

Claims Examples

Pollution Liability Insurance for Contractors

1. Faulty Installation Caused Fuel Escape

The insured heating and air conditioning contractor installed a new tank and furnace at a residential property. A few weeks later, the insured was contacted by the homeowner regarding a sudden strong fuel oil odour in the home. The insured inspected the residence and found a small pool of heating fuel on the concrete floor and noted that the fuel had caused some of the contents to be wet. The inspection also revealed that the source of the leak was a cracked fitting. The fitting had been over-tightened during installation which caused it to crack when the furnace went into service at the beginning of the heating season. The homeowner contacted the property insurer who cleaned the property and issued a subrogation claim against the insured. ENCON was able to negotiate a settlement and a total of \$4,500 was incurred in defence costs in this matter.

2. Maintenance Contractor Added to Litigation

The insured heating and air conditioning contractor purchased the client list of a competitor that had closed its business. The insured did not purchase the assets and liabilities, just the client list. Prior to performing any service, one of the clients sustained a fuel escape from their tank. The fuel escape followed a fuel delivery by a fuel supplier. The property insurer remediated the property and issued a subrogation claim against the fuel supplier. The fuel supplier brought the insured into the litigation by way of a third party action. ENCON appointed defense counsel to defend the insured, who eventually persuaded the parties that the insured could not be held liable as they had never performed any work at the premises. The matter settled with no indemnity contribution from the ENCON policy. ENCON incurred legal costs of \$7,500 on behalf of the insured.

3. Failed O-ring Installation Leads to Litigation

The insured HVAC contractor conducted a residential service call on a home heating oil tank system. The o-ring on the oil filter casing was improperly replaced which led to a substantial amount of oil leaking onto the basement floor and under the foundation of the house. The home insurer completed the cleanup and issued a subrogated action against the insured HVAC contractor, seeking \$350,000 in damages plus costs. ENCON was ultimately able to settle the claim with the home insurer for much less, without the need for a mediation or trial. ENCON paid over \$10,000 in defence costs.

4. Oil Tank Installation and Removal Contractor – Residential Heating Oil Accident

The insured was retained to remove an existing oil tank from the homeowner's basement. The tank was successfully drained for removal but the stop plug was hit and fell out while moving the tank up the stairs, causing the sludge and oil in the bottom of the tank to spray

over the walls and stairs. This was a minor spill so notification to environmental authorities was not required. The insured endeavored to clean up the oil immediately but it was determined that a professional company had to be retained.

ENCON assisted the insured in retaining a remediation company for the cleanup. Both the cleanup costs and the costs of the adjuster retained to oversee the remediation company were covered under the ENCON Pollution Liability Insurance for Contractors policy.

5. HVAC Contractor – Faulty Filter Installation Causes Oil Leak

The insured HVAC contractor had a regular maintenance and service contract with the homeowner. On a routine call, the insured replaced the oil filter on the supply tank. Subsequently, the homeowner received notice from the City that oil had been discovered in a run-off stream downhill from the homeowner. It was determined that the oil originated from the homeowner's location. The insured was called back to check the oil tank and discovered that the oil filter had not been properly installed. This led to a leak of about 300 litres of oil but more significantly, the oil had seeped into the drain and was now in the run-off stream. The homeowner was issued orders by the Ministry of the Environment for cleanup both on the property and of the stream. The homeowner's property insurer denied coverage for the loss so the homeowner looked to the insured for cleanup.

ENCON retained an environmental consultant to assess the remediation and take immediate action. The consultant worked with the City and the Ministry in regard to the remediation which was completed within five weeks of notification at a cost of \$120,000. ENCON also incurred \$52,000 in environmental expert investigation and consultation costs for the insured.

6. HVAC Contractor – Rusted Fuel Filter Cartridge Fails

The insured HVAC contractor owned a firm that provided heating and air conditioning servicing to homeowners and small businesses, and acted as a subcontractor for a large fuel delivery firm. The insured had provided such service to the claimant homeowner for six consecutive years. The claimant's home basement had an earthen floor and was damp as there was no heat or ventilation. The claimant reported to her fuel supplier that she detected an odor in her house and a subsequent inspection determined that a rusted fuel cartridge on the supply tank had been slowly dripping fuel onto the earthen floor for some time. The investigation confirmed the servicing attendance dates and that the insured ought to have noticed the rusted part and notified the homeowner that replacement was required. The matter went to mandatory mediation. The insured and the fuel supplier agreed to resolve the matter to avoid a three-day trial and to maintain good working relations. Both agreed to contribute equally to the settlement. Because the matter was resolved by mediation, the ENCON Pollution Liability Insurance for Contractors policy allowed for a 50 per cent discount of the insured's policy deductible.

