

RULES – IMPLEMENTATION

SEPTEMBER 12, 2019

COMMERCIAL LINES

LI-CL-2019-042

VERMONT RULES REVISED AND TO BE IMPLEMENTED

KEY MESSAGE

ISO filing CL-2019-ORU1 revises Vermont state exceptions based on correspondence with the Vermont Department of Financial Regulation (DFR).

Applicable Lines: BP, CU, FR, GL, HH

ISO ACTION

This filing revises and withdraws Vermont rules exceptions to various divisions of the Commercial Lines Manual (CLM) in response to the Vermont DFR comments with respect to employment-related practices liability and liability pollution coverage and exclusions.

Refer to the attached explanatory material for complete details about the filing.

EFFECTIVE DATE

The ISO revision is subject to the following rule of application:

These changes are applicable to all policies written on or after January 1, 2020.

COMPANY ACTION

If you have authorized us to file on your behalf and decide:

- To use our revision and effective date, you are not required to file anything with the Insurance Department.
- To use our revision with a different effective date, to use our revision with modification, or to not use our revision, you must make an appropriate submission with the Insurance Department.

For guidance on submission requirements, consult the ISO State Filing Handbook.

WE WILL SUBMIT THIS REVISION TO THE INSURANCE DEPARTMENT ON DECEMBER 1, 2019. IF STATE FILING REQUIREMENTS DICTATE THAT YOU MAKE A SUBMISSION WITH THE INSURANCE DEPARTMENT, DO NOT SUBMIT IT PRIOR TO THIS DATE.

In all correspondence with the Insurance Department on this revision, you should refer to ISO Filing Designation Number CL-2019-ORU1, not this circular number. Communications with the regulator concerning a filing affecting multiple lines of business (i.e., CL, PL, AL filing designation) should specify the line(s) of business that you are addressing.

RATING SOFTWARE IMPACT

No new attributes are being introduced with this revision.

POLICYHOLDER NOTIFICATION

If you decide to implement this revision, you should check all applicable laws for the state(s) to which this revision applies, to determine whether or not a specific policyholder notice requirement may apply. Please note that circular [LI-CL-2018-044](#) contains the ISO Guide To Renewals With Changed Conditions For Commercial Lines, which is available only as a guide to assist participating companies in complying with various conditional renewal statutes or regulations, for the major commercial lines of insurance serviced by ISO. The information in the Guide does not necessarily reflect all requirements or exceptions that may apply, and it is not intended as a substitute for your review of all applicable statutes and regulations concerning policyholder notification.

REVISION DISTRIBUTION

We will issue a Notice to Manualholders with an edition date of 1-20 (or the earliest possible subsequent date), along with any new and/or revised manual pages.

REFERENCE(S)

[LI-CL-2018-044](#) (11/27/2018) Revised Lead Time Requirements Listing

ATTACHMENT(S)

Filing [CL-2019-ORU1](#)

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Vermont Rules Revised

Applicable Lines of Business

This filing applies to the following lines of business:

- ◆ Businessowners
- ◆ Commercial Liability Umbrella
- ◆ Commercial General Liability
- ◆ Farm
- ◆ Home Healthcare

About This Filing

This filing revises Vermont state exceptions based on correspondence with the Vermont Department of Financial Regulation (DFR).

Revised Rules

We are revising the following rules:

- ◆ Division Four – Farm
 - Rule 37. Farm Liability Coverage
 - Rule 38. CGL Farm Liability
- ◆ Division Six – General Liability
 - Rule 22. Description Of Commercial General Liability Coverage
 - Rule 36. Description Of Additional Optional Endorsements
- ◆ Division Ten – Businessowners
 - Rule 29. Endorsements
- ◆ Division Thirteen – Commercial Liability Umbrella
 - Rule 25. Description Of Additional Optional Endorsements
 - Rule 53. Description Of Additional Optional Endorsements
- ◆ Division Nineteen – Home Healthcare
 - Rule 20. Description Of Home Healthcare Liability Coverage

We have used a format of ~~striking-through~~ deletions, underlining additions and inserting a revision bar in the left margin to indicate changes.

