

THE POLLUTION EXCLUSION

Is It Limited to Environmental Harm?

A 50-State Survey



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Insurance companies began issuing “absolute” pollution exclusions in response to the surge of environmental laws in the 1970s and 1980s, which imposed liability against businesses for cleanup of environmental contamination. Unlike the standard pollution exclusion, absolute pollution exclusions are characterized by broader exclusionary language and a lack of the “sudden and accidental” exception. Absolute pollution exclusions are intended to exclude coverage for virtually all pollution-related claims under commercial general liability insurance policies. However, jurisdictions across the country have varied wildly in their treatment of these exclusions, resulting in the absolute pollution exclusion being applied broadly in some states and very narrowly in others.

The following 50-state survey examines the judicial response to absolute pollution exclusions and identifies the types of cases in which states have upheld the applicability of the exclusions. In particular, courts generally apply either a “traditional environmental pollution” approach or a broader, literal interpretation. Under the former approach, courts interpret the pollution exclusions to only preclude coverage for those claims that are commonly considered to be “traditional” environmental pollution wherein chemical pollutants cause harm to natural resources. Under the broader approach, courts focus on the plain language of the policies and apply the absolute pollution exclusion to all claims arising from contaminants or irritants that cause property damage or personal injury- regardless of whether traditional harm to natural resources is at issue. In jurisdictions where the courts have not addressed the applicability of absolute pollution exclusions, decisions regarding standard pollution exclusions have been included as a guideline for how those courts may rule on the absolute pollution exclusion.

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<u>STATE</u>	<u>POLLUTION EXCLUSION</u>	<u>CITATION</u>	<u>FACTS/HOLDING</u>
Alabama	Applied: gasoline leak	<i>Federated Mut. Ins. Co. v. Abston Petroleum, Inc.</i> , 967 So. 2d 705 (Ala. 2007)	Exclusion applies to preclude coverage for underground leaks of gasoline that resulted in contaminated soil and fumes. While gasoline is not a pollutant when used for intended purpose, it clearly becomes a pollutant when leaked and causing dangerous conditions.
	Applied: curry aroma	<i>Maxine Furs, Inc. v. Auto-Owners Ins. Co.</i> , 426 Fed. Appx. 687 (11th Cir. Mar. 31, 2011) (applying Alabama law)	Exclusion applies to claim of business owner whose products were soiled by the smell of curry, which had been absorbed through shared air duct with neighboring Indian restaurant.
	Not applied: lead	<i>Porterfield v. Audubon Indem. Co.</i> , 856 So. 2d 789 (Ala. 2002)	Exclusion does not apply to injuries arising out of lead contained in paint, blinds, water, pipes and soil on premises. Exclusion terms “discharging dispersal, release and escape” are ambiguous in the context of flaking and peeling lead paint in a residential apartment.
	Not applied: sewage	<i>Evanston Ins. Co. v. J&J Cable Constr., LLC</i> , 2016 WL 5346079 (M.D. Ala. Sept. 22, 2016)	Exclusion does not apply to residential sewage released on property because the exclusion only applies to traditional pollution.

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Alaska	Applied: gasoline leak	<i>Whittier Props., Inc. v. Ala. Nat'l Ins. Co.</i> , 185 P.3d 84 (Alaska 2008)	Exclusion bars coverage for gasoline leaked from a broken fill pipe. Although gasoline is a “product” for purposes of other parts of policy, when it escapes or reaches a location where it is no longer a useful product, it is properly considered a pollutant.
Arizona	Not applied: bacteria in water Not applied: hydrogen sulfide	<i>Keggi v. Northbrook Prop. & Cas. Ins. Co.</i> , 13 P.3d 785 (Az. Ct. App. 2000) <i>Nat'l Fire Ins. Co. of Hartford v. James River Ins.</i> , 2016 WL 613964 (D. Ariz. Feb. 16, 2016)	Exclusion does not apply to bodily injury sustained from drinking water contaminated with bacteria. Plain language of exclusion does not include bacteria within definition of “pollutants” where there was no evidence that the bacterial contamination was caused by traditional environmental pollution. Exclusion does not apply to claims arising from hydrogen sulfide leaked from pipes because “faulty plumbing pipe installation does not constitute ‘traditional’ pollution.” Citing <i>Keggi</i> as holding that “the standard absolute pollution exclusion clause . . . ‘was intended to exclude coverage for causes of action arising from traditional environmental pollution’ and not for ‘all contact with substances that can be classified as pollutants.’”
Arkansas	Not applied: sewage backup	<i>Minerva Enters., Inc. v. Bituminous Cas. Corp.</i> , 851 S.W.2d 403 (Ark. 1993)	Exclusion does not apply to claim arising out of a single septic tank backup in mobile home park. The term “waste” must be considered within context of the entire list of pollutants; when all listed pollutants relate to industrial waste, it is at least ambiguous that septic tank backup is type of damage the clause was intended to exclude.

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Arkansas (con't)	<p>Not applied: poultry farm</p> <p>Possibly applied: gasoline</p>	<p><i>Scottsdale Ins. Co. v. Morrow Valley Co., LLC</i>, 411 S.W.3d 184 (Ark. 2012); <i>see also Tyson Foods, Inc. v. Allstate Ins. Co.</i>, 2011 WL 3926195 (Del. Super. Ct. Aug. 31, 2011) (applying Arkansas law)</p> <p><i>State Auto Property & Cas. Ins. Co. v. Arkansas Dept. of Environmental Quality</i>, 258 S.W.3d 736 (Ark. 2007)</p>	<p>Exclusion does not apply to claim against poultry farmer where definition of “gases, smoke, dust, fumes, odors and particulates” as pollutants was ambiguous and susceptible to more than one reasonable interpretation.</p> <p>Exclusion may apply to underground fuel leak. Policy language is ambiguous and, where extrinsic evidence is available, lower court should consider extrinsic evidence in determining whether gasoline was excluded by the pollution exclusion clause.</p>
California	<p>Not applied: insecticide</p> <p>Not applied: bat guano</p> <p>Applied: silica dust</p>	<p><i>MacKinnon v. Truck Ins. Exchange</i>, 73 P.3d 1205 (Cal. 2003)</p> <p><i>Nicholson v. Allstate Ins. Co.</i>, 979 F. Supp. 2d 1054 (E.D. Cal. 2013)</p> <p><i>Garamendi v. Golden Eagle Ins. Co.</i>, 25 Cal. Rptr. 3d 642 (Cal. Ct. App. 2005)</p>	<p>General rule for scope of pollution exclusions: exclusion limited to “injuries arising from events commonly thought of as pollution, i.e., environmental pollution.” Exclusion does not apply to bodily injury resulting from exposure to insecticide used to exterminate yellow jackets in residential building.</p> <p>Bat guano not classified as a pollutant under exclusion because insured could not be reasonably expected to believe policy precluded coverage for bat infestation.</p> <p>Exclusion applies to injuries caused by repeated long-term exposure to silica dust discharged into the air as incidental by-product of normal industrial operations.</p>

