

## Revealing the Dark Secrets of Category 3 Water Exclusions

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**Category 3 water is classified Category 3 because it is grossly contaminated with pollutants including fungi and bacteria. Universal exclusions in property and liability insurance policies for losses related to fungi/bacteria automatically apply to Category 3 water losses because of the bacteria and/or fungi in the water. Insurance coverage gaps for losses associated with Category 3 water can be filled using the same risk management tools and environmental insurance products created for fungus/mold risks in 2003.**

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If a loss involves a minute quantity of Category 3 water, the entire loss is likely excluded or severely sublimited through the effects of universal fungus/bacteria exclusions in liability and property insurance policies. Because water intrusion losses are so prevalent in the built environment, they have loss content approximating half the losses caused by the peril fire. A significant part of all water losses involves Category 3 water in some way.

For this much insurance coverage to be eliminated without a whimper of protest from the affected stakeholders, there must have been a Special Forces unit of the insurance industry operating out of a secret underground bunker. Those Special Forces commandos were ordered by the top brass in the insurance industry to eliminate insurance coverage for Category 3 water on millions of water damage insurance claims. To have such a broadscale effect on an entire industry, the Special Forces unit actively coordinated its activities with specially trained covert operatives in insurance companies on a countrywide basis to protect the financial performance of the insurance companies for which they worked. The Special Forces accomplished their mission over 4 years, without detection, by using the best available stealth technology in the business world. Nobody knows where this Special Forces bunker is because it is a dark secret, closely held by the insurance companies that the Special Forces protect.

This is one explanation of how Category 3 water losses were excluded or severely sublimited on hundreds of millions of insurance contracts without being detected by insurance regulators, insurance buyers, claim adjusters, or the insurance distribution system. The US military could take lessons from secret Special Forces operations in insurance companies on how to operate in full daylight to accomplish a covert mission affecting millions of people and remain undetected for years.

Another more plausible explanation of how Category 3 water exclusions were successfully introduced into the insurance industry completely without detection is that it is easy to keep a secret message if the message is so obscure and complicated that nobody understands the message unless the reader has a special decoder device. In this article, I will use a special decoder device to reveal the secrets of the three categories of water. The actual decoder device I will use is the [IICRC S500 Standard and Reference Guide for Professional Water Damage Restoration](#). The definitions of the different categories of water in the S500 document dramatically affect insurance coverage determinations because of the relative recent addition of exclusions for fungi and bacteria into virtually all forms of insurance contracts.

The public has wide access to the S500 document; it is an actual book. Anyone can purchase the S500 from the Institute of Inspection Cleaning and Restoration Certification (IICRC) website at [www.iicrc.org](http://www.iicrc.org). Every word in the S500 standard is drafted by a consensus drafting committee. In the third edition, that consensus drafting committee consisted of 60 subject matter experts who also considered literally thousands of public comments on the language in the standard. The S500 standard is accredited by the American National Standard Institute and is used globally. Originally published in 1994, the S500 is now going into its fourth edition. The S500 standard is used by approximately 64,000 certified water restoration technicians who go to work every day on projects mostly paid for through thousands of insurance claim adjusters. The best-informed insurance adjusters actually require that their water remediation contractors be IICRC-certified under the S500 standards.

### The Three Categories of Water

The 64,000 IICRC-certified professional water restoration technicians have learned in their certification courses that

there are three categories of water. The information below is taken directly from the S500 standard.

## 9.6 Determining the Category of Water <sup>1</sup>

The Categories of water, as defined in this document refer to the range of contamination in water, considering its originating source and its quality after it contacts materials present on the job site. Time and temperature can also affect the quality of water thereby changing its Category.

**Category 1 water**—Originates from a sanitary source and does not pose a risk from dermal, ingestion or inhalation exposure. The cleanliness of Category 1 water can deteriorate to Category 2 or 3 due to ... contact with building materials, soil ...

**Category 2 water**—Contains significant contamination and has the potential to cause discomfort or sickness if contacted or consumed by humans.

**Category 3 water**—Is grossly contaminated<sup>2</sup> and can contain pathogenic, toxicogenic, or other harmful agents. Examples can include but are not limited to sewage, toilet backflows that originate from beyond the toilet trap regardless of the visible content or color; all forms of flooding from seawater; ground surface water and rising water from rivers or streams; and other contaminated water entering or affecting the indoor environment such as wind driven rain from hurricanes, tropical storms or other weather related events. Such water may carry silt, organic matter, pesticides, heavy metals, regulated materials, or toxic organic substances.

