
Limited Pollution Coverage via CGL Endorsements

Standard carriers occasionally offer limited pollution coverage endorsements with their general liability policies. You may come across an agent that is selling this limited coverage as a solution to the insured's environmental risk. These endorsements are inexpensive, but they leave the policyholder exposed to significant risk. Be prepared in case a competing agent offers this coverage to one of your clients. Following are a few of the common issues found in standard carrier pollution endorsements (this is not a comprehensive list):

- **Clean-up Costs** – The most frequent, and often the most costly, element of a pollution claim is the remediation expense. True pollution coverage explicitly covers clean-up costs, in addition to BI and PD. Most limited pollution coverage endorsements do not redefine “Property Damage” to include clean-up costs, making it unlikely the policy would respond to many environmental claims.
- **“Your Premises”** – Some limited coverage endorsements appear to include coverage for the insured's premises. It is only paying for third-party BI & PD, not clean-up costs, so the value of this “on-site coverage” is very minor and often misleading.
- **Limited Time Element** – This restriction limits the discovery time frame (usually 72 hours). This would then exclude any pollution that goes undiscovered over time, migrates or grows over time.
- **Reasonable Cost** – Be wary of this limiting language. It can also often read “necessary in scope”. You have to ask yourself, “who decides what a reasonable cost is?” True pollution coverage pays to remediate the problem to the standard required by governing environmental law. The environmental laws in this country are concerned only with ensuring public health and the standards required for clean-up are often anything but “reasonable” in cost.
- **UST Exclusion** – Many of these endorsements specifically exclude any claim that results in any way from an underground storage tank. You can't dismiss the relevance of this exclusion because your client doesn't own an underground storage tank. Leaking USTs that have been abandoned and buried are a real environmental risk for property owners or contractors involved in excavation work.
- **Burden of Proof** – If there is a dispute over the validity of a claim, some of these limited coverage endorsements put the burden of proof, and the resulting expense, squarely on the insured. Determining when the pollution conditions first commenced can be contentious and expensive.
- **Government Triggers** – Language varies widely and can be difficult to unravel. A government trigger would exclude any clean-up coverage unless action was mandated by a government action.
- **Claims Made, Occurrence or Neither?** – Some endorsements require that the BI or PD take place during the policy period (like an occurrence form) AND that the claim be



reported during the policy period (like a claims made form, only without extended reporting options). The result of this hybrid approach is coverage that is far inferior to both occurrence and claims made coverage. This issue has particular relevance for bodily injury claims, where the alleged injury is often reported well after the exposure to the harmful contamination.

- **Sub-Limits** – These limited coverage endorsements often have much smaller limits than a traditional pollution policy (\$250K or less is common). Policyholders should be aware that a pollution claim can use up most of this limit in defense alone.
- **Release From Wells** – This often overlooked exclusion for release or escape from a well is very relevant for any insured involved in the Oil & Gas industry.
- **Asbestos or Lead** – Many limited pollution coverage endorsements exclude any claims arising in any way from asbestos or lead. These exclusions are not only relevant for contractors performing abatement operations. Most contractors are at risk because of asbestos or lead within older buildings. Naturally occurring asbestos can even be an exposure for excavation contractors or developers.
- **“Entirely Above-ground”** – Coverage provided under limited pollution endorsements may be limited to pollution incidents that happen entirely above-ground. It is no small issue to exclude pollutants that seep into the ground.
- **Products-Completed Operations** – Completed operations are frequently excluded from coverage provided by limited pollution endorsements. Sometimes the exclusion is obvious and labeled as such. Other times carriers take a more subtle approach, such as limiting coverage to locations on which you are performing

operations. Once the job is finished, so is their limited pollution coverage.

- **Failure of Pollution Control Equipment** – There may be an exclusion for conditions that arise as the result of a failure by equipment designed to prevent pollution.
- **Injurious Presence of Pollutants** – The definition of “Pollution Incident” in some forms states that “such emission, discharge, release or escape results in the injurious presence of pollutants”. The standard used in excluding pollution events from the GL policy, by way of the Total Pollution Exclusion, has included a far lower standard. Events that could be excluded under the GL may not meet the injurious presence of pollutants standard created by the limited coverage endorsement.
- **Loading/Unloading** – When standard carriers provide limited transit pollution liability coverage, it often excludes loading or unloading and may also exclude carried cargo.
- **Suit from a Governmental Agency** – Very common on limited coverage forms. This exclusion states that it will not pay for loss resulting from a claim or suit by or on behalf of a governmental agency for damages as a result of testing or remediation.

Consider This...

Would any right-minded carrier allow a GL underwriter, with little or no environmental training, to provide comprehensive environmental liability coverage and charge next to nothing for it? We are happy to review any limited coverage forms that you may come up against, but you can generally assume that the insured is getting what they pay for.