



STORAGE TANK ENVIRONMENTAL POLICY

CERTAIN SECTIONS OF THIS POLICY INCLUDE CLAIMS MADE AND REPORTED COVERAGE. CLAIMS-MADE AND REPORTED COVERAGE REQUIRES CLAIMS TO BE FIRST MADE AGAINST THE INSURED AND REPORTED TO THE COMPANY DURING THE POLICY PERIOD OR ANY APPLICABLE EXTENDED REPORTING PERIOD.

OTHER SECTIONS OF THIS POLICY PROVIDE COVERAGE FOR CONTAMINATION THAT IS DISCOVERED BY THE INSURED DURING THE POLICY PERIOD AND REPORTED TO THE COMPANY DURING THE POLICY PERIOD.

PAYMENT OF DEFENSE EXPENSES ARE SUBJECT TO THE APPLICABLE DEDUCTIBLE. READ THE ENTIRE POLICY CAREFULLY TO DETERMINE YOUR RIGHTS, DUTIES, AND WHAT IS OR IS NOT COVERED.

Throughout this policy, the words "you" and "your" refer to the **named insured** shown in the Declarations. The words "we," "us" and "our" refer to the Company providing this insurance. Other words and phrases that appear in **bold** have special meaning. Refer to Section **II. DEFINITIONS**.

In consideration of the premium paid and in reliance upon the statements that you provided to us in the application and any other supplemental information provided in connection with the application, all of which are incorporated and made a part of this Policy, we agree to provide coverage as shown in the Declarations and described as follows:

STORAGE TANK ENVIRONMENTAL LIABILITY COVERAGE

I. INSURING AGREEMENTS

A. Remediation Expense – Storage Tanks

We will pay for **remediation expense** in excess of the deductible that you become legally obligated to pay as a result of **contamination** due to a **confirmed release** from a **storage tank** but only if:

- a. The **contamination** first commences on or after any Retroactive Date shown in **ITEM 9** in the Declarations or as identified on any endorsements to the policy and before the end of the **policy period**; and
- b. The insured discovers the **contamination** during the policy and reports the **confirmed release** to us as soon as practicable during the **policy period**, or within the **extended reporting period**, if applicable; and
- c. On or prior to the **inception date**, no **responsible individual** knew of or reasonably should have known of such **contamination**.

B. Claims for Bodily Injury and Property Damage Resulting from Contamination

We will pay for **loss** in excess of the deductible that you become legally obligated to pay as a result of a **claim** for **bodily injury** or **property damage** arising from **contamination** that originates from a **storage tank** but only if:

- a. The **claim** is first made against the **insured** and reported to us during the **policy period**, or within the **extended reporting period**, if applicable; and

- b. The **contamination** first commences on or after the Retroactive Date shown in **ITEM 9.** in the Declarations or as identified on any endorsements to the policy and before the end of the **policy period**; and
- c. On or prior to the **inception date**, no **responsible individual** knew of or reasonably should have known of such **contamination**.

C. Defense Expense

We will pay for **defense expense** in excess of the deductible to respond to a **claim** to which **Insuring Agreements A.** or **B.** applies. We shall have the right and duty to defend an **Insured** against any such **claim**. **Defense expenses** are subject to the Limits of Insurance for **defense expense** shown in **Item 5.C.** in the Declarations. Our duty to defend all **claims** and to pay **defense expense** ends once the Limits of Insurance for **Insuring Agreements A., B.** or **C** of this policy, whichever comes first, is exhausted or tendered into a court of applicable jurisdiction; or once you refuse a settlement offer as provided in **Section VI.** Paragraph **D.** of this policy.

D. Image Restoration

We will reimburse you for **image restoration expenses** incurred because of **contamination** reported to us during the **policy period** or as expressly provided for in the **extended reporting period**, if applicable, and that result in **bodily injury, property damage, or remediation expense** covered under **Insuring Agreements I. A., B., or C.,** as applicable. Reimbursement is limited to the costs of restoring your reputation and consumer confidence through image consulting, for the applicable coverage part, and will in no event exceed the amount shown in **ITEM 5.D.** in the Declarations.

