

INSURANCE MATTERS

THE INSURANCE NEWSLETTER OF THE DIOCESE OF NOVA SCOTIA &
PRINCE EDWARD ISLAND

Pollution

Over the past several years there has been much discussion and correspondence on the subject of pollution.

Most of us have had little cause to give thought to losses which can and do arise out of the discharge of oil from our oil tanks.

When oil escapes or is discharged from an oil tank there can be two types of losses: A First Party Loss and/or a Third Party Loss.

When oil escapes, leaks or is discharged, it lands on the property which we own. As owners we are called "First Party". Therefore, the first type of loss incurred will be a First Party Loss.

The second type of loss that can then occur is when the oil migrates off our premises into or onto any

Third Party's property. When this happens, this kind of damage is called "Third Party" damage.

Obviously the best and easiest kind of loss to handle is the one which never occurs. Could we all be that fortunate? No.

Under the Diocesan Insurance Program there is limited coverage for First Party losses. The program can also be extended to cover Third Party pollution, though this coverage is optional.

Turning to the coverage as afforded by the Diocesan Insurance Program, we will deal with each section separately.

FIRST PARTY LOSSES

All locations are AUTOMATICALLY covered for First Party losses, subject, of course, to the coverage which we are able to arrange.

The section of the policy which impacts us as to whether the loss is covered or not is the "PERILS EXCLUDED" section.

This section specifically states that the policy does not pay for claims caused by or arising out of:

"dampness or dryness of atmosphere, changes of temperature, freezing (except with respect to insured water pipes), heating, shrinkage, evaporation, loss of weight, leakage of contents, exposure to light, contamination, pollution, changes in colour or texture or finish, rust or corrosion, marring, scratching or crushing, but this exclusion does not apply to loss or damage caused by a peril insured and not otherwise excluded."

This coverage is considered limited because the maximum limit available is \$25,000 (increased March 1, 2003 from \$10,000), and,

in all probability, damage to our property will exceed \$25,000. Also, most losses which happen are caused by rust and corrosion and, therefore, there is no coverage whatsoever.

The kinds of losses to which the coverage will respond will be those losses caused by (to name a few): vandalism, malicious mischief, falling objects (this also includes snow/ice falling from a roof), a vehicle colliding with the tank, windstorm, fire, or explosion.

As stated above, we consider this to be coverage only of a limited kind as the maximum amount which the insurer will cover is \$25,000 and majority of causes, i.e. rust, corrosion, wear and tear, are excluded.

THIRD PARTY LOSSES

When oil migrates off our property into or onto any Third Party property, then we become legally liable for the damages to this Third Party Property.

Property can mean any building, contents, land, water, soil, etc. By extension, this could also include damages for loss of business.

Third Party claims can surface many years after the initial discharge or escape occurs, and the parish/camp could then be held accountable.

Damages to Third Party property can easily reach over \$100,000. A great factor is how your property is physically located. Is it situated in an isolated area or in a congested area?

If your tank is located outside and the land is elevated above surrounding properties, any oil leak will flow down onto Third Party property.

If your tank is located inside, and the property is elevated, oil can migrate to lower surrounding properties as well. Oil can also flow to a basement drain which flows outside onto your property or into the sewer system. Sewer drains have the impact of spreading the oil even faster than normal.

Under the Diocesan Insurance Program, the \$5 (five) million Comprehensive General Liability coverage contains an absolute Third Party Exclusion for damages, including Bodily Injury, arising out of pollution or contamination.

The exclusion reads:

"This insurance does not apply to Bodily Injury or Property Damage arising out of the actual, alleged or threatened discharge, dispersal, release or escape of pollutants."

Pollutants are defined as *"any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed."*

This exclusion can be avoided by the parish/camp purchasing Third Party Pollution Liability coverage.

By securing this coverage the "absolute" exclusion is changed so that the exclusion no longer applies to *"Bodily Injury or Property Damage when caused by an unexpected or unintentional discharge, dispersal, release or escape of pollutants provided such discharge, dispersal, release or escape of pollutants:*

a) results in the injurious presence of pollutants in or on land, the atmosphere, drainage or sewer system,

*watercourse or body of water; and,
b) is detected within 120 hours after commencement of discharge, dispersal, release or escape; and,
c) is reported to insurer within 120 hours of being detected; and,
d) does not occur in a quantity or with a quality that is not routine or usual to the business of the Insured.”*

In all cases, however, the coverage still excludes:

“Any loss, cost or expense arising out of any governmental direction or request that an Insured test for, monitor, clean-up, remove, contain, treat, detoxify or neutralize pollutants.”

