A heavy contractor is working on a local highway-widening project for a municipality. Part of the work described in the contract involves excavating soil to provide the proper elevation of the new lane being built. The contract requires you to purchase a project-specific contractor’s Pollution Liability, and so you purchase a policy to satisfy the contract (a piece of paper that promises to pay for a claim subject to terms, conditions and exclusions that limit coverage).

Two weeks into the job, during the excavation process, one of your workers falls ill and checks himself into a doctor’s office. The doctor detects abnormally high levels of lead in his system. They test the soil and find that it’s contaminated with high levels of lead, which was traced back to years of auto exhaust that contained lead until the 1980s.

The claim: The injured worker collects workers compensation coverage from his employer, but then he hires a savvy attorney and sues the state, claiming sole negligence creating an action over situation because your contract requires you to name both the municipality and the state as additional insureds. However, your contract is with the municipality and not the state, so would your Pollution Liability’s additional insured coverage respond appropriately?

Other potential issues contractors face every day include the disturbance of pre-existing contaminated material, lead paint and contaminated soils, surface or groundwater. Contractors can also be sued or fined for accepting supposedly “clean” fill from unknown origins, only to learn later that it was contaminated with petroleum or other hazardous substances.

**First off, what is Pollution Liability Coverage?**

Back in the early ‘80s, a General Liability Policy covered pollution events of all kinds. Due to the education of the general public on environmental awareness, insurance carriers began to see an uptick in the frequency and severity of pollution claims. As a result, they began to exclude this coverage and developed a pollution-specific coverage form that they started to charge premiums for. Pollution Liability policies originally covered your business for third-party liability claims alleging bodily injury and property damages for ongoing and completed operations. Today, the coverage is much more robust, offering coverage for clean-up, remediation, defense costs, emergency response, crisis management, transportation, mold, site pollution for contractor yards and Professional Liability coverage, among others.

**Why do I need it?**

As a contractor, many of the contracts you sign require you to have Pollution Liability coverage. In fact, on some jobs you may be required to purchase specific limits dedicated to that jobsite. Contractors may not be allowed on a jobsite without showing proof that these coverages and minimum limits have been purchased.

Over the past few years, the Pollution Liability insurance marketplace has seen an influx of capital and new markets looking to write this kind of business. As a result, Pollution Liability rates have trended down, making it very cost effective for most business owners to purchase this coverage. As mentioned above, contractors often purchase this coverage due to a contract requirement, but given the reduction in rates over the years, many contractors are choosing to buy a practice policy to cover all of their operations.

Ultimately, the risk/reward to buying or not buying this coverage is significant in nature. Pollution Liability claims don’t occur every day, however, when they do happen they are costly and can cause all types of reputational damages to a contractor.

**What insurance carriers offer this coverage?**

Most carriers that offer General Liability coverage for contractors will also sell Pollution Liability policies. Some of the more notable markets include ACE, Zurich, Ironshore, Travelers, Excel, AIG, Philadelphia Insurance Company and more.
What should I look for in a Pollution Liability coverage form?

As mentioned before, many contractors purchase this insurance simply to satisfy a contract requirement. However, some carriers’ forms limit coverage in some key areas, which may lead to an uncovered claim and a breach-of-contract situation.

For example, the additional insured language in the unendorsed Pollution Liability policy may not comply with the requirements of the contract as seen by these three key points:

- Coverage for Clients Only – Your policy only includes Clients as Additional Insureds. This means that if you are contractually obligated to add the owner or developer of the project you are working on as an Additional Insured in addition to the General Contractor, your policy would fail to provide coverage to the owner or developer of the project.

- Direct Contract Requirement – The Additional Insured Coverage provided by your policy only allows you to provide coverage to the organization or entity with whom you signed a direct contract. This means that if the contract that you signed requires you to provide Additional Insured Coverage to any other organization that is not explicitly a party to the contract, your policy will fail to provide this coverage.

- Vicarious Liability Only – The Additional Insured Coverage provided by your Contractors Pollution Liability Policy only provides Vicarious Liability. This means that you will not be able to satisfy any contractual requirement asking you to provide Sole Negligence Additional Insured Coverage or Partial Negligence Additional Insured Coverage.

Another key provision is the definition of “Pollution Condition.” Some carriers have broader definitions than others. When reviewing your definition of pollution condition, be sure that it’s as broad as possible and includes these often excluded hazards, including Legionnaires Disease, fungus and mold and naturally occurring asbestos.

Conclusion

Protect your business and purchase the relatively inexpensive Pollution Liability policy. This will provide you with a $1 million limit or more to cover you for claims that can and have put companies out of business.

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