Contamination from bacteria is one of the key distinguishing factors between Category 2 water and Category 3 water. Category 3 water is classified as Category 3 because of the contamination including bacteria and other microorganisms that it contains. Because fungus- and bacteria-related losses are specifically excluded or sublimited in virtually all insurance contracts today, any loss involving Category 3 water should trigger the fungus/bacteria limitations of coverage.

## Insurance Limitations on Category 3 Water-Related Losses

The words "Category 3 water" do not appear in insurance contracts. To find where losses related to Category 3 water became excluded, all one has to do is look for the word "bacteria" or "contamination" in insurance contracts. The word "bacteria" does appear in most exclusions naively referred to by insurance practitioners as "mold exclusions." The word "bacteria" appears after the word "fungus" in these widely used exclusions. Mold is a form of fungus. By default, "mold exclusions" apply to Category 3 water as well, and there is a lot more Category 3 water in the built environment than there is mold.

Why did the secret Special Forces operatives exclude bacteria when they were really trying to get rid of mold losses in response to the "toxic mold" scare at the turn of the century? Down in their secret bunker, they knew from their aboveground spies that, in every place where the indoor environmental conditions were favorable to grow mold, they would find bacteria colonies actively growing in the same place with the bacteria using mold as their food source. The Special Forces knew that, where you find mold, you are likely to find bacteria, and both of these microorganisms need a wet environment to thrive. To avoid paying mold losses as bacteria losses, the solution was simple—exclude all losses related to either one no matter what other causes of losses may be going on at the same time. Since the efficient proximate cause of the growth of fungi and bacteria in most buildings is water intrusion, the insurance coverage needed to be eliminated for the water intrusion events that lead to the introduction or growth of the microorganisms to avoid paying mold/bacteria losses as water losses. Those drivers were behind the introduction of universal fungus/bacteria coverage limitations around 2005.

In operation, fungus/bacteria exclusions are a variation of a pollution exclusion and apply specifically to losses that are associated with these two contaminants. By incorporating anti-concurrent causation language from the flood exclusion section of a property insurance policy, the exclusions for fungus and bacteria are by far the most onerous pollution exclusions ever conceived in the insurance industry.

## Most-Excluded "Pollutant"

Water intrusion into buildings is a very common cause of loss in the insurance business. With the introduction of newly crafted fungus/bacteria exclusions between 2004 and 2006, Category 3 water became the most successfully excluded pollutant in the history of insurance. Category 3 water was excluded faster and on a wider scale than even terrorism losses, and none of the stakeholders in insurance coverage did anything to protest. Utilizing "mold exclusions" as a cloaking device to camouflage the exclusion of Category 3 water losses, insurance companies have successfully offloaded at their total discretion roughly the loss content equivalent of half of the losses caused by fires, and they never had to reduce their rates in their regulated lines of coverage. The Special Forces operatives all deserve service medals of honor for the successful completion of their mission; but they could never accept the

medals because their secret identities would be blown.

## How Were Losses Related to Category 3 Water Excluded?

In the interest of space, let me limit this discussion to Category 3 water and the commercial general liability (CGL) policy. The same analytics apply to property insurance and to mold as an excluded cause of loss.

**"Fungus/Bacteria" Exclusions.** As a point of reference, because Category 3 water, by definition, is Category 3 because of the bacteria it contains along with other contaminants, for insurance purposes, everywhere the word "bacteria" appears in an insurance policy, "Category 3 water" can be inserted in its stead. In the vast majority of cases, the right coverage determination will be reached. In practice, it is hard to find defined Category 3 water without a speck of bacteria in it, and a speck of bacteria is all it takes to trigger the common fungus/bacteria exclusion endorsement in the CGL policy.

Following the single-speck rule, some Category 2 water could also trigger fungus/bacteria exclusions because most even slightly contaminated water contains some bacteria.

