mold growth.

## Contractors Pollution Liability Can Provide Coverage For

- Contracting operations done “by or on behalf of” the insured
- Contracting operations performed at a job site
- Third-party claims for bodily injury and property damage
- Third-party claims for cleanup
- Defense of third-party claims
- First-party emergency response costs
- Mold, legionella, bacteria, fungi, lead, asbestos and more
- Sudden and accidental coverage for owned/leased locations
- First and third-party transportation pollution liability
- Loading and unloading
- Non-owned disposal sites
- Silt & sedimentation

# Claims Scenarios & Examples

- After more than 50 farm workers experienced vomiting, nausea and fainting, with one having to go to the hospital, it was found that they had been exposed to chlorpyrifos. It was discovered that the pesticide migrated from the next door mandarin orange orchard into the cabbage field that they were working in.
- Soon after the application of pesticide and herbicides to a golf course, heavy rains occurred. The storm water washed the chemicals into an onsite pond, negatively impacting protected species and wetlands. The EPA investigated and ordered restoration of the wetlands and assessed natural resource damages to endangered species and wetlands. The damages to the insured's site were not covered under the herbicide and pesticide coverage on their general liability policy, which limited coverage to third-party property damage only. Their claim for the onsite remediation was denied.
- A man claimed to be sprayed with pesticides while sitting outside at a cafe by a landscaping company's worker applying a mix of bug and weedkillers to the site's landscaping. The landscaper was wearing a backpack sprayer to apply the pesticides. The man sued for \$55,000 to cover medical expenses, bodily injury and suffering, which included severe coughing, insomnia, difficulty breathing and exhaustion.
- A landscaping company was fined by the Environmental Protection Agency after two pesticides entered the tributary of a river. Employees of the company did not correctly follow pesticide instructions and sprayed the chemicals in a pool of water that bordered a creek which led into a river. Both pesticides' labels prohibited applying the chemicals directly on water or areas where water is present. This violated the Federal Insecticide, Fungicide and Redenticide ACE (FIFRA) and the Clean Water Act (CWA).
- A residential neighborhood hired a landscaping contractor to control the weeds and vegetation in the neighborhood. The community was on a golf course, and overapplication of chemicals on the vegetation contaminated a lake on the golf course. Before the contamination was realized, the lake water was used to water the golf course, impacting the grass on all 18 holes. Eight to ten inches of topsoil on the entire golf course had to be removed, which cost several million dollars.
- While working on fill operations for a housing project, a landscaping contractor spread soil across a project site without knowing it was contaminated with petroleum. When a lawsuit was filed, the landscaper was brought into the claim for exacerbating the extent of the contamination. Deliberations went on for some time, and it was concluded that the landscaper would pay cleanup costs along with his defense expenses.
- A landowner sued a town, school and landscape architect for damage to his property that resulted when the school refurbished their athletic field. The landowner claimed that erosion and runoff from the refurbishment caused damage to his property. The runoff caused rocks, silt, iron and bacteria to pollute his home, pond and the wetlands alongside his property. The suit sought \$500,000 in damages.
- After being diagnosed with non-Hodgkin's Lymphoma, a mother of three found out that it was due to a toxic herbicide used around her home. The common household product included glyphosate, which is what made the mother sick along with 30 other claimants.
- A couple hired a landscaping contractor to slope the area around their pool. After the work was completed, the area had a swale that was directed toward the home, and after a rain storm, a foot of mud flowed into the pool, over the deck and into the first floor of the home. The couple sued the contractor for professional negligence and faulty workmanship and sought more than \$100,000 for damages and redesign expenses.
- Landscaping contractors struck a natural gas line while digging holes for fence posts. This caused a gas leak, and when the landscaping machinery sparked flames, a fire erupted. Over \$10,000 in property damage resulted, including melted siding and burned fencing on nearby homes and water damage from putting out the fire.
- A landscaping company used a pesticide that contained aluminum around a home. After the application of the pesticide, the owner sprayed water on it, which caused a chemical reaction, and phosphine, a gas that fills the lungs with fluid, resulted. Three children died from the exposure and one other became sick.

## Final Consideration

As a contractor you can be faced with the cost to defend yourself against allegations or legal action from pollution related events, regardless if you are at fault or not. Having the proper insurance coverage in place will help fund the expenses incurred to investigate or defend against a claim or suit and provide you with environmental claims handling expertise.

*This environmental risk overview has been developed by Environmental Risk Professionals on behalf of J. Loos & Associates. It is intended to provide the reader with a broad range of potential risks they may encounter and may not reflect all risks associated with their business. To verify available insurance coverage, please consult your insurance representative.*

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