



# Z CHOICE POLLUTION LIABILITY

This policy provides coverage on a discovery and/or claims-made and reported basis depending upon the insuring agreements specifically listed as provided in Item 5 of the Declarations. A "pollution event" must be first "discovered" and/or a "claim" must be first made against an "insured" during the "policy period" and such "discovery" or "claim" must be reported to us in writing during the "policy period" or during an applicable extended reporting period. Notice of a "potential claim" is not a "claim" and does not trigger coverage under the policy.

This policy has certain unique provisions and requirements that may be different from other policies the "insured" may have purchased. Coverage is provided only if the word YES appears in the column marked PROVIDED in the schedule set forth in Item 5 of the Declarations. The payment of "claim expenses", including defense costs, reduces the Limits of Liability set forth in Item 3 of the Declarations. If the applicable Limits of Liability are exhausted, we shall not be liable for "claim expenses" or for any "loss", "cleanup costs", "natural resource damages" or "other loss" which would otherwise be covered under this policy. Read the entire policy carefully including any endorsements thereto to determine rights, duties, and what is and is not covered.

Throughout this policy, the words we, us and our refer to the company providing this insurance as identified in the Declarations. Words and phrases that appear in quotation marks have special meaning. Refer to DEFINITIONS (Section III).

In consideration of the payment of premium and the "named insured's" undertaking to pay the Deductible as described herein, in reliance upon the statements made during the application process and in the Application all of which are made a part hereof, and subject to the Limits of Liability of this insurance as set forth in Item 3 of the Declarations, and the exclusions, conditions and other terms of this policy, we agree with the "named insured" as follows:

## I. INSURING AGREEMENTS

THESE COVERAGES ONLY APPLY IF AND TO THE EXTENT SPECIFICALLY LISTED AS PROVIDED IN ITEM 5 OF THE DECLARATIONS

### COVERAGE A: CLEANUP COSTS – EXISTING POLLUTION EVENT

#### 1. On-Site

##### (a) First Party Discovery

We will pay "cleanup costs" to the extent resulting from an "existing pollution event" on, at or under a "covered location", if that "existing pollution event" is first "discovered" during the "policy period" and the "discovery" is reported to us in writing during the "policy period" or any applicable extended reporting period.

##### (b) Third Party Liability

We will pay "cleanup costs" that an "insured" is legally obligated to pay as a result of a "claim" resulting from an "existing pollution event" on, at, or under a "covered location", provided the "claim" is first made against the "insured" during the "policy period", and the "claim" is reported to us in writing during the "policy period" or any applicable extended reporting period.

Unless covered under any other insuring agreement specifically listed as provided in Item 5 of the Declarations, we shall have no obligation to pay any "cleanup costs" attributable to any irritant, contaminant or pollutant that is outside the boundaries of a "covered location".

#### 2. Off-Site

##### (a) First Party Discovery

We will pay "cleanup costs" to the extent resulting from an "existing pollution event" that migrates beyond the boundaries from a "covered location", if that "existing pollution event" is first "discovered" during the "policy period" and the "discovery" is reported to us in writing during the "policy period" or any applicable extended reporting period.

(b) Third Party Liability

We will pay "cleanup costs" that an "insured" is legally obligated to pay as a result of a "claim" resulting from an "existing pollution event" that migrates beyond the boundaries from a "covered location", provided the "claim" is first made against the "insured" during the "policy period", and the "claim" is reported to us in writing during the "policy period" or any applicable extended reporting period.

Unless covered under any other insuring agreement specifically listed as provided in Item 5 of the Declarations, we shall have no obligation to pay any "cleanup costs" attributable to any irritant, contaminant or pollutant that is on, at or under a "covered location".

**COVERAGE B: BODILY INJURY OR PROPERTY DAMAGE – EXISTING POLLUTION EVENT**

1. On-Site

(a) Bodily Injury

We will pay "loss" that an "insured" is legally obligated to pay as a result of a "claim" for "bodily injury":

- (i) sustained by a person while within the boundaries of a "covered location"; and
- (ii) resulting from an "existing pollution event" on, at or under such "covered location";

provided the "claim" is first made against the "insured" during the "policy period", and the "claim" is reported to us in writing during the "policy period" or any applicable extended reporting period.

(b) Property Damage

We will pay "loss" that an "insured" is legally obligated to pay as a result of a "claim" for "property damage":

- (i) to property within the boundaries of a "covered location"; and
- (ii) resulting from an "existing pollution event" on, at or under such "covered location";

provided the "claim" is first made against the "insured" during the "policy period", and the "claim" is reported to us in writing during the "policy period" or any applicable extended reporting period.

Unless covered under any other insuring agreement specifically listed as provided in Item 5 of the Declarations, we shall have no obligation to pay any "loss" attributable to any irritant, contaminant or pollutant that is outside the boundaries of a "covered location".

2. Off-Site

(a) Bodily Injury

We will pay "loss" that an "insured" is legally obligated to pay as a result of a "claim" for "bodily injury":

- (i) sustained by a person while beyond the boundaries of a "covered location", and
- (ii) resulting from an "existing pollution event" that migrates beyond the boundaries from such "covered location";

provided the "claim" is first made against the "insured" during the "policy period", and the "claim" is reported to us in writing during the "policy period" or any applicable extended reporting period.

(b) Property Damage

We will pay "loss" that an "insured" is legally obligated to pay as a result of a "claim" for "property damage":

- (i) to property beyond the boundaries of a "covered location"; and
- (ii) resulting from an "existing pollution event" that migrates beyond the boundaries from such "covered location";

provided the "claim" is first made against the "insured" during the "policy period", and the "claim" is reported to us in writing during the "policy period" or any applicable extended reporting period.

Unless covered under any other insuring agreement specifically listed as provided in Item 5 of the Declarations, we shall have no obligation to pay any "loss" attributable to any irritant, contaminant or pollutant that is on, at or under a "covered location".