Background

With respect to employment-related practices liability exclusions, currently applicable Vermont rules exceptions under various ISO lines generally indicate that such endorsements may be used only on a risk-by-risk basis with the approval of the Commissioner. The DFR has indicated that these exceptions can be removed, stating "[w]e surmise that the consent-to-rate requirement was made for the attachment of these exclusions when they were first introduced so that insureds would be aware of the coverage limitation. As coverage for Employment-Related Practices liability is generally excluded from the CGL policy, it is reasonable to discontinue the requirement for a consent-to-rate application."

With respect to liability pollution coverage and exclusions, currently applicable Vermont rules exceptions under various ISO lines generally address filing requirements. The DFR generally requested that additional verbiage be added to these exceptions to further address filing requirements.

Explanation of Changes

In response to the DFR comments with respect to employment-related practices liability exclusions, we are removing the following exceptions:

- ◆ Paragraph C.13. under General Liability Rule 36.
- ◆ Paragraph S.1.a. under Farm Rule 37.
- ◆ Paragraph N.1. under Farm Rule 38.

In response to the DFR comments with respect to liability pollution coverage and exclusions, we are revising the following exceptions:

- ◆ Paragraph B.18. under Businessowners Rule 29.
- ◆ Paragraph C.15. under Commercial Liability Umbrella Rule 25.
- ◆ Paragraph B.1. under Commercial Liability Umbrella Rule 53.
- ◆ Paragraph A.2.g. under Farm Rule 37.
- ◆ Paragraph C.3. under General Liability Rule 22.
- ◆ Paragraph C.3. under Home Healthcare Rule 20.

We are also making editorial changes to various rules.

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DIVISION FOUR – FARM

37. FARM LIABILITY COVERAGE

Paragraph **A.2.** is replaced by the following:

A. Description Of Coverage And Basic Forms Applicable

2. Basic Forms Applicable

- a. Use Farm Liability Coverage Form **FL 00 20**.
- b. Attach Broad Form Nuclear Energy Liability Exclusion Endorsement **IL 00 21**.
- c. Attach Exclusion – Migrant And Seasonal Agricultural Worker Protection Act Endorsement **FL 01 16**.
- d. Unless Paragraph **A.2.g.** applies, attach Vermont Changes – Contamination Or Pollution Exception Endorsement **FL 01 64**.

Endorsement **FL 01 64** provides coverage on a claims-made basis for sudden and nonsudden pollution incidents, subject to an aggregate limit. The aggregate limit shall be equal to the Each Occurrence Limit applicable to Form **FL 00 20**.

Endorsement **FL 01 64** is to be attached without charge, unless written application for a charge, with the consent of the insured, is made to the Commissioner pursuant to the requirements of Vermont Bulletin 111.

- e. Attach Exclusion – Computer-related Date Processing And Other Electronic Problems Endorsement **FL 10 22** unless choosing one of the options described in Paragraph **X.** instead.
- f. Attach Exclusion – Access Or Disclosure Of Confidential Or Personal Information And Data-related Liability – With Limited Bodily Injury Exception Endorsement **FL 10 12**.

This endorsement excludes liability arising out of any access to or disclosure of any person's or organization's confidential or personal information under both Coverage **H** and Coverage **I**. The Coverage **H** exclusion in this endorsement includes a limited exception for bodily injury with respect to that part of the exclusion addressing electronic data. For endorsement options addressing Access Or Disclosure Of Confidential Or Personal Information And Data-related Liability that may be used in lieu of Endorsement **FL 10 12**, refer to Paragraph **Z**.

