

The coverage provided by this policy contains requirements for claims-made and reporting to the insurance company listed in the declarations (hereinafter the *company*). Please read this entire form carefully. This policy has certain provisions and requirements unique to it and may be different from other policies the insured may have purchased. Defined terms, other than headings, appear in italics.

Notice: the descriptions in any headings or sub-headings of this policy are inserted solely for convenience and do not constitute any part of the terms or conditions of this policy.

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The *Company*, in consideration of the payment of the premium and in reliance upon all representations and warranties contained in the application submitted to the *Company* and made a part of this *Policy*, including any addendum or addenda, and subject to all provisions of this *Policy* subsequently set forth herein, agrees with the *Named Insured* as follows.

I. INSURING AGREEMENT

COVERAGE

The *Company* shall pay, up to the Limits of Liability and in excess of the *Self-Insured Retention*, on behalf of the *Insured* all:

- *Cleanup Costs* of the *Insured*;
- *Liabilities for Property Damage* to a *Third Party* (including *Cleanup Costs*)
- *Liabilities for Bodily Injury* to a *Third Party*; and
- *Defense Expenses*

resulting from *Pollution Conditions* at, upon, within, under or migrating from a *Scheduled Location* which commenced during the *Policy Period* or after the *Retroactive Date*, if any and were *Discovered* and reported to the *Company* during the *Policy Period*, the Automatic Extended Reporting Period or the Optional Extended Reporting Period, if any. A *Claim* under this coverage must be reported to the *Company* in accordance with Section VII. Conditions.

II. DEFINITIONS

Words and phrases in italics in this *Policy* have the following special meaning:

Affiliates

The term *Affiliates* means all affiliates of the *Insured*, including without limitation, subsidiary or parent entities, shareholders, members, partners, owners, joint venturers, directors, managers, officers, employees, *Leased Workers*, *Temporary Workers*, or immediate family of any of the *Insureds*.

Auto

The term *Auto* means a land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment. *Auto* does not include *Mobile Equipment*. However, self-propelled vehicles with the following types of permanently attached equipment are not *Mobile Equipment* but will be considered *Autos*:

- Equipment designed primarily for snow removal, road maintenance other than construction or resurfacing, or street cleaning;
- Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
- Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

Bodily Injury

The term *Bodily Injury* means, sickness, disease, mental anguish, emotional distress or physical injury sustained by a *Third Party*, including death resulting therefrom.

Business Interruption Losses

The term Business Interruption Losses means:

- The actual loss sustained during the *Period of Restoration* by a *Third Party* due to the necessary suspension of business activities resulting directly from *Pollution Conditions* at a *Scheduled Location* not to exceed the net income (net profit or loss before income taxes) that would have been earned or incurred in the absence of suspension of *Operations*;
- The necessary expenses incurred by a *Third Party*
 - as a result of the suspension of *Operations*; and
 - to avoid or minimize the loss suffered by the *Third Party* as a result of the suspension of *Operations*.

The amount payable by the *Company* for *Business Interruption Losses* shall be reduced in the event that *Business Interruption Losses* could have been reduced by:

- a complete or partial resumption of *Operations*, whether the location of *Operations* was damaged or not; or
- by making use of other property at any other location; or
- by making use of stock (raw, in process or finished).

The *Company* shall not be liable for any *Claims* resulting from the suspension, lapse or cancellation of any lease, license, contract or order unless such suspension, lapse or cancellation is directly and primarily caused by the interruption of business resulting from the *Pollution Condition*. The liability of the *Company* for *Business Interruption Losses* shall, in addition to the limitations set forth herein, be further limited to the period of twelve (12) calendar months from the date of the *Claim*.

Cargo

The term *Cargo* means goods, products or wastes carried for delivery on or within an *Auto* that is properly licensed to transport such goods, products or wastes.

Carrier

The term *Carrier* means a person or entity, other than the Insured or any subsidiary or affiliate company of the Insured, properly licensed to engaged in the businesses of transporting property for hire by *Auto*, *Watercraft* or rolling stock.

Claim(s)

The term *Claim(s)* means written notice during the *Policy Period*:

- to an *Insured* from a *Third Party* seeking to hold any *Insured* responsible for *Liabilities* resulting from *Pollution Conditions* at, upon, within, under or migrating from a *Scheduled Location*; or
- by the *Insured* seeking coverage for *Cleanup Costs* resulting from *Pollution Conditions* at, upon, within, under or migrating from a *Scheduled Location*.