II. DEFINITIONS

- A. **Above ground storage tank** means any tank that has at least ninety percent (90%) of its volume above ground (including any ancillary and connected pumps, sumps and equipment) and is listed in **Item 3. Storage Tank Schedule** shown on the Declarations or endorsed to this policy.
- B. **Additional insured** means:
 - 1. Any individual, organization or entity scheduled to this policy as an **additional insured** by an endorsement, but solely for their vicarious liability arising out of their ownership, use, operation or financing of **storage tank(s)**, and subject to any terms, limitations or restrictions set forth in such endorsement; or
 - 2. Any individual, organization or entity when required in a written contract, but solely for their vicarious liability arising out of their ownership, use, operation or financing of **storage tank(s)** shown in **Item 3. Storage Tank Schedule** on the Declarations or endorsed to this policy.
- C. **Bodily injury** means:
 - 1. Physical injury, sickness or disease including associated medical or environmental monitoring; and
 - 2. Mental anguish, emotional distress or shock sustained by any person; including death resulting there from.

- D. Claim** means:
1. Coverage **A** – civil or administrative actions or proceedings or governmental orders seeking to impose a legal obligation on an **insured** to undertake **remediation expense**; or
 2. Coverage **B** – a written demand, notice, or assertion of a legal right by a third-party seeking a remedy or alleging liability or responsibility on the part of you or any **insured** for **bodily injury** or **property damage** as a result of **contamination**. Such demand, notice, or assertion of a legal right includes, but is not limited to legal actions, orders, petitions or governmental or regulatory actions, filed against you or any **insured**.
- E. Confirmed Release** means **contamination** from a **storage tank** that has been investigated and verified by or on behalf of the **insured** either through a system tightness test, a site inspection or other procedure approved in accordance with 40 C.F.R. 280.52 or other law.
- F. Contaminant** means any solid, liquid, gaseous or thermal irritant or pollutant, including but not limited to smoke, vapor, odors, soot, fumes, acids, alkalis, toxic chemicals, hazardous substances, petroleum hydrocarbons, and waste materials to be recycled, reconditioned or reclaimed.
- G. Contamination** means the discharge, dispersal, release or escape of any **contaminant** from a **storage tank** into or upon land, or any structure on land, the atmosphere or any watercourse or body of water, including groundwater, provided such conditions are not naturally present in the environment or are not present on, at or within any structure, as applicable, in the amounts or concentrations discovered.
- H. Corrective action** means reasonable and necessary costs to investigate and remediate a **confirmed release** to the extent legally required pursuant to the following:
1. Subpart F. of the federal underground storage tank regulations, 40 C.F.R. 280.0 through 280.66 40 C.F.R. 280.72, or any other applicable federal regulations; or
 2. Any applicable regulations promulgated by a state under an underground storage tank program approved by the United States Environmental Protection Agency in accordance with section 9004 of the Resource Conservation and Recovery Act of 1976, as amended
- I. Defense expense** means reasonable and necessary legal fees and expenses incurred in the defense, investigation or adjustment of any **claim** to which this insurance applies. **Defense expense** does not include salaries, wages, overhead or benefit expenses incurred by the **insured**, including but not limited to **employees** or supervisory or monitoring counsel, or legal fees or expenses incurred in connection with any dispute, disagreement or controversy arising out of the formation, interpretation, alleged breach, termination, or invalidity of this policy, or as to any other issue regarding the respective duties and responsibilities of us or any **insured** regarding this policy.
- J. Emergency expense** means reasonable and necessary expenses incurred to contain, control, abate or mitigate **contamination** covered under this insurance and that is an imminent and substantial endangerment to:

1. Public health, safety or welfare; or
2. The environment;

Provided that: (i) the **insured** discovers such **contamination** within seventy-two (72) hours of the **contamination** first commencing; and (ii) incurs such **emergency expense** within seven (7) days after the **contamination** first commenced; and (iii) the **emergency expense** are incurred pursuant to **laws** that require an immediate response to **contamination**.