- g. Pollution Coverage may be excluded on a risk-by-risk basis:
 - (1) If the risk purchases a separate pollution liability policy; or
 - (2) If the risk files with the Commissioner to exclude such coverage in accordance with the consent-to-rate requirements of Vermont Bulletin 111.

However, it is the position of the Vermont Department of Financial Regulation that if pollution is excluded from a policy as described above, but then written on a separate policy by the same insurer, a consent-to-rate filing is not required. If pollution is excluded from a policy as described above, but then written on a separate policy by an affiliated insurer or any other insurer, then the consent-to-rate requirements outlined in Vermont Bulletin 111 must be followed.

The following is added to Paragraph **G.1.a.**:

G. Businesses And Incidental For-Profit Activities

1. Businesses

The liquor liability exclusion in Business Activities Endorsement **FL 04 43** may be imposed only on a risk-by-risk basis with the approval of the Insurance Commissioner.

Paragraph **O.** does not apply.

Paragraph **P.4.** is replaced by the following:

P. Home Day Care Coverage

4. Use Vermont Changes – Limited Home Day Care Coverage Endorsement **FL 04 72**.

Paragraph **S.1.a.** is replaced by the following:

~~S. Optional Exclusions~~

~~1. Employment-related Practices Exclusion~~

- ~~a. Exclusion – Employment-related Practices Endorsement **FL 10 01** may be used only on a risk-by-risk basis with the approval of the Insurance Commissioner.~~

~~This endorsement amends Form **FL 00 20** and Farm Employers' Liability And Farm Employees' Medical Payments Insurance Endorsement **FL 04 65** by excluding bodily injury and personal injury liability arising out of employment-related practices.~~

The following is added to Paragraph **S.2.a.**:

S. Optional Exclusions

2. Silica Or Silica-Related Dust Exclusion

This endorsement is available for use on a risk-by-risk basis and is subject to consent-to-rate procedures, in accordance with the procedures contained in Vermont Bulletin 111, via submission of an insured's signed application to the Vermont Department of Banking, Insurance Securities and Healthcare Administration, and subject to the approval of the Commissioner of Insurance.

Paragraph **V.** is replaced by the following:

V. Arbitration Endorsement

1. The policy may be endorsed to include a non-binding arbitration endorsement which is designed to minimize or eliminate litigation between the insured and the company in disclaimer-of-coverage situations.
2. Use Non-binding Arbitration Endorsement **FL 99 02.** (Binding Arbitration Endorsement **FL 99 01** does not apply in Vermont.)
3. Refer to company for rating.

38. CGL FARM LIABILITY

Paragraph **C.** is replaced by the following:

C. Basic Forms Applicable

1. Use Commercial General Liability Coverage Form (occurrence version) **CG 00 01.**
2. Attach Exclusion – Migrant And Seasonal Agricultural Worker Protection Act Endorsement **FL 01 16.**
3. Attach Vermont Changes – Farm Premises Liability Endorsement **FL 04 73.**
4. If covering Personal Liability, also attach Vermont Changes – Personal Liability Endorsement **FL 04 55.**

Paragraph **H.4.** is replaced by the following:

H. Personal Liability

4. Use Endorsement **FL 04 55.** Also use Exclusion – Access Or Disclosure Of Confidential Or Personal Information And Data-related Liability – With Limited Bodily Injury Exception Endorsement **FL 10 12.** This endorsement excludes liability arising out of any access to or disclosure of any person's or organization's confidential or personal information under both Coverage **A** and Coverage **B.** The Coverage **A** exclusion in this endorsement includes a limited exception for bodily injury with respect to that part of the exclusion addressing electronic data. For endorsement options addressing Access Or Disclosure Of Confidential Or Personal Information And Data-related Liability that may be used in lieu of Endorsement **FL 10 12,** refer to Paragraph **S.**

Paragraph **J.1.** is replaced by the following:

J. Custom Farming

1. This classification applies to farming operations performed by the insured for others for a charge under contract or agreement. Endorsement **FL 04 73** includes coverage for liability from custom farming to the extent of the first \$5,000 of the insured's receipts; Paragraphs **J.2., J.3.** and **J.4.** provide for coverage beyond the first \$5,000.

