

THE NRG REPORT

HOMEOWNER OIL SPILL LOSS CONTROL

Residential oil spills can present loss control challenges for a homeowner's insurance, as well as the insured. Even with the current policy caps in place in some states, the potential liability surrounding a loss can be extensive, in particular where third party liability claims for off-site migration of pollution are present. Usually, a loss of this type is covered only when there is the potential for off-site migration, or where an observed release is migrating off-site. Complicating the issue is the fact that the remedies utilized for satisfying claims of this nature almost always involve notification to the State's appropriate environmental agencies, who in return require work plan approvals before allowing contractors to undertake the required work. In an emergency, a verbal approval to commence the clean-up process may be granted by the regulators, with a qualified environmental consultant and contractor required to direct, oversee and perform the scope of work. In short, these are expensive claims, with the "typical" residential oil spill clean-up resulting from a tank burst (from overfilling) or a leaking sub-slab fuel line easily exceeding \$150,000 to achieve the requisite clean-up goals. Where off-site migration of the oil is present, and where private water supplies have the potential to be threatened, the cost of the project may approach or exceed \$1,000,000.

Unfortunately, these kinds of projects are a caveat for unscrupulous contractors who are looking to "cash in" and extract large sums of money for the claim. Below are a few examples of actual projects where this has happened. Included in these examples are some "lessons, which were learned" where significant levels of fraud were encountered on oil spill remediation projects, as well as how these costly and time-consuming events can be avoided. All of the cited examples are actual projects where Norfolk Ram Group, LLC (Norfolk) was directly involved in the "damage control" aspect of the scope of work.

Case #1 – The oil spill, which never happened...

In this case, Norfolk was contacted by the client, in order to provide an opinion regarding a cost estimate for the clean-up of an oil spill located in the basement of the insured's residence. The homeowner, a newlywed in her first home, was distraught over the fact that she had an oil stain on her concrete floor, which was discovered during a routine maintenance call from her oil company. The company had referred an oil spill clean-up contractor, who prepared a clean-up estimate to remediate the spill. The insured put her homeowner's carrier on notice concerning this matter, and the contractor provided the homeowner with a clean-up estimate totaling \$40,000 to perform the scope of work, based upon one core sample of the concrete, which was located directly within the stained area.

Norfolk was engaged by the insurance company to investigate the release, as well as to help determine whether or not coverage was triggered by the oil spill. Upon sampling the soil located underneath the concrete slab, it was determined that there was no release of oil to the soil located beneath the floor, and the staining on the concrete was considered to be minor. In the end, there was no reportable release event, and all that was required at the site was a detergent cleaning of the concrete (the stained area had been caused by deminimis drippings of oil from a fitting).

The homeowner's larger problems continued when the contractor threatened to report the release to the regulatory authority if she failed to utilize his services, and incur his costs. Upon discovery of the fraudulent estimate, Norfolk contacted the regulator's office, as well as the fraud hotline at the Attorney General's Office. This case was deemed fraudulent, and was discovered in time for both the insured and the insurance carrier, resulting in the avoidance of costly expenses.

The lesson learned on this case is to obtain a second opinion on a loss such as this before contracting a contractor to undertake the spill clean-up.

Case #2 – The expanding project...

In this case, there was a documented release of oil from a 275-gallon fuel oil tank located in the basement of a residential structure, which was caused by a broken oil line fitting. In conjunction with the release, there was also some oil staining located on the other side of the basement wall, located under the areas where cars were being parked. An estimate was obtained from an independent contractor for the clean-up of the 275-gallon spill. The contractor informed the homeowner that the spills located on the garage side of the basement also needed to be cleaned up, in order to comply with state environmental regulations (a false statement). He subsequently submitted an estimate, which was increased by \$25,000.