Cleanup Costs

The term *Cleanup Costs* means the reasonable and necessary costs incurred in performing *Corrective Actions* and/or *Restorative Actions* at, upon, within, under or migrating from a *Scheduled Location*. Costs incurred by the use of *Affiliates* to perform *Corrective Actions* or *Restorative Actions* or to act in any manner with respect to a *Claim* are not included in *Cleanup Costs*.

Corrective Actions

The term *Corrective Actions* means actions undertaken with the prior written approval of the *Company* to investigate, test, sample, monitor, cleanup, remove, remediate, treat, dispose of, neutralize or immobilize *Pollutants* resulting from a *Pollution Condition*. *Corrective Actions* for a *Pollution Condition* shall be deemed completed when the condition of the property:

- satisfies the applicable Risk Based Standards; or
- a no further action letter, closure or other approval is received from the appropriate *Regulatory Body*.

For the purposes of this Policy, “Applicable Risk Based Standards” shall mean those standards developed by the appropriate *Regulatory Body* for the cleanup of the *Pollutant(s)*:

- for similar property in the same geographic area as the *Scheduled Location*; and,
- based upon the land use of the *Scheduled Location* at the time of inception of this *Policy*.

Corrective Actions shall also include the preparation of customary reports related to such actions. *Corrective Actions* or *Mitigation Actions* that require an emergency response (pursuant to Section VII. Conditions) do not require the prior written approval of the *Company*.

Defense Expenses

The term *Defense Expenses* means the reasonable legal costs, charges and expenses incurred by the *Company*, fees and expenses of any third party administrator for the *Company* or, with the prior written approval of the

Company, by an *Insured*, in the investigation, adjustment or defense of *Claims* with respect to:

- the determination of any *Liability*; or
- *Cleanup Costs*.

Defense Expenses do not include salary charges of regular employees or officials of the *Company*, fees and expenses of supervisory counsel retained by the *Company*, or the time and expense incurred by the *Insured* in assisting in the investigation or resolving a *Claim* or in connection with *Cleanup Costs*, including, but not limited to, the cost of the *Insured's* in-house counsel.

Discovered

The term *Discovered* means the point in time at which any officer, director, executive or employee responsible for environmental compliance of an *Insured* becomes aware of the existence of a *Pollution Condition*.

Environmental Laws

The term *Environmental Laws* means any federal, state, provincial, foreign or local laws (including, but not limited to, statutes, rules, regulations, ordinances, guidance documents, and governmental, judicial or administrative orders and directives) that are applicable to *Pollution Conditions*.

Insured(s)

The term *Insured(s)* means the following:

- The *Named Insured*;
- Any present or former director, officer or employee of the *Named Insured* while acting (or failing to act) within the scope of his/her duties as such;
- The current spouse of any current owner, director or officer of the *Named Insured*; but solely with respect to the liability of each *Insured* as otherwise covered by this *Policy*;
- The heirs, executors, administrators, guardians and legal representatives of each *Insured* in the event of death, incapacity or bankruptcy, but solely with respect to the liability of each *Insured* as otherwise covered by this *Policy*; and
- Any person or organization acting as the *Insured's* real estate manager.

No person or organization is an *Insured* with respect to the conduct of any current or past partnership, joint venture or any other entity unless such entity is set forth as a *Named Insured* in the Declarations.

Leased Worker

The term *Leased Worker* means a person leased by a labor leasing firm to perform duties related to the conduct of the lessee's business. *Leased Worker* does not include *Temporary Worker*.

Liabilities

The term *Liabilities* means those sums that the *Insured* becomes legally obligated to pay to *Third Parties* as a result of *Claims* for:

- *Bodily Injury*;
- *Property Damage*; or
- *Cleanup Costs*.

Loss of Rental Income

The term *Loss of Rental Income* means the actual loss sustained by a *Third Party* due to the required suspension of rental activities during the *Period of Restoration* at a location directly damaged by a *Pollution Condition* plus necessary expenses incurred by a *Third Party*:

- as a result of the suspension of its rental activities at the location directly damaged by a *Pollution Condition*; and
- to avoid or minimize the loss suffered by the *Third Party* as a result of the suspension of rental activities at the location directly damaged by a *Pollution Condition*.