Paragraph **M.** does not apply.

Paragraph **N.1.** is replaced by the following:

~~**N. Employment-related Practices Exclusion**~~

- ~~1. Exclusion – Employment related Practices Endorsement **FL 10 01** may be used only on a risk by risk basis with the approval of the Insurance Commissioner.~~

~~This endorsement amends policies which include Endorsement **FL 04 55** and/or Farm Employers' Liability And Farm Employees' Medical Payment Insurance Endorsement **FL 04 65** by excluding bodily injury and personal injury liability arising out of employment related practices.~~

Paragraph **O.1.** is replaced by the following:

O. Snowmobiles

1. Owned Snowmobile Coverage Endorsement **FL 04 71** amends policies containing Endorsement **FL 04 55** by providing personal liability coverage for occurrences of bodily injury and property damage arising out of the use of owned snowmobiles off the insured location.

Paragraph **P.1.** is replaced by the following:

P. All-terrain Vehicles

1. All-terrain Vehicle Coverage Endorsement **FL 04 74** amends policies containing Endorsement **FL 04 55** by providing personal liability coverage for occurrences of bodily injury and property damage arising out of the use of all-terrain vehicles off the insured location.

Paragraph **Q.1.** is replaced by the following:

Q. Silica Or Silica-related Dust Exclusion

1. This endorsement amends policies containing Endorsement **FL 04 55** by excluding bodily injury, property damage and personal injury liability arising out of silica or silica-related dust.

This endorsement is available for use on a risk-by-risk basis and is subject to consent-to-rate procedures, in accordance with the procedures contained in Vermont Bulletin 111, via submission of an insured's signed application to the Vermont Department of Banking, Insurance Securities and Healthcare Administration, and subject to the approval of the Commissioner of Insurance.

Paragraph **R.** does not apply.

The introductory text in Paragraph **S.** is replaced by the following:

S. Access Or Disclosure Of Confidential Or Personal Information And Data-related Liability

Endorsement **FL 10 12** referenced in Paragraph **H.4.** may be replaced by **one** of the following endorsements. These endorsements amend policies which include Endorsement **FL 04 55**:

DIVISION SIX – GENERAL LIABILITY

22. DESCRIPTION OF COMMERCIAL GENERAL LIABILITY COVERAGE

Paragraph C.3. is replaced by the following:

3. Refer to mandatory state endorsements:

- a. Vermont Changes – Pollution Endorsement **CG 01 54** (Occurrence Version only).
- b. Vermont Changes – Pollution Endorsement **CG 01 61** (Claims-made Version only).

These endorsements afford coverage for sudden and non-sudden pollution incidents on a claims-made basis, subject to an aggregate limit. The aggregate limit shall be the same as the Each Occurrence Limit afforded by the policy.

These endorsements are to be attached without charge unless written application for a charge, with the consent of the insured, is made to the Commissioner pursuant to the requirements of the Vermont Statutes.

To exclude pollution coverage on a risk-by-risk basis, **do not** attach Endorsement **CG 01 54** or **CG 01 61**:

- (1) If the risk purchases a separate pollution liability policy; or
- (2) If the risk agrees to exclude the coverage with either:
 - (a) The basic pollution exclusion contained in Commercial General Liability Coverage Form **CG 00 01** or **CG 00 02**;
 - (b) Pollution Exclusion – Named Peril Limited Exception For A Short-term Pollution Event Endorsement **CG 04 28**;
 - (c) Pollution Exclusion – Limited Exception For A Short-term Pollution Event Endorsement **CG 04 29**;
 - (d) The basic pollution exclusion contained in Endorsement **CG 00 01** or **CG 00 02** with Pollution Exception For Designated Pollutant(s) Endorsement **CG 04 30**;
 - (e) The Total Pollution Exclusion With A Hostile Fire Exception Endorsement **CG 21 55**; or
 - (f) The Total Pollution Exclusion With A Building Heating, Cooling And Dehumidifying Equipment Exception And A Hostile Fire Exception Endorsement **CG 21 65**

with such exclusion filed with the Commissioner pursuant to the consent-to-rate requirements of Vermont Bulletin 111.