- K. Employee** means any person whose labor is engaged by or directed by you, including temporary and leased staff working on behalf of and under direct supervision and control by you, but only while acting within the scope of their employment or authority as such.
- L. Environmental professional** means an individual chosen by us, in consultation with the insured, who possesses at least certain minimal levels of education, training and experience, holds valid and applicable licensing, certifications and qualifications to properly assess and remediate the contamination.
- M. Extended Reporting Period** means either:
1. Automatic **extended reporting period** as described in Section IX. **Extended Reporting Provisions**, Paragraph A; or
 2. Supplemental **extended reporting period**, as described in Section IX. **Extended Reporting Provisions**, Paragraph B.;

Whichever is applicable, following termination of coverage, as described in Section IX. **Extended Reporting Provisions**, in which to report a **claim**.

- N. Image restoration expenses** means reasonable and necessary expenses incurred for services rendered by an image restoration firm, exclusive of any salaries, wages, overhead or benefit expenses incurred by an **insured**, or any expenses that are covered under any other insurance, including any applicable deductibles or self-insured retention amounts of such other insurance.
- O. Inception date** means: (i) the first date shown in **ITEM 4**. in the Declarations; or (ii) with respect to any endorsement the Company issues after the first date shown in **ITEM 4**. in the Declarations, the effective date listed in such endorsement.
- P. Insured** means
1. The **named insured**;
 2. **Additional insured** and
 3. Any past or present director, officer, partner, member, or **employee** of the **insured**, but only while acting within the scope of his or her employment or authority as such.
- Q. Law** means any federal, state, provincial or local statutes, rules, regulations, ordinances, and judicial or administrative orders and directives and all amendments thereto that apply

to **your covered location** based on the land use and zoning designation in effect during the **policy period**.

R. Loss means monetary awards or settlements, previously agreed to in writing by us, of compensatory damages to which this policy applies.

S. Named insured means the individual or entity shown in **ITEM 1.** in the Declarations and responsible for acting on behalf of all other **insureds**, if any, under this policy as described in Section **X. General Conditions , N. Sole Agent.**

T. Natural resource damage means physical injury to or destruction of, including the resulting loss of value of and assessment of such physical injury to or destruction 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. §1801a 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.

U. Policy period means the period shown in **ITEM 4.** in the Declarations, or any shorter period arising as a result of:

1. Cancellation of this policy; or
2. With respect to any of your **storage tanks**, the deletion of any such tank(s) from this policy by us at your written request.

V. Property damage means:

1. Physical injury to or destruction of tangible property of parties other than the **insured** including the resulting loss of use and diminution in value thereof;
2. Loss of use, and diminution in value of tangible property of parties other than the **insured** that has not been physically injured or destroyed; and
3. **Natural resource damage.**

Property damage does not include **remediation expense.**

W. Remediation expense means:

1. For **above ground storage tanks**, those reasonable and necessary expenses, incurred for investigation, removal, abatement, disposal, treatment, clean-up or neutralization, including associated monitoring, of **contaminants** to the extent required by **law**; or
2. For **underground storage tanks**, **corrective action**

Remediation expense also includes **restoration expense** and **emergency expense**

However, **remediation expense** does not include **property damage.**

X. Responsible individual means:

1. Any officer, director, partner or project manager of the **insured**; or
2. The manager or supervisor of the **insured** who is responsible for environmental or health and safety affairs or compliance; or
3. Any manager or supervisor of the **insured** who is responsible for risk management, loss control, procurement or maintenance of insurance, or the tendering or reporting of losses or liabilities to insurers or other third-parties; or
4. Any manager of **your insured location** or **storage tank(s)** at **your insured location**.

Y. Restoration expense means reasonable and necessary costs incurred to repair, replace or restore real or personal property to substantially the same general condition it was in prior to being physically damaged, provided that:

1. Such real or personal property is not owned by an **insured**; and
2. Such physical damage was directly caused by work performed in responding to **contamination** to which this insurance applies.

However, **restoration expense** does not include any costs associated with betterments or improvements to, or depreciation of, such real or personal property.

Z. Storage tank means **underground storage tank** or **above ground storage tank**.

AA. Underground storage tank means any tank (including any ancillary and connected pumps, sumps and equipment) that has more than ten percent (10%) of its volume below ground and is listed in **ITEM 3. Storage Tank Schedule** shown on the Declarations or that is listed in an Underground Storage Tank Scheduled endorsed on to this policy.

