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Client Advisory

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COMMERCIAL GENERAL LIABILITY POLLUTION EXCLUSION

Overview

Exclusion f. Pollution of the standard General Liability contract (CG 00 01 12 04) is the most lengthy and possibly the most complicated of all the 15 standard exclusions. This exclusion is frequently misunderstood by agents and brokers, underwriters, claim adjusters and contractors.

Potential Problem

Confusion about Exclusion f. Pollution could result in a contractor not understanding the true exposure of a situation. A complete understanding of this exclusion is also essential when dealing with claim adjusters that are incorrectly applying this exclusion to otherwise covered events. Lastly, a better understanding of this exclusion will enable the contractor to be more effective in negotiations with an underwriter when they feel the need to attach the CG 21 49 09 99 – TOTAL POLLUTION EXCLUSION ENDORSEMENT and why endorsements CG 21 55 or CG 21 65 may be a more desirable alternative.

Solution

Carefully read Exclusion f. Pollution and become familiar with the 5 sets of circumstances under which a release or escape of "pollutants" is excluded:

The first step to understanding the Pollution Exclusion is to understand what the policy means by a "pollutant". (See attached definition)

1. The exclusion applies when the pollution event is "at or from" premises that have at anytime been owned, operated, rented or loaned to any insured. This part of the exclusion eliminates coverage for injury or damage that occurs on the insured's premises or that is caused to other premises when the pollutant escapes beyond the boundaries of the insured's premises.
2. When the pollution event is at or from any waste disposal or treatment site.

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Client Advisory

Page 2

3. When the pollutants involved in the claim are waste that has been transported, stored, disposed of, or handled in any way by the insured or by anyone performing such operations for the insured or other parties for which the insured has legal responsibility.
4. When the pollution event occurs at a site where the insured or the insured's contractors or subcontractors are doing work in connection with which the insured or the insured's contractors or subcontractors brought the pollutants to the site.
5. When the pollution event occurs at a site where the insured or the insured's contractors or subcontractors are engaged in pollution clean up or remediation.

Exclusion f. Pollution, however, does leave in tact some important areas of coverage:

1. Manufacturers of substances that meet the definition of pollutant are still provided products liability coverage.
2. A pollution event away from the insured's premises, not involving waste products or pollutants that the insured brought onto the site and did not arise out of the insured's remediation work, would still be covered.
3. Smoke and fumes from a hostile fire are not considered "pollutants" within the context of the owned – premises and the off – premises contracted work sections of the exclusion. If an insured's premises burns down, the resulting smoke damage to surrounding properties or people would not be regarded as injury or damage caused by a "pollutant", (smoke from an incinerator or from a deliberate fire would still be subject to the exclusion).
4. In reference to bodily injury that results from smoke, fumes, vapor or soot from a buildings heating equipment or water heater are not excluded. Coverage is provided for carbon monoxide leaks from such equipment.
5. Another exception to the owned premises section of the exclusion applies to the pollution events at or from premises owned by someone

Page 3

who has been made an additional insured under the named insureds

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Client Advisory

policy. Without this exception, a contractor would have no pollution coverage for work done on premises owned by an additional insured project owner.

6. The accidental escape or release of "operating fluids" (gasoline, diesel fuel, motor oil, or hydraulic fluid) from part of a piece of mobile equipment designed to hold, store or receive those liquids. The ruptured hydraulic line of a backhoe used on a construction site would not be an excluded pollution event.
7. Exclusion f. does not apply to off premises work involving injury or damage caused by fumes from materials used by a contractor in the work. Such injury or damage is not excluded, as long as the injury or damage occurs inside a building and is caused by fumes from materials that were brought into the building in connection with the work.

In addition to understanding what Exclusion f. Pollution actually excludes and does not exclude, every effort should be made to avoid having a carrier use CG 21 49 09 99 – TOTAL POLLUTION EXCLUSION ENDORSEMENT. This endorsement eliminates many coverages that would ordinarily be provided by the unendorsed CG 00 01 12 04 contract.

If you are unable to negotiate the elimination of endorsement CG 21 49 09 99, it is critical to convince the underwriter to use CG 21 65 12 04 as an alternative.

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