Although the actual exclusions for losses associated with fungi and bacteria in CGL insurance policies do vary, the exclusions for these contaminants usually have common elements. The common elements in fungus/bacteria exclusions on the CGL policy include:

- It applies to fungi, mold, and bacteria because they are often found living together.
- It will have an anti-concurrent causation section that eliminates coverage for some other covered cause of loss, like Category 1 water, if it was the proximate cause of the loss—that is, the fungi/bacteria was in fact ensuing damage arising from an otherwise covered loss. Therefore, the fungus, mold, and bacteria exclusion should be ignored. The covered proximate cause of loss and ensuing damages argument is totally neutralized by the anti-concurrent causation language that is common in fungus/bacteria exclusions.
- There will usually be two parts of the exclusion endorsement. The first part, a., addresses damages associated with actual or perceived exposure to fungi, mold, and bacteria. The second part of the exclusion, b., eliminates *all* of the insurance coverage in the policy, including the duty to defend any loss arising from an operation that has any involvement whatsoever in remediating or accessing fungi, mold, or bacteria. By definition, this would include Category 3 water.
- The exclusions never limit their scope to any particular species or measurable amount of fungi, mold, or bacteria. Therefore, a microscopic speck of any species of these materials technically triggers the full effect of the exclusion on the entire claim.

Although fungus/bacteria exclusions do vary, a common exclusion for use in CGL insurance policies will read:

This insurance does not apply to:

**a.** "Bodily injury" or "property damage" which would not have occurred, in whole or in part, but for the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of, any "fungi" or bacteria on or within a building or structure, including its contents, regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to such injury or damage.

**b.** Any loss, cost, or expenses arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to, or assessing the effects of, "fungi" or bacteria, by any insured or by any other person or entity.

This exclusion eliminates a lot more insurance coverage than most risk management and insurance practitioners realize. Insurance buyers in particular appear to be in the dark on the dark secretive effects of this exclusion. That situation is likely trouble for risk advisers from a professional malpractice standpoint if their clients find themselves with uncovered Category 3 water losses that could have been insured and the insurance buyer was never advised of the impact of the new exclusions or offered gap-filling coverage.

## Analysis of the CGL Fungi/Bacteria Exclusion Endorsement

A few of the provisions in the fungi/bacteria exclusion deserve special attention.

**In Whole or in Part.** In section a., I wonder what "in part" might mean in this sentence: "'Bodily injury' or 'property damage' which would not have occurred, in whole or in part, but for...." In part must be intended to apply the exclusion to the entire loss if only part of the loss was related to fungi/bacteria. As written, without a threshold amount qualifier, a speck of fungi or bacteria involved with a loss should trigger this exclusion.

**Threatened Exposure.** Fungi and bacteria are omnipresent in every building on earth. I wonder why the Special

Forces excluded from coverage losses involving the threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of any "fungi" or bacteria on or within a building or structure. Everybody knows fungi and bacteria are in the building already. Is there really a need to exclude bodily injury and property damage from the threatened existence of materials that are already in the building or structure? The answer is yes, there is a need to exclude threatened exposure if you want to exclude phobia-type losses. Because of this provision, bodily injury or property damages are excluded if a drop of Category 3 water is even alleged to have caused damage—with no physical evidence that it did.

For example, if a plumber works on a drainpipe leak (Category 3 water, by definition) and damages a building, and bystanders allege they could have been exposed to the water and are worried about their quality of life being impaired as a result of their worrying, then all of the bodily injury damage claims associated with the claim are technically excluded by the reference to threatened exposure to fungi or bacteria. The damage to the building is excluded, too. Plumbers as a class of business really do not have much in the form of completed operations coverage on the CGL policy as a result of these exclusions. However, the CGL policy in the above scenario would still need to defend this loss; only bodily injury and property damages are excluded in section a. of the endorsement, so the duty to defend still stands.

**Anti-Concurrent Causation.** The anti-concurrent causation provision in section a. reads almost verbatim to the anti-concurrent causation section of the flood exclusion in a property insurance policy: "regardless of whether any other cause, event, material, or product contributed concurrently or in any sequence to such injury or damage." The Special Forces operatives were brilliant in adding this provision to the fungus/bacteria exclusion on the general liability insurance policy. They knew that flood exclusions hold up perfectly in property insurance policies because of this anti-concurrent causation provision, and they also realize that pollution exclusions are the most litigated provisions in the history of insurance. To eliminate litigation over what the fungus and bacteria "pollution" exclusion might exclude or not and all arguments about the efficient proximate cause of loss and ensuing damages, the drafters of the fungus/bacteria exclusion simply added an anti-concurrent causation clause to the wording.