We are pleased to advise that as of March 1, 2003, the Third Party Pollution Liability limit has been increased from \$500,000 to \$1,000,000.

Currently, acquiring Third Party Pollution Liability protection is optional. When a location houses an oil tank and the risk is retained by the parish or camp, then all resultant damages/awards will be paid out of parish funds. Another very important factor to consider is that if the risk is

retained by the parish/camp, then all legal (lawyer) expenses are also borne entirely by the parish/camp.

In addition to the above, there are conditions imposed upon us as to the “age of tanks” and when they were installed.

Our insurer will allow us to purchase the Third Party Pollution Liability arising out of any tank providing an above ground tank, inside or outside, has been installed within the past 25 years and a buried tank was installed within 15 years.

Once the installation date(s) exceed the above noted time frame limitations, then the coverage must be removed from the program and the risk automatically transferred back to the parish.

As stated earlier, if a parish/camp purchases Third Party Pollution Liability coverage, all damages and awards are paid by the insurer, including all defense/legal costs.

The above comment should not be interpreted to imply that each and every claim will be covered by the insurance policy as each claim must be judged as it

occurs; no two claims are alike.

OTHER COMMENTS

When it comes to First Party versus Third Party losses we have some unique situations.

On First Party losses, the age of the tank has no bearing on whether the loss is covered, the insurer is only concerned with the cause that created the loss. On Third Party Pollution losses, the unexpected or unintentional cause has no bearing on whether the loss is covered or not, but the age of the tank does.

Whether the pollution damage is First Party or Third Party, there is no intent under either coverage for damages which have occurred over an extended period of time by the gradual leakage and/or seepage of oil from the tanks. These kinds of situations are deemed to be maintenance problems and are the responsibility of the tank owner.

As stated earlier, the easiest loss to handle is that loss which does not occur. What can be done to achieve this goal?

While no one can predict if

and when any kind of loss might occur, we should be approaching the whole matter of protecting our assets and liabilities proactively rather than reactively. This can be summed up as proper "risk management and risk protection".

Over the years there have been both insured and uninsured losses. For instance:

A) Oil from an outside tank which had been vandalized damaged our property. This loss was insured as the cause of the discharge was from an insured peril - vandalism.

B) Two losses related to outside tanks, both of which were the result of leakage from a hole at the bottom of the tanks caused by rust and corrosion. In both cases, the tanks were four (4) years old but the tank warranty was for three (3) years. The First Party losses were not insured. If there was any resultant Third Party damage, then such damages would be covered provided the Third Party Pollution Liability coverage had been purchased. If not, then any Third Party damages would be borne, financially, by the parish.

It is, therefore, in all our interests to do our best to eliminate this exposure altogether. By eliminating First Party losses, we also eliminate Third Party losses.

One of the easiest ways to avoid loss is by installing the proper oil tank for the location. In all likelihood, the best oil tank to install is a fiberglass tank which, we believe, can carry a 25 year warranty. On steel

This newsletter is meant only to convey general information concerning the Diocesan Insurance Program. It is not a statement of policy or a legal document. Nor does it replace the legal wording of the policy. For specific information on this coverage or any other insurance topic, kindly contact Jarvis de Condé, Diocesan Insurance Advisor, at:

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tanks, a minimum acceptability should be a

12-gauge tank. The length of the warranty is another component that should be determined. You should also ensure that your new tank is not manufactured of recycled material. Installation of fiberglass basins (indoor) or the complete envelope (outdoor) should be investigated.

NEVER transfer oil from the old tank into the new tank. While you will be advised that the old oil can be filtered, the filtering process will not remove the contaminants from the oil and can lead to rust and corrosion being generated in the new tank. Now it could be viewed that we, through our negligence, have contributed to the deterioration of the new replacement tank.

Every location should be visited to ensure that all tanks, especially exterior oil tanks, are installed, supported and maintained in an acceptable manner.

Please review the attached exhibit issued by the Department of the Environment outlining their recommended guidelines and procedures.