Pollution Exposures and Coverages

Driving members to distinction.
Pollution Exposures & Coverages

Video Presentation

Introduction of Pollution Exposures
Pollution Exposures and Coverages

Section 1
Overview of the Pollution Exposure

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Pollution Exposures & Coverages

What are Pollution Exposures?

- Site assessment, testing, upgrading fines & penalties
- Upgrading facilities
- On-site cleanup (remediation)
- Off-premises cleanup
- Injuries and damages to third parties
- Fines, penalties, etc.
Pollution Exposures & Coverages

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Covering Financial Exposures for Pollution
Pollution Exposures & Coverages

Who Has a Pollution Exposure?

- Property Owners
- Manufacturers
- Contractors
- Refineries, oil jobbers, distributors, service stations, etc.
- Wholesalers & retailers
- Restaurants
- Truckers
Pollution Exposures and Coverages

Section 2
The Government and Pollution
Pollution Exposures & Coverages

Video Presentation

Pollution Liability and Statutes
FIRST Federal Legislation statute establishing financial responsibility requirements for owners/operators of hazardous waste treatment, storage or disposal facilities

- Manufacturing, refineries, service stations and butane/propane distributors
  - $1 million occ./$2 million agg. for “sudden”

- Surface impoundments, landfills & land treatment facilities
  - a $1 million occ./$2 million agg. for “sudden”
  - a $3 million occ./$6 million agg. for “non-sudden”
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Comprehensive Environmental Response, Compensation & Liability Act (CERCLA)

- Federal statute creating “Superfund” to be used by federal government for cleanup. Established who could be liable for cleanup and damages.

- Who could be held liable?
  - Current owner and operator of site
  - All owner(s)/operator(s) from time of first release
  - Any person/organization that arranged for disposal, treatment or transportation of substances or any person transporting substances
  - Corporate employees participating in or having knowledge of the disposal or treatment
  - Lenders who foreclose & take operational control of site
Pollution Exposures & Coverages

- Hazardous & Solid Waste Amendments to RCRA
  - Authorized EPA to develop design, construction and installation standards for underground storage tanks
  - Established dates for compliance

- Superfund Amendments & Reauthorization Act (SARA)
  - Provides “innocent landowner” defenses under CERCLA
    - Land was contaminated at time of purchase, and
    - Purchaser made all appropriate inquiries as to previous ownership & use of property
## Pollution Exposures & Coverages

### Financial Responsibility Requirements

**Underground Storage Tanks (Petroleum Only)**

<table>
<thead>
<tr>
<th>TYPE OF RISK</th>
<th>OCCURRENCE LIMIT</th>
<th>AGGREGATE LIMIT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Used in Petroleum Production, Refining, or Marketing</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1-100 tanks</td>
<td>$1,000,000</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>101 or more tanks</td>
<td>$1,000,000</td>
<td>$2,000,000</td>
</tr>
<tr>
<td><strong>NOT Used in Petroleum Production, Refining, or Marketing</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total throughput of 10,000 or less gallons per month</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1 – 100 tanks</td>
<td>$500,000</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>101 or more tanks</td>
<td>$500,000</td>
<td>$2,000,000</td>
</tr>
<tr>
<td><strong>Total throughput of MORE than 10,000 gallons per month</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1 – 100 tanks</td>
<td>$500,000</td>
<td>$1,000,000</td>
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</tbody>
</table>
Pollution Exposures & Coverages

Motor Carrier Act of 1980 (Sections 29 & 30)

- Published “hazardous materials” list
- Established financial responsibility requirements for haulers of hazardous materials
- Requirement that MCS-90 endorsement be attached to auto liability insurance
  - Financial guarantee for required limits; and bodily injury, property damage and environmental restoration
  - Does not change limits or coverage of auto policy
  - Permits insurer to recover from insured for any loss not covered by the auto policy
Pollution Exposures and Coverages

Section 3
The CGL Policy and Pollution

Driving members to distinction.
Pollution Exposures & Coverages

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What is a Pollutant?
Pollution Exposures & Coverages

What Does the CGL Exclude?

