

Vermont Insurance Division

BULLETIN 111: Pollution Coverage

October 18, 1996

THIS BULLETIN REPLACES BULLETIN 106 DATED OCTOBER, 1994

1. POLICY ON POLLUTION COVERAGE: APPLICABLE TO ALL COMMERCIAL POLICIES AND COVERAGE PARTS:

The Department requires all insurers issuing liability policies in Vermont to provide coverage for pollution by endorsement, with limited exceptions. In order to foster availability of liability coverage with licensed companies, the Department will allow pollution exclusions as discussed below. These exclusions should be used only when liability coverage would not otherwise be made available.

The Department has approved liability policies with an endorsement (such as ISO forms CG 01 54 and CA 01 53) which provide claims-made coverage for pollution, i.e., the insurer responding to the pollution incident would be the company providing coverage when the claim is made and the applicable limit would be the limit on the policy when the claim is made.

2. CONSENT TO RATE PROCEDURE

The Department will consider Consent to Rate applications from licensed insurance companies or their agents seeking to attach a pollution exclusion to liability coverage when there is a high probability of a pollution claim. Consent to Rate is defined in Title 8, V.S.A. Section 4688(f): Consent to rate. Notwithstanding any other provisions of this title, upon written application of the named insured, stating the reasons therefore and filed for approval of the commissioner, a rate in excess of, or coverage more restrictive than, that provided by an otherwise applicable filing may be used on any specific risk. Such rate or coverage shall not be effective unless approved by the commissioner and in accordance with the effective date therefore established by him. [emphasis added]

A business with a high probability of a pollution claim may be a business which stores and disposes of chemicals or has an oil storage tank of 1000 gallons or more. An insurance company might reject an application for liability coverage from such a business where the age of the equipment is not known, is of questionable quality, or represents old technology, unless the insurance company was permitted to attach a pollution exclusion. The Department will routinely approve this type of Consent to Rate application. Note that each application is individually considered, and that this procedure is not to be used to routinely attach a pollution exclusion to all policies. We will approve use of the exclusion only where there is an identifiable pollution exposure.

3. FILING THE CONSENT TO RATE APPLICATION

a. The attached Consent to Rate application must be completed and signed by the insured, and mailed to the Department along with a cover letter and a copy of the exclusion.

b. For general information, please refer to Regulation I-85-1 Property and Casualty Insurance Filing Procedures and Reporting Requirements, Section V (E) concerning Consent to Rate filings.

c. The pollution exclusion must be signed by the named insured no later than 15 days after the effective date of the policy to which it is attached. Insurers are not permitted to extend the term of the latest expiring policy for the purpose of obtaining a signature within this deadline. The Department views this as an improper cancellation and an unfair trade practice. If the filing contains an application signed by the named insured more than 15 days after the effective date of the policy, the Department will disapprove the pollution exclusion.

d. If you wish an acknowledgment of the filing, you must attach a stamped, self addressed return envelope.

e. Address the letter which accompanies the Consent to Rate Application to:

Department of Banking, Insurance, Securities and Health Care Administration
89 Main Street, Drawer 20
Montpelier, Vermont 05620-3101

f. The application must be received by a representative of the Department no later than 60 days after the effective date of the policy.

4. SIMPLIFIED CONSENT TO RATE PROCEDURES FOR SPECIFIC POLLUTION RELATED

SITUATIONS

a. In order to reduce the number of routine filings, the Department will permit insurance companies to attach a pollution exclusion to liability coverage without filing a Consent to Rate application for businesses in specific classes. This is not to suggest that a pollution exclusion is mandatory for these classes. Insurers are encouraged to provide liability coverage with no pollution exclusion for these classes.

b. The following classes of businesses which perform operations described by the following terms may qualify for this simplified procedure:

Agricultural equipment sales/service

Airports

Automotive body shops

Automotive parts stores with shops

Automotive repair shops

Automotive sales

Battery manufacturers

Battery recyclers

Fuel oil and kerosene sales Marinas

*Mobile equipment sales/service

Municipalities

Printers

Recreational vehicles sales/service

Refuse disposal

Retail gasoline sales

Septic tank service

An insurance company wishing to use this simplified procedure for the above classes of insured businesses must first file the procedure and form they intend to use for these classes with the Department, following the usual practice for making filings with the Department. Once the procedure and form have been approved, insurers do not need to file a consent to rate application for each liability policy with a pollution exclusion issued to businesses in the classes listed above. However, insurers must obtain the signature of the insured on the application for each policy (including renewal policies) as described in section 3.c. above, and must retain a copy of that signed application in the insurance company files.

Note: In items (3) and (4) above, if the renewal policy number is identical to that of the expiring policy, the existing application can be brought forward without a new signature.

5. UMBRELLA POLICIES

a. An insurance company issuing a umbrella policy is not required to make a Consent to Rate filing to exclude pollution claims if:

> the umbrella policy adopts the language of another policy which excludes coverage;
and

> the insurance company providing the underlying liability coverage has made a Consent to Rate filing or issued the underlying policy following the simplified procedures outlined in Section 4, above.

b. If the insurance company issuing an umbrella policy does not adopt the underlying policy's exclusion by reference, then the procedures described in parts 3 and 4 apply.

6. CONTACT PERSON

Questions concerning this bulletin may be directed to:

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89 Main Street, Drawer 20
Montpelier, Vermont 05620-3101

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Elizabeth R. Costle

COMMISSIONER