Loss of Rental Income shall not exceed the net income (net profit or loss before income taxes) that would have been earned or incurred in the absence of suspension of rental activities and is further limited to the period of twelve (12) calendar months from the date of the *Claim*.

Loss of Use

The term *Loss of Use* means the lesser of *Business Interruption Losses* or *Loss of Rental Income*.

Mobile Equipment

The term *Mobile Equipment* means any of the following types of land vehicles, including any attached machinery or equipment:

- Bulldozers, farm machinery, forklifts, and other vehicles designed for use principally off public roads.
- Vehicles maintained for use solely on or next to premises you own or rent.
- Vehicles that travel on crawler treads.
- Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
- Power cranes, shovels, loaders, diggers or drills; or
- Road construction or resurfacing equipment such as graders, scrapers or rollers.
- Vehicles not described in the above definition that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
 - Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
 - Cherry pickers and similar devices used to raise or lower workers.
 - Vehicles not described in the above definition maintained primarily for purposes other than the transportation of persons or cargo.

Mitigation Actions

The term *Mitigation Actions* means those actions set forth in Section VII. Conditions.

Named Insured

The term *Named Insured* means the proprietor, partners or organization identified as the *Named Insured* in the Declarations.

Natural Resource Damage

The term *Natural Resource Damage* means physical injury to or destruction of, including the resulting loss of value of, land, fish, wildlife, biota, air, water, groundwater, drinking water supplies and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.)), 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.

Non-Owned Disposal Sites

The term *Non-owned Disposal Sites* means *Liabilities* arising from an *Insured's* disposal of wastes at a treatment, storage or disposal facility that is not owned or operated by the *Insured*, and that is scheduled by endorsement on the Non-Owned Disposal Site Coverage Endorsement.

Operations

The term *Operations* means the business activities of a *Third Party* occurring at a location damaged by a *Pollution Condition*.

Period of Restoration

The term *Period of Restoration* means the period of time that:

- begins with the date that a *Claim* from a *Third Party* is received by an *Insured* or is made by the *Insured* to the *Company*, and;
- ends on the date when the property at the *Scheduled Location* is repaired, rebuilt or replaced with reasonable speed and similar quality.

Period of Restoration does not include any delay caused by the enforcement of any local or state ordinance or law regulating the construction, use or repair, or demolition of property. The expiration date of this *Policy* does not end the *Period of Restoration*.

Policy

The term *Policy* means this document as well as the application, all endorsements, declarations, modifications and addenda thereto.

Policy Period

The term *Policy Period* means the period set forth in the Declarations, any shorter period, arising as a result of cancellation or non-renewal or any other period as changed by endorsement.

Pollutant(s)

The term *Pollutant(s)* means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, toxic chemicals, liquids or gases, other irritants or contaminants or any discarded materials of any kind. *Pollutants* shall not include “Source Material,” “Special Nuclear Material” or “Byproduct Material” as such terms are defined in the Atomic Energy Act of 1954.

Pollution Condition(s)

The term *Pollution Condition(s)* means the gradual or sudden unintended discharge, dispersal, release or escape of *Pollutants* at, upon, within, under or migrating from a *Scheduled Location* which the *Insured* had not *Discovered* at the time of inception of this *Policy*, unless such previously *Discovered Pollution Condition* has been listed by endorsement, is first reported to the *Company* during the *Policy Period*, and commenced during the *Policy Period* or after the *Retroactive Date*, if any.

Property Damage

The term *Property Damage* means the following:

- Physical injury to or destruction of property of *Third Parties*;
- *Natural Resource Damage*
- *Loss of Use* of tangible property of *Third Parties*; and
- the lesser of (i) the diminution of value of tangible property of *Third Parties* directly attributable to the effects of *Pollution Conditions*; or (ii) the reasonable costs of *Restorative Actions* for such property;

but only to the extent the above injuries are not already remedied by *Cleanup Costs*. For purposes of determining the extent, if any, of diminution in value, the value of the tangible property injured shall equal the replacement cost of such property reduced by physical depreciation and obsolescence as of the time the damage to such tangible property was sustained.

Regulatory Body(ies)

The term *Regulatory Body(ies)* means the federal, state or foreign regulatory agency or agencies having jurisdiction with respect to a *Pollution Condition*.

Restorative Actions

The term *Restorative Actions* means actions undertaken with the prior written approval of the *Company* to repair, replace or restore tangible property to substantially the same condition such tangible property was in prior to being damaged during work performed in the course of incurring *Cleanup Costs*. The cost of *Restorative Actions* at a *Scheduled Location* shall not exceed the diminution in value of the *Scheduled Location* as a result of the *Pollution Condition*.