**COVERAGE C: CLEANUP COSTS – NEW POLLUTION EVENT**

1. On-Site

(a) First Party Discovery

We will pay "cleanup costs" to the extent resulting from a "new pollution event" on, at or under a "covered location", if that "new pollution event" is first "discovered" during the "policy period" and the "discovery" is reported to us in writing during the "policy period" or any applicable extended reporting period.

(b) Third Party Liability

We will pay "cleanup costs" that an "insured" is legally obligated to pay as a result of a "claim" resulting from a "new pollution event" on, at, or under a "covered location", provided the "claim" is first made against the "insured" during the "policy period", and the "claim" is reported to us in writing during the "policy period" or any applicable extended reporting period.

Unless covered under any other insuring agreement specifically listed as provided in Item 5 of the Declarations, we shall have no obligation to pay any "cleanup costs" attributable to any irritant, contaminant or pollutant that is outside the boundaries of a "covered location".

2. Off-Site

(a) First Party Discovery

We will pay "cleanup costs" to the extent resulting from a "new pollution event" that migrates beyond the boundaries from a "covered location", if that "new pollution event" is first "discovered" during the "policy period" and the "discovery" is reported to us in writing during the "policy period" or any applicable extended reporting period.

(b) Third Party Liability

We will pay "cleanup costs" that an "insured" is legally obligated to pay as a result of a "claim" resulting from a "new pollution event" that migrates beyond the boundaries from a "covered location", provided the "claim" is first made against the "insured" during the "policy period", and the "claim" is reported to us in writing during the "policy period" or any applicable extended reporting period.

Unless covered under any other insuring agreement specifically listed as provided in Item 5 of the Declarations, we shall have no obligation to pay any "cleanup costs" attributable to any irritant, contaminant or pollutant that is on, at or under a "covered location".

**COVERAGE D: BODILY INJURY OR PROPERTY DAMAGE – NEW POLLUTION EVENT**

1. On-Site

(a) Bodily Injury

We will pay "loss" that an "insured" is legally obligated to pay as a result of a "claim" for "bodily injury":

- (i) sustained by a person while within the boundaries of a "covered location"; and
- (ii) resulting from a "new pollution event" on, at or under such "covered location";

provided the "claim" is first made against the "insured" during the "policy period", and the "claim" is reported to us in writing during the "policy period" or any applicable extended reporting period.

(b) Property Damage

We will pay "loss" that an "insured" is legally obligated to pay as a result of a "claim" for "property damage":

- (i) to property within the boundaries of a "covered location"; and
- (ii) resulting from a "new pollution event" on, at, or under such "covered location";

provided the "claim" is first made against the "insured" during the "policy period", and the "claim" is reported to us in writing during the "policy period" or any applicable extended reporting period.

Unless covered under any other insuring agreement specifically listed as provided in Item 5 of the Declarations, we shall have no obligation to pay any "loss" attributable to any irritant, contaminant or pollutant that is outside the boundaries of a "covered location".

2. Off-Site

(a) Bodily Injury

We will pay "loss" that an "insured" is legally obligated to pay as a result of a "claim" for "bodily injury":

- (i) sustained by a person while beyond the boundaries of a "covered location"; and
  - (ii) resulting from a "new pollution event" that migrates beyond the boundaries from such "covered location";
- provided the "claim" is first made against the "insured" during the "policy period", and the "claim" is reported to us in writing during the "policy period" or any applicable extended reporting period.

(b) Property Damage

We will pay "loss" that an "insured" is legally obligated to pay as a result of a "claim" for "property damage":

- (i) to property beyond the boundaries of a "covered location"; and
  - (ii) resulting from a "new pollution event" that migrates beyond the boundaries from such "covered location";
- provided the "claim" is first made against the "insured" during the "policy period", and the "claim" is reported to us in writing during the "policy period" or any applicable extended reporting period.

Unless covered under any other insuring agreement specifically listed as provided in Item 5 of the Declarations, we shall have no obligation to pay any "loss" attributable to any irritant, contaminant or pollutant that is on, at or under a "covered location".

## COVERAGE E: NATURAL RESOURCE DAMAGES

1. Existing Pollution Event

We will pay "natural resource damages" that an "insured" is legally obligated to pay as a result of a "claim" for injury to or destruction of "natural resources" resulting from an "existing pollution event" on, at, under or that migrates beyond the boundaries from a "covered location", provided the "claim" is first made against the "insured" during the "policy period" and the "claim" is reported to us in writing during the "policy period" or any applicable extended reporting period.

2. New Pollution Event

We will pay "natural resource damages" that an "insured" is legally obligated to pay as a result of a "claim" for injury to or destruction of "natural resources" resulting from a "new pollution event" on, at, under or that migrates beyond the boundaries from a "covered location", provided the "claim" is first made against the "insured" during the "policy period" and the "claim" is reported to us in writing during the "policy period" or any applicable extended reporting period.

## II. DEFENSE

We shall have the right and duty to assume the adjustment, defense and settlement of any "claim" to which an insuring agreement specifically listed as provided in Item 5 of the Declarations applies. "Claim expenses" reduce the applicable Limits of Liability set forth in Item 3 of the Declarations as described in LIMITS OF LIABILITY AND DEDUCTIBLE (Section VI.).

If permitted by applicable law, we shall have the right to appoint one legal counsel to represent and/or defend one or more of the "insureds" who are or may be involved in a "claim" to which this insurance applies. In the event an "insured" is entitled by law to select independent counsel to represent and/or defend an "insured" at our expense, the attorney's fees and all other litigation expenses we must pay to that counsel are limited to "reasonable legal costs". Furthermore, an "insured" may at any time waive any right it may have to select independent counsel.

Our duty to adjust, defend and settle any and all "claims", pending and future, to which an insuring agreement specifically listed as provided in Item 5 of the Declarations applies, ends when the remaining applicable Limits of Liability have been tendered into court or have been exhausted by payment of "loss", "cleanup costs", "natural resource damages" or "other loss".

