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Insurance Bulletin No. 111

Pollution Coverage

Revised: March 11, 2024

This Bulletin supersedes and replaces DFR Bulletin No. 111 dated October 18, 1996.

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

The Department of Financial Regulation (DFR) requires all insurers issuing liability policies in Vermont to provide coverage for pollution. Limited exceptions may be allowed if authorized by the Commissioner pursuant to the Consent to Rate (CTR) Procedures described in Sections 2 through 5. 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 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 CTR applications from licensed insurers or their agents seeking to attach a pollution exclusion to liability coverage only when there is a high probability of a pollution claim. CTR is defined in 8 V.S.A. § 4688(f): "Notwithstanding any other provisions of this title to the contrary, 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 the Commissioner.”

A business with a high probability of a pollution claim may be a business which manufactures, stores, distributes, sells and/or disposes of chemicals or goods containing chemicals, or has a fuel storage tank of 1000 gallons or more. An insurer might reject an application for liability coverage from such a business for various reasons, including 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 CTR 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.

3. FILING THE CONSENT TO RATE APPLICATION

- a. The [CTR](#) application must be completed by the insurer or agent/broker and signed by the insured, and submitted via SERFF along with a cover letter and a copy of the exclusion. A CTR filing may be submitted by the insurer or by an authorized agent of the insurer. No filing fee is required for a CTR filing.
- b. Please refer to Bulletin 51 for information on the CTR process. For general information concerning CTR filings, please refer to Regulation I-2010-03, Section 9.
- c. The initial CTR application with 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. Electronic signatures as defined in 9 V.S.A. § 271(9) are acceptable. 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 CTR application for the pollution exclusion.
- d. The application must be filed with the DFR no later than 60 days after the effective date of the policy.
- e. If the renewal policy number is identical to that of the expiring policy, the existing application can be utilized without a new signature.
- f. If the pollution exclusion is altered, the insurer must comply with the requirements set out in section 3c.



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 insurers to attach a pollution exclusion to liability coverage without filing a CTR application with DFR 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:
 - i. Agricultural equipment sales/service.
 - ii. Airports.
 - iii. Automotive body shops.
 - iv. Automotive parts stores with shops.
 - v. Automotive repair shops.
 - vi. Automotive sales.
 - vii. Battery manufacturers.
 - viii. Battery recyclers.
 - ix. Fertilizer, including herbicide, manufacturing, and distributing.
 - x. Firefighting services and material.
 - xi. Firefighting training and facilities.
 - xii. Fuel oil and kerosene distribution and sales.
 - xiii. Marinas.
 - xiv. Mobile equipment sales and service.
 - xv. Municipalities.
 - xvi. Printers.
 - xvii. Recreational vehicles sales and service.
 - xviii. Refuse disposal.
 - xix. Retail gasoline and diesel distribution and sales.
 - xx. Septic tank service
 - xxi. Waste collection services and facilities, including waste treatment and disposal.
- c. An insurer planning to use this simplified procedure for the above classes of insured businesses must first submit the procedure in a manual rule filing and the form they intend to use for these classes in a form filing with the Department. These filings must be submitted via SERFF. Once the rule for the procedure and the form have been approved, insurers do not



need to file a CTR application with DFR for each liability policy with a pollution exclusion issued to businesses in the classes listed above.

- d. The insurer must, however, obtain the signature of the insured on the initial application. The use of an electronic signature, as defined in 9 V.S.A. § 271(9) is allowed. At each policy renewal, the insurer must issue to the policyholder an Important Notice affirming the inclusion of the policy exclusion, along with a copy of the exclusion. The insurer must retain copies of the signed application and Important Notice(s) in the insurance company files.
- e. If the renewal policy number is identical to that of the expiring policy, the existing application can be utilized without a new signature.
- f. If the pollution exclusion is altered, the insurer must comply with the requirements set out in section 4c.

5. UMBRELLA OR EXCESS POLICIES

- a. An insurer issuing an umbrella or excess policy is not required to make a CTR filing to exclude pollution claims if:
 - i. the umbrella or excess policy adopts the language of another policy which excludes coverage; and
 - ii. the insurer providing the underlying liability coverage has made a CTR filing which has been approved by the Commissioner or has issued the underlying policy following the simplified procedures outlined in Section 4, above.
- b. If the insurer issuing an umbrella or excess policy does not adopt the underlying policy's exclusion by reference, then the procedures described in parts 3 and 4 apply.

Inquiries about this bulletin should be directed to the Director of Rates & Forms for Property & Casualty Insurance.

DocuSigned by:

Kevin Gaffney

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Kevin J. Gaffney, Commissioner

3/11/2024

Date