Retroactive Date

The term *Retroactive Date* means the date identified as such and set forth in the declarations and is the earliest date that a *Pollution Condition* can have commenced for coverage to be provided under this *Policy*.

Scheduled Location

The term *Scheduled Location* means the insured locations identified on the declarations.

Temporary Worker

The term *Temporary Worker* means a person who is furnished to substitute for a permanent employee on leave or to meet seasonal or short-term workload conditions.

Termination Date

The term *Termination Date* means the effective date and hour of cancellation or nonrenewal of this *Policy* and the *Policy Period* as described in Section VII. Conditions.

Third Party(ies)

The term *Third Party(ies)* means any person or persons who are not *Insureds*, *Affiliates* or contractors (including without limitation, any affiliates, employees, *Leased Workers* or *Temporary Workers* of such contractors) of the *Insured*.

Transported Cargo

The term Transported Cargo means Cargo after it is moved from the place where it is accepted for movement into or on to the Covered Auto, until the Cargo is moved from the Covered Auto to the place where it is finally delivered. Transported Cargo also includes Cargo during the loading and unloading to or from a Covered Auto, provided that the loading or unloading is performed by the Insured. Transported Cargo does not include Cargo at rest for a period of longer than seventy-two (72) hours, after it has been accepted for movement into or onto a Covered Auto but before it reaches the place of final delivery

III. EXCLUSIONS

This policy does not cover any *Claims* arising out of, based upon, resulting from or with respect to:

Acts of War

The consequence of war, invasion, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power, strike, riot or civil commotion.

Asbestos

Any *Claim* arising out of the existence of asbestos products, fibers, or asbestos dust unless specifically endorsed onto this *Policy*; or,

Automobiles

Any *Claim* arising out of the ownership, maintenance, use, operation, loading or unloading of any *Auto*, aircraft, watercraft or rolling stock; except when on or at a *Scheduled Location*; or,

Certain Damages

Punitive or exemplary damages, multiplied damages, assessments, fines or penalties (including those arising from criminal actions).

Compliance Actions and Improvements

Funds spent for additions, equipment, upgrades or physical improvements to the *Scheduled Location* or other property of the *Insured* undertaken voluntarily or to assure future compliance with applicable laws, rules or regulations.

Contractual Liability

The liability of others assumed by an *Insured* under any contract or agreement unless the liability of such *Insured* would exist in the absence of a contract or agreement.

Course of Employment

Any injury:

- to any *Affiliates* in the course of employment by the *Insured* or performing duties related to the conduct of the *Insured's* business; or
- to the spouse, child, parent, brother, sister, personal representative, guardian or other party authorized to act on behalf of the injured party as a consequence of the injury.

Insured versus Insured

By any past or present *Insured* against any *Insured*. This exclusion does not apply to additional *Insureds* under this *Policy*.

Intentional or Illegal Acts

Any *Insured's*:

- intentional, willful, deliberate non-compliance with any statute, regulation, ordinance, administrative complaint or notice of violation,

notice letter, executive order or instruction of any governmental agency or body; or

- dishonest, illegal, fraudulent or criminal act.

Known Conditions

Any *Pollution Conditions Discovered* prior to the inception of this *Policy*. This exclusion does not apply to *Pollution Conditions* disclosed to the *Company* prior to the inception of this *Policy* and specifically listed by endorsement.

Lead-Based Paint

Any *Claim* arising out of the existence, required removal or abatement of lead paint unless specifically endorsed onto this *Policy*; or,

Mold

Any *Claim* arising directly or indirectly out of, or in concurrence with actual, alleged or threatened existence, growth, spread, proliferation, discharge, dispersal, seepage, release or escape of any form of fungus, including mold or mildew, and any mycotoxins, spores, scents or byproducts produced or released by fungi unless specifically endorsed onto this *Policy*; or,

Silica

Any *Claim* arising out of exposure to or inhalation, ingestion or respiration of silica or products or substances containing silica or silicon dioxide in any form including, but not limited to, silica dust, sand or otherwise, or work involving the use of or handling of silica or silicon dioxide in any form unless specifically endorsed onto this *Policy*; or,

Subsequent to Property Transfer

A *Pollution Condition* that is *Discovered* subsequent to the time the *Named Insured* has sold, given away, abandoned, condemned or otherwise transferred the *Scheduled Location* unless specifically listed by endorsement.