BB. Your insured location means any property or location approved by us and shown in **ITEM 3. Storage Tank Schedule** in the Declarations or endorsed to this policy.

III. LIMITS OF INSURANCE AND DEDUCTIBLE

The Limits of Insurance shown in **ITEMS 5.** and **6.** in the Declarations and the deductible shown in **ITEM 7.** and the rules below fix the most we will pay regardless of the number of **storage tanks, insureds, contamination incidents, claims** or claimants:

- A.** The **Total Policy Aggregate Limit** shown in **ITEM 6.** in the Declarations is the most we will pay for the sum of all **loss** or **remediation expense** under this policy.
- B.** Subject to Paragraph A., above, the most we will pay for the sum of all **remediation expense** arising from any single **contamination** incident is the applicable Limit of Insurance shown in **ITEM 5.A** in the Declarations. If no Limit of Insurance is shown for a particular Insuring Agreement in the Declarations, then no coverage is provided under that particular Insuring Agreement.
- C.** Subject to Paragraph A., above, the most we will pay for the sum of all **loss** arising from any single **contamination** incident is the applicable **Limit of Insurance** shown in **ITEM 5.B** in the Declarations. If no Limit of Insurance is shown for a particular Insuring Agreement in the Declarations, then no coverage is provided under that particular Insuring Agreement.

- D.** The most we will pay for the sum of all **defense expense** under the policy is the applicable Limit of Insurance shown in **ITEM 5.** in the Declarations. Sums that we pay as covered **defense expense** under this policy will not erode the **Total Policy Aggregate Limit** shown in **ITEM 6.** in the Declarations.
- E.** The same, related, similar or continuous **contamination** shall be deemed to be a single **contamination** incident.
- F.** Two or more **claims** arising out of or resulting from the same, related, similar or continuous **contamination** will be deemed to: (i) be a single **claim**; (ii) have been first made at the time the first such **claim** was made; and (iii) be subject to only one **Limit of Insurance** shown in **ITEM 5.** in the Declarations. The same, related, similar or continuous **contamination** is **contamination** that is based upon, arises out of, or is the result of, the same, similar or related facts, circumstances, or situations.
- G.** If we or an arbitration panel determine that more than one Insuring Agreement applies to any single **claim**, the following conditions will apply:
- 1.** Only one **Limit of Insurance** shown in **ITEM 5.** in the Declarations or applicable endorsement, together with the corresponding deductible, will apply to such **claim**.
 - 2.** If one of the applicable **Limits of Insurance** shown in **ITEM 5.** in the Declarations or applicable endorsement exceed the amount of any of the other applicable Limits of Insurance, then only the highest such Limit of Insurance and corresponding deductible will apply to such **contamination** incident.
 - 3.** In no event will more than one **Limit of Insurance** shown in **ITEM 5.** in the Declarations, or applicable endorsement, apply to any single **claim** or **contamination** incident.
- H.** We will not pay for **loss, remediation expense, defense expense** or other coverage afforded under this policy unless the amount of **loss, remediation expense, defense expense** or other coverage afforded under this policy exceeds the applicable Deductible. In the event that we advance any portion of the Deductible, the **insured** must reimburse us for those amounts promptly and as soon as possible.
- I.** If we or an affiliated company have issued multiple environmental coverage policies or policies providing coverage similar thereto to you, in no event will more than one such policy apply to any **loss, remediation expense** or **defense expense** that arises out of the same, related, similar or continuous **contamination**. In that event, only the policy in effect when the **claim** arising from such **loss, remediation expense** or **defense expense** is first made against you and reported to us, or when the **insured** discovers such **contamination** and reports it to us, as applicable, shall apply.

IV. EXCLUSIONS

This policy does not apply to **claims, loss, remediation expense, defense expense** or any other coverage afforded under this policy:

- A. Asbestos/Lead** - Based upon or arising out of asbestos, asbestos-containing materials or products or lead paint.

