Airport Litigation & Settlement of Environmental Claims

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→ U.S. Airport Historical Operations

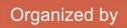
- → Many U.S. airports built or significantly expanded in 1940s as part of the U.S. war effort
- → Pre-1940: Airfields outside major population centers focused on GA and air mail operations
- → 1940s: U.S. Army Air Force operated and significantly expanded operations to include manufacturing and maintenance
- → Post-1945 − 1960s: Continuing use of airports in support of U.S. military needs













→ Impacts from Historical Operations

- → Discharges, spills, and dumping of industrial chemicals:
 - Chlorinated solvents from degreasing operations
 - Waste paint
- Leaks from underground storage tanks
- → Fuel farms and underground system leaks
- → At many U.S. airports, largest source of historical contaminants from on-site or adjacent U.S. military operations

Current U.S. Airport Operations Involving Environmental Risks

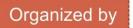
- → Aircraft fueling and maintenance
- Ground service equipment fueling and maintenance
- Fuel farms, underground fuel systems, and underground storage systems
- Deicing
- Waste disposal and treatment
- → Asbestos, PCBs, mold, and lead paint
- Natural resource impacts
- → Airport expansion including acquisition of properties













→ U.S. Laws Impacting Upon Airport Operations

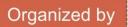
- → Federal Government v. Individual States
 - Patchwork of laws
- Yarious Federal Laws Including:
 - Clean Air Act (CAA) and Clean Water Act (CWA)
 - National Environmental Policy Act (NEPA)
 - → Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) ("Superfund")
 - → Resource Conservation & Recovery Act (RCRA)
- State Laws Similar to U.S. Federal
 - Add a separate layer of compliance requirements













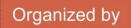
- → Types of Environmental Lawsuits Faced by U.S. Airport Operators
 - Regulatory actions by government agencies
 - Associated with airport expansion plans
 - → Seeking enforcement of environmental laws and regulations
 - Fellow state / county government agencies
 - Litigation filed by residents living near airport
 - → Noise
 - Takings / interference with enjoyment of property rights
 - → Bodily injury claims
 - → Qui Tam actions
 - Airport Fee Litigation













→ Insurance Coverage Issues

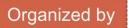
- → Historical Insurance
 - Types: Airport Owners & Operators, General Liability (excess and umbrella), 1st Party Property, Hangarkeepers
 - → Issue: 1970 − Present -- policies include AVN 46B or Environmental Disturbance exclusion
 - → Exclude coverage for noise, pollution and contamination (subject to carve-out provision)
- → Current Insurance Products
 - Pollution Legal Liability (various forms)













→ Insurance coverage issues (continued)

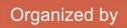
- → Self-insured retentions
- → Capital cost v. "damages"
- → Investigation v. remediation costs
- Fines, penalties, punitive damages
- Governmental oversight costs
- Long-term monitoring
- → Loss of use claims
- Decrease in property values















- Reputational harm
- Natural resource damage claims
- → Defense v. indemnity
- Legal costs













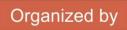
→ Potential costs:

- → Leaking fuel oil tanks: \$10,000 \$50,000
- → USTs: \$125,000 to over \$1 million
- → Impacts to municipal drinking water wells: \$10+ million
 - → Especially if contaminant is MTBE or LNAPL











→ Settlement of Airport Environmental Litigation

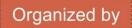
- → Monetary v. compliance
 - Consent decrees
 - → Noise abatement
 - Modification of expansion plans
 - Compensation and financial restitution
 - Damages
- Legal restrictions on scope
- → Generally not confidential due to open records laws













→ Questions?