Transportation

The ownership, maintenance, use, operation, loading or unloading of any form of transportation beyond the legal boundaries of a *Scheduled Location* unless specifically listed by endorsement.

Underground Storage Tanks

The existence of any underground storage tank(s) and associated underground piping at a *Scheduled Location*, but only if the *Named Insured* had *Discovered* such underground storage tanks at the time of inception of the *Policy*. This exclusion does not apply to underground storage tank(s) and associated underground piping when endorsed onto this *Policy*.

Workers Compensation

Any obligation of the *Insured* under a workers compensation, disability benefits, unemployment compensation, employee benefits, pension sharing, ERISA law or any similar law.

Wrongful Delivery

Any Claim arising out of the delivery of any Cargo into the wrong receptacle or to the wrong address, or the delivery of one type of Cargo in error for another.

IV. LIMITS OF INSURANCE

The limits of this insurance are presented in the following sections regarding “Maximum Limits of Liability” and separate limits of liability.

Maximum Limits of Liability

The *Company’s* total liability hereunder for all *Liabilities*, *Cleanup Costs* and *Defense Expenses*, shall not exceed the “Aggregate Limit” specified in the Declarations irrespective of any of the following:

- The number of *Claims* made;
- The number of persons or organizations making claims;
- The number of persons covered hereunder;
- The number of actual or alleged *Pollution Conditions*; or
- The number of times *Cleanup Costs* or *Liabilities* are incurred.

Limits of Liability

As specified in the Maximum Limits of Liability above and in the Declarations:

- The “Per Pollution Condition Limit” amount shown in the Declarations is the maximum amount the *Company* will pay under this *Policy* for any *Claim(s)* resulting from the same or related *Pollution Conditions*.
- The “Aggregate Limit” amount shown in the Declarations is the maximum amount the *Company* will pay under this *Policy*.

The Limits of Insurance shown in the Declarations shall apply in excess of the *Self Insured Retention* amount shown in the Declarations.

If this *Policy* and any other policy providing coverage issued by the *Company* or any affiliate of the *Company* apply to the same *Pollution Condition* or related *Pollution Conditions*, the aggregate maximum amount payable under all of such policies combined shall be limited to the amount of the highest applicable Per Pollution Condition Limit payable under any one of the policies.

In the event that the *Company* or any affiliate of the *Company* issues a subsequent Pollution Legal Liability Policy to the *Insured* which provides substantially the same coverage as this *Policy*, all *Pollution Conditions* (including related *Pollution Conditions Discovered* after the *Policy Period*) *Discovered* and reported to the *Company* under any of these policies shall be deemed to have been *Discovered* and reported under this *Policy* during the *Policy Period*. As a result, the *Company* shall have no further obligation for the *Pollution Condition* (and the related *Pollution Conditions*) under all of the policies once the *Company* pays an amount equal to the Single Pollution Incident Limit of this *Policy*. Coverage under this *Policy* for such *Pollution Conditions* shall not apply unless the *Insured* has maintained with the *Company* or any affiliate of the *Company* a Pollution Legal Liability Policy providing substantially the same coverage as this *Policy* on a continuous, uninterrupted basis since the *Pollution Condition* was *Discovered* and reported to the *Company*.

For the purposes of this *Policy*, related *Pollution Conditions* are those which arise out of, are based on, relate to or are in consequence of, the same facts, circumstances or situations.

Settlement

If the *Company* recommends a settlement of a *Claim*:

- for an amount within the Self-Insured Retention and the *Insured* refuses such settlement, the *Company* shall not be liable for any *Cleanup Costs, Liability* or *Defense Costs* or other coverages in excess of the Self-Insured Retention; or
- for a total amount in excess of the Self-Insured Retention and the *Insured* refuses such settlement, the *Company's* liability for *Cleanup Costs, Liabilities* or *Defense Costs* or other coverages shall be limited to that portion of the recommended settlement and the costs, charges and expenses as of the date *Insured's* refusal that exceed the Self-Insured Retention and fall within the Limits of Liability.

V. SELF-INSURED RETENTION

The *Company's* obligation for *Liabilities, Cleanup Costs* and *Defense Costs* shall only be in excess of the "Self-Insured Retention Amounts" for the *Policy* and per *Claim* as specified in the Declarations for the same or related *Pollution Conditions*. The Self-Insured Retention shall be applied as shown in the Declarations.