**"In Any Sequence."** The reference to other causes of loss *in any sequence* deserves special attention. As mentioned in the IICRC definition above, Category 1 and Category 2 water can morph into an excluded fungus/bacteria loss through the operation of time and temperature. For example, mold could start growing in the standing water of a basement as a result of a water supply line (Category 1 water) leak. Because mold in this case appeared *in any sequence* to the otherwise covered Category 1 water loss, the entire loss before, during, and after the appearance of mold should be denied under the terms of the fungus/mold exclusion. If the Special Forces had not intended this to be the case, they would have written "injury or damage subsequent to the presence of fungi or bacteria" instead of "in any sequence." If the exclusion did not read this way, the door would be open to argue in the above scenario that the proximate cause of the loss was Category 1 water, which is covered, and therefore, the exclusion for fungi/bacteria should not apply. The words "in any sequence" as used in the exclusion must mean before, during, and after the presence of fungi or bacteria.

**"In Any Way."** In section b. of a typical fungus/bacteria exclusion, the drafters took their lead from the pollution exclusion (f) in the CGL policy. First exclude claims caused by the pollutants, and then make sure the CGL policy does not apply to losses from any customers who venture into the remediation business. By referring to "loss" in section b. of the fungus/bacteria exclusion, the drafters eliminated the duty to defend any customer who has the audacity to engage in the fungi/bacteria/Category 3 water remediation business. Under this section, all losses arising out of or *in any way* responding to, or assessing the effects of, "fungi" or bacteria by any insured or by any other person or entity are excluded. An easy way to think of this part of the exclusion is that it is essentially an "all losses from job site exclusion" that applies to any job that involves remediating a speck of fungi or bacteria, which will automatically apply to all Category 3 water jobs.

**"Loss."** An example of section b. in effect is a remodeling contractor called in to remove drywall damaged by a tidal surge who accidentally causes a fire at the property who would not be insured for the fire damages. This is because the drywall was damaged by bacteria-laden water from the tidal surge and the contractor was at the job site to fix the drywall. In this case, with all losses from the job site excluded, the contractor would not even have defense coverage in his CGL insurance policy for causing the fire. The term "loss" in the CGL policy includes defense costs.

**"You Cannot Be at This Job Site."** Section b. of the fungus/bacteria exclusion is particularly onerous for the 40,000 fire/water restoration contracting firms and carpet cleaners with water extraction equipment that may work on remediating Category 3 water losses. There are a lot of leaky drains and backed up toilets in the United States; carpet cleaners are often the first responders to the Category 3 water loss that subjects them to the "you cannot be at this job site exclusion" in section b. of the fungus/bacteria exclusion. Plumbers and "rooters" responding to backed-up sewers are affected by the same exclusion. This is an area where insurance agents and brokers are particularly misinformed and misguided. As a result, an awful lot of contractors are needlessly uninsured for working on water damage job sites.

The only way to correct for the "you cannot be at this job site" coverage gap is to eliminate section b. of the fungus/bacteria exclusion for contractors that cannot avoid these job sites. Purchasing environmental insurance

coverage cannot fill the gap in coverage on the CGL policy created by a "you cannot be at this job site exclusion." In essence, environmental insurance only pays for damages caused by a release of pollutants. Burning down a house at a Category 3 water job has nothing to do with pollution; neither the CGL nor the environmental coverage will respond to the fire loss in the example—that is, unless of course the CGL claims adjuster never figures out that the project was related to a tidal surge, in which case it would be a simple property damage loss, which is covered in the off-the-shelf CGL policy.

Specially modified business liability insurance policies are available for specialty water remediation firms that are not dependent on a claims adjuster failing to discover that a project involved Category 3 water for a loss that would technically be covered under the CGL policy. As of this writing, more than 90 percent of water restoration firms needlessly go to work every day with a fungus/bacteria/Category 3 water job site exclusion on their CGL policy. The contractors and their insurance intermediaries are operating on a prayer that the claims adjuster never sees the words fungus/mold/bacteria/Category 3 water if the contractor ever gets a liability claim from one of its water remediation jobs.

**"Mold and drywall."** There is one more important thing for insurance practitioners to know in order to plan for the effects of fungus/bacteria exclusions. Category 1 water or even excessive moisture at room temperature will lead to mold growth within 72 hours on drywall. Once a speck of any type of mold becomes *related to* a loss, the fungus/bacteria exclusions in both property and liability insurance policies apply in the same manner they do with Category 3 water losses.