## III. DEFINITIONS

- A. **"Bodily injury"** means any physical injury, sickness, disease, mental anguish or emotional distress sustained by any person, including death resulting therefrom.
- B. **"Claim"** means a written demand or written notice received by the "insured" alleging liability or responsibility on the part of the "insured". "Claim" does not include a "potential claim" that was reported in a prior policy period as described in CLAIM PROVISIONS (Section VII., B. NOTICE OF POTENTIAL CLAIM), that has become a "claim" during the "policy period".

**C. "Claim expenses"** means:

1. Fees charged by an attorney designated by:
  - a. Us; or
  - b. The "insured" with our prior written consent, provided such fees are "reasonable legal costs"; and
2. All other fees, costs and expenses resulting from the adjustment, defense, settlement and appeal of a "claim" if incurred by us, or by or on behalf of the "insured" with our written consent, including interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay (including an offer of judgment), or deposited in court the amount available for the judgment under the policy.

"Claim expenses" does not include the salaries or expenses of regular employees of ours or the "insured".

**D. "Cleanup costs"** means:

1. Reasonable and necessary costs, charges and expenses incurred in the investigation, removal, remediation (including associated monitoring), neutralization or immobilization of contaminated soil, surface water, groundwater, or other contamination including "emergency expense", but excluding any costs, charges or expenses:
  - (a) incurred by the "insured" to confirm "discovery" (except as specifically provided for in Section III. D.4. below); or
  - (b) to achieve regulatory standards at a "covered location" that are stricter than those necessary for the actual or intended use of such location as set forth in the Application or in the Schedule of Covered Locations endorsement.
2. Where real property or improvements thereto are damaged in the course of performing the activities described in Section III., D.1. above, the lesser of the actual cost to repair, or the actual cash value of, such real property or improvements (as determined based upon the condition of the property or improvements thereto immediately prior to such damage) but excluding any:
  - (a) damage caused by the underlying "pollution event"; or
  - (b) costs, charges or expenses for improvements or betterments, including, but not limited to, those arising from compliance with any law that was not applicable to (including by operation of any grandfather provision contained in any such law) or not enforced against the property before it was so damaged; and
3. "Claim expenses" in connection with a "claim" for "cleanup costs"; or
4. With respect to "discovery", only those "reasonable legal costs" incurred with our prior written consent.

"Cleanup costs" does not include "loss" for "property damage", "natural resource damages" or any other compensation for injury to or destruction of "natural resources".

**E. "Covered location"** means, and is limited to, that property listed in the Schedule of Covered Locations endorsement to the extent therein specifically described, including, without limitation, by street address, lot and block reference, metes and bounds, or by a combination of these or any other substantially equivalent land description methods, current as of the effective date of coverage for any such property.

**F. "Delimitation date"** means the date set forth in Item 6 of the Declarations or in the Schedule of Covered Locations endorsement as applicable.

**G. "Discovered" or "discovery"** means discovery by a "responsible insured" of a "pollution event" in amounts or concentrations that exceed allowable levels or concentrations established under "governmental authority".

**H. "Emergency expense"** means costs, charges and expenses incurred to avoid an actual imminent and substantial endangerment to the public health or welfare or the environment.

**I. "Existing pollution event"** means a "pollution event" that commenced on or after the "retroactive date" and prior to the "delimitation date".

**J. "Fungus" or "fungi"** means any:

1. Form or type of mold, mushroom or mildew,
2. Other fungal structure, and
3. Volatile organic compounds, mycotoxins, allergenic proteins or other substances or gases produced by or arising out of any mold, mushroom, mildew, fungal structure or "spores".

- K. "Governmental authority"** means applicable federal, state, or local statutes, regulations, ordinances or orders.
- L. "Insured"** means:
1. The "named insured"; and
  2. Any current or former principal, partner, officer, director, employee, member or manager (in the case of a limited liability company) or leased personnel of a "named insured", while acting within the scope of their employment or written agreement with such "named insured".
- M. "Insured contract"** means a contract or agreement listed in a Schedule of Insured Contracts endorsement to this policy, if any.
- N. "Loss"** means:
1. Compensatory damages, whether awarded by a court in a judgment or paid in settlement for:
    - (a) "Bodily injury" which may include costs for medical monitoring but only when such medical monitoring is a direct result of physical injury; or
    - (b) "Property damage" which may include diminution in property value and stigma damage to property, but only when such diminution in value or stigma damage is a direct result of physical injury to such property; and
  2. "Claim expenses" in connection with a "claim" for Section III., N.1.(a) and N.1.(b) above.
- "Loss" does not include "other loss".
- O. "Microbial substance"** means any substance that reproduces through release of "spores" or the splitting of cells including but not limited to bacteria, viruses, "fungus(i)", protozoa, chlamydiae, or rickettsiae, whether or not the substance is living.
- P. "Named insured"** means the person or entity set forth in Item 1 of the Declarations, and any other person or entity listed in a Named Insured endorsement to the policy, if any.
- Q. "Natural resources"** means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States, any State or local government, any foreign government, any Indian tribe, or, if such resources are subject to a trust restriction on alienation, any member of an Indian tribe.
- R. "Natural resource damages"** means the sum of:
1. Reasonable and necessary direct costs, including such costs of assessment and replacement required by applicable "governmental authority" to restore the "natural resources" to their baseline condition as they existed prior to the "pollution event";
  2. "Use value" of injury to or destruction of "natural resources" between the time of a "pollution event" and restoration of the "natural resources" to the extent injured by the "pollution event"; and
  3. "Claim expenses" incurred in connection with a "claim" for injury to or destruction of "natural resources".
- "Natural resource damages" does not include "cleanup costs" or "loss" for "property damage".
- S. "New pollution event"** means a "pollution event" that commences on or after the "delimitation date".
- T. "Other loss"** has the meaning given in a Choice Coverage endorsement to this policy, if any. "Other loss" does not include "loss".
- U. "Policy period"** means the period set forth in Item 2 of the Declarations or:
1. Any shorter period arising from:
    - (a) Cancellation or termination of this policy; or
    - (b) With respect to a specific "covered location" the deletion of such "covered location" from this policy by us upon the "named insured's" written request; or
  2. As otherwise expressly provided in an endorsement.
- V. "Pollution event"** means the discharge, dispersal, release, or escape of any solid, liquid, gaseous or thermal irritant, contaminant or pollutant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, and waste into or upon land, or any structure on land, the atmosphere, or any watercourse or body of water including groundwater.
- W. "Potential claim"** means a "new pollution event" that an "insured" reasonably expects may result in a "claim".

