
POLLUTION/ENVIRONMENTAL LIABILITY EXCLUSION CLAUSE

On July 31, 2000, IBC issued Bulletin No. Standards & Practices AMSP 2000-3 explaining changes to the Pollution Liability Exclusion as contained in the revised Commercial General Liability forms IBC 2100 and 2200.

Coincident with the introduction of the two new CGL policy wordings, two endorsements were discontinued. These were IBC 2300 – Pollution Liability Coverage Extension and IBC 2313 – Limited Pollution Liability Coverage.

These changes followed recommendations contained in the IBC **Report of the Environmental Liability Committee** dated August 1994.

The new policies contain a “total” pollution exclusion, but provide for the choice to purchase **OPTIONAL POLLUTION LIABILITY EXTENTIONS** in the form of **Option 1** (similar to the previous “absolute” exclusion coverage) or **Option 2** (similar to the previous IBC 2313 coverage).

RRC was concerned that IBC had decided to include coverage for government-ordered clean up under the optional extensions. Nevertheless, RRC determined that this is acceptable if:

- Cover is clearly defined.
- Cover is subject to specific limits.
- Clean up does not extend to owned, rented or occupied property.
- Cover is properly understood and underwritten.

RRC has developed the new Pollution/Environmental Liability Exclusion for treaty use to be concurrent with the primary IBC policy wordings.

Special underwriting considerations:

- Cover is not limited to Canada, so Superfund claims are possible.
- IBC has recommended against the use of the time-element extension (Option 2) for risks with underground storage tanks.
- The extension options are not suitable for all risks. EIL cover is available from specialist markets for high hazard risks. Special underwriting, inspection and wording considerations may apply.
- The 1994 IBC report introduced an Industry Classification for Environmental Hazards. As the Pollution Liability Association was disbanded, this new classification could be considered as a base for a replacement of references to PLA classifications when defining classes of business to which the extensions might apply.

POLLUTION/ENVIRONMENTAL LIABILITY EXCLUSION CLAUSE

The following exclusion applies to all new, renewal or replacement policies that become effective on or after _____.

This agreement does not cover any liability for:

- A. Bodily injury or property damage arising out of a spill, discharge, emission, dispersal, seepage, leakage, migration, release or escape of "pollutants":
- i) at or from any premises, site or location which is or was at any time, used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
 - ii) arising from the transportation, handling, storage, disposal, processing, or treatment of waste by or for any insured or any organization for whom the insured may be legally responsible;
 - iii) at or from any premises, site or location on which any insured or contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are for "cleanup"; or
 - iv) at or from any premises, site or location:
 - a) which is or was at any time, owned or occupied or rented or loaned to an insured; or
 - b) on which any insured or contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought onto the premises, site or location in connection with such operations by or on the instruction of such insured, contractor, or subcontractor;but paragraph iv) does not apply to bodily injury or property damage
 - (i) if caused by heat, smoke or fumes from, or fire extinguishing substances used to fight a fire which becomes uncontrollable or breaks out from where it was intended to be, or
 - (ii) if all (4) of the following conditions are met:
 - (1) the spill, discharge, emission, dispersal, seepage, leakage, migration, release or escape of "pollutants" commences during the term of this agreement;
 - (2) the spill, discharge, emission, dispersal, seepage, leakage, migration, release or escape of "pollutants" occurs in a quantity or with a quality that is in excess of that which is routine or usual to the business of the insured;
 - (3) the spill, discharge, emission, dispersal, seepage, leakage, migration, release or escape of "pollutants" is detected within 120 hours of its commencement;
 - (4) the spill, discharge, emission, dispersal, seepage, leakage, migration, release or escape of "pollutants" is reported to the cedant within 120 hours of its being detected.
 - v) which occurred prior to the term of this agreement.
- B. Any fines, penalties, punitive or exemplary damages assessed against or imposed upon any insured.

"Pollutants" means any solid, liquid, gaseous, or thermal irritant or contaminant including smoke, odour, vapour, soot, fumes, alkalis, acids, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

"Cleanup" means to test for, monitor, clean-up, remove, contain, treat, detoxify, decontaminate, stabilize, remediate or neutralize or in any way respond to or assess the effect of "pollutants".