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California (<i>con't</i>)	Applied: asbestos	<i>Villa Los Alamos Homeowners Ass'n v. State Farm General Ins. Co.</i> , 130 Cal. Rptr. 3d 374 (Cal. Ct. App. 2011)	Under <i>MacKinnon's</i> interpretation of pollution, release of asbestos during the scraping of a popcorn ceiling in residential unit constitutes environmental pollution.
Colorado	Applied: cooking grease in sewer drain Applied: ammonia	<i>Mt. States Mut. Cas. Co. v. Roinestad</i> , 296 P.3d 1020 (Colo. 2013) <i>TerraMatrix, Inc. v. U.S. Fire Ins. Co.</i> , 939 P.2d 483 (Colo. Ct. App. 1997)	Exclusion applies to cooking oil and grease that had been poured down a sewer drain, where volume of grease created dangerous buildup of toxic gas and resulted in bodily injuries from breathing hydrogen sulfide fumes. Follows rule that pollution exclusions not limited solely to environmental or industrial pollution. Exclusion applies to ammonia vapors where ammonia constitutes a "pollutant" and circulation of ammonia vapors within office building constitutes a "discharge, dispersal . . . release or escape."
Connecticut	Applied: oil spill Applied: contaminants in soil and water	<i>Heyman Assocs. No. 1 v. Ins. Co. of the State of Pa.</i> , 653 A.2d 122 (Conn. 1995) <i>Schilberg Integrated Metals Corp. v. Continental Cas. Co.</i> , 819 A.2d 773 (Conn. 2003)	Exclusion applies where plain language of policy makes clear that fuel oil spilled into waterway constitutes pollution. Contamination of soil and water at insured's wire and metal reclamation site unambiguously fell within meaning of "pollutant" in pollution exclusion. Pollution occurring in the course of the insured's central business activity does not preclude application of exclusion.

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Connecticut (con't)	Not applied: asbestos	<i>R.T. Vanderbilt Co., Inc. v. Hartford Accident & Indem. Co.</i> , 2014 WL 1647135 (Conn. Super. Ct. Mar. 28, 2014); <i>see also Nat'l Grange Mut. Ins. Co. v. Caraker</i> , 2006 WL 853153 (Conn. Super. Ct. Feb. 28, 2006)	Exclusion does not apply to asbestos—"policies containing standard and absolute pollution exclusions, which preclude coverage for injuries arising from the 'discharge, dispersal, release or escape' of pollutants, are ambiguous regarding [asbestos]."
	Not applied: lead paint	<i>Danbury Ins. Co. v. Novella</i> , 727 A.2d 279 (Conn. Super. Ct. 1998)	Interprets <i>Heyman</i> as implicitly adopting an "environmental" approach to pollution exclusions. Exclusion does not apply where it is ambiguous as to whether lead paint on residential building involves discharge of a pollutant.
Delaware	Applied: lead paint	<i>Farm Family Cas. Co. v. Cumberland Ins. Co., Inc.</i> , 2013 WL 5569214 (Del. Super. Ct. Oct. 2, 2013)	General rule: "it is appropriate to apply the total pollution exclusion outside of situations involving 'traditional' environmental and industrial pollution." Lead paint constitutes a pollutant and contaminant and exclusion applies to preclude coverage for poisoning claim resulting from negligent residential lead paint abatement process.
	Applied: landfills	<i>New Castle County v. Hartford Accident & Indem. Co.</i> , 673 F. Supp. 1359 (D. Del. 1987)	Exclusion applies to preclude coverage for claims arising out of contaminated landfills owned by insured.
District of Columbia	Not applied: carbon monoxide fumes Applied: welding fumes	<i>Richardson v. Nationwide Mut. Ins. Co.</i> , 826 A.2d 310 (D.C. Cir. 2003) (vacated due to settlement after grant of rehearing en banc)	Pollution exclusions are limited to pollution of natural environments, particularly for the types of pollution regulated by federal environmental law. Exclusion does not apply to bodily injury from inhalation of carbon monoxide fumes from apartment furnace.

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District of Columbia <i>(con't)</i>	Applied: manganese fumes	<i>Nat'l Elec. Mfrs. Ass'n. v. Gulf Underwriters Ins. Co.</i> , 162 F.3d 821 (4th Cir. 1998) (applying D.C. law)	Exclusion unambiguously applies to preclude coverage for bodily injury claims made by welders exposed to manganese welding rod fumes.
Florida	<p>Applied: ammonia and insecticide</p> <p>Applied: contaminants in swimming pool</p> <p>Not applied: legionella bacteria</p> <p>Applied: Chinese drywall</p>	<p><i>Deni Assocs. Of Fla., Inc. v. State Farm Fire & Cas. Ins. Co.</i>, 711 So. 2d 1135 (Fla. 1998)</p> <p><i>First Specialty Ins. Corp. v. GRS Mgmt. Assocs., Inc.</i>, 2009 WL 2524613 (S.D. Fla. Aug. 17, 2009)</p> <p><i>Westport Ins. Corp. v. VN Hotel Group, LLC</i>, 513 Fed. Appx. 927 (11th Cir. 2013) (applying Florida law)</p> <p><i>First Specialty Ins. Corp. v. Milton Const. Co.</i>, 2012 WL 2912713 (S.D. Fla. July 16, 2012)</p>	<p>Exclusions are unambiguous and apply to injuries caused by release of contaminants—including ammonia and insecticide—even where contaminant is dispersed into a confined or indoor area.</p> <p>Exclusion applies to injuries arising out contaminated swimming pool. Contaminants containing Coxsackie virus in pool water constitute pollutants.</p> <p>Legionella bacteria does not qualify as a pollutant because it is (1) not an irritant or contaminant, and (2) not a “solid, liquid, gaseous, or thermal” substance. Existence of a separate exclusion provision for bacteria supports conclusion that bacteria cannot be considered a pollutant under the pollution exclusion.</p> <p>Exclusion applies to preclude coverage for property damage and bodily injury claims arising out of the escape of harmful sulfur compounds from Chinese drywall.</p>