**X. "Property damage"** means:

1. Physical injury to or destruction of tangible property including the resulting loss of use thereof; or
2. Loss of use of tangible property that has not been physically injured or destroyed.

"Loss" for "property damage" does not include "cleanup costs", "natural resource damages" or any other compensation for injury to or destruction of "natural resources".

**Y. "Reasonable legal costs"** means attorneys fees, costs, charges, and all other litigation expenses in connection with the defense of a "claim" or negotiation of cleanup standards in connection with "discovery", limited to rates we actually pay to counsel we retain in the ordinary course of business in the defense of similar "claims" or negotiation of similar matters in the community where the "claim" arose or is being defended or the "discovery" was made or is being negotiated; provided that we shall pay such rates and amounts only to the extent that and so long as they are evidenced to be reasonable and necessary attorney fees, costs, charges, and expenses. We may exercise the right to require that such counsel have certain minimum qualifications with respect to legal competency including experience in defending "claims" or negotiating in connection with a "discovery" similar to the one pending against or involving an "insured" and to require such counsel to have errors and omissions insurance coverage. It is a condition precedent to our obligation to pay any "reasonable legal costs" that an "insured" agree and be responsible for counsel responding to our requests for information regarding the "claim", "discovery" or any other matter in a timely and comprehensive manner.

**Z. "Responsible insured"** means a "named insured's" principal, partner, director, officer, member or manager (in the case of a limited liability company), or employee with responsibility for compliance, environmental or legal affairs, or risk management.

**AA. "Retroactive date"** means the date set forth in Item 7 of the Declarations, or any applicable endorsement, which is the earliest date that a "pollution event" can commence for coverage to be provided under the policy. If no entry appears or the words NOT APPLICABLE or N/A appear in the corresponding space of Item 7 of the Declarations then a "retroactive date" shall not apply.

**BB. "Spore" or "spores"** means any reproductive body produced by or arising out of any "fungus(i)".

**CC. "Termination of coverage"** means, for the purpose of EXTENDED REPORTING PERIODS (Section V.), the effective date of:

1. Cancellation or nonrenewal of this policy by the "named insured", or cancellation or nonrenewal of this policy by us other than for fraud or material misrepresentation, change in use of, or operations conducted at, the "covered location", or nonpayment of premium; or
2. Deletion of a "covered location" from this policy by us upon the "named insured's" written request but only with respect to such "covered location".

**DD. "Underground storage tank"** means any tank in existence at a "covered location" as of the inception date of the policy or installed thereafter, including associated underground piping connected thereto, that has at least ten (10) percent of its volume, or any associated piping, below the ground.

**EE. "Use value"** means the value of the "natural resources" to the public attributable to the direct use of the services provided by such "natural resources", provided, however, that no aesthetic or historic use shall be considered in the determination of such value.

#### **IV. EXCLUSIONS**

This insurance does not apply to "claims", "cleanup costs", "loss", "natural resource damages" or "other loss" based upon, arising out of, or to the extent comprised of:

##### **A. Asbestos and Lead**

Any asbestos-containing material or lead-based paint which are or were part of any fixtures, buildings or improvements on, at or under the "covered location". However, this exclusion does not apply to "cleanup costs" to the extent attributable to asbestos-containing materials or lead-based paint in the soil or groundwater.

##### **B. Contractual Liability**

Any liability assumed by an "insured" under any contract or agreement. However, this exclusion does not apply to liability:

1. For "cleanup costs", "loss", "natural resource damages" or "other loss" that would have attached to an "insured" by operation of law in the absence of such contract or agreement; or

2. That is specifically assumed in an "insured contract" but only to the extent that any indemnity or contractual liability assumed thereby is consistent with liability expressly covered under, and not otherwise excluded from coverage by, this policy.

### **C. Financial Assurance**

Any obligation to demonstrate financial assurance or financial responsibility, or to meet any financial assurance or financial responsibility requirements under any federal, state or local law. However, this exclusion does not apply to any such obligation to the extent specifically provided in an endorsement to this policy, if any.

### **D. Fines, Penalties and Punitive Damages**

Any fines, penalties, or punitive, exemplary or multiple damages.

### **E. Known Pollution Event**

Any "pollution event" known to a "responsible insured" prior to the effective date of the applicable insuring agreement listed as provided in Item 5 of the Declarations of this policy, unless such "pollution event" was disclosed to us in writing and listed on a Known Pollution Event Schedule and/or Disclosed Documents endorsement and provided that such "pollution event" is not otherwise excluded under the policy.

### **F. Known Underground Storage Tanks**

Any "underground storage tank", whether active, inactive or abandoned, known to any "responsible insured" unless listed on a Scheduled Underground Storage Tank endorsement to this policy, if any.

### **G. Maintenance, Upgrades, Improvements or Installations**

Any costs, charges or expenses for maintenance, upgrade or improvement of, or installation of any control to, any property or processes on, at, within or under a "covered location" even if such maintenance, upgrade, improvement or installation is required:

1. By "governmental authority"; or
2. As a result of "cleanup costs", "loss", "natural resource damages" or "other loss" otherwise covered under the policy.

### **H. Microbial Substance**

Any "microbial substance".

### **I. Naturally Occurring Substance**

Any naturally occurring substance in its unaltered form, or altered solely through naturally occurring processes or phenomena. However, this exclusion does not apply to the extent that an "insured" demonstrates that the naturally occurring substance:

1. Exceeds amounts or concentrations naturally present on, at, under or surrounding the "covered location", and
2. Was the result of a discharge, dispersal, release or escape of such naturally occurring substance.

