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Technical Advisory

TA 198

January 8, 2002

SUBJECT: Pollution Exclusions in Commercial Lines Policy Forms

BACKGROUND: The Louisiana Department of Insurance (LDI) has approved a new Pollution Exclusion submitted by ISO. IIAL worked closely with LDI and insurance companies to help develop Pollution Exclusions which balance the interests of our policyholders with the concerns of insurers.

MAIN POINTS: Attached is Louisiana Department of Insurance Advisory Letter #01-01. The language in this exclusion is the same language that has been filed by ISO nationwide. Use of the new exclusion will expedite the form review and approval process.

NECESSARY ACTION: Circulate this Technical Advisory to all Commercial Lines agency personnel.



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ADVISORY LETTER NUMBER 01-01
December 28, 2001

**TO: ALL PROPERTY AND CASUALTY COMMERCIAL INSURERS
ADMITTED OR APPROVED TO ISSUE POLICIES INSURING RISKS IN
LOUISIANA**

RE: Use of Pollution Exclusions in Commercial Lines Policy Forms

STATUTE AND REGULATION REFERENCES:

Title 22 of the Louisiana Revised Statutes §§ 2, 620-621, 1211 et seq., and 1262.1

Please be advised that ISO has submitted a new Pollution Exclusion.¹ The new exclusion has been approved for use in Louisiana. The language in this exclusion is the same language that has been filed by ISO on a nationwide basis. Thus, approval of the language places Louisiana on par with other states. Use of the new exclusion will expedite the form review and approval process.

The LDI is hereby advising insurers that it will approve policies that utilize the new exclusion. Further, the agency will approve pollution exclusions that are substantially similar to the new ISO exclusion, or to the ISO exclusions referenced in Advisory Letter 97-01.² The LDI will continue to approve policies that use the suggested language that it has made available to insurers since 1998. (For ease of reference, copies of the exclusions are attached to this Advisory Letter.)

The LDI is hereby advising all admitted insurers that it will no longer approve policies that include in the text of the policy any version of the ISO Total Pollution Exclusion or substantially similar non-ISO total pollution exclusions.³ The LDI has approved the use of CG 21 65 09 99 as an endorsement to insurance policies. This endorsement, or one substantially similar to it, if approved for use in Louisiana, may be attached to policies issued to classes of insureds or individual insureds that are required to provide proof of financial responsibility for clean-up costs and related expenses for environmental damage to a federal, state, or local environmental regulatory agency. Additionally, insurers may use such an exclusion in situations other than as previously described when there is underwriting justification for its use.

¹ ISO form number CG 26 75 01 02 for use with general liability forms and CG 31 40 01 02 for Owners and Contractors Protective Liability forms. The new exclusion adds language that resolves key areas of concern on the part of the LDI, particularly in regards to indoor occurrences.

² Those exclusions are CG 04 28 07 98, CG 04 29 07 98 and CG 04 30 07 98. Advisory Letter 97-01 can be viewed at www.ldi.state.la.us currently listed under the icon LDI Office Index. Then click on Legal Department. For personal lines please see Directive 137 at the same website.

³ CG 21 49 11 88.

Admitted insurers can elect to (1) file notice of adoption of the ISO exclusion or (2) file revised forms with the Commissioner of Insurance on or before **March 30, 2002**.⁴ After **June 30, 2002**, insurers that issue new or renewal policies that contain pollution exclusions that are inconsistent with this advisory letter will be issued an order withdrawing the approval previously granted, as authorized by LSA-R.S. 22:620C.

Further, the LDI is hereby advising surplus lines insurers that use of a total pollution exclusion in the text of an insurance policy or the excessive use of such an exclusion as an endorsement to insurance policies, in the absence of underwriting justification, could result in removal from the white list.

Any questions regarding this Advisory Letter may be directed to Kathlee Hennigan, Director of the Property and Casualty Division, at khennigan@ldi.state.la.us or by telephone at 225-342-0073 or to C. Noël Wertz, Chief Attorney, Property and Casualty Section at nwertz@ldi.state.la.us or by telephone at 225-342-4632.



J. ROBERT WOOLEY
ACTING COMMISSIOER OF INSURANCE

⁴ This provision is not applicable to insurers that have already obtained approval and are using a pollution exclusion that has an exception for pollution incidents that are accidental, occur suddenly and last for a short term, if they implement use of such an exclusion across all lines of business.