Bodily injury or property damage arising out of discharge or release of “pollutants”

- At or from any premises which is or was owned or occupied by or rented or loaned to any insured,

**EXCEPT:**

- Caused by smoke, fumes, vapor or soot from building’s heating equipment
- If a contractor and the owner of site has been added as an additional insured
- Arising out of a “hostile fire”
Pollution Exposures & Coverages

What Does the CGL Exclude?

Bodily injury or property damage arising out of discharge or release of “pollutants”

- At or from premises which is or was used to handle, store, dispose of, process or treat waste

- Which are or were transported, handled, stored, treated, disposed of, or processed as waste
Pollution Exposures & Coverages

What Does the CGL Exclude?

Bodily injury or property damage arising out of discharge or release of “pollutants”

- Contractor operations if “pollutants” brought on site by or for contractor, **EXCEPT**:
  - Accidental discharge of fuels, lubricants or other operating fluids from “mobile equipment”
  - Release of gases, fumes or vapors within a building from materials brought into the building in connection with operations being performed by the insured or its contractors
  - “Hostile fire”
Pollution Exposures & Coverages

What Does the CGL Exclude?

Bodily injury or property damage arising out of discharge or release of “pollutants”

- Any premises where insured or its contractors are performing operations to test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize “pollutants”
Pollution Exposures & Coverages

What Does the CGL Exclude?

Cleanup Exclusion

- Loss, cost or expense arising out of request, demand or requirement to test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize “pollutants” or any claim by the government, **EXCEPT** liability the insured would have in the absence of any request, demand or requirement
Pollution Exposures & Coverages

What Does the CGL Cover?

- Products – completed operations
- Hostile fire
- Smoke, fumes, vapor or soot from building’s heating equipment
- Contractor operations if:
  - Pollutants not brought on site by or for contractor
  - Operations do not involve testing, removing, treating pollutants
Pollution Exposures & Coverages

What Does the CGL Cover?

- Accidental discharge from operating system of mobile equipment
- Release of gases, fumes or vapors within a building from materials brought into the building in connection with insured’s operations.
Pollution Exposures & Coverages

**Which Endorsement is Usually Added to the CGL?**

Total Pollution Exclusion (CG 21 49)
Pollution Exposures & Coverages

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Unendorsed CGL
Pollution Exposures & Coverages

Coverage in the ISO CGL Occurrence Form and Known Injury or Damage Provision

What is the Purpose of the “Known Injury or Damage” Provision?

Primary purpose is to prevent the stacking of policies for continuous occurrences or repeated occurrences arising out of the same set of circumstances.
Pollution Exposures and Coverages

Section 4
The Business Auto Policy and Pollution

Driving members to distinction.
Pollution Exposures & Coverages

Auto-Related Pollution Claims

Pollution claims can arise out of ownership, maintenance or use of our autos.

Business auto policy does provide for some coverage.
Pollution Exposures & Coverages

What is Covered?

- In a covered auto, away from your premises, and strike the container of the pollutant
- Accidental discharge, away from your premises, from the fuel system of a covered auto

What is NOT Covered?

- The Hauling or Cargo Exposure – a pollution spill resulting from something you are hauling.
Pollution Exposures & Coverages

**What Endorsement Can Be Used to Cover the “Hauling” or “Cargo” Exposure?**

Pollution Liability – Broadened Coverage for Covered Autos (CA 99 48)

- Paragraph “a” of pollution exclusion (transported or loading and unloading) does not apply
- Care, Custody or Control exclusion does not apply
Pollution Exposures & Coverages

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Paying for Clean Up
Pollution Exposures and Coverages

Section 5

Mold

Driving members to distinction.
Pollution Exposures and Coverages

What are the Exposures?

- Direct damage to the property
- Remediation Costs
- Loss of Income
- Bodily Injury
Pollution Exposures and Coverages

Who Has These Exposures?

- Property Owners

- Contractors
  - New Construction
  - Renovation and repair
Pollution Exposures and Coverages

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Example of Mold Exposure
How Do Our Policies Address Mold?

Commercial Property:

- Direct damage and remediation costs are limited to $15,000
- Loss of income and extra expenses are limited to 30 days
- Adding CP 04 34 allows purchasing higher limit and increasing the number of days for loss of income
Pollution Exposures and Coverages

How Do Our Policies Address Mold?