However, it is the position of the Vermont Department of Financial Regulation that if pollution is excluded from a policy as described above, but then written on a separate policy by the same insurer, a consent-to-rate filing is not required. If pollution is excluded from a policy as described above, but then written on a separate policy by an affiliated insurer or any other insurer, then the consent-to-rate requirements outlined in Vermont Bulletin 111 must be followed.

- c. Vermont Changes – Civil Union Endorsement **IL 01 09**.
- d. Vermont Changes – Statutory Liability Endorsement **IL 01 26**.
- e. Vermont Changes – Cancellation And Nonrenewal Endorsement **IL 02 19**.

36. DESCRIPTION OF ADDITIONAL OPTIONAL ENDORSEMENTS

Paragraph **C.12.** does not apply.

The following is added to Paragraph **C.13.:**

Endorsements **CG 21 47** and **CG 29 51** may be used only on a risk-by-risk basis with the approval of the Insurance Commissioner.

Paragraph **C.14.** is replaced by the following:

C. Exclusion Endorsements

- 14.** Liability arising out of any pollution exposure not otherwise precluded by the pollution exclusion contained in the Commercial General Liability Coverage Part:
 - a.** May be totally excluded, with the exception of liability arising out of a hostile fire, by attaching Total Pollution Exclusion With A Hostile Fire Exception Endorsement **CG 21 55.**
 - b.** May be totally excluded, with the exception of liability arising out of building heating equipment or a hostile fire, by attaching Total Pollution Exclusion With A Building Heating, Cooling And Dehumidifying Equipment Exception And A Hostile Fire Exception Endorsement **CG 21 65.**

To provide pollution liability coverage refer to Rule **47.**

The following is added to Paragraph **C.15.:**

Endorsements **CG 21 50, CG 21 51, CG 29 52** and **CG 29 53** may be used only on a risk-by-risk basis with the approval of the Insurance Commissioner.

Paragraph **C.24.** is replaced by the following:

- 24.** Liability arising out of silica or silica-related dust may be excluded by attaching Silica Or Silica-related Dust Exclusion Endorsement **CG 21 96.**

This endorsement is available for use on a risk-by-risk basis and is subject to consent-to-rate procedures, in accordance with the requirements of Vermont Statutes via submission of an insured's signed application to the Vermont Department of Banking, Insurance Securities and Healthcare Administration, and subject to the approval of the Commissioner of Insurance.

Paragraph **C.25.** does not apply.

Paragraph **E.2.** is replaced by the following:

E. Coverage Amendment Endorsements

- 2.** Coverage disputes between the company and an insured may be submitted to arbitrators when either party requests it. When, by prior agreement, the decision of the arbitrators may be appealed to a court, attach Non-binding Arbitration Endorsement **CG 24 01.**

DIVISION TEN – BUSINESSOWNERS

29. ENDORSEMENTS

Paragraph **A.39.** is replaced by the following:

A. Property Endorsements

39. Windstorm Or Hail Exclusion

a. Description And Application

Windstorm Or Hail Exclusion Endorsement **BP 14 84** may be used to exclude loss or damage caused directly or indirectly by windstorm or hail and:

(1) Provided the Named Insured acknowledges, in writing, Endorsement **BP 14 84**.

(2) Endorsement **BP 14 84** will remain in effect:

(i) For the term of the policy; and

(ii) For each renewal, reinstatement, substitute, modified, replacement or amended policy; until discontinued by the insurer.

