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VERMONT INSURANCE BULLETINS AND RELATED MATERIALS
BULLETINS

Bulletin 106
October 1994

FROM: Elizabeth R. Costle
Commissioner of Banking and Insurance

DATE: October 1994

RE: LIABILITY INSURANCE AND **POLLUTION** EXCLUSIONS

1. Policy on **Pollution** Coverage

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

The Department has approved general 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 "Consent to Rate" applications from licensed insurance companies or their agents seeking to attach a **pollution** exclusion to general 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 therefor 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 therefor 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. An insurance company might reject an application for general 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. However, this procedure is not intended to be a surrogate for a blanket **pollution** exclusion on all policies issued by the insurance company.

3. Filing the Consent to Rate Application

a. You must complete the attached form, "Consent to Rate Application" and mail it to the Department along with a cover letter and copy of the exclusion signed and dated by the named insured, or an authorized agent or representative of the named insured if it is a corporation.

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.

*2 c. The **pollution** exclusion must be signed by the named insured or authorized agent or representative of the corporation, 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 exclusion signed by the named insured or authorized agent or representative of the corporation more than 15 days after the effective date of the policy, the Department will disapprove the **pollution** exclusion.

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

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

Insurance Analysis Section

Department of Banking, Insurance and Securities

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 with the **pollution** exclusion.

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 general 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.

Auto body shops	Marinas
Auto parts stores with shops	Municipalities
Auto repair shops	New and used car sales
Battery manufacturers	Retail gasoline sales
Battery recyclers	Printers
Fuel oil and kerosene oil sales	

c. 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 general 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 exclusion for each policy (including renewal policies) as described in Section 3.c. above, and must retain a copy of that signed exclusion in the insurance company files.

***3** 5. Umbrella policies

a. An insurance company issuing an 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 general 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 above apply.

6. Contact Person

Questions concerning this bulletin may be directed to:

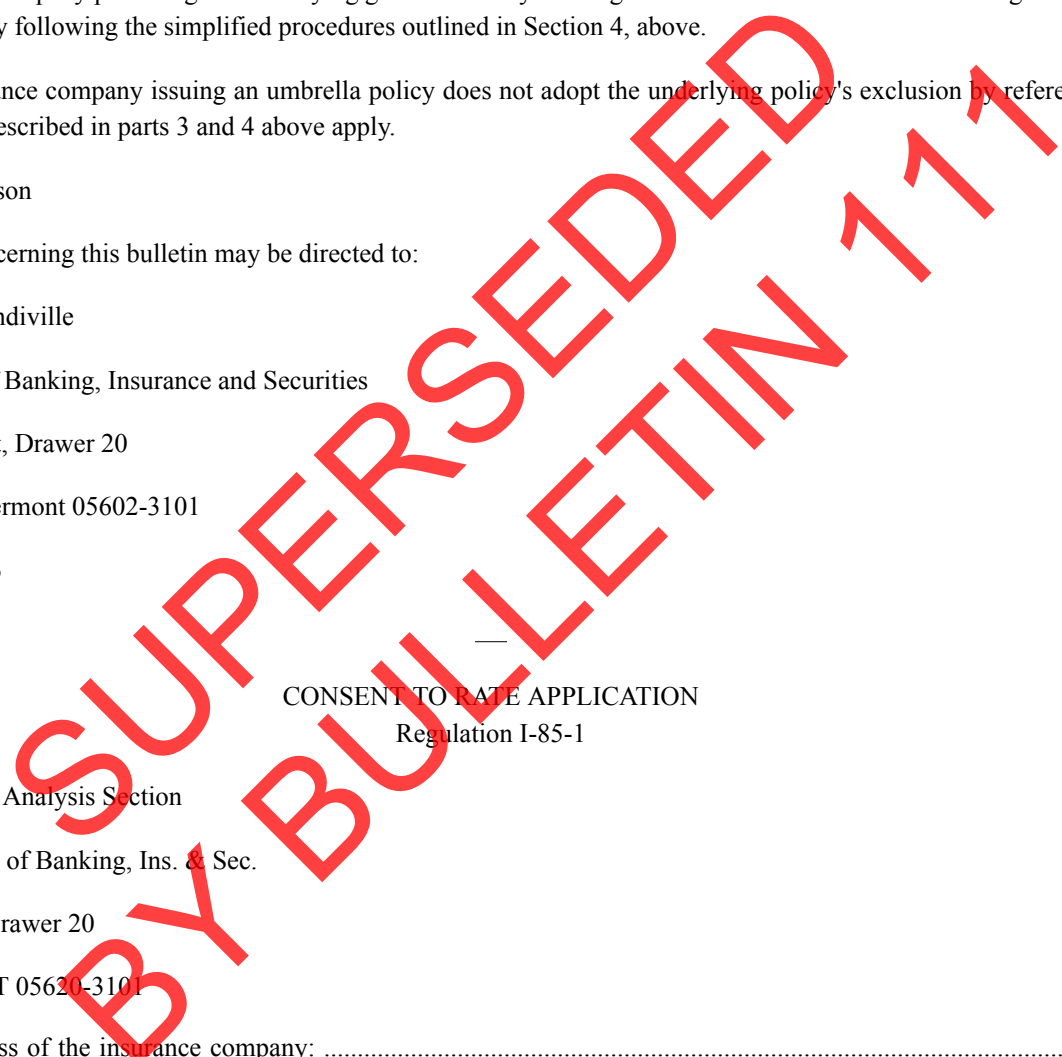
Thomas F. Prindiville

Department of Banking, Insurance and Securities

89 Main Street, Drawer 20

Montpelier, Vermont 05602-3101

(802)828-4843



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CONSENT TO RATE APPLICATION
Regulation I-85-1

TO: Insurance Analysis Section

Vermont Dept. of Banking, Ins. & Sec.

89 Main St., Drawer 20

Montpelier, VT 05620-3101

Name and address of the insurance company:

.....

NAIC insurance company code number:

Name of insured:

Address of insured:

.....

Description and location of the risk:

.....

Policy number: _____ Effective date of policy:

Effective date of endorsement:

Manual Premium: _____ Consent to rate premium:

Reasons for consent to rate premium or non standard coverage:

.....

.....

Description of exposure or coverage eliminated:

.....

I understand the rates for the coverage applied for are higher than normal or the coverage is not standard.

.....

Signature of Insured

Date

Name/title of Insurance Company Representative

.....

Agent/broker

Date

End of Document

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