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Georgia	<p>Applied: carbon monoxide</p> <p>Applied: lead paint</p> <p>Not applied: bleach and Sporicidin</p>	<p><i>Reed v. Auto-Owners Ins. Co.</i>, 667 S.E.2d 90 (Ga. 2008)</p> <p><i>Georgia Farm Bureau Mut. Ins. Co. v. Smith</i>, 2016 WL 1085397 (Ga. Mar. 21, 2016)</p> <p><i>Minkoff v. Action Remediation, Inc.</i>, 2010 WL 3960603 (N.Y. Sup. Ct. Sept. 30, 2010) (applying Georgia law)</p>	<p>Plain language of pollution exclusion does not limit it to “what is commonly or traditionally considered environmental pollution.” Exclusion applies to preclude coverage for a carbon monoxide leak in insured landlord’s rental property.</p> <p>Lead paint ingested by child falls within the definition of “pollutant” as defined by the absolute pollution exclusion. Contractual language of policy unambiguously applies to preclude coverage.</p> <p>Declined to apply exclusion to injuries resulting from use of bleach and Sporicidin mix in mold remediation because doing so “would raise public policy issues.” Noted that “a reasonable insured would expect the chemicals released by the mix . . . to be covered by the CPL.”</p>
Hawaii	Applied: drain cleaner	<p><i>Apana v. TIG Ins. Co.</i>, 504 F. Supp. 2d 998 (D. Haw. 2007), certified question on appeal, <i>Apana v. TIG Ins. Co.</i>, 574 F.3d 679 (9th Cir. 2009)</p>	<p>Nothing in language of pollution exclusion limits exclusion to “instances of traditional environmental pollution or requires that the pollution cover an extended area.” Exclusion applies to injuries arising out of Wal-Mart’s use of a drain cleaner that allegedly generated “noxious fumes.” (Note: on appeal, the 9th Circuit certified the “traditional versus non-traditional” issue to the Supreme Court of Hawaii, but the case was subsequently dismissed by the parties.)</p>

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Hawaii (con't)	Applied: solid waste	<i>Nautilus Ins. Co. v. Hawk Transp. Serv., LLC</i> , 792 F. Supp. 2d 1123 (D. Haw. 2011)	Noted that Hawaii has not yet decided whether to apply total pollution exclusions to traditional environmental pollutants, but held that even under a narrow interpretation, hazardous solid waste allegedly dispersed by insured qualifies as traditional environmental pollution.
	Not applied: sewage	<i>Allstate Ins. Co. v. Leong</i> , 2010 WL 1904978 (D. Haw. May 11, 2010)	Exclusion does not apply to leaked sewage flow that damaged neighbor's wall because, even if the leak contained "waste materials or other irritants, contaminants and pollutants," it is unclear whether the alleged damage was caused by those materials.
Idaho	Applied: mine tailings	<i>Monarch Greenback, LLC v. Monticello Ins. Co.</i> , 118 F. Supp. 2d 1068 (D. Idaho 1999)	Exclusion applied to EPA action seeking cleanup of mine tailings, which constitute "pollutants" within the exclusion's definitions.
Illinois	Not applied: carbon monoxide	<i>Am. States Ins. Co. v. Koloms</i> , 687 N.E.2d 72 (Ill. 1997)	Drafting history of absolute pollution exclusion reveals intent to apply exclusion to "only those hazards traditionally associated with environmental pollution." Exclusion does not apply to claims arising out of carbon monoxide emitted from a building's furnace.
	Applied: contaminated tap water	<i>Scottsdale Indem. Co. v. Vill. Of Crestwood</i> , 673 F.3d 715 (7th Cir. 2012) (Posner, J.)	Rejected "traditional environmental pollution" evaluation of pollution exclusion and replaced it with "adverse self-selection" formula, focusing on cause or likelihood of pollution. Exclusion applies to preclude claims arising out of village's alleged delivery of contaminated tap water.

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Indiana	Not applied: gasoline	<i>Am. States Ins. Co. v. Kiger</i> , 662 N.E.2d 945 (Ind. 1996)	It is ambiguous whether “pollutant” includes gasoline within the terms of the policy. Exclusion does not apply to claims arising from an underground storage tank leak at gas station.
	Applied: gasoline	<i>W. Bend Mut. Ins. Co. v. U.S. Fidelity & Guar. Co.</i> , 598 F.3d 918 (7th Cir. 2010) (applying Indiana law)	Exclusion applies to preclude coverage for gasoline storage tank leaks where the language of the pollution exclusion specifically eradicated the ambiguities on which <i>Kiger</i> rested.
Iowa	Applied: carbon monoxide	<i>Bituminous Cas. Corp. v. Sand Livestock Systems, Inc.</i> , 728 N.W.2d 216 (Iowa 2007)	Exclusion applies to preclude coverage for carbon monoxide that was released from a propane power washer. Carbon monoxide falls within the policy’s broad definition of “pollutant” because it is a “gaseous irritant or contaminant.”
Kansas	Applied: ammonia fertilizer	<i>Union Ins. Co. v. Mendoza</i> , 405 Fed. Appx. 270 (10th Cir. 2010) (applying Kansas law)	Anhydrous ammonia fertilizer fell within policy definition of a pollutant. Exclusion applies to preclude coverage for injuries resulting from chemical irritant after it was sprayed on land adjacent to plaintiff’s construction job. (Also noted that earlier Kansas Court of Appeals decisions were in conflict with earlier federal district court decisions. The Kansas Supreme Court dismissed the Circuit Court’s certified question regarding interpretation of the pollution exclusion.)
	Applied: mercury spread by fire	<i>Gerdes v. American Family Mut. Ins. Co.</i> , 713 F. Supp. 2d 1290 (D. Kan. 2010)	Exclusion applies to bar coverage for property damage to home from a fire where the fire also created and spread pollution from two tablespoons of mercury that had been stored in the basement of the home.