- B. Contractual Liability** – Based upon or arising out of liability of others assumed by the **insured** under any contract or agreement, unless the **insured** would have been liable in the absence of such contract or agreement.
- C. Criminal Fines and Penalties** – Based upon or arising out of any criminal fines, penalties or assessments.
- D. Damage to Insured's Property** – Based upon or arising out of physical injury to or destruction of tangible property, including the resulting loss of use and diminution in value, to any property owned, leased, rented by or loaned to an **insured** including property in the **insured's** care, custody and control. This exclusion does not apply to Coverage **A**.
- E. Damage to or Upgrade, Replace or Maintain Storage Tanks or Your Insured Location** – Based upon or arising out of any costs for reconstruction, repair, removal, maintenance, replacement, upgrading or rebuilding of any **storage tank** or any costs or expenses incurred to install, upgrade, modify, maintain or improve any processes, operations, equipment, machinery, or real or personal property at **your insured location**.
- F. Divested Storage Tanks or Locations** – Based upon or arising out of **contamination** which commences on or after the date that:
 - 1. Operation or use of any **storage tank** has been suspended or discontinued without completing closure as documented by a regulatory agency having jurisdiction over such **storage tank** pursuant to **laws**; or
 - 2. **Your covered location or storage tank** has been divested, sold, given away, abandoned, taken away by eminent domain or condemned, or after operational control or management has been transferred to an entity or individual that is not an **insured**.
- G. Employer Liability** – Based upon or arising out of **bodily injury** to any **employee**, partner or member of any **insured**, or by anyone who has a right to make a **claim** against any **insured** because of any employment, blood, marital or any other relationship with such **employee**, partner or member. This exclusion applies:
 - 1. Whether the **insured** may be responsible as an employer or in any other capacity; or
 - 2. To any obligation to share damages with or repay someone else who must pay damages because of **claims**.
- H. Hostile Acts** – Based upon or arising out of any consequence, whether direct or indirect, of war, invasion, act of a foreign enemy, hostilities whether declared or not, civil war, rebellion, revolution, insurrection, military or usurped power, or any covert military action.
- I. Insured's Costs of Goods or Services** – Based upon or arising out of any costs, charges or expenses for goods or services provided by an **insured** including a parent or affiliate of such **insured**, unless such costs, charges or expenses are:
 - 1. **Emergency expense**; or
 - 2. Such costs are approved, in our sole discretion, by us.

- J. **Insured versus insured** – Based upon or arising out of a **claim** by any **insured** against any other **insured** under this policy.
- K. **Known Contamination** – Based upon or arising out of any **contamination**, including any subsequent dispersal, movement or migration of such **contamination**, that prior to the applicable **inception date** was known by or that reasonably should have been known by a **responsible individual**. For purposes of this exclusion, **contamination** that is disclosed to us in the application for this policy or subsequent to the date of binding but prior to date we issue the policy to you is deemed to be **Known Contamination**.
- L. **Nuclear Liability** – Based upon or arising out of radioactive, toxic, or explosive properties of Source Materials, Special Nuclear Material or By-Product Material, as defined in the Atomic Energy Act, and for which the United States Department of Energy or any other governmental authority or agency has indemnified the **insured**, or for which the Price Anderson Act provides protection for the **insured**.
- M. **Prior Claims** - Based upon or arising from **claims for loss, corrective action, remediation expense, defense expense** or other circumstances reported by you or required to be reported by you under any policy that was in effect prior to the **inception date**.
- N. **Product Liability** – Based upon or arising out of goods or products manufactured, sold, handled or distributed by the insured or others trading under the **insured's** name, after possession of such goods or products has been relinquished by the **insured** or others trading under their name.
- O. **Regulatory Compliance** – Based upon or arising out of **contamination** resulting from any **storage tank** that was not in compliance with **laws** prior to commencement of such **contamination**.
- P. **Tank Contents** – Based upon or arising out of damage to, alteration of, or the removal, replacing or recycling of the contents of any **storage**.
- Q. **Vehicles** - Based upon or arising out of the ownership, use, maintenance or operation of an automobile, aircraft, watercraft or rolling stock. This exclusion shall not apply to the loading or unloading of a **storage tank**.
- R. **Willful Non-Compliance and Dishonest Acts** – Based upon or arising out of any **contamination** based upon or attributable to:
 - 1. A **responsible individual's** intentional, willful or deliberate noncompliance with or intentional disregard of any statute, regulation, ordinance, administrative complaint, notice of violation, notice letter, executive order, or instruction of any governmental agency or body; or
 - 2. Actual or alleged fraudulent, dishonest, knowingly wrongful or malicious conduct by or at the direction of the **responsible individual**.
- S. **Workers Compensation** - Based upon or arising out of the Merchant Marine Act of 1920 (Jones Act) or any workers compensation, unemployment compensation, disability, employee benefits, profit sharing, ERISA law or similar or related laws.
- V. **Policy Territory**

This policy is applicable only in the United States, its territories or possessions, but only if your responsibility is determined in:

- A. A proceeding on the merits conducted in the United States or its territories or possessions; or
- B. A settlement agreed to by us.