The Self-Insured Retention is to be paid by the *Insured* and is not to be insured by the *Company* unless specifically listed by endorsement. The *Insured* shall promptly reimburse the *Company* for advancing any element of *Liability, Cleanup Costs* or *Defense Costs* falling within the Self-Insured Retention.

VI. EXTENDED REPORTING PERIOD

The following section describes the automatic and extended reporting period provisions of this *Policy*.

Automatic Extended Reporting Period

The *Insured* is entitled to an Automatic thirty (30) day Extended Reporting Period for no additional premium upon cancellation or non-renewal of this *Policy* in accordance with the terms of this section. The Automatic Extended Reporting Period shall apply to *Claims* first made within the Automatic Extended Reporting Period but only with respect to *Pollution Conditions* that (a) are *Discovered* and reported during the Automatic Extended Reporting Period, and (b) commenced during the *Policy Period* or after the *Retroactive Date*, if any. The *Insured* shall not have the right to the Automatic Extended Reporting Period if:

- The *Policy* was cancelled due to non-payment of premium, fraud or material misrepresentation; or
- The *Insured* purchases other insurance to replace this *Policy*.

Optional Extended Reporting Period

The *Insured* may purchase an Optional Extended Reporting Period upon cancellation or non-renewal of the *Policy* subject to the following terms and conditions:

- The *Insured* makes a written request for an Optional Extended Reporting Period that the *Company* receives within thirty (30) days of the *Termination Date*; and
- The *Insured* pays the *Company* an additional premium (to be determined by the *Company*) within thirty (30) days of the *Termination Date*. Such additional premium charge may not exceed 200% of the policy premium stated in the Declarations.

The maximum Optional Extended Reporting Period may at the election of the *Insured* be for a period of up to thirty-six (36) months from the *Termination Date* applicable to any *Scheduled Location*. The Optional Extended Reporting Period shall apply to *Claims* first made within the Optional Extended Reporting Period but only with respect to *Pollution Conditions* that (a) are *Discovered* and reported during the Optional Extended Reporting Period, and (b) commenced during the *Policy Period* or after the *Retroactive Date*, if any.

The *Insured* shall not have the option to purchase the Optional Extended Reporting Period if:

- The *Policy* was cancelled due to non-payment of premium, fraud or material misrepresentation; or
- The *Insured* purchases other insurance to replace this *Policy*.

In the event that the Optional Extended Reporting Period is purchased by the *Insured*, the Optional Extended Reporting Period shall run concurrent to the Automatic Extended Reporting Period and shall not be in addition to the Automatic Extended Reporting Period.

VII. CONDITIONS

The following sections describe the conditional provisions of this *Policy*.

Notice of Pollution Conditions and Claims

The *Named Insured* shall immediately provide written notice of any *Pollution Conditions Discovered* or *Claim* received. Such written notice:

- shall be given to the *Company*, in care of:

Claims
Berkley Custom Insurance Managers
3 Stamford Plaza
301 Tresser Blvd., 6th Floor
Stamford, CT 06901

Telephone 855-597-7616
E-Mail addressed to: claims@berkleycustom.com

- shall contain complete details regarding the *Pollution Condition* or *Claim*, including, but not limited to:
 - The exact date the *Pollution Condition* was *Discovered* or the *Claim* was made, its nature and location, and circumstances giving rise to such *Claim* or *Discovery*;
 - All information relating to the cause of the *Pollution Conditions*, including, the *Bodily Injury*, *Property Damage* or *Cleanup Costs* that have resulted or may result from such *Pollution Conditions*, all engineering information available on the *Pollution Conditions*, and any other information that the *Company* deems reasonably necessary.
 - All demands, summonses, notices or other process or papers filed with a court of law, administrative agency or an investigative body;
 - The names and addresses of all parties asserting a *Claim* and all persons with knowledge of the *Claim* and *Pollution Condition*; and

- All other information in the possession of the *Insured* or its *Affiliates* regarding the *Pollution Conditions*, the *Discovery* and the *Claim*.

The duties of the *Insured* hereunder may not be delegated. Nothing contained herein shall relieve the *Insured* from any obligation, including any notification requirements it may have pursuant to applicable laws, rules or regulations.

Written notice shall be given whether or not the *Named Insured* believes that a *Pollution Condition* or *Claim* will result in a demand that falls under, or in excess of, the *Self-Insured Retention*.