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Kentucky	Not applied: carbon monoxide	<i>Motorists Mut. Ins. Co. v. RSJ, Inc.</i> , 926 S.W.2d 679 (Ky. Ct. App. 1996)	Exclusion does not apply to claims arising out of carbon monoxide leak from a boiler. Drafting history of exclusion and environmental law language suggests that an ordinary insured would not interpret the provision to exclude coverage for this type of injury.
	Applied: nuclear material	<i>Sunny Ridge Enters., Inc. v. Fireman’s Fund Ins. Co.</i> , 132 F. Supp. 2d 525 (E.D. Ky. 2001)	Exclusion applies to preclude coverage for damage caused by nuclear material released by a monitoring gauge destroyed during the melting of scrap metal.
Louisiana	Not applied: hydrocarbons in water	<i>Doerr v. Mobil Oil Corp.</i> , 774 So. 2d 119 (La. 2000)	Exclusion does not apply to preclude coverage for claims arising out of hydrocarbons discharged into water system finding that “the exclusion was designed to exclude coverage for environmental pollution only and not for all interactions with irritants or contaminants of any kind.”
	Applied: bat guano	<i>Marcelle v. Southern Fidelity Ins. Co.</i> , 954 F. Supp. 2d 429 (E.D. La. 2013)	Exclusion unambiguously applies because bat guano and its odor is clearly a “waste” or “contaminant” within the language of the policy.
Maine	Not applied: roofing fumes	<i>Nautilus, Inc. v. Jabar</i> , 188 F.3d 27 (1st Cir. 1999) (applying Maine law)	Exclusion does not apply to claims arising out of exposure to fumes from roofing products as policy language is ambiguous and “an ordinary intelligent insured could reasonably interpret the pollution exclusion clause as applying only to environmental pollution.”
	Applied: gasoline in junk yard	<i>Clark’s Cars & Parts, Inc. v. Monticello Ins. Co.</i> , 2005 WL 2972988 (D. Me. Nov. 4, 2005)	Exclusion applies to preclude coverage for pollution caused by gasoline spilled on the ground in a junk yard in the course of car crushing operations. It is clear that the pollutant, gasoline, was released at the waste site.

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Maryland	<p>Not applied: manganese welding fumes</p> <p>Applied: airborne pollutants</p>	<p><i>Clendenin Bros., Inc. v. United States Fire Ins. Co.</i>, 889 A.2d 387 (Md. 2005)</p> <p><i>Clipper Mill Fed., LLC v. Cincinnati Ins. Co.</i>, 2010 WL 4117273 (D. Md. Oct. 20, 2010)</p>	<p>Exclusion does not apply to bodily injuries caused by exposure to manganese welding fumes, which are non-environmental and localized to the workplace.</p> <p>Exclusion applies to claim arising out of toxic airborne pollutants released by HVAC system into residential property. Pollution includes, but is not limited to, substances which are generally recognized as harmful or toxic to persons, property, or the environment.</p>
Massachusetts	<p>Not applied: carbon monoxide</p> <p>Applied: home oil spill</p>	<p><i>West Alliance Ins. Co. v. Gill</i>, 686 N.E.2d 997 (Mass. 1997)</p> <p><i>McGregor v. Allamerica Ins. Co.</i>, 868 N.E.2d 1225 (Mass. 2007)</p>	<p>Exclusion does not preclude coverage for bodily injuries arising out of carbon monoxide poisoning due to tandoori oven in poorly ventilated restaurant kitchen. “A reasonable policyholder might well understand carbon monoxide is a pollutant when it is emitted in an industrial or environment setting, but would not reasonably characterize carbon monoxide emitted from a [restaurant] oven as pollution.”</p> <p>Exclusion applies to preclude coverage for a home heating oil spill, distinguishing <i>Gill</i> because “spilled oil is a classic example of pollution.” The fact that the oil spill is located at a residence rather than an industrial/manufacturing site “does not automatically alter the classification of spilled oil as a pollutant.”</p>

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Michigan	Not applied: sanitizing agent	<i>Hastings Mut. Ins. Co. v. Safety King Inc.</i> , 778 N.W.2d 275 (Mich. Ct. App. 2009)	Genuine issue of fact whether exclusion applies to preclude coverage for claims arising out of use of sanitizing agent triclosan during duct cleaning services. Evidence that the sanitizing agent was “supposed to be where it was located, i.e., in ductwork” and generally not expected to be harmful suggested that triclosan is not a pollutant.
	Not applied: oil	<i>Secura Ins. v. DTE Gas Services Co.</i> , 2014 WL 7012044 (E.D. Mich. Dec. 11, 2014)	Genuine issue of fact whether exclusion applies to preclude coverage for claims arising out of alleged defects in compressed natural gas fuel filtration equipment. Court held it was ambiguous whether the presence of a higher-than-normal concentration of a substance should be classified as a “pollutant” or “contaminant.”
	Applied: chemicals	<i>McKusick v. Travelers Indem. Co.</i> , 632 N.W.2d 525 (Mich. Ct. App. 2001)	Exclusion applies to preclude coverage for injuries arising out of release of chemicals from a high-pressure hose delivery system. Rejecting the “traditional environmental” approach of other jurisdictions and declining to “judicially engraft such limitation” where the exclusion language contains “no limitations regarding its scope, including the location or other characteristics of the discharge.”
Minnesota	Applied: carbon monoxide	<i>Midwest Family Mut. Ins. Co. v. Wolters</i> , 831 N.W.2d 628 (Minn. 2013)	Carbon monoxide from a negligently installed boiler qualifies as a “pollutant” within the definition of the exclusion. Exclusion does not “use language descriptive of the natural environment only;” therefore, exclusion applies to indoor release of carbon monoxide.