### **J. Owned Property**

"Property damage" to property that is owned or rented by or leased to, the "insured".

### **K. Related Persons and Organizations**

Any "claim" made:

1. By an "insured" against any other "insured"; or
2. Against an "insured" by an organization or individual:
  - a. That wholly or partially controls, owns, operates or manages an "insured"; or
  - b. That is wholly or partially controlled, owned, operated or managed by the "insured".

### **L. War**

1. War, including undeclared or civil war;
2. Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
3. Insurrection, rebellion, revolution or usurped power, or action taken by any government, sovereign or other authority in hindering or defending against any of these.

## **M. Wrongful Acts or Deliberate Non-Compliance**

Any:

1. Knowingly wrongful act, or
2. Deliberate non-compliance with any "governmental authority", administrative complaint, notice of violation, notice letter, or instruction of any governmental agency or body,  
by or at the direction of a "responsible insured".

## **N. Workers' Compensation and Injury as a Consequence of Employment**

1. Any obligation of the "insured" that is owed, in whole or in part, under a workers compensation, disability benefits, unemployment compensation or any similar law,
2. Injury to any "insured" if such injury occurs during and in the course of employment;
3. Injury to the spouse, child, parent, brother or sister of any "insured" as a consequence of such "insured's" employment; or
4. Any obligation of an "insured" for indemnity or contribution to another because of "loss" or "other loss" arising out of such injury in the course of employment.

## **V. EXTENDED REPORTING PERIODS**

### **A. RENEWAL OF COVERAGE**

Provided that the "named insured" has renewed this policy, the "named insured" shall be entitled to a provisional extended reporting period of sixty (60) days (at no additional charge) within which to report:

1. "Discovery" during the final thirty (30) days of the "policy period", such provisional extended reporting period to commence upon the date of "discovery"; or
2. A "claim" that is first made against the "insured" during the final thirty (30) days of the "policy period", such provisional extended reporting period to commence upon the date the "claim" is made against the "insured".

Any "discovery" or "claim" reported to us in writing during the provisional extended reporting period shall be deemed to have been made during the "policy period" and shall be subject to the remaining Limits of Liability for the "policy period", if any.

### **B. TERMINATION OF COVERAGE**

Only with respect to "claims" seeking payment of "cleanup costs", "loss", "natural resource damages" or "other loss" to which an insuring agreement specifically listed as provided in Item 5 of the Declarations applies, the "named insured" shall be entitled to:

1. An automatic extended reporting period of sixty (60) days (at no additional charge) upon "termination of coverage".
2. Purchase an optional extended reporting period of up to three (3) years in duration commencing when the automatic extended reporting period ends, provided the "named insured":
  - (a) makes a written request to us for such optional extended reporting period within sixty (60) days after "termination of coverage"; and
  - (b) pays the additional premium when due. The charge for such optional extended reported shall not exceed one hundred percent (100%) of the total premium for the policy as set forth in Item 8 of the Declarations plus any additional premium described in an endorsement to the policy, if any.

At the commencement of any such optional extended reporting period, the entire premium shall be considered earned, and in the event the optional extended reporting period is terminated before its expiration for any reason, we shall not return any portion of the premium paid. If such additional premium is paid when due, the optional extended reporting period may not be canceled by us, provided that all other terms and conditions of the policy are met.

3. Any "claim" first made against the "insured" and reported to us in writing during the automatic extended reporting period or, as applicable, the optional extended reporting period shall be deemed to have been made and reported on the last day of the "policy period" and coverage shall apply under this policy provided that:
  - (a) The "pollution event" commenced on or after the "retroactive date" and before the end of the "policy period"; and

- (b) The "named insured" has not purchased any other insurance to replace coverage provided by this policy; and
- (c) The "claim" is otherwise covered under the terms and conditions of this policy; and
- (d) The "cleanup costs", "loss", "natural resource damages" or "other loss" resulting from such "claim" will be subject to the remaining Limits of Liability for this policy, if any; and
- (e) Notwithstanding CONDITIONS (Section VIII.), OTHER INSURANCE, and Section V., B.3 (b), above, the insurance provided for a "claim" first reported during the automatic extended reporting period or the optional extended reporting period is excess over any other valid and collectible insurance available under policies in force during the automatic or optional extended reporting periods.

## **VI. LIMITS OF LIABILITY AND DEDUCTIBLE**

### **A. EACH POLLUTION EVENT LIMIT**

Subject to the Aggregate Policy Limit, the most we will pay for all "cleanup costs", "loss", "natural resource damages" or "other loss" arising out of the same, continuous or repeated "pollution event" or series of related "pollution events" is the Each Pollution Event Limit set forth in Item 3 of the Declarations.

We shall not be obligated to pay any "cleanup costs", "loss", "natural resource damages" or "other loss", or undertake or continue the defense of any "claim", pending or future, after the Each Pollution Event Limit has been tendered into court or exhausted by payments for "cleanup costs", "loss", "natural resource damages" or "other loss".

### **B. AGGREGATE POLICY LIMIT OF LIABILITY**

The most we will pay for all "cleanup costs", "loss" and "other loss" to which this insurance applies is the Aggregate Policy Limit set forth in Item 3 of the Declarations.

### **C. SUB-LIMIT OF LIABILITY/AGGREGATE SUB-LIMIT**

If a sub-limit of liability is shown in Item 5 of the Declarations corresponding with a specific insuring agreement or in an endorsement to this policy, then, subject to the Each Pollution Event Limit and Aggregate Policy Limit set forth in Item 3 of the Declarations and the corresponding Aggregate Sub-Limit, such sub-limit of liability is the most we will pay for all "cleanup costs", "loss", "natural resource damages" or "other loss" as applicable, arising from the same, continuous or repeated "pollution event" or series of related "pollution events" to which the specific insuring agreement or endorsement applies. The corresponding Aggregate Sub-Limit is the most we will pay for all "cleanup costs", "loss", "natural resource damages" or "other loss", as applicable, under the terms of the insuring agreement or endorsement to which that Aggregate Sub-Limit corresponds.

