



**State of New Jersey**  
**DEPARTMENT OF INSURANCE**

HAZEL FRANK GLUCK  
COMMISSIONER

Bulletin #86-1  
Commercial Policy Forms  
Absolute Pollution Exclusion

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TO: All Authorized Property/Casualty Insurers and Rating Organizations

Commissioner Hazel Frank Gluck has approved in principle an "absolute pollution exclusion" for use in connection with commercial liability insurance policy forms. This Bulletin is to advise all companies that such policy forms will not be disapproved pursuant to the Commercial Insurance Deregulation Act, N.J.S.A. 17:29AA-1 et seq., so long as they conform to requirements set forth below.

In making this decision the Commissioner considered the information obtained at a public hearing held in December, which examined all issues including market impact. Industry representatives testified that they lacked confidence in the courts to construe any language limiting pollution liability consistent with their intended policy coverages. Inclusion of unintended coverages for 'gradual' pollution and for liabilities imposed by state and federal environmental legislation has greatly expanded the scope of coverage in present policies. An absolute pollution exclusion is necessary, they stated, to permit them to offer other liability coverages.

Nevertheless, it also seems clear that potential liabilities intended by insurers to be covered in policy language exempting 'sudden and

accidental' events from present pollution exclusions remain insurable for a vast, but undetermined, number of insureds. By permitting the use of policy forms containing the "absolute pollution exclusion" the Commissioner does not wish to discourage development of policy language accurately describing this coverage. Insurers filing policy forms that contain an 'absolute pollution exclusion' may choose to develop an appropriately worded endorsement that reinstates the coverage previously contemplated in the 'sudden and accidental' clause. If carefully drafted and offered, it could serve to reinstate important protection to a great number of insureds with negligible potential exposure to gradual or statutory pollution liabilities.

The Commissioner expects that the use of policy forms containing an "absolute pollution exclusion" consistent with the provisions below will improve availability of commercial liability insurance.

1. Commercial liability form filings containing an 'absolute pollution exclusion' must otherwise conform to all requirements of the Commercial Insurance Deregulation Act, N.J.S.A. 17:29AA-1 et., seq., and applicable administrative rules.
2. The Commissioner hereby grants permission to use approved policy forms containing an "absolute pollution exclusion" when renewing existing business, which permission is required by the rule on cancellations and non-renewals, N.J.A.C. 11:1-20.3(a). Insurers may offer renewal coverage by approved forms that exclude liability for pollutants or environmental impairment.
3. Insurers are cautioned, however, that they must comply with all provisions of N.J.A.C. 11:1-20 and statutes governing renewals.

Insurers must specifically notify an insured whose policy is being renewed of more limited coverage terms represented by such an exclusion.

4. Insurers issuing new policies containing an "absolute pollution exclusion" should specifically advise insureds of this restriction in coverage prior to the sale, in a manner reasonably calculated to draw attention to its terms.
5. All insurers are requested to keep pollution loss data separate from other loss data, pending consideration by this Department of an administrative rule compelling the recording and reporting of such data in a particular format.
6. Insurers with policy forms deemed approved and in use, but containing terms, provisions or methods of utilization inconsistent with the requirements set forth above, are requested to take necessary action to comply immediately. Failure to take such action may result in this Department instituting action under N.J.S.A. 17:29AA-13.

This Bulletin is informational only, for the advice of potential filers of such forms. Nothing contained herein restricts in any way the right of any filer to seek approval of a policy form, nor to appeal any adverse decision or order.



Hazel Frank Gluck  
Commissioner  
February 28, 1986

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