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Minnesota (<i>con't</i>)	Applied: manure odor	<i>Wakefield Pork, Inc. v. RAM Mut. Ins. Co.</i> , 731 N.W.2d 154 (Minn. Ct. App. 2007)	Exclusion applied to preclude coverage for claims arising out of “gases, hydrogen sulfide, and noxious and offensive odors that emanated from the insured’s pig farm.” Distinguished from cases where contaminants were contained within a building.
Mississippi	Applied: paint fumes	<i>Am. States Ins. Co. v. Nethery</i> , 79 F.3d 473 (5th Cir. 1996) (applying Mississippi law)	Exclusion applies to injuries arising out of hypersensitive plaintiff’s exposure to paint and glue fumes released during the painting of a residence. “An irritant is a substance that produces a <i>particular</i> effect, not one that generally or probably causes such effects. The paint and glue fumes that irritated Nethery satisfy both the dictionary definition and the policy exclusion of irritants.”
Missouri	Not applied: gasoline Applied: mold	<i>Hocker Oil Co., Inc. v. Barker-Phillips-Jackson, Inc.</i> , 997 S.W.2d 510 (Mo. Ct. App. 1999) <i>Am. Western Home Ins. Co. v. Utopia Acquisition L.P.</i> , 2009 WL 792483 (W.D. Mo. Mar. 24, 2009)	Exclusion does not apply to release of gasoline from storage tank at a service station where insured is in the business of transporting, selling and storing gasoline. “Gasoline belongs in the environment in which Hocker routinely works . . . [I]n that environment, gasoline is not a pollutant.” Exclusion is unambiguous and applies to injuries arising out of mold and other airborne contaminants. Distinguished <i>Hocker Oil</i> because that case rested on “the oddity of having a policy issued to a gas station exclude coverage for spilled gasoline.” Noted that under Missouri law, the term “pollutant” is not limited to traditional environmental pollutants.

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Missouri (con't)	Applied: chemical sealant	<i>United Fire & Cas. Co. v. Titan Contractors Serv., Inc.</i> , 751 F.3d 880 (8th Cir. 2014) (applying Missouri law)	TIAH, a chemical concrete sealant used by insured, constitutes a pollutant within the pollution exclusion.
	Applied: poultry and swine farm	<i>Grinnell Mut. Reinsurance Co. v. Rambo</i> , 626 Fed. Appx. 660 (8th Cir. 2015)(unpublished opinion)	Total pollution exclusion is unambiguous and applies to preclude coverage for nuisance claims arising out of odors, discharge and insects emanating from swine and poultry farm
Montana	Applied: diesel fuel	<i>Mont. Petroleum Tank Release Compensation Bd. v. Crumleys, Inc.</i> , 174 P.3d 948 (Mont. 2008)	Exclusion applies to preclude coverage for diesel fuel leaked from an underground tank at gas station. Although useful for its intended purpose, “most consumers would consider diesel a pollutant when it leaks into the ground and contaminates soil and groundwater.”
Nebraska	Applied: sealant fumes	<i>Cincinnati Ins. Co. v. Becker Warehouse, Inc.</i> , 635 N.W.2d 112 (Neb. 2001)	Exclusion applies to preclude coverage for contamination of food stored in a warehouse due to fumes from a floor sealant. Language of policy does not specifically limit exclusion to traditional environmental damage.
	Applied: lead paint	<i>State Farm Fire & Cas. Co. v. Dantzler</i> , 852 N.W.2d 918 (Neb. 2014)	Exclusion applies to preclude coverage for injuries arising out of lead paint in residential building. The terms “discharge,” “dispersal,” “spill,” “release,” and “escape” unambiguously encompass the separation of lead-based paint from painted surface.

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Nevada	Not applied: carbon monoxide	<i>Century Sur. Co. v. Casino West, Inc.</i> , 329 P.3d 614 (Nev. 2014)	Exclusion did not apply to bar coverage to deaths of hotel guests caused by carbon monoxide poisoning due to sleeping above pool heater. “[T]o demonstrate that the absolute pollution exclusion applies to nontraditional indoor pollutants, an insurer must plainly state that the exclusion is not limited to traditional environmental pollution.”
	Applied: hazardous waste in landfill	<i>Montana Refinery Co. v. Nat’l Union Fire Ins. Co. of Pittsburgh, Pa.</i> , 918 F. Supp. 1395 (D. Nev. 1996)	Exclusion is unambiguous and applies to bar coverage for pollution arising out of insured’s disposal of hazardous substances at a landfill.
New Hampshire	Not applied: lead paint	<i>Weaver v. Royal Ins. Co.</i> , 674 A.2d 975 (N.H. 1996)	Exclusion does not apply to claim arising out of child’s lead poisoning due to exposure to lead paint from his father’s workplace clothing.
	Applied: noxious odors	<i>Titan Holdings Syndicate, Inc. v. City of Keene, N.H.</i> , 898 F.2d 265 (1st Cir. 1990) (applying New Hampshire law)	Under “reasonable expectations” doctrine, exclusion applies to preclude coverage for pollutants emitted by sewage treatment plant. While noxious odors qualify as “pollutants” within the meaning of the policy, however, “excessive noise and light” are not pollutants because they are not “solid, liquid, gaseous, or thermal irritants.”

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New Jersey	Not applied: sealant fumes	<i>Nav-Its, Inc. v. Selective Ins. Co. of Am.</i> , 869 A.2d 929 (N.J. 2005)	Exclusion does not apply to indoor toxic fumes from floor coating/sealant operation. Pollution exclusion should be read to apply to claims “arising from activity commonly thought of as traditional environment pollution,” and specifically to pollution resulting from “environmental catastrophe related to intentional industrial pollution.
	Applied: asbestos	<i>Edwards & Caldwell LLC v. Gulf Ins. Co.</i> , 2005 WL 2090636 (D.N.J. Aug. 29, 2005)	Exclusion applies to preclude coverage for claim based on firm’s failure to disclose home inspection report that showed asbestos because asbestos is a pollutant.
New Mexico	Applied: petroleum waste	<i>Manzano Oil Corp. v. Comm. Union. Ins. Co.</i> , No. CV 93-280 (N.M. Dist. Ct. 1994)	Exclusion unambiguously applies to preclude coverage for injuries to cattle caused by ingestion of petroleum waste materials, which constitutes a release or discharge of a pollutant, contaminant, or irritant.
New York	Not applied: paint fumes	<i>Belt Painting Corp. v. TIG Ins. Co.</i> , 795 N.E.2d 15 (N.Y. 2003)	Exclusion does not apply to claim arising out of paint or solvent fumes because those fumes do not fall within the definition of “pollutant” and the underlying injuries are not caused by “discharge, dispersal, seepage, migration, release or escape” of the fumes that “drifted a short distance from the area of the insured’s intended use.” To interpret paint fumes as a pollutant would “seemingly contradict both a ‘common speech’ understanding of the relevant terms and the reasonable expectations of a business-person.”