The sub-limit of liability is not in addition to and will erode the Each Pollution Event Limit and the Aggregate Policy Limit set forth in Item 3 of the Declarations. If the Each Pollution Event Limit and/or Aggregate Policy Limit has been reduced to an amount which is less than the sub-limit of liability corresponding with a specific insuring agreement or in an endorsement, the lesser of the remaining Aggregate Policy Limit or remaining Each Pollution Event Limit is the most that will be available for payment of "cleanup costs", "loss", "natural resource damages" or "other loss" as applicable, to which to which that insuring agreement or endorsement applies.

### **D. DEDUCTIBLE**

We will pay "cleanup costs", "loss", "natural resource damages" or "other loss" to which this insurance applies in excess of the Deductible set forth in Item 4 or Item 5 (corresponding with an insuring agreement specifically listed as provided) of the Declarations or as set forth in an endorsement to this policy, if any. The Deductible is the "named insured's" obligation and applies to all "cleanup costs", "loss", "natural resource damages", and "other loss" arising from the same, continuous or repeated "pollution event" or series of related "pollution events". The Deductible does not erode the Limits of Liability. We may advance payment for "cleanup costs", "loss", "natural resource damages" or "other loss" within the Deductible. The "named insured" shall promptly reimburse us for advancing any element of such "cleanup costs", "loss", "natural resource damages" or "other loss" paid by us within the Deductible.

If an "insured" agrees with us to use non-binding mediation to resolve a "claim" for which a defense has been provided and such "claim" is resolved thereby, the Deductible shall be reduced by 50% for that "claim" only, subject to a maximum reduction of \$25,000.

### **E. MULTIPLE INSURED OR CLAIMANTS, MULTIPLE COVERAGES, MULTIPLE POLICY PERIODS, CLAIMS ARISING FROM POTENTIAL CLAIMS, AND CLAIMS REPORTED IN THE EXTENDED REPORTING PERIOD**

#### **1. MULTIPLE INSURED OR CLAIMANTS**

The inclusion of more than one "insured" in the "discovery" of a "pollution event" or in the making of a "claim" regarding the same "pollution event" shall not increase the Limits of Liability set forth in Item 3 of the Declarations. Nor shall the "discovery" of a "pollution event" or the making of "claims" by more than one person or organization increase the Limits of Liability stated in the Declarations.

## **2. MULTIPLE COVERAGES**

If the same, continuous or repeated "pollution event" or series of related "pollution events" is covered under more than one insuring agreement specifically listed as provided in Item 5 of the Declarations, only a single Each Pollution Event Limit shall apply to all "cleanup costs", "loss", "natural resource damages" or "other loss" arising from such "pollution event" or series of related "pollution events". Furthermore, if more than one Deductible is applicable, only the highest Deductible shall apply to all "cleanup costs", "loss", "natural resource damages", or "other loss" arising from such "pollution event" or series of related "pollution events".

## **3. MULTIPLE POLICY PERIODS**

If we or an affiliate have issued pollution liability coverage to the "named insured" for the "covered location" in one or more consecutive and uninterrupted policy periods, and:

- (a) a "pollution event" or series of related "pollution events" that is first reported to us in accordance with all of the terms and conditions of this policy takes place over the "policy period" and one or more subsequent policy periods; and/or
- (b) a "claim" for "cleanup costs", "loss", "natural resource damages" or "other loss" is first made against the "insured" during the "policy period" and reported to us in accordance with all of the terms and conditions of this policy; and/or
- (c) a "pollution event" is first "discovered" during the "policy period" and reported to us in accordance with all of the terms and conditions of this policy;

All "claims", "cleanup costs", "loss", "natural resource damages", and "other loss" arising out of the same, continuous or repeated "pollution event" or series of related "pollution events" whether reported during the "policy period" or during a subsequent policy period shall be subject to the Limits of Liability and Deductible corresponding with this policy.

## **4. CLAIMS ARISING FROM POTENTIAL CLAIMS**

A "potential claim" which subsequently becomes a "claim" shall be subject to the Limits of Liability corresponding to the policy period in effect when the "potential claim" was reported to us in accordance with CLAIMS PROVISIONS (Section VII., Paragraph B. NOTICE OF POTENTIAL CLAIM).

## **5. CLAIMS REPORTED IN THE EXTENDED REPORTING PERIOD**

The extended reporting periods shall not serve to increase or reinstate the Limits of Liability set forth in Item 3 of the Declarations. The Limits of Liability shall be those that remain at the end of the "policy period".

# **VII. CLAIM PROVISIONS**

## **A. NOTICE OF DISCOVERY OR CLAIM**

In the event of a "discovery" or "claim", the "insured" shall give written notice to us as soon as possible containing particulars sufficient to identify an "insured" and reasonably obtainable information including:

1. The time, place, location, and a detailed explanation of the "pollution event" including, as applicable, the date of "discovery" or the date the "insured" received the "claim";
2. The names and addresses of any injured parties and available witnesses;
3. Any and all investigative or engineering reports, data or information about the "pollution event", "cleanup costs", "loss", "natural resource damages" or "other loss"; and
4. Any and all other relevant information about the "pollution event", "claim", "cleanup costs", "loss", "natural resource damages" or "other loss".

If a "claim" is made against an "insured", the "insured" shall immediately forward to us every demand, notice, summons, complaint, order or other process or legal papers received by an "insured" or its representatives.

