



## Vacant Land - Site Pollution Liability

Vacant land presents many potential environmental hazards and pollution risks for the property owner. These locations can be targeted by third-parties to illegally dispose of hazardous wastes, known as illicit abandonment, and the owner may become responsible for removing or cleaning up any contamination from the site. Adjacent properties can pose risks to vacant land if contaminants in soil and groundwater on the neighboring property migrate, or if stormwater runoff carries contamination onto the vacant property. The migration of contaminants onto the property could result in cleanup liability as well as diminish the value of the vacant land. Unknown pollutants may also be present on the vacant land, which may migrate offsite contaminating neighboring properties, for which the owner may be held responsible. Vacant land in urban communities is often contaminated with hazardous wastes such as lead, cadmium, arsenic and asbestos which can result in unsafe conditions for nearby residents.

## Environmental Exposures May Include

- Soil and groundwater contamination emanating from adjacent properties could migrate onto vacant land creating an environmental liability. The burden of the liability could be placed on the owner of the vacant land in the event the originator of the contamination becomes insolvent.
- Stormwater runoff from adjacent properties could carry pollutants onto vacant land creating an environmental liability. The burden of the liability could be placed on the owner of the vacant land in the event the originator of the contamination becomes insolvent or the source of the contamination cannot be confirmed.
- Vacant land may also be barren and free of vegetation which can cause the release of fugitive dust during windy conditions or storms. Fugitive dust is particulate matter which becomes airborne and possesses the potential to adversely affect human health and/or the environment. These particles cause respiratory and breathing problems such as coughing, wheezing, shortness of breath, aggravated asthma and lung damage.
- Neighboring properties with known contamination and ongoing cleanup efforts can affect the value of the vacant land. Vacant land in the vicinity of a Superfund site can be even less attractive to a prospective purchaser and result in a claim for diminution in value.
- The property owner could discover a former landfill on the vacant property that may have been abandoned and not closed properly. The landfill could contain hazardous waste or hazardous materials that have caused contamination of the soil on the property and may have impacted groundwater. Contaminants have the potential to migrate off-site and contaminate neighboring properties, causing third-party property damage third-party bodily injury claims against the owner.
- Illicit abandonment is the illegal dumping of pollutants on a property by a third party. It can become the burden of the property owner for cleanup and third-party bodily injury or property damage if law enforcement cannot find the originator of the waste.
- Existing soil and/or groundwater contamination may be present on, under or adjacent to a property and resulting in potential environmental liability. Without knowledge of existing contamination at the site, the property owner may be held responsible for addressing the cleanup and/or remediation of the property.
- Previously unknown subsurface structures, including underground storage tanks (USTs), may be discovered on the vacant property by the property owner. In addition, unidentified above ground storage tanks (ASTs) may have been historically operated on the site. These structures are vulnerable to releases during the loading and unloading of petroleum products and may have leaked contaminating soil and groundwater at the site. Releases from ASTs and USTs can migrate offsite and enter dry wells and storm drains, damaging sewer systems, and contaminating soils and groundwater on neighboring properties.
- Vacant properties could have previously been used as farmland, orchards or vineyards, and may have been exposed to pesticides. The term pesticide covers a wide range of compounds including, insecticides, rodenticides, molluscicides, nematocides, plant growth regulators and others. Applied pesticides can leach through soil and into groundwater or become mobile through runoff or drift and enter surface water or adjacent properties. Pesticide contamination can impact drinking water supply and cause natural resource damage to non-target organisms, ranging from beneficial soils microorganisms to the killing bees, wildlife and aquatic systems.

## Environmental Pollution Liability Can Provide Coverage For

- On-site cleanup of new and pre-existing pollution conditions
- Off-site cleanup of new and pre-existing pollution conditions
- Third party claims for cleanup costs
- Third party claims for bodily injury
- Third party claims for property damage
- Non-owned disposal sites
- First and third-party claims for transportation pollution liability
- Loading and unloading
- Coverage for civil fines and punitive damages where allowed by state law
- Coverage for the presence of lead and asbestos
- Underground and aboveground storage tanks
- Diminution of Value
- Defense costs for third party claims
- Illicit abandonment
- Natural resource damage

## Claims Scenarios & Examples

- During excavation and dewatering activities on a previously undeveloped parcel of land, contaminated groundwater was discovered. State regulatory authorities required the property owner to collect, test and treat groundwater pumped out during the excavation process. Contaminated soils were also discovered at the site, and it was determined that the contamination had migrated from a nearby manufacturing facility from several years prior to the development project. This caused construction delays and additional expenses, totaling over \$1 million for the land owner.
- A marina owned vacant land that they wanted to build a new boat storage facility on. The owner went out to the site to begin construction and found several piles of unknown waste that had been left on the property illegally. The piles were tested and showed that the waste was hazardous. The marina owners had to pay for the waste disposal which cost over \$650,000.
- A real estate development firm acquired property previously used for farming on which they planned to build a mall. The firm hired a consultant to conduct a Phase I ESA. The property was determined to be clean. However, when excavation for the mall began, 100 drums of buried pesticides and herbicides were unearthed. The firm's liability for the drums and associated contaminated soil removal, including disposal costs, exceeded \$750,000.
- A land owner hired an environmental contractor to remove waste that had been abandoned on a vacant piece of land. While consolidating and packaging chemicals prior to off-site transportation and disposal, incompatible wastes were mixed, resulting in an explosion and release of toxic vapor cloud. The explosion and ensuing vapor cloud contaminated the project site and surrounding residential properties. Site owners and numerous third parties were sued for resulting bodily injury, physical damage and clean-up costs.

## Final Consideration

Your property can be faced with the cost to defend itself 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.*

*© 2020 Environmental Risk Professionals*



J. LOOS & ASSOCIATES  
Daniel Loos  
919-256-6860  
daniel.loos@jloosins.com  
www.jloosins.com