All premiums, limits, deductibles, **loss remediation expense** or other amounts under this policy are expressed and payable in the currency of the United States of America. If judgment is rendered, settlement is denominated or another element payable under this policy is stated in a currency other than United States dollars, payment under this policy shall be made in United States dollars at the rate of exchange published in *The Wall Street Journal* on the date the final judgment is reached, the amount of the settlement is agreed upon, or the other element of payment under this policy is due, respectively.

This policy shall not apply in any situation that would be in violation of the laws of the United States of America, as applicable, including but not limited to, United States of America economic or trade sanction laws or export controls laws administered by the United States Treasury's Office of Foreign Assets Control.

VI. Defense and Settlement

- A. We shall have the right and duty to defend any **insured** against any **claim** to which this insurance applies, even if such **claim** is groundless, false or fraudulent. For any **claim** we defend or for any **loss** or **remediation expense** to which this insurance applies, we will pay **defense expense** in excess of the deductible for the investigation or defense of such **claim**.
- B. **Defense expense** is included within the **Deductible** shown in **ITEM 7**. in the Declarations, or applicable endorsement. Our duty to defend and to pay **defense expense** ends once the applicable Limit of Insurance is exhausted or tendered into a court of valid jurisdiction or once the **insured** refuses a settlement offer as provided in Paragraph **VI. D.** below. We shall have no duty to defend any **claim**, or to pay **defense expense** for any **loss** or **remediation expense** to which this insurance does not apply.
- C. We shall have the right to select counsel for the investigation, adjustment and defense of **claims** to which this insurance applies. The **insured** shall have the right to propose such counsel and we will consult with the **insured** on the selection. If more than one **insured** is involved in a **claim** to which this insurance applies, we may, in our sole discretion, appoint separate counsel for one or more of such **insureds** if there is a material (actual or potential) conflict of interest among any such **insureds**.
- D. In the event that by mutual agreement or by applicable law the **insured** is entitled to select independent counsel to defend a **claim** to which this insurance applies, the **defense expense** we must pay to such counsel is limited to the rates we would actually pay to counsel that we retain in the ordinary course of business in the defense of similar **claims** in the venue where the **claim** arose or is being defended. We have the right to require that such counsel have certain minimum qualifications with respect to competency, including experience in defending **claims** similar to the one pending against the **insured**, and to require that such counsel have acceptable limits of errors and omissions insurance coverage. The **insured** agrees that such counsel will timely respond to our requests for information regarding any **claim**. Notwithstanding the foregoing, the

insured may at any time, by its written consent, freely and fully waive any right to select independent counsel.

- E. We reserve the right, but not the duty, to at any time, with the **insured's** consent, settle any **claim** to which this insurance applies as we deem expedient. If with respect to any **claim** to which this insurance applies, the **insured** refuses to consent to the first settlement acceptable to the claimant which we recommend to the **insured** in writing, and elects to further contest the **claim**, then our total liability for such **claim** shall not exceed the amount for which such **claim** could have been settled, including **defense expense** incurred, up to the date of such refusal, plus fifty percent (50%) of covered **loss, remediation expense** or other coverage afforded under this policy in excess of such first settlement amount. It being a condition precedent of this insurance that the remaining fifty percent (50%) of such **loss, remediation expense** or other coverage afforded under this policy in excess of the first settlement amount in uninsured and shall be borne by the **insured** at the **insured's** own risk. Notwithstanding the foregoing, this paragraph shall not apply until the settlement amount exceeds the **Deductible** amount shown in **ITEM 7.** in the Declarations or applicable endorsement.