## **B. NOTICE OF POTENTIAL CLAIM**

If during the "policy period" the "insured" first becomes aware of a "potential claim", the "insured" may provide written notice to us containing particulars sufficient to identify an "insured" and providing all of the following information:

1. The cause of the "new pollution event" if known or suspected, including any potential cause;
2. The time, place, location, and details of the "new pollution event" including how and when the "insured" first became aware of the "potential claim";
3. The names and addresses of any actually or potentially injured parties or damaged property, and available witnesses, if and to the extent reasonably available;
4. Any and all investigative or engineering reports, data or information about the "potential claim", and any other information containing "cleanup costs", "loss", "natural resource damages" or "other loss" that may result; and
5. Any other relevant information about the "potential claim", "cleanup costs", "loss", "natural resource damages" or "other loss".

If all of the foregoing information is provided to us in writing during the "policy period" and the "potential claim" subsequently becomes a "claim" made against the "insured" and reported to us during any renewal policy, any applicable extended reporting period, or within five (5) years after the later of the end of any such policy or extended reporting period, such "claim" shall be deemed, for the purposes of this insurance, to have been made on the date on which written notice of the "potential claim" was first received by us and shall be subject to the terms, conditions and Limits of Liability applicable to the policy in effect as of such date.

We may elect to investigate any "potential claim" which is reported to us. Any costs associated with the investigation of a "potential claim" prior to a "claim" being made will not be considered "claim expenses". These costs shall not be applied towards reducing the applicable Deductible, and are in addition to the Limits of Liability and shall be borne by us.

#### **C. NOTICE TO US**

All "discovery", "claims" and "potential claims" shall be reported to us in writing at the address shown in Item 9 of the Declarations.

#### **D. SETTLEMENT**

The "insured" shall not settle any "claim" without our written consent. If we recommend a settlement, the "insured" shall have the opportunity to concur, such concurrence not to be unreasonably withheld or denied. If we recommend a settlement that is acceptable to a claimant for a total amount in excess of the applicable Deductible and the "insured" refuses to concur with such settlement, then our liability for "cleanup costs", "loss", "natural resource damages", and "other loss" shall be limited to that portion of the recommended settlement and the "claim expenses" incurred as of the date of the "insured's" refusal, which exceed the Deductible and fall within the Limit of Liability.

#### **E. VOLUNTARY PAYMENTS, ADMISSIONS OR ASSUMPTIONS OF LIABILITY**

No costs, charges or expenses shall be incurred or paid or liability admitted or assumed by an "insured" without our written consent, which shall not be unreasonably withheld, delayed or denied.

Notwithstanding the foregoing, an "insured" may incur such "emergency expense" as reasonably necessary to prevent or mitigate "cleanup costs", "loss", "natural resource damages" or "other loss", provided the "insured" provides written notice to us within ninety-six (96) hours after any portion of such "emergency expense" is incurred.

### **VIII. CONDITIONS**

#### **A. APPRAISAL**

If we and the "insured" disagree as to the value of real property or improvements thereto in connection with "cleanup costs" (Section III. DEFINITIONS, paragraph D.2) or the amount of "other loss" for Coverages H, I, and J (only if specifically listed as provided in Item 5 of the Declarations), either party may make written demand for an appraisal of the value of the property or the amount of "cleanup costs" or "other loss". In this event, each party will select a competent and impartial appraiser. The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the value of the property and amount of "cleanup costs" or "other loss". If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

1. Pay its chosen appraiser; and
2. Bear the other expenses of the appraisal and umpire equally.

If there is an appraisal, we retain our right to deny coverage for "cleanup costs" or "other loss" as applicable.

## **B. ASSIGNMENT**

Assignment of interest under this policy shall not bind us unless and until our consent is endorsed thereon, which consent shall not be unreasonably withheld, delayed or denied.

## **C. AUDIT AND INSPECTION**

We shall be permitted upon reasonable prior notice to audit the "insured's" books and records at any time during the "policy period" and within three (3) years after the final termination of this policy, as far as they relate to the subject matter of the policy and any "cleanup costs", "loss", "natural resource damages" or "other loss" for which payment may be made under the policy. We shall also be permitted, upon reasonable prior notice, to inspect, sample and monitor on a continuing basis any "covered location" and operations conducted thereon. Neither our right to make inspections, sample and monitor, nor the actual undertaking thereof, nor any report thereon shall constitute an undertaking, on behalf of us or others, to determine or warrant that a "covered location" or operation is safe, healthful or conforms to acceptable engineering practice or is in compliance with any law, rule or regulation. We will not manage or exercise control over any "covered location" or operation.

## **D. BANKRUPTCY**

Bankruptcy or insolvency of an "insured" will not relieve us of our obligations to an "insured" under this policy nor increase our obligations including, but not limited to, those with respect to any Deductible amount. However, if we have advanced any payment for "cleanup costs", "loss", "natural resource damages" or "other loss" within the Deductible pursuant to LIMITS OF LIABILITY AND DEDUCTIBLE (VI., paragraph D), then any such payments to the extent not reimbursed to us shall reduce the Limits of Liability. Furthermore, this condition shall not impair our ability to assert any defense on behalf of an "insured".

## **E. CANCELLATION**

This policy may be canceled by the "named insured" by surrender to us or by mailing to us written notice stating when thereafter cancellation shall be effective.

This policy may be canceled by us by mailing to the "named insured" at the address set forth in Item 1 of the Declarations, a notice stating when thereafter such cancellation shall be effective. We may cancel this policy for the following reasons only:

1. Fraud or material misrepresentation;
2. Any "insured's" material failure to comply with the terms, conditions or contractual obligations under this policy including failure to pay the Deductible when due;
3. A material change in use of, or operations conducted at, any "covered location"; or
4. Nonpayment of premium.

The mailing of notice as aforesaid shall be sufficient proof of notice. The time of surrender or the effective date and hour of cancellation stated in the notice shall become the end of the "policy period". Delivery of such written notice either by the "named insured" or by us shall be equivalent to mailing. Notice of pending cancellation will be provided not less than: (a) sixty (60) days prior to the effective date of cancellation for any "insured's" failure to comply with the terms, conditions or contractual obligations under this policy including failure to pay the Deductible when due, or change in use of, or operations conducted at the "covered location" that materially increases risks to which this insurance applies; (b) thirty (30) days prior to the effective date of cancellation for fraud or material misrepresentation; and (c) ten (10) days prior to the effective date of cancellation for nonpayment of premium.