Unfortunately, the homeowner allowed the contractor to undertake the unnecessary, expanded clean-up, and the case ended up going to litigation when the homeowner finally realized that he was being deceived. There was no insurance coverage allowed on this claim, and the homeowner ended up having to obtain a second mortgage to clean-up the spill at an inflated and exaggerated cost. The fraudulent billing could have been avoided if the homeowner had known to call an environmental engineer or scientist to assist him in managing the project. Because of the contractor's fraudulent business practices, the homeowner paid in excess of \$55,000 for a project, which should have cost at most half, and possibly even less. The dispute will now be settled through the legal system.

The lesson learned on this case is to confirm environmental problems with environmental professionals before committing to a contractor with little or no environmental expertise.

HOMEOWNER OIL SPILL LOSS CONTROL (continued...)

Case #3 – The “stretch” for insurance coverage...

In this case, a release of over 100-gallons of fuel oil occurred from an oil tank located in the basement of a residential home. Although the homeowner’s insurance carrier was notified, it was found that the leak was the result of a corrosion hole located in the oil tank, and therefore there was no insurance coverage available for the claim. The homeowner’s attorney, knowing that coverage for the claim may be allowable if the oil could be shown to be migrating toward the neighbor’s property line, pushed for coverage and engaged an environmental consultant to perform an assessment of the site, in the search for potential off-site migration of the oil spill. Based upon findings of oil-related compounds located in several borings outside of the driveway, the environmental consultant’s report concluded that the oil was traveling off-site to the abutting property. Norfolk was engaged by the insurance carrier to perform a separate investigation of the release, and revealed that the “oil” compounds, which the insured’s consultant and attorney were relying upon to make their case for off-site migration, were simply asphalt particles, which had been drawn down into the soil borings that had been installed to test the soil and groundwater located in the area. No oil was present at the location, or migrating off-site, which was being claimed by the insured’s attorney and consultant.

Was this incompetence or fraud? You decide. In any case, the lesson learned is that had the insurance carrier not engaged an expert to investigate the claim, the cost to the insurance carrier would have been much different.

Summary...

The environmental consulting and contracting arena is rampant with opportunists, some of whom are less than honest. There are several things that should be done before “signing on the dotted line” with any environmental contractor or consultant, which will protect both the homeowner’s and the insured’s best interests. These include:

- Getting involved early in the process before a contractor is allowed to start the work. Often times contractors will muscle their way into a spill project, or even misrepresent the facts about the need to get started immediately. At our firm, we have even seen environmental contractors using police scanners to “get a jump on” spill clean-up opportunities.
- Ask for a detailed written proposal and contract rates for all phases of the project before committing to the proposal. Let the contractor know up- front that you will have the right to disengage yourself from the contact after the first phase if you are not happy with the way things are being handled.
- Never give an environmental contractor a credit card to bill against unless there is a defined scope of work, a budget and a signed contract agreement. Providing a credit card tends to create billing disputes down the road.
- Hire a competent and reputable oversight consultant to oversee the contractor, review the invoices and keep the laborers on track. If you do not know how to find one, call your state environmental regulator’s office and ask them for a list of reputable consultants who may be able to help you in your current condition. Even though the regulators cannot recommend a consultant per se, if you ask the right questions, you can get the answers you are looking for. Once your consultant is under contract, authorize him or her to act as your legal agent in negotiating with the contractor and minimizing the potential losses.
- Have your consultant review and scrutinize all of the invoices prepared by the contractors prior to you authorizing payment. This is a “must do” for all losses, whether there is, or is not, insurance coverage.
- Let the buyer beware.

If you would like to know more about homeowner oil spill loss control, please contact Norfolk’s **Brian V. Moran, P.E., LSP at (508) 478-1276, extension 12, or via email at bmoran@norfolkram.com**. Norfolk can also be accessed on the internet at www.norfolkram.com.

Norfolk Ram Group, LLC is a full-service environmental and civil engineering consulting firm, which specializes in environmental compliance, permitting, assessment, design/build remediation, and civil engineering.

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