Commercial General Liability:

✔ EPA has classified mold as a pollutant - CGL Pollution exclusion should apply

✔ Courts have been reluctant to consider mold a pollutant because it is not man-made

✔ CGL Endorsements
  • Fungi or Bacteria Exclusion (CG 21 67)
  • Limited Fungi or Bacteria Coverage (CG 24 25)
Pollution Exposures and Coverages

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Examples of Violation
Pollution Exposures and Coverages

Section 6
Pollution Recap
Unendorsed CGL provides some pollution coverage

- Bodily injury or property damage arising out of discharge or release of “pollutants”
  - Caused by smoke, fumes, vapor or soot from building’s heating equipment
  - Arising out of a “hostile fire”
  - If a contractor and the owner of site has been added as an additional insured
Pollution Exposures and Coverages

Coverage that We Have in Standard Policies

- Some contractor operations are covered in CGL
  - Accidental discharge of fuels, lubricants or other operating fluids from “mobile equipment”
  - Release of gases, fumes or vapors within a building from materials brought into the building in connection with operations being performed by the insured or its contractors (Janitorial services for example)
Pollution Exposures and Coverages

Coverage that We Have in Standard Policies

- Contractor operations are NOT covered in CGL
  - Contractor brings pollutant onto site
  - Clean up and remediation
- Products completed operations are covered
- Clean up covered if insured is liable
- Pollution endorsements
  - Total Pollution Exclusion
- Mold not specifically excluded by name in CGL
  - Fungi Bacteria Endorsements
Pollution Exposures and Coverages

Coverage that We Have in Standard Policies

Business Auto

- Business Auto Policy provides some pollution coverage
- Unendorsed business auto policy does not cover the hauling or cargo exposure
  - Need Broadened Pollution Endorsement
- Federal Endorsement – MCS 90
  - Guaranteed bond
  - Insured carrying required limits
### Pollution Exposures and Coverages

#### Coverage that We Have in Standard Policies

<table>
<thead>
<tr>
<th>Business Auto</th>
<th>Federal Endorsement – MCS 90 (con’t.)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>- Provides bodily injury, property damage, and environmental restoration</td>
</tr>
<tr>
<td></td>
<td>- Does NOT change policy</td>
</tr>
<tr>
<td></td>
<td>- Allows insurance company to recover expenses from their own insured</td>
</tr>
</tbody>
</table>
Pollution Exposures and Coverages

Section 7
Managing the Pollution Exposure

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Pollution Exposures and Coverages

Risk Management - Avoidance

- Don’t buy anything
  - Don’t do anything
    - Don’t sell anything
      - Don’t go into business!
Pollution Exposures and Coverages

Risk Management - Insurance

- There is no standard pollution liability policy covering all exposures
- Separate Policies and Endorsements
  - Underground and above ground storage tanks
  - Transit and hauling exposures
- Professional Services and Activities
- Remediation
Pollution Exposures and Coverages

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Non-Insurance (Contractual) Transfers
Pollution Exposures and Coverages

Section 8
Pollution Liability Checklist

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Pollution Exposures & Coverages

Questions You Need to Ask

- Who is the insured?
- What does the insured do?
- Where does the insured conduct business?
- What type of pollution liability policy is needed for this insured’s specific exposures?
Pollution Exposures & Coverages

Claims Made Policy

- Claim made during policy year
- No stacking
- Retroactive date
- Full prior acts coverage
- Extended reporting period provisions
Pollution Exposures & Coverages

Claims Made Policy

✓ Deductible
✓ Defense Costs
  ▪ In addition to limits
  ▪ Within limits
Pollution Exposures & Coverages

Claims Made Policy

✓ Who is an insured?
✓ Exclusions
  - Contractual relationship
  - Intentional non-compliance with statute
  - Ownership, maintenance, use and loading or unloading of autos, aircraft and watercraft
Pollution Exposures & Coverages

Claims Made Policy

✓ Exclusions, con’t.

- Loading and unloading rolling stock
- Asbestos
- Underground storage tanks
- Work at ports and offshore facilities
- Professional activities
Pollution Exposures & Coverages

Claims Made Policy

✓ Exclusions, con’t.
  - Superfund Sites
  - Fines and penalties
  - Punitive damages
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Pollution – Not a One Size Fits All Policy
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Section 9
Questions & Answers

Driving members to distinction.
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Questions and Answers