

UNDERSTANDING POLLUTION COVERAGE FOR TRANSPORTATION CLIENTS

The environmental risks associated with various modes of transportation can be significant, often resulting in costly cleanup operations, bodily injury claims, and the need for long-term medical monitoring. For companies that transport hazardous materials, it is critical to understand the scope and limitations of their insurance coverage in the event of a spill or pollution-related incident. Standard Commercial Auto policies frequently exclude pollution-related incidents, which may limit the scope of protection available for certain environmental events. However, specialized solutions such as Transportation Pollution Liability (TPL) policies, the addition of the CA 99 48 ISO Endorsement, or the inclusion of an MCS-90 endorsement can help protect these companies in the event of a pollution incident. Each of these options differ in how they respond in the event of a loss so it is important for effective risk management to understand each.

MCS-90

- An endorsement to the Commercial Automobile policy, the MCS-90 provides proof of financial responsibility that can be a beneficial supplement on auto policies.
- Typically, form language requires insureds to reimburse the carrier for any payments made where insurance does not apply.
- Is not a standalone insurance policy.
- Is not a regulatory filing.
- Is not blanket protection. Only applies when a third party suffers bodily injury or property damage when no other coverage is available.
- Insurer is not obligated to provide legal defense.
- Does not offer financial protection to the insured motor carrier.
- MCS-90 is not insurance and exists only to satisfy financial responsibility requirements.

CA 99 48

- ISO-similar transportation endorsement for certain commercial auto policies.
- Typically lacks the same language found in MCS-90 around reimbursement to the carrier where insurance does not apply.
- Carriers typically do not seek reimbursement from the insured following a loss.
- Typically covers legally liability for medical monitoring and clean up from pollution incidents during transport.
- Generally excludes coverage for loading/unloading.
- Provides a give-back for cleanup costs under the pollution exclusion but lacks coverage for Property Damage from pollution.
- Only provides coverage for Autos, excluding other modes of transport.
- Does not cover the insured's vicarious liability from hired third party carriers.
- Applies only to pollution caused by "upset and overturn" or "accident". Does not cover other transportation perils such as misdelivery and vandalism and typically would not respond to a spill caused by negligence or liquid cargo contents accidentally leaking from point A to point B.

TPL POLICY

- Adding transportation to an existing pollution policy or purchasing a separate TPL Policy can serve as a supplement to existing auto coverage to help address pollution liability or as a potential solution to contractual pollution liability insurance requirements.
- The Transportation Endorsement or TPL Policy are typically broader as they may provide coverage for both first party vehicles (owned) and third-party vehicles (hired) in addition to loading and unloading as well as the additional available coverages as listed below.

Can include the following coverages:

- First-party on-site cleanup for pollution of the covered location (storage and vehicle maintenance yards/rail spurs and rail sidings).
- Third-party liability for bodily injury and property damage.
- Transportation pollution coverage (sudden and gradual) addressing contingent exposures as well as Insured's vehicles.
- Loading and unloading.
- Pre-existing/legacy and new pollution conditions.
- Defense expense available in addition to the policy limits.

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