If we cancel, subject to any minimum earned premium that may apply, the return premium will be calculated on a pro rata basis. If the "named insured" cancels, subject to any minimum earned premium that may apply, there may be no return premium or the return premium may be less than pro rata.

## **F. CHANGES**

The terms of this policy shall not be waived or changed, except by endorsement issued to form a part of this policy.

## **G. CHOICE OF LAW**

In the event an "insured" and we dispute the meaning, interpretation or operation of any term, condition, definition or provision of this policy resulting in litigation, arbitration or other form of dispute resolution, the "insured" agrees with us that the law of the State of New York shall apply without giving effect to any conflicts or choice of law principles. In the event the "insured" agrees with us to resolve the dispute by arbitration, any such arbitration

shall be in accordance with the Commercial Arbitration Rules of the American Arbitration Association in effect when such agreement is reached.

#### **H. COOPERATION**

The "insured" agrees with us to assist and cooperate in the fulfillment of the policy's terms, including the investigation, adjustment, defense or settlement of any "claim" or in connection with the "discovery" of any "pollution event". Such cooperation may include participating at meetings; testifying at hearings, depositions and trials; and securing evidence. The "insured" shall be allowed \$250 per day but no more than \$5,000 in total allowable expenses for compensation to its principals, partners, officers, directors, employees or members or managers for personally attending any such meetings, hearings or depositions at our request. These allowable expenses shall not reduce the applicable Limits of Liability and Deductible set forth in Item 3 of the Declarations.

In addition, all "insureds" shall cooperate with us in the pursuit of any coverage that may be available from other insurers and/or under other insurance policies for "claim expenses", "cleanup costs", "loss", "natural resource damages" or "other loss", covered under this policy.

#### **I. DECLARATIONS**

By acceptance of this policy, the "named insured" agrees that the statements in the Declarations, and those made during the application process and in the Application are its agreements and representations, that this policy is issued in reliance upon the truth of such statements and representations and that this policy embodies all agreements existing between the "named insured" and us relating to this insurance.

#### **J. HEADINGS**

The descriptions in the headings of this policy are solely for convenience and form no part of the policy terms and conditions.

#### **K. OTHER INSURANCE**

1. The insurance provided under this policy is primary insurance, except as otherwise provided in connection with any extended reporting period, or where stated in an endorsement to apply in excess of, or contingent upon the absence of, other insurance. When this insurance is primary and the "insured" has other insurance which is stated to be applicable to the "cleanup costs", "loss", "natural resource damages" or "other loss" on an excess basis, the amount of our liability under this policy shall not be reduced by the existence of such excess insurance.
2. When this insurance is excess, we shall have no duty to defend the "insured" against any "claim" if any other insurer has a duty to defend the "insured" against such "claim". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers. When this insurance is excess over other insurance, we will pay only our share of the amount of "cleanup costs", "loss", "natural resource damages" or "other loss" if any, that exceeds the sum of:
  - a. The total amount that all such other insurance would pay for the "cleanup costs", "loss", "natural resource damages" or "other loss" in the absence of this insurance; and
  - b. The total of all deductible and self-insured amounts under all that other insurance.
3. When both this insurance and other insurance apply to the "cleanup costs", "loss", "natural resource damages" or "other loss" on the same basis, whether primary, excess or contingent, we shall not be liable under this policy for a greater proportion of the "cleanup costs", "natural resource damages" or "other loss" than the amount set forth in Item 3 of the Declarations or the amount resulting from the following contribution methods, whichever is lesser:
  - a. Contribution by equal shares - Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the "cleanup costs", "loss", "natural resource damages" or "other loss" remains, whichever occurs first; or
  - b. Contribution by limits - each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

#### **L. SEPARATION OF INSURED**

Except with respect to the Limits of Liability and any rights and duties specifically assigned to the "named insured" set forth in Item 1 of the Declarations, this insurance applies:

1. As if each "named insured" were the only "named insured"; and
2. Separately to each "insured" against whom a "claim" is made.

Misrepresentation, concealment, breach of condition or violation of any duty under this policy by one "insured" shall not prejudice the interest of coverage for another "insured" under this policy, except where an "insured" is a parent, subsidiary, or affiliate of the "named insured" set forth in Item 1 of the Declarations. For purposes of the immediately preceding sentence, an "affiliate" is any company or entity that is in control of, controlled by, or under common control with the "named insured". "Control" (including the terms "controlled by" and "under common control with") as used herein includes, but is not limited to, the possession, directly or indirectly and whether acting alone or in conjunction with others, of the authority to direct or cause the direction of the management or policies of a company or entity. A voting interest of twenty five percent (25%) or more creates a rebuttable presumption of control.

#### **M. SOLE AGENT**

The "named insured" set forth in Item 1 of the Declarations shall act on behalf of all "insureds" for all purposes, including but not limited to the payment of Deductible, payment or return of premium, receipt and acceptance of any endorsement issued to form a part of this policy, giving and receiving notice of cancellation or nonrenewal, and the exercise of the rights provided in EXTENDED REPORTING PERIODS (Section V.)

#### **N. SUBROGATION**

In the event of any payment under this policy, we shall be subrogated to all of an "insured's" rights of recovery against any person or organization, including any rights to contribution from any other insurer. An "insured" shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. No "insured" shall do anything to impair, prejudice or waive such rights.

Any recovery obtained through subrogation, after expenses incurred in such subrogation are deducted by the party bearing the expense, shall be applied proportionately to the "insured" and us for actual payments as a result of judgment, settlement or defense of a "claim", or "cleanup costs" with respect to the "discovery" of a "pollution event".

#### **O. THIRD PARTY BENEFICIARIES**

No third party beneficiaries are created as a result of this policy. This policy creates no rights by or on behalf of any third parties. We have no obligation under this policy to any third party whatsoever and specifically we have no obligation to make payment to anyone except the "insured".