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THE NEW FRONTIER: PUBLIC ENTITY POOLS AND ENVIRONMENTAL COVERAGE

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Recent changes in underwriting philosophies have opened up the potential for public entity pools to add environmental coverage to the options presented to their members.

Furthermore, underwriters are making the information exchange less onerous, and the pricing of these options has never been as reasonable as it is today. The combination of these elements makes an environmental program for public entity pools the newest frontier for expansion of coverage and member services. This paper will review those coverage options, briefly discuss information gathering and provide a fairly comprehensive overview of the environmental exposures faced by all public entity types.

COVERAGES

A wide variety of coverages is offered by many carriers. The terminology varies by market, but this discussion will address the base coverages associated with the majority of these programs as well as coverage buy-backs available by endorsement to an existing policy form.

ON-SITE AND OFF-SITE CLEAN-UP COSTS Covers the costs to remediate, clean up and defend actions related to a premises owned by the insured where a pollution event occurs.

POLLUTION LIABILITY Covers liability for third-party bodily injury and property damage claims, natural resource damage, clean-up costs and defense costs resulting from a pollution condition on, at, under or migrating from an insured premises. Bodily injury can also be extended to include medical monitoring costs.

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NON-OWNED DISPOSAL SITE LIABILITY Provides coverage for a site that has received the insured's waste material and which is not owned or operated by the insured.

TRANSPORTATION POLLUTION LIABILITY Coverage for pollution events arising from the movement of goods, products or waste transported by the insured or on behalf of the insured.

POLLUTION LIABILITY FROM CONTRACTOR OPERATIONS Can cover the insured for pollution events arising from operations by or on behalf of the insured away from covered locations at a third-party job or work site. Some forms provide this excess of the contractor's limits or can provide defense only for contractor operations.

POLLUTION LIABILITY FROM DESIGN PROFESSIONALS Coverage can be provided on an excess basis over Design Professionals coverage.

Other coverages that can be added:

- Business interruption and extra expense
- Third-party claim expense for disciplinary proceedings
- Crisis management or emergency response expense
- Litigation expense reimbursement
- Subpoena expense coverage
- Reputation rehabilitation
- Underground storage tanks
- Phantom storage tanks
- Lead paint (except for abatement within a structure)
- Asbestos (except for abatement within a structure)
- Bacteria (Legionella)
- Pollution event can include low level radioactive waste, medical waste and mixed waste
- Mold/fungi
- Newly acquired property
- Illicit abandonment
- Remediation costs include restoration costs
- Coverage for formerly owned or operated designated sites
- Prior acts

EASE OF ADMINISTRATION

A key to the successful integration of a new line of business to the coverage options offered by pools is the ability to collect most of the information needed from existing data acquired through the pools' application process. Obviously, some specific underwriting information may be required, as in the case of

underground storage tanks (USTs). Underwriters can review the COPE data spreadsheets for the majority of the premises exposures rating. Supplemental questionnaires would only be required for unique exposures, such as waste water treatment facilities or other utilities.

Whether to include USTs in the program must be considered. In most instances, members may already have the USTs placed in other markets. In order to move that coverage into the master pool environmental program, you will most likely be required to provide the following information:

- Tank tightness test completed within the last 12-24 months (depending on the market)
- Evidence of prior coverage in order to add a prior year retro date onto the program
- A separate application or tank survey

In prior years, to get coverage for asbestos, mold or lead paint, insureds had to submit exposure control plans and get them improved in order to add the coverage. This requirement greatly complicated the application process and created an exposure for the pool if this information could not be approved up front. Policy wording has been created that now will provide coverage subject to the insured complying with an exposure control plan. Many markets have the loss control resources to provide model exposure control plans, which can make compliance more achievable.

LIMITS

The most common way to provide coverage for pools is to provide a limit for a pollution event per member, subject to an annual aggregate for that member. The pool would have an aggregate limit for all members typically ranging from \$10 million to \$50 million. Retentions per member will usually start at \$10,000 and can range as high as

needed. Some of the other coverages listed above may be subject to sublimits (e.g., emergency response, reputation rehabilitation, etc.).

ENVIRONMENTAL EXPOSURES FOR PUBLIC ENTITIES

The following is an outline of exposures typically found in cities, counties, school districts and special districts. Not all of the exposures presented exist at all entities, and the list is by no means exhaustive but is meant to provide a basis for discussing and reviewing the potential exposures that an entity faces.