When a *Pollution Condition* or other circumstance requires an *Insured* to undertake emergency *Mitigation Actions* as described in this section, the *Named Insured* must immediately provide written notice to the *Company* upon undertaking such emergency *Mitigation Actions*.

Defense and Cooperation and Assistance of the Insured

The *Company* has the right and the duty to defend the *Insured* against any *Claim* resulting from a *Pollution Condition*, and may, in its sole discretion, investigate and settle such *Claims*. The *Company* shall have the right to designate legal counsel for the investigation, adjustment and defense of *Claims*. Each *Insured* shall fully cooperate with and offer all reasonable assistance to the *Company* with respect to the investigation, defense, settlement, arbitration or appeal of any *Claim*. Such cooperation shall include full access to the *Company* to interview *Affiliates* as well as inspect any property of the *Insured*. No *Insured* shall be indemnified hereunder for loss of earnings incurred in such cooperation or assistance, unless provided in an endorsement, nor shall such loss of earnings apply towards the satisfaction of the *Self-Insured Retention*. In no event shall this paragraph be deemed to require the *Insured* to share documents or information in a manner that would result in the waiver of any legally sanctioned privilege.

The *Company's* duty to defend the *Insured* shall terminate when the *Company* establishes: (i) the absence of coverage under the terms and conditions of this *Policy*; or (ii) the Limits of Liability have been exhausted. In such

circumstance, the *Company* shall take reasonably appropriate steps to transfer control of any existing defense to the *Named Insured*.

Inspection

The *Company* has the right, upon reasonable advance notice, to inspect the *Scheduled Locations* at any time. Neither the *Company's* right to inspect the *Scheduled Locations*, any actual inspection performed pursuant to this right, nor any report resulting from any inspection shall constitute an undertaking, on behalf of the *Insured* or any other party, to determine or warrant that the property or operations are safe, healthful or conform to acceptable engineering practice or are in compliance with any law, rule or regulation. The *Insured* will provide appropriate assistance to the *Company* during any inspection.

Actions Prejudicial to the Company

In the event of a *Claim*, no *Insured* shall undertake any of the following actions without the *Company's* prior written consent:

- Engage counsel to provide legal representation;
- Assume any obligation;
- Admit or in any manner acknowledge liability;
- Effectuate or attempt to effectuate compromise or settlement, including, but not limited to, entering into a consent decree involving the assignment of any *Insured's* interest under this *Policy*; or
- Except for emergency *Mitigation Actions* described in this section, initiate (or modify ongoing) *Corrective Actions* or *Restorative Actions*.

Any of the foregoing actions by any *Insured* shall be deemed to materially prejudice the *Company's* rights. Where the written approval of the *Company* is required for *Corrective Actions* or *Restoration Actions*, such consent shall not be unreasonably withheld or delayed.

Mitigation Actions

The *Named Insured* shall make all reasonable efforts to abate, stop, prevent or reduce the *Liabilities*, *Cleanup Costs* and *Defense Costs* caused by any *Pollution Condition(s)*. These efforts:

- May be taken only with the prior written consent of the *Company*; and

- Shall commence immediately when a *Pollution Condition* is *Discovered*.

Such mitigation efforts must be undertaken even in the absence of a *Claim*.

The prior written approval of the *Company* shall not be required to take any action in the event of a *Pollution Condition* that presents an immediate, dangerous and significant threat to human health or the environment where any delay by the *Insured* would cause further injury to persons or damage to property or increase significantly the cost of responding to a potential *Claim*. At any time after the *Company* receives notification of a *Claim*, the *Company* may require its prior written approval before the *Insured* may incur any additional *Cleanup Costs* or other costs or expenses.

Subrogation

In the event that the *Company* pays any amount under this *Policy*, the *Company* shall be subrogated to all of each *Insured's* rights of recovery against any person, firm or organization. All *Insureds* shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. No *Insured* shall do anything to waive or prejudice such rights.

Named Insured as Agent

The *Named Insured* specified in the Declarations shall be deemed the agent of each *Insured* with respect to all matters involving this *Policy*, however, the *Company* shall have the right to seek indemnification from any *Insured* or any other person who may be legally liable for the actions of the *Named Insured*.

Assignment

This *Policy* may be assigned only with the prior written consent of the *Company*. Such written consent shall not be unreasonably withheld or delayed by the *Company*.