7. HVAC Contractor – Residential Heating Oil Spill

During a routine maintenance service call, an HVAC contractor replaced the oil filter on a residential oil tank. The contractor was contacted by the homeowner the next day as there was a strong smell of fuel oil in the home. When the insured HVAC contractor returned to inspect the tank, it was discovered that the filter had been improperly replaced, which led to

700 litres of fuel oil seeping into the basement and foundation of the home. The provincial Ministry of the Environment issued orders to clean up the contamination and the homeowner's property insurer conducted the cleanup. Subrogation proceedings were commenced against the insured, claiming \$425,000 in cleanup costs, due to his negligent installation of the oil filter.

Subsequent negotiations led to the settlement of the action and ENCON paid \$18,000 in defence costs and legal costs.

8. HVAC Contractor – Faulty Valve Installation Causes Leak

An HVAC contractor was hired to install a new above ground exterior heating oil tank which was two metres away from the owner's property line. The inexperienced insured HVAC contractor installed the tank, but he installed the wrong type of shut-off valve. When the new tank was filled, hundreds of litres of heating oil leaked out of the valve, down the side of the homeowner's foundation into shallow soil and fractured bedrock and migrated onto the adjacent third party property. The spill also threatened to impact an adjacent lake 100 metres away. The Ministry of the Environment issued orders against the homeowner to cleanup the spill and remediate the impacts. The homeowner's insurance company took charge of the cleanup and later subrogated against the insured contractor who was liable for the spill.

If the contractor had been insured under an ENCON Pollution Liability Insurance for Contractors policy, there would have been coverage for this type of claim, subject to the policy terms, conditions and exclusions, and subject to the specific circumstances of each claim.

9. Restoration Contractor – Bodily Injury From Presence of Mould

A restoration contractor was hired to clean up and remediate a condominium complex after a water pipe ruptured and caused major water damage to many suites. Several months after the cleanup was completed, a tenant became ill and had difficulty breathing, allegedly from odours emanating from her suite. Upon investigation by the condominium committee, they discovered that areas of drywall and insulation were wet and covered with toxic mould. A claim was made against the restoration contractor alleging that he created a dangerous environment by failing to remove all water-damaged material, install proper equipment to prohibit high humidity levels, provide proper air circulation and prohibit the growth of mould. The tenant sought to recover costs associated with bodily injury related to her exposure to mould.

If the restoration contractor had been insured under an ENCON Pollution Liability Insurance for Contractors policy, which can provide mould coverage for such contractors via endorsement, there would have been coverage for this type of claim, subject to the policy terms, conditions and exclusions, and subject to the specific circumstances of each claim.

10. General Contractor – Window Sills Containing Asbestos Fibres

A general contractor damaged the interior window sills during a large-scale window replacement project on an older residential condominium building. It was later discovered that the sills contained asbestos insulation and, during removal of the windows, asbestos

fibres became airborne and entered the HVAC system, and spread throughout the building. The building was evacuated and the project was put on hold to implement an abatement program. The building and unit owners filed claims for delays and loss of use.

If the general contractor had been insured under an ENCON Pollution Liability Insurance for Contractors policy, there would have been coverage for this type of claim, subject to the policy terms, conditions and exclusions, and subject to the specific circumstances of each claim.

11. Excavation Contractor – Contaminated Soil Spreads to Surrounding Properties

An excavation contractor was hired to excavate a trench for the installation of specialized cabling/wiring. An Environmental Site Assessment was performed which identified minimal contamination within allowable tolerances. The contractor completed his excavation activities and stockpiled the soil on an adjacent property. The stockpiled material was later trucked away and used as backfill at a rural residential townhouse development. Weeks later, another Environmental Site Assessment revealed larger concentrations of soil contamination and it was found that the previously excavated soil also contained dangerous levels of contamination. As a result, the adjacent property and the backfilled residential development suffered extensive contamination and soil remediation operations were initiated to clean up the contamination.

If the excavation contractor had been insured under an ENCON Pollution Liability Insurance for Contractors policy, there would have been coverage for this type of claim, subject to the policy terms, conditions and exclusions, and subject to the specific circumstances of each claim.

12. General Contractor – Furnace Heating Oil Spill

While in the process of constructing a three-storey building, a general contractor placed a portable furnace on the top floor of the structure to heat the building during winter work conditions. The furnace, which was fuelled with heating oil, failed over the weekend and fuel oil leaked onto the two concrete floors and migrated down to the basement floor. In addition, the fuel oil leaked onto two open decks, down the sides of the building, into the soil and under a seven-foot-wide footing across one end of the building. The fuel oil also migrated through a storm sewer system and entered the tidal waters of a harbour. There were extensive costs to clean up the site and remediate the third party property.

If the general contractor had been insured under an ENCON Pollution Liability Insurance for Contractors policy, there would have been coverage for this type of claim, subject to the policy terms, conditions and exclusions, and subject to the specific circumstances of each claim.

These Claims Examples are for illustrative purposes only. Please remember that only the insurance policy can give actual terms, coverage, amounts, conditions, and exclusions.