

WAP Corner: What Lies Ahead for the Pollution Occurrence Insurance Project?

By Robert Adams

A fair question! And here are a few more – *Will DOE continue to require the purchase of Pollution Occurrence Insurance (POI) by local agencies and private contractors? Will premiums for these policies rise or fall? What factors will affect premiums and access? And finally - Why is a federally-funded energy conservation program, like the Weatherization Assistance Program (WAP), concerned with lead hazard control and POI coverage?*

POI IN THE WAP

Let's start with the last question first. Why is the WAP concerned with lead hazard control and POI? After all, the WAP installs energy conservation materials and performs limited health and safety repairs. Here's the answer - Because of our modern methods of providing energy conservation services, WAP crews rarely disturb lead-painted surfaces. When a surface is disturbed, these crews are required to safeguard the environment by using a prescribed set of work practices, referred to as Lead Safe Weatherization (LSW). Interestingly, the Department of Energy's (DOE) WAP regulations (10CFR Part 440) do not mention lead-based paint hazard control and their policies forbid the use of WAP funds to perform lead-based paint abatement, control or stabilization work. These policies only require workers to conduct activities in a safe manner to avoid contaminating homes and to avoid exposing themselves and their families to the lead paint hazards. In other words, WAP is not involved in lead hazard control.

But each state must have insurance protection for its local agencies, crews, and contractors. DOE has stated in several of their program notices that "adequate liability coverage" must exist to protect the state and local agencies in the event of an incident while installing materials in the home. Their definition of "adequate coverage" includes both contractors liability insurance to protect against poor workmanship and liability insurance to protect against incidental disturbances of environmental pollutants like lead-based paint dust, known as POI.

FACTORS AFFECTING PRICE AND ACCESS

POI coverage on a scale like the one being implemented through WAP is relatively new for the insurance industry and is both risky and difficult to market to insurance carriers. Thanks to the hard work of BC Environmental, a liability insurance brokerage located in California, we were able to find an insurance carrier, American Safety of Atlanta, GA, willing to offer a product at a discounted rate to the WAP local agencies and their contractors. Continuing to maintain affordable access to this claims made policy will depend on several factors, provided below in no specific order of importance:

- Insurance claims against existing policies will determine whether risk and exposure are equal to premiums collected. So far, no claims have been filed against current POI policies. The longer we (and the insurance carrier) can experience “zero” claims paid, the POI risk remains low and costs remain stable or decline. If the insurance carrier is required to defend an agency or contractor against a claim, the future premiums will quickly reflect the increase in risk and exposure for the carrier.
- The volume of business being underwritten by the insurance carrier will determine the project’s overall economic viability. If the carrier does not receive an adequate volume of business to cover administrative costs and the anticipated risk of exposure, the company could terminate the coverage or increase premiums on those policies remaining in force.
- The cost of insurance in the residential market continues to increase due in part to claims related to mold, mildew, and other air quality issues in both new and existing housing. At the same time, the number of insurance carriers willing to offer this kind of coverage has declined dramatically. Those insurance companies remaining in the residential liability insurance business continue to eliminate any products deemed risky or unprofitable by tightening underwriting requirements and raising premiums.
- Like the insurance carrier, the insurance broker, BC Environmental, incurred significant expenses to help implement the POI project. And like the carrier, BC Environmental also requires a certain volume of business in order to cover its costs associated with underwriting and maintaining these policies in each state. If sufficient business volume is not attained each year, BC Environmental could discharge their responsibilities. Finding another national broker willing to handle our “low profit – high volume” business could prove extremely problematic and could result in increased premiums.

THE RISE AND FALL OF PRICES

Every state and local agency engages in some sort of budget exercise to determine whether revenues will be sufficient to offset anticipated costs. Estimating next year’s budget is an exercise based on historical costs as applied to future activities. Being able to predict the future cost of an item is essential to developing useful, and accurate budgets. So knowing whether POI premiums will increase or decrease is important to states so they can predict costs for their “liability insurance” line item in their State Plan; to local agencies who must allow for the cost in their operating budgets, and to contractors who must include the amortized cost of the insurance in their negotiated price structure with the local agency.

NASCSP recently issued a survey to the states asking whether POI coverage has been required in their state and whether local agencies and their contractors were purchasing the POI coverage through BC Environmental or by some other means. As of this writing, fourteen states responded to the questionnaire and their answers were quite interesting:

- Only 57 percent (8 of 14) currently require POI coverage through either their contract or policy documents. Of the six who do not require it, four expect to have requirements in place by this year's contract execution.
- Half of the states (7 of 14) either require now or will require evidence of POI coverage to be presented by their local agencies before contracts are executed. Only 29 percent (4 of 14) were sure that their local agencies required evidence of POI coverage from their contractors before work begins in the homes being weatherized. The remaining states weren't sure whether the evidence was being collected.
- Only 43 percent of the states (6 of 14) knew that a majority of their local agencies were using the POI project as the primary method for procuring POI coverage.

It is clear from this very brief survey that the use of POI coverage by the network has yet to achieve full implementation by the states and their local agencies. It is still too early to determine whether we will meet the business volume required to maintain the interest of both the insurance carrier and the broker. Price stability will be directly related to that interest level. In regards to pricing in 2004, we have received no word that insurance premiums are increasing for POI coverage. Of course we haven't received any word that the premiums are staying the same or decreasing either. This year remains part of the implementation phase of the project and we should know more about short term pricing trends by October 2004.

THE FUTURE OF POI

And now for the final question - *Will DOE continue to require the purchase of POI by local agencies and private contractors?* The simple answer is yes! The reason has already been stated – POI remains part of the mandate for “adequate insurance coverage.” As long as we work in homes where there is a risk of incidental disturbance of environmental pollutants like lead-paint dust, there will be a need for POI coverage to protect against claims from the families we serve and those who perform the work. The local agency should demand it, the state requires it, and common sense calls for it.

Purchasing the right coverage to protect your organization is not an easy task. Liability insurance is a very serious issue and doing it wrong could result in dire consequences. If you have questions or concerns, you should consult a licensed broker or your legal representative to make sure you are making sound decisions about your coverage and your risks.

And remember - insurance is purchased for financial protection in case something unexpected occurs. If perfection could be attained when weatherizing every home, no agency or contractor would ever need Workmen's Compensation, contractor's liability insurance, vehicle insurance, or POI coverage. Unfortunately, life doesn't come with guarantees and sometimes things happen we can't foresee. So the WAP network must purchase POI coverage and continue to perform our jobs so well that we never have to use it.