Policywriting Support Form **BP N 002** Vermont Windstorm Or Hail Exclusion Endorsement Acknowledgement may be used to obtain the Named Insured's acknowledgement.

b. Endorsement

Use Endorsement **BP 14 84**.

c. Rules

In the Schedule of Endorsement **BP 14 84** identify the Premises Number and Building Number of the building(s) to which the endorsement is to apply.

d. Rate Modification

Subtract the appropriate amount in state loss cost Table **29.A.39.d.(LC)** from the state base rate determined in Rule **23.C.6.a.(2)(a)**. This should be done separately for buildings and business personal property.

Paragraph **B.1.** does not apply.

Paragraph **B.4.** does not apply.

Paragraph **B.7.b.** does not apply.

Paragraph **B.9.** is replaced by the following:

B. Liability Endorsements

9. Exclusion – Silica Or Silica-related Dust

An endorsement is available, for use on a risk-by-risk basis with the approval of the Insurance Commissioner, as follows:

a. Description

The endorsement amends Businessowners Liability Coverage to exclude bodily injury, property damage and personal and advertising injury arising out of silica or silica-related dust.

b. Endorsement

Use Exclusion – Silica Or Silica-related Dust Endorsement **BP 05 17**.

c. Consent-To-Rate

This endorsement is subject to consent-to-rate procedures, in accordance with the requirements of Vermont Statutes via submission of an insured's signed application to the Vermont Department of Banking, Insurance Securities and Healthcare Administration, and subject to the approval of the Commissioner of Insurance.

Paragraph **B.11.** does not apply.

Paragraph **B.13.b.(4)** is replaced by the following:

13. Liquor Liability Coverage

b. Liquor Liability Grades

(4) The Liquor Liability Numerical Grade is 10.

Citation of Statute: VT. STAT. ANN. tit. 7 Section 501 *et seq.*

Comments:

The statute provides, in part, that:

A person injured in person, property or means of support by an intoxicated person or in consequence of the intoxication of any person, has a right of action against anyone who caused in whole or in part such intoxication by selling or furnishing intoxicating liquor to:

- A minor;
- A person apparently under the influence of liquor;
- A person after legal servicing hours; or
- A person whom it would be reasonable to expect would be under the influence of liquor as a result of the amount of liquor served by the defendant to that person.

The statute specifically states that it does not create a statutory cause of action against a social host for furnishing liquor, but states that it does not affect the liability of a social host for negligence at common law.

The Vermont Supreme Court has confirmed that the statute provides a cause of action in strict liability to injured third persons. See *Langle v. Kurkul*, 146 Vt. 513, 510 A.2d 1301 (1986).

Paragraph **B.18.** is replaced by the following:

18. Vermont Changes – Contamination Or Pollution Exception Endorsement BP 01 14

This endorsement affords coverage for sudden and non-sudden pollution incidents on a claims-made basis, subject to an aggregate limit. The aggregate limit is the occurrence limit for "bodily injury" and "property damage" coverage provided by the policy.

This endorsement is not subject to additional premium unless written application for such additional premium, with the insured's consent, is made to the commissioner in accordance with the requirements of Vermont Statutes.

To exclude pollution coverage on a risk-by-risk basis **do not** attach Vermont Changes – Contamination Or Pollution Exception Endorsement **BP 01 14**. Pollution coverage may be excluded on a risk-by-risk basis:

- a. If the risk purchases a separate pollution liability policy; or
- b. If the risk agrees to exclude the coverage with:
 - (1) The basic pollution exclusion contained in Section II – Liability of the Businessowners Coverage Form **BP 00 03**;
 - (2) Pollution Exclusion – Limited Exception For Short-term Pollution Event Endorsement **BP 04 90**;
 - (3) Pollution Exclusion – Limited Exception For Designated Pollutants Endorsement **BP 04 91**; or
 - (4) Total Pollution Exclusion With A Building Heating Equipment And A Hostile Fire Exception Endorsement **BP 04 93**,

with such exclusion filed with the Commissioner pursuant to the consent-to-rate requirements of Vermont Bulletin 111.

