

A Risk Managers Guide to Environmental Insurance Specifications

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Disclaimer: The following is a draft of suggested language for incorporation into construction insurance specifications. This information is provided for training and discussion purposes. It is not intended to be a final document. We recommend any documents be reviewed with legal counsel before incorporating into final form.

Insurance Specifications For General Liability, Contractors Pollution Liability, Professional Liability, Automobile Liability Workers Compensation and Excess Liability

Maintaining the insurance coverage's below are a material part of our decision to engage the services of the Contractor. The Contractor shall, at its sole expense, purchase and maintain insurance as outlined below.

A. Minimum Scope of Insurance for Contractor

Coverage shall be at least as broad as:

1. **Commercial General Liability** provided under the Insurance Services Office Form #CG 00 01 12 04 or the most recently approved State version of this form, covering General Liability, including coverage for the insureds Premises, Operations, Products Liability, Completed Operations and Contractual Liability. This policy or this coverage part of a package policy should be written on an Occurrence basis

The policy shall Primary and Non Contributory and provide a Waiver of Subrogation in favor of the following parties,

- a. Site owner;

Products and Completed Operations coverage shall be maintained through the purchase of renewal policies to protect the insured and additional insured for at least 2 years after the services are complete or this contract is terminated.

2. **Contractors Pollution Liability** or a equivalent coverage extension within the General Liability policy. This policy shall provide coverage for:

- a. Bodily injury, sickness, disease, sustained by any person, including death;
- b. Property damage, including physical injury to or destruction of tangible property including the resulting loss of use thereof; clean up costs, and the loss of use of tangible property that has not been physically injured or destroyed including diminution of value and Natural Resources damages.

- c. Defense costs including costs, charges and expenses incurred in the investigation, adjustment or defense of claims;
- d. Contractual liability coverage, e.g. coverage for liability assumed by the named insured under a written contract or agreement.
- e. The full scope of the named insureds operations as described within the scope of work for this contract.
- f. The policy must provide coverage for claims arising from owned and non owned disposal sites utilized in the performance of this contract.
- g. This coverage can be provided on either claims made or occurrence based policy form.
- h. The policy must insure contractual liability, be Primary and Non Contributory and name Site owner as an Additional Insured.
- j. The policy must insure loss arising from pollutants including but not limited to fungus, bacteria, asbestos, lead, silica and contaminated drywall.

The policy may not contain separate restrictions for:

- a. Insured versus insured actions. However exclusions for claims made between insureds within the same economic family are acceptable.
- b. For completed operations in any coverage part of the policy for either the insured or the additional insured certificate holder.
- c. Damage to property that cannot be used or is less useful because of the operations of the insured. (Most Impaired Property exclusions are not acceptable.)
- d. Water Damage Restoration Contractors cannot have CPL insurance with a Property Damage to Your Work exclusion.
- e. Work performed by subcontractors.

Completed Operations coverage shall be maintained through the purchase of renewal policies to protect the insured and additional insured for at least 2 years after the property owner accepts the project or this contract is terminated. The purchase of an extended discovery period or an extended reporting period on a Claims Made policy or the purchase of occurrence based Contractors Environmental Insurance will not be sufficient to meet the terms of this provision.

If coverage is provided on a claims-made basis, coverage will at least be retroactive to the earlier of the date of this Contract or the commencement of contractor services in relation to the Work and the policy will offer an extended discovery clause of at least three years.

3. **Professional Liability.** This insurance should insure the professional services of the vendor for the scope of professional services to be provided under this contract.

4. **Workers' Compensation & Employers' Liability.** This insurance shall provide statutory coverage for any/all states where operations under this contract take place, and provide Employers' Liability to the limits specified in section B below

If operations under this contract are performed on or near navigable waterways, coverage shall be included for U.S. Longshoremen & Harborworkers benefits.

5. **Automobile.** This insurance shall cover liability arising out of any auto (including owned, non-owned and hired autos.

Business auto coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.

If the contract documents require contractor to remove and haul hazardous waste from the project site, or if the project involves such similar environmental exposure, pollution liability coverage equivalent to that provided under the ISO Pollution Liability-Broadened Coverage for Covered Autos Endorsement (CA 99 48) shall be provided, and the Motor Carrier Act Endorsement (MCS90) shall be attached.

Waiver of Subrogation. Contractor waives all rights against Owner and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the business auto liability or commercial umbrella liability insurance obtained by contractor pursuant to this agreement or under any applicable auto physical damage coverage.

6. **Umbrella or Excess Liability.** The contractor is granted the option of arranging the required coverage under a single policy or by a combination of underlying policies with the balance provided by and Excess or Umbrella liability policy equal to the total 'per occurrence' and aggregate limits required. Umbrella or Excess liability policies, if furnished, shall provide additional insured and waiver of subrogation in favor of all previously named parties in the same manner as required of the underlying policies.

7. **Property Insurance.** Unless otherwise indicated, Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the project is located, property insurance written on a builders risk "all risk" or equivalent policy form in the amount of the initial contract sum, plus value of subsequent contract modifications and cost of materials supplied or installed by contractor or subcontractors, comprising total value if the entire project at the site. This insurance shall include the interests of the Owner, the Contractor, the engineer, and all tiers of subcontractors in the project. Insurer claim payments resulting from losses, if any, under this insurance shall be made payable to Owner.

If Owner does not intend to purchase such property insurance required by the contract and with all coverages in the amount described above, Owner shall so inform the contractor in writing prior to commencement of the Work. The Contractor may then effect insurance which will protect the interests of Contractor, and Subcontractors of all tiers of the work. If the

6. Use of CGL/CPL/Professional package policies, if a package policy is utilized the following limits will apply: \$3,000,000 per loss; \$3,000,000 in aggregate.

C. Acceptability of Insurers

Unless otherwise agreed to in writing by Owner, insurance is to be placed with insurers, who have a *Best's Insurance Reports* rating of no less than "A" and a financial size of no less than Class "IX",

D. Additional Insureds

The following parties shall be named as additional insured's on the Commercial General Liability, Contractors Environmental Liability, Automobile Liability for liability arising out of the project work:

1. Site owner

The Commercial General Liability and Contractors Pollution Liability coverage for these additional insureds shall be on a primary and non-contributory basis. The Commercial General Liability policy shall provide that any insurance maintained by the additional insureds is excess and non-contributing with any insurance required hereunder. The Additional Insured endorsement on the CGL and CPL policies shall be provided under – Insurance Services Office Form #CG 20 10 and #CG 20 37 07 04 on the GL and their equivalent on the CPL.

G. Additional Insurance Requirements

1. Any and all deductibles or other forms of retention are the responsibility of the Contractor. All deductibles or other forms of retention are subject to the approval of Owner. Contractor will disclose to the Owner in writing the amounts of any deductibles or self-insured retentions on the insurance required under this contract.

**For technical support regarding these insurance specifications please call the insurance consultants at American Risk Management Resources Network, LLC.
1-877- 735- 0800**