In addition, if we recommend a first settlement of a **claim** to which this insurance applies within the policy's applicable Limit of Insurance that is acceptable to the claimant, and the **insured** consents to such settlement, then the **insured's** applicable deductible for such **claim** shall be retroactively reduced by ten percent (10%). It shall be a condition precedent to such reduction that you must consent to the first settlement amount within thirty (30) days after the date we recommend to the **insured** such first settlement amount, or in the case of a first settlement amount which arises from a first settlement offer by the claimant, then within the time permitted by the claimant to accept such first settlement offer, but in all events no later than thirty (30) days after we recommend to the **insured** such first settlement offer. If the **insured** does not consent to the first settlement within the time prescribed above, the applicable **Deductible** amount shall remain the respective amount shown in **ITEM 7.** in the Declarations or applicable endorsement, even if consent is given to a subsequent settlement.

VII. Notice and Claim Reporting Provisions

- A. Notice as required under this policy must be given by **you**, or on your behalf:
1. In writing to us at:
One Bala Plaza, Suite 100

Bala Cynwyd, PA 19004 – 0950
ATTN: Claims Department – Environmental; or
 2. By fax at: 1 (800) 685-9238; or
 3. By telephone at: 1 (800) 765-9749; or
 4. By email at: claimsreport@phly.com; or
 5. To report a fuel spill or pollution release claim, contact our nationwide provider, The Spill Center at 1 (877) 683-2159.

As a condition precedent to our obligations under this policy, the **insured** shall give written notice to us as soon as practicable during the **policy period** or **extended reporting**

period, if applicable, of any **claim** made against the **insured** for **loss, remediation expense** or other coverage afforded under the policy. Oral notification must be followed with a written notice to us as soon as practicable during the **policy period** or **extended reporting period**, if applicable.

- B.** If during the **policy period**, the **insured** first becomes aware of any **contamination** or incurs **emergency expense** which could reasonably be expected to give rise to a **claim, remediation expense, loss** or other coverage under this policy, the **insured** must give written notice to us regarding all particulars of such incident. Notice must be provided to us as soon as practicable after the **insured** discovers such **contamination** or incurs such **emergency expense**, but in no event later than the expiration of the **policy period**. Oral notification must be followed with a written notice to us as soon as practicable, but in no event later than the expiration of the **policy period**. Such notice of any **contamination** or **emergency expense** must include:
1. The particulars of the specific **contamination** or **emergency expense**;
 2. The circumstances by which the **insured** first became aware of such **contamination** or **emergency expense**; and
 3. The **claim, loss, remediation expense** or other coverage afforded under this policy which has or may result from such **contamination** or **emergency expense**.
- C.** In the event that during the policy period, an **underground storage tank** is scheduled to be voluntarily upgraded, removed or replaced, then as a condition precedent for coverage under this policy, at least ten (10) days prior to such upgrade, removal or replacement, the insured must provide us with written notice of the upgrade, removal or replacement as set forth in Paragraph VIII. A., above,
- D.** In the event that the **named insured** continuously maintains Storage Tank Environmental Policy with the Company and in the event we determine that the **insured** has fully complied with the notice provision set forth in Paragraph VII. B., then for a period not to exceed five (5) years from the expiration of this policy, any **claim, remediation expense, loss** or other coverage afforded under this policy that subsequently arises out of such **contamination** will be considered to have been first made under the policy in effect at the time the **insured** discovers such **contamination**.

VIII. Duties in the Event of a Claim or Confirmed Release or Discovery of Contamination

A. The Insured's Duties

As a condition precedent to our obligations under this policy, in the event of a **claim, confirmed release**, or the discovery of **contamination** and pursuant to VII. Notice and Claim Reporting Provisions above, the **insured** must:

1. Give notice containing particulars sufficient to identify the **insured**, time, place and underlying circumstances to us;
2. Immediately forward to us every demand, notice, summons, or other process received by the **insured** or the **insured's** representatives;
3. Take reasonable measures to protect your interests. We will not be liable for **loss, remediation expense** or **defense expense**, or any other coverage afforded under this policy admitted by the **insured** without our prior written consent;

4. Except at an **insured's** sole cost, admit no liability, make no payments, assume no obligation and incur no expense without our prior written consent, except in the case of **emergency expense**;
5. Fully cooperate with us and, upon our request, assist in investigations, making settlements and in the conduct and defense of **claims**. The **insured** shall, at the **insured's** cost, attend inquiries, interviews, hearings, trials and depositions and shall assist in securing and giving evidence and in obtaining the attendance of witnesses and **employees**; and
6. Not demand or agree to arbitration of any **claim** or any part of your responsibilities for **remediation expense**, **loss**, or other coverage afforded or **contamination** without our prior written consent. Such consent shall not be unreasonably withheld.

