



Coronavirus (COVID-19) - Environmental Insurance Coverage Considerations

With the recent news involving cases of COVID-19 (Coronavirus) reaching the United States, the Willis Towers Watson Environmental Practice has prepared the following guide regarding Environmental Insurance coverage considerations.

Brief History regarding coverage for Bacteria & Viruses

In the early to mid-2000s, site pollution coverage for the “presence” of mold and legionella became readily available in the environmental insurance marketplace. When offered, the site pollution policies provided coverage for third party bodily Injury and property damage claims, as well as first party Cleanup Costs, arising from the presence of mold or legionella at a covered location. The carriers referred to these exposures as “indoor air quality” or IAQ. There was no affirmative coverage grants for bacteria or viruses.

In the late 2000’s, as the environmental insurance marketplace expanded, carriers began developing specific product lines geared toward certain industries. During this time, we began to see site pollution coverage tailored specifically for hospitals, clinics and managed care facilities. It was within these “healthcare” pollution forms/endorsements, where we first see the definition of “pollution condition” broadened to include “bacteria” and “viruses”. In addition, coverage was expanded to include cleanup costs as required by CDC, and coverage for disinfection and infectious wastes were introduced to site pollution and contractor’s pollution liability products.

Current environmental insurance marketplace for Bacteria & Viruses

Over the past decade the environmental insurance marketplace has experienced significant claims (both in number and severity) involving IAQ issues. While pollution coverage is still available for bacteria and viruses, coverage is limited to certain scenarios, and only addresses cleanup/disinfection costs. If coverage is provided for bacteria and viruses (and there is no specific exclusion addressing COVID-19), the carriers limit the scope of coverage as follows:

- **Insured Property** – Sites owned by the First Named Insured to which the purchased coverage applies. No coverage exists for a Pollution Condition (including a potential release of a virus or bacteria) that occurs at a facility that is not an Insured Property.
- **Definition of Pollution Condition** – Several carriers will include Bacteria and Viruses as a “Pollution Condition”, but solely as respects cleanup or disinfection costs. For those carriers, therefore, there is no affirmative coverage for bodily injury, property damage, or business interruption. There are a few carriers that include bacteria and viruses within the definition of “Pollution Condition”, without narrowing the scope of coverage.
- **Separate Insuring Agreement** – A “Disinfection Event” has its own single-event scenario insuring agreement (usually limited to cleanup only) and exclusions (most restrictive).

- **Environmental Laws** – Typically, environmental policies provide cleanup costs to the extent required by environmental laws, although some may also include coverage for remediation performed by the directive or order of an administrative agency (i.e. per the direction of CDC or Health Department) in absence of environmental laws. Since there are no actual environmental laws governing regarding the remediation standards of COVID-19 – coverage would only apply if the latter provision is included.
- **Disinfection Event** – Typically a separate insuring agreement (or defined separately from Pollution Condition) provides Cleanup Costs only arising from Facility-Borne Illnesses/Healthcare Associated Infections only. Coverage may be further restricted by Time-Element provisions, or by other exclusions such as Communicable Disease/ Human to Human Contact/Bodily Fluids Exclusions. Some Disinfection Event Exclusions even specifically restrict costs associated with the disposal of corpses or body parts.
- **Facility Borne Illness/Healthcare Associated Infections** – Usually relates to the method by which an illness or infection may be covered – i.e. contracted directly from viral or bacterial contact at a facility and not directly from another human.
- **Communicable Disease/Human to Human Contact/ Bodily Fluids Exclusion** – Usually relates to the method or media by which an illness or infection is excluded. Can be applied to all insuring agreements or specifically to Disinfection Events coverage.

Each applicable policy of insurance must be reviewed to determine the extent, if any, of coverage for COVID-19. Coverage may vary depending on the jurisdiction and circumstances. For global client programs it is critical to consider all local operations and how policies may or may not include COVID-19 coverage.

Does My Environmental Policy Cover Coronavirus?

The coverage provided by each policy is unique and must be evaluated individually on a case-by-case basis – therefore, you should not assume that your Environmental Policy covers COVID-19 (Coronavirus).

For Site Pollution policies – if coverage is provided for COVID-19, it will likely be for Cleanup Costs associated with a Disinfection Event arising from a Facility Borne Illness – however, a few carriers may provide broader coverage. Separately, there may be coverage for COVID-19 via a pollution condition associated with medical waste (which may offer a separate avenue for bodily injury). With that said, attention must be given to exclusions, including Communicable Disease, Human to Human Contact, and Bodily Fluids that may be applied broadly to further restrict or eliminate coverage.

For Contractors Pollution Liability coverage, many of the policies are silent with specific regard to viruses and bacteria – although they may mention Microbial Matter with respect to mold and Legionella. Environmental Carriers may not have contemplated the potential for virus or bacteria related Pollution Condition resulting from Covered Operations. Therefore, each carrier's coverage form would need to be evaluated to determine how potential coverage for viruses or bacteria may exist.

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