## Limited Application ... Now

The good news for insurance buyers and the insurance distribution system is that the Special Forces coverage drafting operatives forgot to tell the claims adjusters what their new exclusions for fungi and bacteria actually did to the coverage in property and liability insurance policies. They never told the insurance agents and brokers, either. As a result, most Category 3 water losses are simply paid by claims adjusters as Category 1 water losses ... today. Apparently, none of the knowledge about the three categories of water held by the 64,000 IICRC-certified water remediation contractors has filtered over to the claim adjusters they work for over the past 10 years. That turns out to be a very convenient state of affairs for almost all of the stakeholders in water damage losses.

Ignoring the categories of water makes the claim adjustment process much easier, which makes the policyholders and insurance agents/brokers happy. A happy product distribution force and customer base is good for business if you are an insurance company. This explains why a technically excluded claim does not always lead to a denied claim when it comes to fungus/bacteria/Category 3 water-related losses.

The only stakeholders in the insurance claims arena that might be unhappy with insurance companies paying technically excluded losses as a common business practice would be the shareholders of publicly traded insurance companies. But the shareholders must be happy, too, as measured by the dearth in shareholder derivative action suits against the board of directors of insurance companies for squandering shareholder value by simply ignoring the effects of universal fungus/bacteria exclusions and the link to Category 3 water as a business practice.

But, the status quo with all of the stakeholders in insurance claims being happy could change overnight. Insurance practitioners should plan today for this eventuality. All it will take to trigger sudden knowledge by claims adjusters on the different categories of water is a shareholder derivative action suit alleging management malpractice at the insurance company for paying excluded Category 3 water losses as if they were Category 1 water losses.

For example, today, almost all leaky drainpipe damage claims resulting from the work of plumbers are paid as if they were Category 1 water losses. That is good for the 78,000 plumbing firms in the United States and the insurance agents and brokers who sell them business insurance policies. Every drop of water in a drainpipe after the trap will be Category 3 water by definition. With billions of dollars of Category 3 water losses being paid as Category 1 water losses every year, the potential damages target is large for the lawyers representing shareholders, and the stakes are high for the insurance company managers.

For these reasons, it is safe to assume the insurance company managers will work to close the distance between the actual coverage provided in insurance policies and the claims paid for losses associated with water damages. There are two ways for the managers to close the distance. They could expand coverage for fungus/mold/bacteria /Category 3 water-related losses in the insurance policies the insurance company sells simply by eliminating the exclusions the Special Forces spent years to insert. This will take years to accomplish, as regulatory approval is needed on changes to insurance rates and forms in many different lines of admitted insurance coverage. This strategy would do nothing to address the fact that plumbers have purchased over 600,000 occurrence-based general liability insurance policies with fungi/bacteria exclusions in them. Alternatively, the insurance company managers could pull the trigger on Category 3 water damage exclusions that are already in place. Pulling the trigger on the Category 3 water exclusions offers a quick fix; the regulatory approvals on coverage and rates are already in place. Plus, the newly denied Category 3 water losses immediately improve profits at the insurance company. For these reasons, I expect more and more Category 3 water-related losses to be denied in the future on both property and

liability insurance policies.

## Mitigating Insurance Coverage Gaps for Category 3 Water

The easiest way to conceptualize the exclusions for Category 3 water is to think of them as pollution exclusions on steroids. The anti-concurrent causation language applying the exclusion for fungi/mold/bacteria to the entire loss if any of these materials is even partially involved *in any sequence* to the loss is the steroids part of the analogy. As in other forms of excluded pollutants as a cause of loss, the most reliable insurance coverage solutions for Category 3 water losses will fall within the insurance products offered by the environmental insurance marketplace.

For all of the stakeholders mentioned in Table 1 below, if general liability insurance can be obtained without specific exclusions for fungus or bacteria *and* the definition of a "pollutant" can be amended to specify that fungi/bacteria are specifically not pollutants *and* losses related to water damages are not separately excluded by endorsement, then there may not be a need for supplemental environmental insurance to address Category 3 water loss exposures. I do not know of any insurance policies fitting all of the coverage elements detailed above in any class of business at the time of this writing.

Specially adapted environmental insurance products to address the effects of fungus/bacteria exclusions were originally introduced in September 2003, 2 years before the fungus/bacteria exclusions became commonplace on Main Street, USA. With 10 years of insurance product maturation, there are actually good coverage solutions for most Category 3 water-related exposures today.

Insurance practitioners will be working with two basic types of environmental insurance to fill the insurance coverage gaps for Category 3 water in property and liability insurance policies.

