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Pollution Permit Ruling Backs Pro-Insurer Policy Reading

By **Jennifer Mandato**

Law360 (January 29, 2026, 9:19 PM EST) -- The Illinois Supreme Court recently deemed state pollution permits irrelevant when determining whether pollutants fall within the scope of an exclusion in commercial general liability policies and endorsed separate pollution liability policies in a ruling that carrier-side attorneys are praising as a straightforward application of policy language.

People protest Sterigenics' ethulene oxide emissions in front of the company's headquarters in Illinois in 2018. (Mark Black/Chicago Tribune/Tribune News Service via Getty Images)

Answering a certified question submitted by the Seventh Circuit Court of Appeals about the relevance of a permit authorizing emissions plays in assessing the application of a pollution exclusion in a standard CGL policy, the justices said in a 6-0 **ruling** that a permit doesn't change the "character or substance" of certain emissions as pollution.

Justice Elizabeth Rochford took no part in the Jan. 23 decision, Griffith Foods International Inc. et al. v. National Union Fire Insurance Co. of Pittsburgh, Pa.

The dispute centered on whether National Union must cover $150 million in defense costs for Sterigenics U.S. LLC and former parent Griffith Foods.

"This unanimous ruling was welcome and instructive in its simplicity — it reinforces that the plain language of a pollution exclusion controls," Steven Burgess Davis, a carrier-side attorney and partner at

Stradley Ronon Stevens & Young LLP, told Law360.

"Faced with plain language and absence of any meaningful basis to create an ambiguity or carve out exceptions for permitted pollution, the court rightly refused to stretch the plain reading of the exclusion," Davis added.

In the opinion, led by Justice Joy Cunningham, the court said that the at-issue pollution exclusion did not make any mention of permitted or authorized pollution. Thus, the court must refrain from "inject[ing] terms and conditions different from those agreed upon by the parties."

David L. Brown, a partner at Goldberg Segalla LLP and insurer-side attorney, was also pleased with the state Supreme Court's ruling as he believed the court applied "plain language in a straightforward way."

He credited Griffith Foods with advancing a "creative argument," noting the policyholder's initial success in August 2022. At that time, a federal judge determined that National Union had a duty to defend on the grounds that the pollution exclusion was ambiguous about whether the emission of ethylene oxide permitted by the Illinois Environmental Protection Agency qualified as traditional environmental pollution under the policies, according to court records.

Still, the Illinois Supreme Court reached "the right result," Brown said.

Policyholder attorney Kenneth Anspach of Chicago-based Anspach Law Office, however, told Law360 that the Griffith Foods decision "significantly narrows the path for policyholders seeking a defense or indemnity for pollution-related claims under standard CGL policies in Illinois."

The court's ruling diminishes a policyholder's ability to credibly argue that compliance with environmental permits, regulations or agency authorizations preserves CGL coverage, Anspach said.

"In practical terms, Griffith Foods shifts Illinois decisively into the insurer-favorable camp and removes what had been one of the more policyholder-friendly ambiguities following" American States Insurance Co. v. Koloms, he told Law360.

In the present opinion, the Illinois Supreme Court analyzed its 1997 ruling in Koloms and a state appeals court's 2011 ruling in Erie Insurance Exchange v. Imperial Marble Corp.

In the former case, the state high court ruled that the standard CGL pollution exclusion bars coverage for bodily injuries caused by traditional environmental pollution, but not more common emissions, like carbon monoxide. In the latter case, a state appeals court found Koloms to be "arguably ambiguous" if the industrial emission of pollutants at levels allowed under a regulatory permit constituted such traditional pollution under a pollution exclusion.

Based on that ambiguity, the state appeals court ruled that Erie Insurance Exchange had a duty to defend Imperial Marble.

In the Griffith Foods opinion, the justices ultimately deemed Imperial Marble overruled so long as it treats permitted emissions as creating ambiguity under a pollution exclusion.

Davis praised this decision. He **previously** told Law360 he hoped the Illinois Supreme Court's since-issued ruling would "fix the confusion" caused by the Imperial Marble decision.

Anspach, on the other hand, told Law360 that the overruling of Imperial Marble — and another state appeals court ruling, Country Mutual Insurance Co. v. Bible Pork Inc. — is significant "not only doctrinally, but institutionally."

"The court reaffirmed that Koloms was never meant to introduce a permit-based carveout; it was about distinguishing accidental, localized indoor exposures from environmental pollution as ordinarily understood," he said. "By overruling Imperial Marble, the court eliminated a line of appellate authority that had allowed regulatory compliance to function as a proxy for coverage."

That being said, Griffith Foods "draws a sharp — and important — line between regulatory compliance and insurance coverage," Anspach told Law360.

"Compliance may protect against enforcement actions or penalties, but it does not insulate policyholders

from tort exposure, nor does it preserve CGL coverage once pollution-related bodily injury is alleged," he explained.

Griffith Foods underscores a significant distinction that while environmental permits regulate conduct, they lack the ability to reframe pollution as nonpollution for insurance purposes, Anspach said. As a result, corporate policyholders may be forced to reckon with compliance, risk management and insurance procurement strategies.

Policyholder attorney Evan T. Knott, a partner at Honigman LLP, told Law360 that going forward Illinois corporations should negotiate for pollution exclusions containing a "sudden and accidental" exception when possible.

This exception may allow for coverage under a CGL policy in the event that alleged environmental damage was unexpected and unintended.

Based on the Illinois Supreme Court's finding in Griffith Foods, corporate policyholders may need to exercise more vigilance when it comes to managing their environmental liability risks, even where their operations comply with environmental permits and regulations, Knott added.

Still, "it remains to be seen whether companies operating under government permits will be able to negotiate manuscript exceptions to the pollution exclusion for emissions permitted by regulatory agencies, or whether that coverage can only be obtained under specialized pollution policies," Knott said.

In the opinion, the justices noted that separate pollution liability policies exist in the marketplace, allowing insurers "to assess the risk of costly environmental litigation."

"Without speculating on the availability of such policies to any particular insureds, we emphasize that these separate policies generally provide the policyholders with coverage for environmental lawsuits," the opinion said.

Anspach told Law360 policies such as pollution legal liability or environmental impairment liability, contractors pollution liability, site-specific environmental liability policies, and environmental endorsements are common examples of coverages designed to pick up the kinds of risks excluded under CGL policies.

Many large, corporate policyholders already have these types of policies, Brown of Goldberg Segalla told Law360. The challenge that remains, however, is the price, he said.

"As you might imagine, that's very expensive coverage to buy," Brown explained, "As any insurance product, whether it's a commercial liability policy, a pollution policy or an auto policy that we all have personally, the tension is always you want the most coverage for the most advantageous premium."

Anspach told Law360 that from his perspective, the Illinois Supreme Court implied that CGL policies are not intended to be silent environmental policies, Anspach said.

"If an insured's operations foreseeably involve emissions that could give rise to bodily injury claims, the risk is expected to be placed in one of these specialty products, where underwriting, pricing, and exclusions are tailored accordingly," he explained.

"That framing strengthens the insurer's position doctrinally, but it also puts policyholders on notice: Coverage gaps are now clearly intentional, not accidental," he added.

--Additional reporting by Celeste Bott. Editing by Bruce Goldman and Nick Petruncio.