

Coronavirus Coverage Response 2019 (2019-nCoV) as of March 9, 2020

More cases of the 2019-nCoV are likely to be identified in the coming days in the United States. It's also likely that person-to-person spread will continue to occur. Public agencies such as Counties, Cities, Water/Sewer Districts, Fire Districts, Schools and Colleges may experience more absenteeism that will affect services to constituents. Critical infrastructure such as law enforcement, emergency medical services and other first responders may also be affected.

The 2019-nCoV virus is causing events that may affect our members in a myriad of ways and it's impossible to address every potential claim scenario. However, in reviewing our policy as it relates to various claims that may be presented, ICRMP's property and casualty policy does not have coverage related to virus contamination. Here is how our coverage responds to allegations of damages caused by viruses:

Section II – General Definitions:

"Pollutant(s)" means:

- a. Those materials that can cause or threaten damage to human health or human welfare or cause or threaten damage, deterioration, loss of value, marketability or loss of use to property;
- b. Any solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, metals and waste, including debris and trash and materials to be recycled, reconditioned or reclaimed;
- c. Bacteria, **fungi**, mold, mildew, **virus**, silica, or hazardous substances as listed in the Federal Water Pollution Control Act, Clean Air Act, Resource Conservation and Recovery Act of 1976, Toxic Substances Control Act or as designated by the U.S. Environmental Protection Agency or any other governing authority.

Section IV – General Exclusions:

Pollution. This is an absolute pollution exclusion. It is the intention of **you** and **we** that there is absolutely no coverage arising out of or relating to **pollutants**, however characterized or defined. This policy does not cover any injury, loss, damage, costs, fines, penalties or expenses of any kind directly or indirectly arising out of the actual, alleged or threatened existence, discharge, dispersal, release or escape of **pollutants** or negligence in any way related thereto:

- a. At or from **premises you** now, or in the past, have owned, rented or occupied, including but not limited to **premises** that **you** have operated or managed as an involuntary possessor; or
- b. At or from any site or location used by or for **you** or others for the handling, storage, disposal, processing or treatment of waste at any time; or

- c. That at any time involves the transportation, handling, storage, treatment, disposal or processing by or for **you** or any person or organization for whom **you** may be legally responsible:
 - (1) At or from any site or location on which **you** or any contractors or subcontractors working directly or indirectly on **your** behalf are performing operations; or
 - (2) If the **pollutants** are brought on or to the site or location in connection with such operations; or
 - (3) If the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize the **pollutants**;
- d. Whether caused or alleged to have been caused by the **named insured** or any other person, entity or third-party, however characterized; or
- e. Arising out of any direction, request or order of any governmental agency, court of law, or other authority, that **you** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **pollutants**, including any and all costs or attorney's fees associated therewith; or
- f. Arising out of the failure of the **named insured** to prevent or regulate **pollutants** generated or caused by any other person, entity, or third-party, however characterized; and
- g. This exclusion shall not apply to tear gas or mace as applied by law enforcement personnel within the scope of their duties.

The pollution exclusion above directly excludes costs for required cleaning of buildings and other related expenses.

Section V – Property Insurance:

12. “Operational Disruption Expense” means costs incurred by the **named insured** in order to continue as nearly as practicable the **normal** operation of **your** public entity **immediately following a covered loss**. This includes the loss of any income, net of expenses, incurred during the **period of restoration** of the operation of the public entity.

As to the question of operational disruption expense, our policy exclusion on pollution (which includes viruses) would likely apply outright. However, for operational disruption expenses to be triggered, our language requires that a property claim be otherwise covered prior to invoking this additional coverage.

Liability Coverage Sections:

It is unlikely that ICRMP’s various liability coverage sections such as Errors/Omissions, General Liability, Police Liability and Educators Legal Liability would be responsive to scenarios alleging loss due to virus outbreaks such as that of 2019-nCoV. Mainly, the general exclusion referenced above for pollution would apply as virus is a term included in the definition. The types of claims envisioned such as fear or threat of virus contamination (whether perceived or actual), outbreak of communicable disease, reductions in attendance attributable to outbreak or threat thereof, failure to protect or prevent spread of disease or any claim related to the outbreak would not be covered.

Employment Practices Liability coverage may be afforded if a claim is filed related to termination for illness or lack of adherence to member personnel policies, etc, that be in conjunction with actions taken by members responses to 2019-nCoV. However, it will depend on the allegations within the claim as to if coverage is triggered or if the pollution exclusion applies.

Taking everything into consideration as stated above, we still encourage members to submit claims relating to this virus for ICRMP to review the specific allegations of the tort or suit against the member as it's impossible to account for every possible scenario.

Risk Management Resources:

Although it is beyond the scope of coverage under the ICRMP policy to cover public health crisis claims, we still want to provide you with the same expert risk management resources you've become accustomed to seeing from us.

Some members may be considering implementing personnel policy amendments to address this virus by establishing quarantine measures, paid time off use, remote work options and other responsive measures. If doing so, we encourage you to reach out to our Human Resource Risk Management team of Carl Ericson, Jim McNall or Tammy Middleton to ensure any changes will not create liability to your agency:

Carl: cericson@icrmp.org or 208-246-8209

Tammy: tmiddleton@icrmp.org or 208-246-8204

Jim: jmcnall@icrmp.org or 208-246-8222

If law enforcement or jail related, contact Chad Sarmento:

Chad: csarmento@icrmp.org or 208-246-8203

There are also many resources available to public entities at the Centers for Disease Control & Prevention and a few of the links are listed below:

[Interim Guidance for Business & Employers](#)

[Childcare & Schools](#)

[Colleges](#)

[Community Events](#)

[First Responders & Law Enforcement](#)

[Public Health Communicators](#)

[Healthcare Facilities](#)

[Communication Resources](#)