However, it is the position of the Vermont Department of Financial Regulation that if pollution is excluded from a policy as described above, but then written on a separate policy by the same insurer, a consent-to-rate filing is not required. If pollution is excluded from a policy as described above, but then written on a separate policy by an affiliated insurer or any other insurer, then the consent-to-rate requirements outlined in Vermont Bulletin 111 must be followed.

Paragraph **B.21.** does not apply.

Paragraph **D.3.e.(2)** does not apply.

Paragraph **D.5.** does not apply.

Paragraph **E.1.** does not apply.

DIVISION THIRTEEN – COMMERCIAL LIABILITY UMBRELLA

25. DESCRIPTION OF ADDITIONAL OPTIONAL ENDORSEMENTS

Paragraph C.9. does not apply.

Paragraph C.15. is replaced by the following:

C. Exclusion Endorsements

15. Liability arising out of any pollution exposure not otherwise precluded by the Commercial Liability Umbrella Coverage Part:
- a. May be totally excluded on a risk-by-risk basis by attaching Total Pollution Exclusion Endorsement **CU 21 25**;
 - b. May be totally excluded, with the exception of liability arising out of a hostile fire, by attaching Total Pollution Exclusion With A Hostile Fire Exception Endorsement **CU 21 51**; or
 - c. May be totally excluded, with the exception of liability arising out of building heating, cooling or dehumidifying equipment or a hostile fire, by attaching Total Pollution Exclusion With A Building Heating, Cooling And Dehumidifying Equipment Exception And A Hostile Fire Exception Endorsement **CU 21 52**.

These endorsements can be attached only with the signature of the insured and must be filed with the Commissioner pursuant to the consent-to-rate requirements of Bulletin 111 of Vermont's regulations.

However, it is the position of the Vermont Department of Financial Regulation that if pollution is excluded from a policy as described above, but then written on a separate policy by the same insurer, a consent-to-rate filing is not required. If pollution is excluded from a policy as described above, but then written on a separate policy by an affiliated insurer or any other insurer, then the consent-to-rate requirements outlined in Vermont Bulletin 111 must be followed.

However, there is an exception to the requirement for the above "Consent-to-Rate" filing contained in Bulletin 111, under Section 5. Umbrella Policies. It states:

- a. An insurance company issuing an umbrella policy is not required to make a "Consent-to-Rate" filing to exclude pollution claims if:
 - (1) The umbrella policy adopts the language of another policy which excludes coverage; and
 - (2) The insurance company providing the underlying liability coverage has made a "Consent-to-Rate" filing or issued the underlying policy following the simplified procedures outlined in Section 4 of the Bulletin.
- b. If the insurance company issuing an umbrella policy does not adopt the underlying policy's exclusion by reference, then the procedures described in parts 3 and 4 of the Bulletin apply.

Paragraph C.19. is replaced by the following:

19. Liability arising out of silica or silica-related dust may be excluded by attaching Silica Or Silica-related Dust Exclusion Endorsement **CU 21 50**.

This endorsement is available for use on a risk-by-risk basis and is subject to consent-to-rate procedures, in accordance with the requirements of Vermont Statutes via submission of an insured's signed application to the Vermont Department of Banking, Insurance Securities and Healthcare Administration, and subject to the approval of the Commissioner of Insurance.