No Action Against Company

No third party action shall lie against the *Company* unless, as a condition precedent thereto, each *Insured* has fully complied with all the provisions of the *Policy* nor until the amount of the *Insured's* obligation to pay has been finally determined either by written agreement of the *Insured*, the *Company* and the party asserting the *Claim* or by final judgment against the *Insured* after the

actual trial of the issues and the period of time to appeal has elapsed without an appeal having been taken or, if an appeal has been taken, then until after such appeal has been adjudicated. Any person or organization, or the legal representative thereof, that has secured such judgment or written agreement shall thereafter be entitled to recover under this *Policy* to the extent of the insurance afforded by the *Policy*. No person or organization shall have any right under this *Policy* to join the *Company* as party to any action against the *Insured* to determine the *Insured's* liability nor shall the *Company* be impleaded by the *Insured* or his legal representative.

Changes

No provision of this *Policy* may be amended, waived or otherwise changed except by endorsement hereto and the written agreement of the *Named Insured* and the *Company*.

Cancellation

The *Named Insured* may cancel this *Policy* by mailing to the *Company* written notice stating when thereafter such cancellation shall become effective. The *Termination Date* shall be the date stated in such written notice.

The *Company* may cancel this *Policy* for:

- fraud or material misrepresentation by an *Insured*;
- material change in the nature or extent of the risk involved hereunder; or
- failure to pay premium.

In the event of cancellation for any reason other than failure to pay premium, the *Company* shall provide written notice stating when not less than thirty (30) days thereafter such cancellation shall become effective. In the event the *Named Insured* fails to pay premium under this *Policy*, the *Company* shall provide not less than ten (10) days written notice of cancellation of the *Policy*. The *Termination Date* shall be the date stated in any such written notice.

The mailing of notice to the last known address of the *Insured* in the manner provided herein or hand delivery to such address shall be sufficient proof of notice.

In the event of cancellation by the *Named Insured*, the earned premium shall be computed in accordance with the customary short rate table. In the event of cancellation by the *Company*, the earned premium shall be computed pro rata.

The *Company* will tender any return premium subject to retaining a minimum earned premium equal to 25% of the amount specified in the Declarations unless modified by endorsement. Premium adjustment may be made either at the time cancellation is effective or as soon as practicable thereafter, but neither tender of the unearned premium nor return of this *Policy* shall be a condition to cancellation hereunder.

Nonrenewal

The *Company* may non-renew this *Policy* by mailing or delivering to the *Named Insured* written notice of nonrenewal at least sixty (60) days before the expiration date of this *Policy*. The *Termination Date* shall be the date stated in such nonrenewal notice.

Additional Premiums

If, during this *Policy Period*, an increase in the risk or hazards covered hereunder occurs, the *Company* shall have the right to charge an appropriate additional premium or to cancel the *Policy*.

Representations and Covenants

The *Named Insured* acknowledges and agrees that:

- The information, warranties and representations contained in the application submitted by the *Insured* as well as in all supplemental documents provided herewith are true, correct and complete; and
- The *Company* has issued this *Policy* in specific reliance upon the truth and accuracy of the warranties and representations contained in the application.
- A signed copy of the application is kept on file by the *Company*.
- All activities of the *Insured* have been and will be conducted in full compliance with *Environmental Laws*.

The application, the declarations and endorsements, if any, are incorporated into, and are part of, this *Policy* and embody all agreements existing between the *Named Insured* and the *Company* and supersede all prior agreements, whether written or oral, expressed or implied.

Other Insurance

If any part of *Liabilities, Cleanup Costs* or *Defense Costs* or other coverage afforded by endorsement is insured under this *Policy* and any other current, prior or subsequent policy that is not issued by the Company or an affiliate of the *Company*, this *Policy* shall provide coverage for such *Liabilities, Cleanup Costs, Defense Costs* or other coverage afforded by endorsement, in proportion to the applicable Limits of Liability of this *Policy* and those of such other policy or policies.

Concealment or Fraud

If the *Insured* wilfully concealed or misrepresented any fact or circumstance material to the granting of coverage under this *Policy*, this entire *Policy* shall be void.

Separation of Insured

Except with respect to the Limits of Liability, and any rights or duties specifically assigned to the *Named Insured*, this *Policy* applies:

- As if each *Named Insured* were the only *Named Insured*; and
- Separately to each *Insured* against whom a *Claim* is made.