### Environmental Impairment Liability (EIL)

This insurance policy fills the coverage gaps created by pollution/fungus/mold/bacteria/Category 3 water/asbestos/lead exclusions that are common in the property and liability insurance policies purchased by property owners. EIL insurance provides coverage for bodily injury, property damage, defense costs, cleanup and restoration expenses, loss of rents, business interruption, and extra expense coverage at designated properties. For property owners or lessees that have water intrusion loss prevention plans in place, coverage for Category 3 water losses is readily available with limits exceeding \$100 million.

### Contractors Environmental Liability (CEL)

This policy fills the coverage gaps created by pollution/fungus/mold/bacteria/Category 3 water/asbestos/lead/contaminated drywall exclusions that are common in the liability insurance policies purchased by contractors. CEL insurance provides coverage for bodily injury, property damage, defense costs, and cleanup and restoration expenses arising from the insured operations of the contractor. Insurance market capacity for high-quality coverage exceeds \$100 million. Minimum premium for a good-quality CEL policy covering Category 3 water loss exposures is about \$3,500 as of the date of this writing.

Click [here](#) for **Table 1. Insurance Coverage Gaps and Insurance Solutions**

The "Insurance Coverage Gaps and Insurance Solutions" table assumes the referenced environmental insurance policies have been specifically modified to address fungus/bacteria loss exposures. As a word of warning, off-the-shelf environmental insurance products are usually not well suited for insuring fungus/mold/bacteria/Category 3 water risks because the insurance policies were not originally created for indoor environmental loss exposures. Therefore, special attention needs to be paid to adapting environmental insurance policies for indoor environmental loss exposures.

EIL and CEL policies are marketed under many different brand names. There are more than 80 different environmental insurance policy forms that can address Category 3 water loss exposures. Some policy forms are significantly better than others are. The insurance premium, limits of liability, and deductible are very poor gauges of the quality of the coverage offered.

## Conclusion

There are no dark secrets related to Category 3 water. The facts and resource documents to study the subject are available to the general public and always have been. There never were Special Forces operatives in the insurance business engaged to eliminate Category 3 water damages from property and liability insurance contracts. There was, however, a concerted effort to eliminate "toxic mold" losses at the turn of the century. Category 3 water losses are more than 50 times greater than mold losses, and they were excluded in the process of eliminating claims from "toxic mold."

Category 3 water is defined as Category 3 because of the pollutants/contaminants it contains, including bacteria. Intentional or not, the insurance coverage drafters eliminated or severely sublimited all losses related to Category 3 water by default when the word bacteria was inserted into "mold exclusions."

Most Category 3 water losses are being paid as Category 1 water losses today because claims adjusters make no distinction between the categories of water involved in a loss. The only thing potentially wrong with that scenario is that paying claims as a matter of routine business practice that are technically not covered by the insurance contracts that the insurance company sells potentially exposes the insurance company directors to shareholder derivative action lawsuits. With billions of historical insurance claims dollars associated with Category 3 water losses potentially in dispute with shareholder representatives, it is likely that the differences between the insurance coverage sold and the claims payments made related to Category 3 water damages will narrow over time.

In anticipation of more coverage denials on losses related to Category 3 water, insurance practitioners are well advised to fill the gaps in insurance coverage created by fungus/bacteria exclusions on a proactive basis. Insurance coverage solutions for virtually all sources of Category 3 water losses are readily available in the environmental insurance marketplace and have been for more than 7 years.

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<sup>1</sup>In 1994, the IICRC made the decision to eliminate the use of gray and black water references in the professional standard because color-based descriptions of the water were not accurate. Water grossly contaminated with bacteria can be perfectly clear, Category 3 water formerly referred to as black water is rarely black, and Category 2 water formerly referred to as gray water might not be gray.

<sup>2</sup>It is important to note that "contaminates" is an operative word found in the standard pollution exclusions universally found in property and liability insurance policies. Although the discussion below will focus on Category 3 water in reference to the fungus/bacteria exclusions, many of the contaminants referenced in the definition of Category 3 water technically trigger both pollution exclusions and fungus/bacteria exclusions. In some states, as established by litigated insurance coverage caselaw, bacteria has already been determined to be a "pollutant" within the ISO standard definitions used in pollution exclusions. In these states, Category 3 water is excluded by both pollution exclusions and fungus/bacteria exclusions, the latter being by far the more onerous of the two exclusions.

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