I. GENERAL EXPOSURES, ALL PUBLIC ENTITIES

A. GENERAL HOUSEKEEPING

1. Use and disposal of cleaning liquids, solvents and paints
2. Sick building syndrome, Legionella and mold outbreaks
3. Presence of lead paint, asbestos and radon
4. Use of pesticides or herbicides
5. Use and run-off of salt and other chemicals in snow removal
6. Old septic systems that were improperly closed
7. Entity could be a PRP from improper disposal of hazardous waste to landfill
8. Improper disposal and cleanup of broken fluorescent lights

B. MOTOR POOL

1. Past use of oil and fuel at site and past spills not cleaned up
2. Lack of proper storage or cleanup of antifreeze, waste oil or other solvents
3. Lack of proper disposal of brake linings and their asbestos content
4. Exposure to groundwater from use of floor drains
5. Poor management and maintenance of underground and aboveground storage tanks

C. UNDEVELOPED PROPERTIES, GREEN SPACES, PARKS AND PLAYGROUNDS

1. Previous illegal dumping or burial of hazardous wastes
2. Pollution migration from neighboring properties
3. Pipeline easements that could result in gradual or sudden pollution

4. Residual contamination from prior use of pesticides or herbicides
5. Abandoned wells, USTs or septic systems
6. Improper management of sensitive areas, including wetlands or protected habitats

D. THE PUBLIC ENTITY IN CONDEMNATION ACTIVITIES

1. Exposure to joint and several liability for cleanup and/or third-party claims for bodily injury and property damage on contaminated property
2. Other parties may be financially insolvent or out of existence
3. Site may be impacted from migrating pollutants or contamination
4. Could pick up exposure of previous owner for being a PRP at other sites
5. When public entity acquires contaminated property:
 - a. Risk of inadequate cleanup by entity or third party
 - b. Lack of future financing to develop property
 - c. Entity becomes PRP for cleanup operations
 - d. Lack of regulatory permits for use of site

E. RECYCLING/RESOURCE RECOVERY PROGRAMS

1. Lack of information on previous use of the site
2. Contaminated water run-off and run-on
3. Improperly treated wastewater discharges
4. Blowing litter and debris on the site
5. Noise or odor problems

F. PUBLIC ENTITY AS A CONTRACTOR OR USE OF CONTRACTORS

1. Inadequate contract wording to provide protection from environmental exposures
2. Lack of indemnity provisions for pollution events
3. No insurance requirements for pollution liability
4. Failure to require subcontractors to provide same coverage
5. Inadequate environmental assessment of the site prior to construction
6. Excavations into uncharted sites where USTs and pipelines exist
7. Improper or inadequate testing of materials during grading and excavation to identify contamination
8. Improper handling, transportation and storage of contaminated soils at a site
9. Improper storm water management to prevent run-on and run-off of contaminants
10. Lack of procedures for management of hazardous waste that is generated at a job site
11. Improper onsite disposal of hazardous materials (including burning of waste)
12. Poor management and control of onsite inactive surface impoundments and landfills that result in ground water contamination
13. Failure to control dust and other nuisance hazards
14. Storage of vehicles and equipment without regard to contamination risks

G. PUBLIC ENTITY PERMITTING, PLANNING AND INSPECTIONS

1. Inadequate or improper inspection of local hazardous industries
2. Inadequate or improper permitting of local hazardous industries
3. Increase in pollution hazards from improperly zoned or planned areas
4. Denial of permits for properly operating hazardous industries

II. EDUCATION FACILITIES

A. COURSE OFFERING EXPOSURES

1. Improper handling, storage and disposal of hazardous chemicals in labs
2. Low level radioactive materials improperly handled, stored or disposed of
3. Improper disposal of lead arising from ROTC operations, rifle ranges
4. Improper disposal of medical waste from nursing/clinic operations
5. Emissions of ethylene oxide from autoclaves
6. Contamination from agriculture operations, spraying or animal waste disposal

B. OTHER EXPOSURES

1. Faculty consulting operations in environmental remediation
2. Upset or overturn of vehicles, watercraft and airplanes resulting in spills
3. Improper supervision of interns or student volunteers in remediation or cleanup activities
4. Emergency or power generation air emissions violations
5. Carbon monoxide or air quality issues in dormitories and classrooms