<u>STATE</u>	<u>POLLUTION EXCLUSION</u>	<u>CITATION</u>	<u>FACTS/HOLDING</u>
New York (con't)	Applied: noxious waste	<i>Town of Harrison v. Nat'l Union Fire Ins. Co. of Pittsburgh, Pa.</i> , 675 N.E.2d 829 (N.Y. 1996)	Exclusion applies to preclude coverage for pollution caused by disposal of noxious waste, despite the fact that disposal was done by third-party excavation contractor retained by insured. Insured does not need to be actual polluter in order for exclusion to apply.
	Applied: sewage	<i>Cincinnati Ins. Co. v. Roy's Plumbing, Inc.</i> , 2017 WL 2347562 (2d Cir. May 31, 2017) (applying New York law)	Exclusion applies to toxic chemicals being released onto neighboring residential properties by a plumbing company during sewer repairs. The Second Circuit found that the policy contained a broad definition of "pollutant" and that the lower court's reasoning that the exclusion applied because the underlying suit alleges "only injuries arising in the context of traditional environmental pollution and caused by substances of a polluting character" was sound.
North Carolina	Not applied: floor resurfacing vapors	<i>West Am. Ins. Co. v. Tufco Flooring East, Inc.</i> , 409 S.E.2d 692 (N.C. Ct. App. 1991), <i>overruled on other grounds</i> , <i>Gaston County Dyeing Machine Co. v. Northfield Ins. Co.</i> , 524 S.E.2d 558 (N.C. 2000)	Exclusion does not apply to preclude coverage for damage to chickens from styrene vapors that were released by insured's resurfacing of floors in chicken processing facility. Insured had reasonable belief that "damages accidentally arising from its normal business activities" would not be excluded. Claim against insured arose out of non-environmental damage and pollution exclusion applies only to "discharges into the environment."
	Applied: hazardous waste	<i>Home Indem. Co. v. Hoechst Celanese Corp.</i> , 494 S.E.2d 774 (N.C. Ct. App. 1998)	Pollution exclusion applies to preclude coverage for pollutants generated by polyester manufacturing and wastewater treatment plants. The plants disposed of waste at a nearby landfill over series of years, causing degradation of soil and groundwater.

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North Dakota	Applied: hydrocarbon condensate	<i>Hiland Partners GP Holdings, LLC v. Nat'l Union Fire Ins. Co. of Pittsburgh, PA</i> , 847 F.3d 594 (8th Cir. 2017) (applying North Dakota law)	Exclusion applies to preclude coverage for lawsuit arising out of an explosion at insured's facility, which resulted from hydrocarbon condensate that overflowed from tanks.
Ohio	<p>Not applied: carbon monoxide</p> <p>Not applied: aircraft fuel chemicals</p> <p>Applied: contribution for cleanup of pollution</p>	<p><i>Andersen v. Highland House Co.</i>, 757 N.E.2d 329 (Ohio 2001)</p> <p><i>Bosserman Aviation Equip., Inc. v. U.S. Liab. Ins. Co.</i>, 915 N.E.2d 687 (Ohio Ct. App. 2009)</p> <p><i>Danis v. Great Am. Ins. Co.</i>, 823 N.E.2d 59 (Ohio Ct. App. 2004)</p>	<p>Exclusion does not apply to bodily injury caused by exposure to carbon monoxide from a faulty heater in an apartment where it was reasonable for the insured to believe that the policy would not exclude such claims.</p> <p>Exclusion does not preclude coverage for exposure to harmful chemical agents contained in aircraft fuel while reconditioning and repair aircraft-refueling equipment. Following <i>Andersen</i> and finding that exclusion of this nature does not apply to exposure to chemicals confined within an employee's work area as "there is no discharge, dispersal, release, or escape of pollutants."</p> <p>Exclusion applies to preclude coverage for lawsuit seeking contribution for CERCLA response costs and tort claims arising out of failure to pay for cleanup of pollution. Because the underlying claims were directly related to and arose from claims for pollution damage at a landfill, the pollution exclusion applies to directors and officers insured under the policy.</p>

<u>STATE</u>	<u>POLLUTION EXCLUSION</u>	<u>CITATION</u>	<u>FACTS/HOLDING</u>
Oklahoma	Applied: lead paint	<i>Bituminous Cas. Corp. v. Cowen Constr., Inc.</i> , 55 P.3d 1030 (Okla. 2002)	Exclusion applies to preclude coverage for claims arising out of exposure to lead paint in a hospital’s dialysis unit. Policy language does not support finding that exclusion only applied to injuries arising from when the general “environment” was damaged.
Oregon	Applied: petroleum	<i>Martin v. State Farm Fire & Cas. Co.</i> , 932 P.2d 1207 (Or. Ct. App. 1997)	Exclusion applies to petroleum contamination from underground petroleum tanks because the property damage claimed was caused by “traditional environmental pollution.”
	Applied: heating oil	<i>Larson Oil Co. v. Federated Serv. Ins. Co.</i> , 859 F. Supp. 434 (D. Or. 1994)	Exclusion unambiguously applies to claims arising out of discharge of heating oil into a home even where the insured did not cause the discharge.
Pennsylvania	Applied: sealant fumes	<i>Madison Constr. Co. v. Harleysville Mut. Ins. Co.</i> , 735 A.2d 100 (Pa. 1999)	Exclusion applies to preclude coverage for bodily injury arising out of fumes from a concrete sealer. Definition of “pollutant” clearly and unambiguously encompassed the cement sealing agent.
	Not applied: lead paint	<i>Lititz Mut. Ins. Co. v. Steeley</i> , 785 A.2d 975 (Pa. 2001)	Exclusion does not apply to injuries arising from lead paint because, although lead paint is a “pollutant,” the process by which it caused the underlying injury did not involve a “discharge,” “dispersal,” “release,” or “escape.”

