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Annual Company Meeting 2017
When it’s Dry, Pollutants Multiply

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By Tracy Durham, Associate Account Executive

The ongoing conditions in California provide an opportunity to see the impact of drought on pollution conditions. A drought can increase the hazards presented by contamination already in place and can contribute to new contamination conditions. Businesses, property owners, and governments need to be aware of this increased exposure.

How does drought affect pollutants?

Less water means increased strength of pollutants. Water for human use and animal habitats can be affected by an arid climate. As wells and groundwater sources begin to dry up, contaminants in the water concentrate. For example nitrates, perchlorate, pesticide residues, oil, gasoline, and other sources previously at non-actionable levels may become actionable. This contamination can affect the health of vulnerable populations and can lead to various illnesses, some fatal.

Water contamination can also kill wildlife, sicken livestock, and poison recreational waterways. Entire species can be devastated due to polluted habitats. Some pollutants bio-accumulate, increasing as they move up the food chain. This means that species higher up the chain, including humans, can acquire higher levels of toxins.

It’s not just water systems that are impacted by drought conditions. Hot, dry conditions can increase pollution in the air. Dry air allows for accumulation of particles and hot weather increases ozone production. Both of these circumstances can cause or exacerbate respiratory difficulties as well as heart issues.

Wildfires abound in drought conditions and add to pollutants in the air. Although the smoke from a wildfire produces naturally occurring pollutants, when a fire encounters developed properties or facilities, unexpected toxins can be released and dispersed by the smoke. These pollutants can be carried great distances.

Even if contamination was not previously found, regulators may re-open closed cases or mandate clean-up of previously “clean” locations due to the new conditions.

Where do these pollutants come from?

Sources of pollution during drought are similar to those under normal conditions; however, drought can compound the problem. For example, agricultural operations, manufacturers, distributors, and energy operations

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may contribute to pollution due to current or historic operations at a location.

Landscapers and groundskeepers can increase pollutants through the use of pesticides, herbicides, and fertilizers, which in turn can impact groundwater. These contractors can also stir up air pollution through the use of leaf blowers and other equipment.

While there are always risks associated with these operations, contaminants in the water and air can become concentrated and more efficiently distributed during drought conditions.

**Who may be held responsible when pollution conditions are discovered?**

The current owner of a property or business can be sued or fined as a result of pollution generated on their site as can prior owners or operators at a location. In addition, contamination does not have to originate on a property for others to take action against the owners and operators. Suits can be brought by neighboring property owners and tenants; fines can be imposed by regulators.

Municipalities can be held liable for their oversight of utilities and waste management facilities as well as other operations in their jurisdiction. State and local governments may be the target of fines or lawsuits due to inadequate or improper regulation of pollution sources in their jurisdiction.

**When your client is faced with a pollution exposure, how can they protect their assets?**

As always, insurance is a means of transferring risk. The violations and lawsuits that can come from a company’s work or property can be expensive and the existing insurance plan may not adequately address these exposures. A major pollution release can bankrupt a company. There are a number of ways a Pollution policy can provide protection.

For owners or operators of a location, an **Environmental Impairment Liability (EIL), or Premises Pollution Liability** policy can provide coverage for cleanup costs and respond to property damage and bodily injury claims that result from pollutant discharges. These policies may provide coverage for both historic and new conditions, crisis management options to address harm to a company’s image, and address restoration of damaged wildlife habitats. Some of these products may respond to regulatory fines, where allowable by law. An EIL policy may also address pollution conditions resulting from material stored at ancillary locations, for example, equipment or products held at a warehouse or transit location.

For performing operations at third-party locations, a **Contractors Pollution Liability** policy will respond to pollution conditions caused by the insured’s work. It can provide similar coverage on a jobsite that the EIL policy provides at an insured’s owned or leased location.

**Transportation Pollution** may be endorsed onto either of the above policy types. This coverage responds to the release of pollutants from the insured’s products or materials while in transit from one location to another.

**Products Pollution** may be available for products that a company distributes or manufactures. This coverage would address a leak from a product or a malfunction in equipment distributed or made by the insured resulting in a pollution condition.

**Non- Owned Disposal coverage** may be endorsed onto policies to address pollution conditions emanating from locations where businesses send waste for disposal or processing.

Each of these options may be combined onto a single policy. Note that not every policy will respond in the same way, therefore it’s important to understand the coverage being offered. Be sure to talk with your client about potential exposures they may face now or in the future. When climate conditions change, unanticipated conditions may arise.
Examples of action against alleged polluters and regulators:

Kern County Group Files RICO Lawsuit against Governor and Oil Companies

Family Farm Suing Over Pollution of Fresh Water Supply in the San Joaquin Valley

Fishing and Conservation groups sue over poor water management on Northern California’s Scott River

ELF v. Southern California Gas Co. et al. BTEX contamination of protected aquifers

Enviros Want Calif. Solar Project Stopped Over Species Die-Off

Rite Aid to Pay $12.3 Million for Failing to Properly Manage Waste Products from its California Stores

Whirlpool Reaches Settlement with Fort Smith Residents

Owners of cement plant agree to spend $7.5M to settle pollution lawsuit

References

Health experts warn of water contamination from California drought

California’s Lingering Drought and Pollution Defy Solutions

San Diego’s New Lawsuit Shows Just How Hard It Is To Hold Polluters Accountable

Report: California drought could worsen air pollution

Journal of the American Heart Association, Impact of Fine Particulate Matter (PM2.5) Exposure During Wildfires on Cardiovascular Health Outcomes

The Effect of Wildfire on Soil Mercury Concentrations in Southern California Watersheds

Forest Fires Could Spread Pollutants

Learn more about other types of environmental exposures.