III. UTILITIES AND SPECIAL DISTRICTS

A. WATER SUPPLY, WASTE WATER AND SEWAGE TREATMENT

1. Chlorine gas or chlorine-based chemicals can create vapor cloud hazard
2. Liquid chemicals used in treatment without secondary containment



3. Health hazards from under/over-treated water
4. Wells contaminated by migration of pollutants from offsite sources
5. Vandalism or sabotage results in intentional contamination of water supply
6. Pipeline leaks cause sinkholes or damage resulting in release of contaminants
7. Inadequately treated effluent being discharged
8. Capacity of system overcome by storms or other conditions
9. Inadequate industrial pretreatment program
10. Lack of controls to isolate sections of facility in emergency situations
11. Poor ground water monitoring at facility, lagoons or impoundments
12. Nuisance odors at the treatment facility or pumping stations
13. Violations of operating permits
14. Failure of backflow prevention devices resulting in releases
15. Land application or land filling of improperly treated solid waste sludge
16. Presence of lead in water systems from pipes, soldered joints, welds, fixtures, etc.

B. SOLID WASTE INCINERATORS

1. Air emissions in excess of permitted quantities
2. Incomplete combustion causes increased volume of ash generation
3. Improper testing of ash for waste classification and hazardous characteristics
4. Improper on-site and off-site ash disposal
5. Improper monitoring of incoming materials and charges to incinerator
6. Chronic litter problems on site
7. Lack of contingency plans when incinerator does not operate

C. SOLID WASTE LANDFILLS

1. Old landfill operations
 - a. Inadequate information on groundwater gradient and relevant aquifers; inadequate identification of wells

- b. Poor records on historical uses of the site, including past disposal of industrial waste
- c. Unlined cells or old liners that are leaking
- d. Reliance on clay versus modern synthetic liners for containment
- e. Inadequate leachate collection systems and/or containment of leachate from collection systems
- f. Inadequate monitoring of groundwater at site
- g. Inadequate or improperly constructed cap
- h. Inadequate inspection procedures for environmental risks

2. Current landfill operations

- a. RCRA permits not in order
- b. Inadequate liners and leachate collection systems
- c. Inadequate containment of leachate
- d. Inadequately treated leachate being discharged
3. Groundwater not adequately monitored
- f. Insufficient daily cover with soil
- g. Inadequate control of dust, odors and windblown waste
- h. Storm water run-off and run-on improperly controlled
- i. Site security and supervision of incoming materials inadequate
- j. Methane migration off site

3. Closure/post closure
 - a. Lack of approved plan for closure and post-closure care
 - b. Inadequate source of funds
 - c. Lack of control over industrial and chemical wastes deposited
 - d. Questionable long-term site security for earthquakes and floods

D. POWER GENERATION FACILITIES

1. Large amounts of cooling water may strain resources
2. Thermal pollution from cooling water discharges
3. Storm water run-off from coal storage areas
4. Impacts on air quality from NOx, SOx and particulates
5. No ground water monitoring at ash piles, landfills and lagoons
6. In-service equipment containing PCBs
7. Equipment or dielectric fluid in storage
8. Complaint alleging bodily injury from EMFs
9. Claims for diminution of property values from EMFs
10. Use of herbicides around distribution lines

E. GAS DISTRIBUTION FACILITIES

1. Old manufactured gas plants on contaminated sites
2. Improperly maintained or operated gas/oil separators
3. Pumping stations/lubricants contaminated with PCBs
4. Distribution pipelines that leak at joints or rupture
5. Mercury from old gauges in pumping stations
6. Air quality issues from odorization operations

F. FIRE DEPARTMENT/HAZMAT OPERATIONS

1. Air emissions from training facilities
2. Improperly stored fuels and lack of secondary containment
3. Lack of formal pre-planning with local industries to deal with hazardous materials
4. Plans are out of date or not practiced
5. Delay in response worsens contamination condition

6. Improper action worsens contamination/cleanup or injuries
7. Negligence in training, selection or supervision of staff
8. Disposal facility is not permitted for a particular waste or operated in accordance with standards

CONCLUSION

Public entities have a tremendous exposure to pollution events that have expanded in scope over the years. Public entities that are in pools typically have not had the opportunity to participate in competitive programs that were also easy for the pools to administer and that could deal with the many exposures these entities face. Solutions are now available that can provide very broad coverage that are efficient to deliver and are competitively priced.

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