53. DESCRIPTION OF ADDITIONAL OPTIONAL ENDORSEMENTS

Paragraph **B.1.** is replaced by the following:

B. Exclusion Endorsements

1. Liability arising out of pollution not otherwise precluded by the pollution exclusion contained in the Excess Liability Coverage Form:
 - a. May be totally excluded by attaching Total Pollution Exclusion Endorsement **CX 21 02**;
 - b. May be totally excluded, with the exception of liability arising out of a hostile fire, by attaching Total Pollution Exclusion With A Hostile Fire Exception Endorsement **CX 21 03**; or
 - c. May be totally excluded, with the exception of liability arising out of building heating, cooling or dehumidifying equipment or a hostile fire, by attaching Total Pollution Exclusion With A Building Heating, Cooling And Dehumidifying Equipment Exception And A Hostile Fire Exception Endorsement **CX 21 04**.

These endorsements can be attached only with the signature of the insured and must be filed with the Commissioner pursuant to the consent-to-rate requirements of Bulletin 111 of Vermont's regulations.

However, it is the position of the Vermont Department of Financial Regulation that if pollution is excluded from a policy as described above, but then written on a separate policy by the same insurer, a consent-to-rate filing is not required. If pollution is excluded from a policy as described above, but then written on a separate policy by an affiliated insurer or any other insurer, then the consent-to-rate requirements outlined in Vermont Bulletin 111 must be followed.

However, there is an exception to the requirement for the above "C_{consent-to-R}rate" filing contained in Bulletin 111, under Section 5. Umbrella Policies. It states:

1. An insurance company issuing an umbrella policy is not required to make a "C_{consent-to-R}rate" filing to exclude pollution claims if:
 - (a) The umbrella policy adopts the language of another policy which excludes coverage; and
 - (b) The insurance company providing the underlying liability coverage has made a "C_{consent-to-R}rate" filing or issued the underlying policy following the simplified procedures outlined in Section 4 of the Bulletin.
2. If the insurance company issuing an umbrella policy does not adopt the underlying policy's exclusion by reference, then the procedures described in parts 3 and 4 of the Bulletin apply.

Paragraph **B.7.** does not apply.

DIVISION NINETEEN – HOME HEALTHCARE

20. DESCRIPTION OF HOME HEALTHCARE LIABILITY COVERAGE

Paragraph C.3. is replaced by the following:

3. Refer to mandatory state endorsements:

- a. Vermont Changes Endorsement **HH 01 48**
- b. Vermont Changes – Pollution Endorsement **HH 01 56**

This endorsement affords coverage for sudden and non-sudden pollution incidents on a claims-made basis, subject to an aggregate limit. The aggregate limit shall be the same as the Each Occurrence Limit afforded by the policy.

This endorsement is to be attached without charge unless written application for a charge, with the consent of the insured, is made to the Commissioner pursuant to the requirements of the Vermont Statutes.

To exclude pollution coverage on a risk-by-risk basis, **do not** attach Endorsement **HH 01 56**:

- (1) If the risk purchases a separate pollution liability policy; or
- (2) If the risk agrees to exclude the coverage with either:
 - (a) The basic pollution exclusion contained in Home Healthcare Liability Coverage Form **HH 00 01**;
 - (b) The basic pollution exclusion contained in Form **HH 00 01** with Pollution Exclusion – Limited Exception For Designated Pollutant(s) Endorsement **HH 04 11**;
 - (c) The Total Pollution Exclusion With A Hostile Fire Exception Endorsement **HH 21 13**; or
 - (d) The Total Pollution Exclusion With A Building Heating, Cooling And Dehumidifying Equipment Exception And A Hostile Fire Exception Endorsement **HH 21 14**

with such exclusion filed with the Commissioner pursuant to the consent-to-rate requirements of Vermont Bulletin 111.

However, it is the position of the Vermont Department of Financial Regulation that if pollution is excluded from a policy as described above, but then written on a separate policy by the same insurer, a consent-to-rate filing is not required. If pollution is excluded from a policy as described above, but then written on a separate policy by an affiliated insurer or any other insurer, then the consent-to-rate requirements outlined in Vermont Bulletin 111 must be followed.