<u>STATE</u>	<u>POLLUTION EXCLUSION</u>	<u>CITATION</u>	<u>FACTS/HOLDING</u>
Pennsylvania (con't)	<p>Not applied: heating oil</p> <p>Not applied: lead in water</p>	<p><i>Whitmore v. Liberty Mut. Fire Ins. Co.</i>, 2008 WL 4425227 (E.D. Pa. Sept. 30, 2008)</p> <p><i>Netherlands Ins. Co., et al., v., Butler Area School Dist., et al.</i>, 2017 WL 2533525 (W.D. Pa. June 9, 2017)</p>	<p>Exclusion does not apply to preclude coverage for property damage claim arising out of heating oil spill during delivery to above-ground tank because the spill remained in the basement and did not contaminate the environment.</p> <p>Exclusion does not apply to water contamination in an elementary school. The court held that the pollution exclusions in the policies were ambiguous and construed coverage in favor of the insured. The court stated that the policies exclude damages “arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of ‘pollutants,’” but that the Pennsylvania courts have found this language does not accurately describe the degradation over time that causes lead exposure from lead-based paint.</p>
Rhode Island	No instructive authority, but see:	<i>Picerne-Military Housing, LLC v. Am. Int'l Specialty Lines Ins. Co.</i> , 650 F. Supp. 2d 135 (D.R.I. 2009)	In case involving a Pollution Legal Liability policy, which insures what most policies exclude through a pollution exclusion provision, issue of what constitutes a “pollutant” is a question of fact that precludes summary judgment. (Note: the court’s analysis, which cites to pollution exclusion decisions nationally for guidance, may be useful in the pollution exclusion context.)
South Carolina	Not applied: paint fumes	<i>NGM Ins. Co. v. Carolina’s Power Wash & Painting, LLC</i> , 407 Fed. Appx. 653 (4th Cir. 2011) (applying South Carolina law)	Exclusion does not apply to bodily injury caused by exposure to paint fumes, vapor, dust, and other residue from insured’s painting operations. Pollution exclusion is subject to more than one reasonable interpretation and, therefore, must be construed liberally in favor of the insured and strictly against the insurer.

<u>STATE</u>	<u>POLLUTION EXCLUSION</u>	<u>CITATION</u>	<u>FACTS/HOLDING</u>
South Carolina (con't)	Applied: job-site runoff	<i>Pennsylvania Nat'l Mut. Cas. Ins. Co. v. Triangle Paving, Inc.</i> , 1997 WL 422883 (4th Cir. July 29, 1997) (applying South Carolina law)	Exclusion unambiguously applies to preclude coverage for damages associated with job-site runoff (sedimentation) from a construction site.
South Dakota	Applied: cement dust	<i>South Dakota State Cement Plant Comm'n v. Wausau Underwriting Ins. Co.</i> , 616 N.W.2d 397 (S.D. 2000)	Exclusion applies to preclude coverage for claims arising out of excessive dust emissions from a cement plant. The causes of action in the underlying complaint are “based upon alleged ‘contamination’” and therefore “clearly fall within the definition of pollution in the pollution exclusion clause.”
Tennessee	Applied: sulphuric acid	<i>Sulphuric Acid Trading Co., Inc. v. Greenwich Ins. Co.</i> , 211 S.W.3d 243 (Tenn. Ct. App. 2006)	Exclusion applies to preclude coverage for claim arising out of 1,800 gallons of sulphuric acid being spilled on an employee of a loading company’s subcontractor because such a discharge is clearly classified as “classic environmental pollution.” Although underlying claim involves employee who was injured in the course and scope of his employment, “it would defy logic to hold that the discharge of 1,800 gallons of sulphuric acid into the environment was anything other than environmental pollution.” Recognizing the “traditional” vs. “non-traditional” split between jurisdictions but declining to rule on which line of reasoning Tennessee should follow because such a distinction is unnecessary under the facts of this case.

<u>STATE</u>	<u>POLLUTION EXCLUSION</u>	<u>CITATION</u>	<u>FACTS/HOLDING</u>
Tennessee (con't)	Applied: waste	<i>CBL & Assoc. Mgmt., Inc. v. Lumbersmens Mut. Cas. Co.</i> , 2006 WL 2087625 (E.D. Tenn. July 25, 2006)	Exclusion precludes coverage for claims arising out of plumbing issues in commercial storefront that caused waste to shoot out of sink drains. Predicted that the Supreme Court of Tennessee would not limit application of the exclusion to traditional environmental pollution.
	Not applied: carbon monoxide	<i>In re Idleaire Technologies Corp.</i> , 2009 WL 413117 (Bkrcty. D. Del. Feb. 18, 2009)	Exclusion does not apply to preclude coverage for claims arising out of carbon monoxide exposure caused by malfunctioning HVAC unit. Applied the “reasonable expectations” doctrine and held that the insured HVAC manufacturer did not “create or produce the pollution” and therefore could not have reasonably expected that such claims for a malfunctioning unit would be barred.
Texas	Applied: hydrofluoric acid	<i>National Union Fire Ins. Co. of Pittsburgh, Pa. v. CBI Indus.</i> , 907 S.W.2d 517 (Tex. 1995)	Pollution exclusion is unambiguous and applies to bar coverage for claims arising out of an oil refinery explosion which produced a toxic cloud of hydrofluoric acid
	Applied: spray-foam insulation	<i>Evanston Ins. Co. v. Lapolla Indus., Inc.</i> , 2015 WL 9460301 (5th Cir. Dec. 23, 2015)(applying Texas law)	Total pollution exclusion applies to bar coverage for claims arising out of spray-foam insulation that caused odors and respiratory distress. Noted that “Texas courts have held that such exclusions are not ambiguous.”
Utah	Not applied: hydrocarbon vapor	<i>United Nat’l Ins. Co. v. Int’l Petroleum & Exploration</i> , 2007 WL 4561460 (D. Utah Dec. 20, 2007)	Exclusion does not apply to preclude coverage for injuries caused by the release of a hydrocarbon vapor cloud that led to an explosion and fire during the unloading of waste. Examined the “traditional” vs. “non-traditional” debate and concluded that, because there are two possible interpretations, the exclusion was ambiguous.

