

III. Justices Deem Permits 'Irrelevant' To Pollution Exclusion

By **Celeste Bott**


Law360 (January 23, 2026, 2:31 PM EST) -- Whether emissions are allowed under a permit is "irrelevant" when determining whether a commercial general liability policy's pollution exclusion applies to a claim made over those emissions, the Illinois Supreme Court ruled Friday.


The high court was asked to help the Seventh Circuit decide whether an AIG unit was correctly ordered to cover \$150 million in defense costs over decades of ethylene oxide pollution that a Sterigenics plant sterilizing medical devices released into an Illinois community.

Sterigenics **had argued** that it operated under permits from Illinois environmental regulators that expressly authorized their annual ethylene oxide, or EtO, emissions. But that permit didn't change the "character or substance" of the emissions as pollution, the justices said.

In a 6-0 ruling authored by Justice Joy Cunningham, the state Supreme Court said the pollution exclusion says nothing about permitted or authorized pollution, and courts can't insert their own terms and conditions that the parties haven't agreed on. Justice Elizabeth Rochford took no part in Friday's decision.

"Indeed, if the EtO emissions were not pollution, there would have been no need for the policyholders to obtain a permit from IEPA [Illinois Environmental Protection Agency] in the first place," the justices said. "In other words, the permit allowing the policyholders to emit EtO did not, in some manner, render those emissions no longer pollution in the plain and ordinarily understood meaning of the word."

At issue in the case was how to apply *American States Insurance Co. v. Koloms* , an Illinois Supreme Court ruling that interprets the standard commercial general liability pollution exclusion to exclude coverage for bodily injuries caused by traditional environmental pollution, like industrial emissions of pollutants, but not by more commonplace emissions, like a carbon monoxide leak in a residence.

A three-judge panel of the Seventh Circuit was unsure how to square *Koloms* with an Illinois state appeals court's 2011 ruling in *Erie Insurance Exchange v. Imperial Marble Corp.* , which found a CGL policy's pollution exclusion "arguably ambiguous" as to whether emissions authorized by regulatory permit are excluded from coverage.

The Illinois Supreme Court noted that Seventh Circuit has already found that the discharge of emissions at issue in this case fits squarely within the plain language of the pollution exclusion, which bars coverage for litigation over "the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water."

A permit or regulation that greenlights emissions generally or at a particular level has "no relevance" in determining whether that exclusion applies, the justices concluded.

"In addition, as explained by this court in *Koloms*, the pollution exclusion in CGL policies was drafted in response to the insurance industry's concerns about increasing, costly environmental litigation," the court said. "Declining to apply the pollution exclusion simply because the pollution was permitted by the state would undermine the pollution exclusion's very purpose."

Representatives of the parties did not immediately respond to requests for comment.

Beginning in 2018, the companies and several others were sued by Illinois residents who claimed that they suffered bodily and personal injuries as a result of exposure to ethylene oxide that was discharged from Sterigenics' medical device sterilization facility in Willowbrook. The facility, which shut down in 2019, was owned and operated by Griffith Laboratories USA Inc., now known as Griffith Foods, between 1984 and 1999, according to court filings.

National Union denied coverage for the claims under two CGL policies issued to Griffith between 1983 and 1985, citing the pollution exclusion. Sterigenics and Griffith filed separate but related suits against the insurer in August and November 2021, respectively.

After Sterigenics and Griffith prevailed in one trial and were hit with a \$363 million jury award in another in 2022, the companies reached a \$408 million settlement to resolve more than 870 underlying emissions lawsuits in January 2023.

Meanwhile, in the coverage dispute, U.S. District Judge Mary M. Rowland concluded in August 2022 that National Union had a duty to defend the companies, because 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.

In the Seventh Circuit's order certifying a question to the Illinois high court, the appellate court said it was "'genuinely uncertain' as to how to proceed" with interpreting the exclusion, because the "exact scope of traditional environmental pollution remains unclear," sending the dispute to the state court for guidance.

Griffith Foods is represented by Sopen Shah, James Davis, Kahin Tong, Bradley Dlatt and Eric Wolff of Perkins Coie LLP.

Sterigenics is represented by Gary Feinerman, Peter Prindiville and Margaret Upshaw of Latham & Watkins LLP, K. James Sullivan and Matthew Chiricosta of Calfee Halter & Griswold LLP and Andrew May, Steven Pflaum and Paul Walker-Bright of Neal Gerber & Eisenberg LLP.

National Union is represented by Thomas H. Dupree Jr., Nick Harper, Aaron Hauptman and Aly Cox of Gibson Dunn & Crutcher LLP and Michael T. Reagan of the Law Offices of Michael T. Reagan.

The case is Griffith Foods International Inc. et al. v. National Union Fire Insurance Co. of Pittsburgh, Pa., case number 131710, in the Supreme Court of Illinois.

--Editing by Nicole Bleier.