

# Why your General Liability policy is NOT a Pollution Policy

A General Liability (GL) policy will almost always have at least one kind of pollution exclusion if not more. The most common pollution exclusion is found in the GL policy form itself, usually as Exclusion f. In addition, a lot of carriers will include pollution exclusions via endorsement to the policy. For example, the Total Pollution Exclusion is a common one and the Fungi or Bacteria Exclusion is another that you will see a lot. The main point to take away from these exclusions is that they are designed to kick out coverage for Bodily Injury (BI) and Property Damage (PD) arising out of the discharge, dispersal, seepage, migration, release or escape of “pollutants”. It’s clear that it is not insurance carriers’ intent for GL policies to pick up coverage for pollution-related losses.

A common misconception is that the term “pollutant” only refers to hazardous waste. However, that is not the case. Since 1986, the operative terms in the definition of a “pollutant” in a standard GL policy are “irritant” and “contaminant”. Due to the ambiguity of these terms it comes down to case law in each state to determine if a substance, liquid, vapor, etc. is an irritant or contaminant. A good example from recent news is the Wisconsin Supreme Court’s ruling that manure is in fact an irritant and

contaminant and, therefore, excluded on the standard farm liability policy. So, it seems like anything could be labeled an irritant or contaminant and be excluded by a pollution exclusion.

Another common misconception is that the givebacks and exceptions within the pollution exclusions can be used as pollution coverage. We like to refer to this practice as “insurance roulette”. We cannot truly predict how a pollution exclusion is going to respond before a loss occurs, which makes it dangerous to rely on them as pollution coverage. You are leaving it up to the claims adjuster’s interpretation of the exclusion and the confusing exceptions and givebacks to determine whether coverage is to be offered.

In other words, using a pollution exclusion and its exceptions is a scary way to provide coverage for pollution incidents. For that reason, there are actual environmental insurance products in the market. The coverage trigger for these policies is a pollution incident or condition (i.e. the discharge, dispersal, seepage, migration, release or escape of “pollutants”). They have their own insuring agreements, definitions, and endorsements in order to fill the gap created by pollution exclusion(s) on GL

policies. The most common policy for contractors is a Contractors Environmental Liability policy; these are often referred to as Contractors Pollution Liability (CPL) policy. They are designed to provide coverage for BI, PD, and cleanup costs resulting from a pollution incident or condition caused by your work as a contractor. Many times contractors can be written on a combine form policy that puts their GL and CPL policy together on the same form.



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## CLAIM EXAMPLE

From our time in the environmental insurance industry, it's clear that mechanical contractors have environmental exposure. What's tough is convincing them of this as a lot of them think environmental or pollution exposure is limited to hazardous waste cleanup contractors. However, if these contractors are designing and installing systems constructed to move air and ventilate buildings they have a significant mold exposure. If a system is constructed improperly, moisture can build up and cause mold growth. Mold remediation and cleanup can be expensive and, even worse, mold can make people sick, which then gets really costly. A good old GL policy is most likely going to have Fungi or Bacteria Exclusion and deny coverage for any claim that mentions the "M" word.

A specific claim example we have is a mechanical contractor that installed an HVAC system in an assisted living facility for senior citizens. The system was improperly installed and caused mold growth. A claim was filed against the contractor for property damage and cleanup costs related to the mold. In addition, several occupants were relocated during the repair of the system and the mold remediation of the building.

There is plenty of more literature out there on pollution exclusions that can offer additional insight on the topic. Many more claims examples exist for other contractors as well making it clear that a basic GL policy does not provide sufficient coverage for their environmental and pollution exposures.

## SUMMING IT ALL UP