<u>STATE</u>	<u>POLLUTION EXCLUSION</u>	<u>CITATION</u>	<u>FACTS/HOLDING</u>
Utah (<i>con't</i>)	Applied: ash	<i>Headwaters Resources, Inc. v. Illinois Union Ins. Co.</i> , 770 F.3d 885 (10th Cir. 2014) (applying Utah law)	Exclusion applies to preclude coverage for property damage claims resulting from fly ash used in construction, which allegedly caused air and water pollution. Disagreed with <i>Int'l Petroleum & Exploration</i> and held that “[t]he fact that certain policy provisions, including pollution exclusions, may broadly apply to bar coverage does not make them ambiguous.”
Vermont	<p>Applied: gasoline</p> <p>Applied: spray-foam insulation</p> <p>Applied: pesticide (chlorpyrifos)</p>	<p><i>State v. OneBeacon America. Ins. Co.</i>, 2009 WL 6557344 (Vt. Super. Ct. Nov. 5, 2009)</p> <p><i>Cincinnati Specialty Underwriters Ins. Co. v. Energy Wise Homes, Inc.</i>, 120 A.3d 1160 (Vt. 2015)</p> <p><i>Whitney v. Vermont Mut. Ins. Co.</i>, 2015 WL 8540432 (Vt. 2015)</p>	<p>Exclusion enforceable to preclude coverage where insured had contaminated soil with gasoline and other chemicals. Discussed the historical evolution of the pollution exclusion and Vermont precedent.</p> <p>Exclusion is unambiguous and applies to preclude coverage for injuries allegedly resulting from airborne chemicals and residues from spray-foam insulation. Recognizing jurisdictional split and declining to address whether standard “absolute pollution exclusion” would apply because policy in question was broader than standard exclusion provision.</p> <p>Exclusion applies to preclude coverage for injuries arising out of exposure to chlorpyrifos, a pesticide sprayed in insured’s home to treat bed bug infestation and applied in violation of state and federal law. Cited <i>Cincinnati</i> as holding that “pollution exclusions are not presumed, as a class, to be ambiguous or to be limited in their application to traditional environmental pollution.” Chlorpyrifos is toxic to humans and is a pollutant under the terms of the policy.</p>

<u>STATE</u>	<u>POLLUTION EXCLUSION</u>	<u>CITATION</u>	<u>FACTS/HOLDING</u>
Virginia	Applied: trihalomethanes in water	<i>City of Chesapeake v. States Self-Insurers Risk Retention Group, Inc.</i> , 628 S.E.2d 539 (Va. 2006)	Exclusion is unambiguous and precludes coverage for claims arising out of trihalomethanes in a city’s water supply. Declined to examine how other jurisdictions have resolved similar disputes because plain language of the policy was clear.
	Applied: Chinese drywall	<i>Nationwide Mut. Ins. Co. v. The Overlook, LLC</i> , 785 F. Supp. 2d 502 (E.D. Va. 2011)	Definition of “pollutant” in exclusion “does not apply solely to traditional environmental pollution.” Exclusion applies to preclude coverage for use of drywall in construction of townhouses that allegedly emitted sulfide gases.
Washington	Applied: sealant fumes	<i>Quadrant Corp. v. Am. States Ins. Co.</i> , 110 P.3d 733 (Wash. 2005)	Exclusion applies to preclude coverage for injuries arising out of fumes from a deck sealant entering apartment unit. Language of the exclusion is not limited to traditional environmental pollution. Distinguished <i>Kent Farms</i> and concluded that the court’s discussion of traditional environmental harms was limited by the facts of that case.
	Not applied: diesel fuel	<i>Kent Farms, Inc. v. Zurich Ins. Co.</i> , 998 P.2d 292 (Wash. 2000)	Exclusion does not apply to bodily injury resulting from the sudden spraying of diesel fuel. Offending substance’s toxic character was not central to the injury because underlying plaintiff “was not polluted by diesel fuel.” “The fuel was not acting as a ‘pollutant’ when it struck him any more than it would have been acting as a ‘pollutant’ if it had been in a barrel that rolled over him.”

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Washington (<i>con't</i>)	Not applied: carbon monoxide	<i>Xia v. Probuilders Specialty Ins. Co. RRG</i> , Case No. 92436-8 (Wash. Apr. 27, 2017)	Insurer had duty to defend building in lawsuit arising out of homeowner's exposure to carbon monoxide released from improperly installed water heater. Although the release of carbon monoxide was a "polluting event" that fell within the policy's pollution exclusion, the homeowner's injuries were proximately caused by the negligent installation of the water heater, which is a covered occurrence.
West Virginia	Applied: coal tar	<i>Supertane Gas Corp. v. Aetna Cas. & Sure. Co.</i> , 1994 WL 1715345 (N.D. W.Va. Sept. 27, 1994)	Exclusion applies to preclude coverage for property damage claim arising out of coal tar left by a coal fuel generation plant. Predicted that West Virginia would find exclusion to be unambiguous.
Wisconsin	Applied: bat guano Applied: cow manure Applied: lead paint	<i>Hirschhorn v. Auto-Owners Ins.</i> , 809 N.W.2d 529 (Wis. 2012) <i>Wilson Mut. Ins. Co. v. Falk</i> , 857 N.W.2d 156 (Wis. 2014) <i>Peace v. Nw. Nat'l Ins. Co.</i> , 596 N.W.2d 429 (Wis. 1999)	Exclusion applies to preclude coverage under homeowners policy where bat guano is a pollutant and insured's alleged loss "resulted from the 'discharge, release, escape, seepage, migration or dispersal' of bat guano." Exclusion applies to preclude coverage of claims arising out of well contamination caused by seepage of cow manure. Cow manure is a "pollutant" within meaning of the pollution exclusion. Exclusion applies to "bodily injury from the ingestion of lead in paint that chips, flakes, or breaks down into dust or fumes." When pollutant lead "begins to disperse, discharge, or escape from the containment of the painted surface, it falls within the plain language of the pollution exclusion clause."

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Wisconsin (con't)	Not applied: carbon dioxide	<i>Donaldson v. Urban Land Interests, Inc.</i> , 564 N.W.2d 728 (Wis. 1997)	Exclusion does not preclude coverage for claims arising out of inadequately ventilated carbon dioxide from breathing. “[T]he pollution exclusion clause does not plainly and clearly alert a reasonable insured that coverage is denied for personal injury claims that have their genesis in activities as fundamental as human respiration.”
Wyoming	Not applied: hydrogen sulfide gas	<i>Gainsco Ins. Co. v. Amoco Prod. Co.</i> , 53 P.3d 1051 (Wyo. 2002)	Based on original purpose of the pollution exclusion, in response to legislation mandating responsibility for the cleanup costs of environmental pollution, pollution exclusion is limited to the concept of environmental pollution. Exclusion does not apply to preclude coverage for bodily injury caused by exposure to hydrogen sulfide gas while emptying a vacuum truck in an oil field.

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