B. Rights and Duties Concerning Confirmed Release

1. The **insured** shall have the right and duty to retain an **environmental professional**, subject to our consent, to associate with the **insured's** investigation of a **confirmed release** covered by this insurance after the **insured** discovers and notifies us of ~~such~~ **confirmed release**. We have the right, but not the duty, to review and approve all aspects of any such investigation or remediation.
2. In the event of **emergency expense**, the **insured** may select an **environmental professional** without our prior consent. Except for **emergency expense**, any costs incurred without our consent will not be covered under this policy or credited against the Deductible. As a condition precedent for coverage of **emergency expense** under this policy, the **insured** must notify us as soon as practicable, but in no event after expiration of the **policy period**, of such **emergency expense**.
 - a. In the event that the **insured**, subject to our prior consent, retains a remediation contractor to investigate and remediate **contamination** to which this policy applies, the **remediation expense** we must pay to such remediation contractor is limited to the unit rates and material costs we would actually pay to remediation contractors that we retain in the ordinary course of business in the investigation or remediation of similar **contamination** in the location where the **contamination** took place. We have the right to require that such remediation contractors have certain minimum qualifications with respect to competency, including experience in investigation and remediation **contamination** similar to the **contamination** at issue, and to require that such remediation contractors have acceptable limits of errors and omissions insurance coverage. The **insured** warrants that such remediation contractors will timely respond to our requests for information regarding any **contamination**.
 - b. In the event that the **insured**, subject to our prior consent, directly undertakes the investigation and remediation of **contamination** to which this policy applies, the **remediation expense** we must pay to such **insured** is limited to the unit rates and material costs we would actually pay to remediation contractors that we retain in the ordinary course of business in the investigation or remediation of similar **contamination** in the location where the **contamination** took place, but in no event will we be obligated to pay the **insured** for any element of overhead or profit with respect to any **remediation expense** it incurs under this subparagraph.
3. In addition, we shall retain the right but not the duty to investigate or remediate **contamination** on behalf of the **insured** after receipt of notice of such **contamination**. Any expenses incurred in such investigation or remediation shall

be deemed to be incurred by the **insured** and applied against the Limits of Insurance and credited against the Deductible.

IX. Extended Reporting Provisions

A. Automatic Extended Reporting Period

1. If you cancel or refuse to renew this policy or, if we cancel or refuse to renew this policy for reasons other than non-payment of premium or fraud or material misrepresentation on your part, we will provide to you a one-hundred and eighty (180) day automatic **extended reporting period**, at no additional charge.
2. The automatic **extended reporting period** will apply to any **claim** first made against you and reported to us in writing during the one-hundred and eighty (180) day extension period, but only with respect to **confirmed release** or **contamination** that the **named insured** discovers during the **policy period** and reports to us in writing during the **policy period**, provided that such **confirmed release** or **contamination** is otherwise covered by this policy.
3. If you purchase replacement coverage for this policy or a supplemental **extended reporting period** under **B.** below, the one-hundred and eighty (180) day automatic extension period will end on the effective date of the replacement coverage or on the effective date of the supplemental **extended reporting period**, whichever is earliest.

B. Supplemental Extended Reporting Period

1. If you cancel or refuse to renew this policy or, if we cancel or refuse to renew this policy for reasons other than non-payment of premium or fraud or material misrepresentation on your part, you shall have the right to purchase a supplemental **extended reporting period** of three (3) years for a premium of not more than two hundred and fifty percent (250%) of the expiring policy premium.
2. The supplemental **extended reporting period** will apply to any **claim** first made against you and reported to us in writing during the supplemental **extended reporting period** but only with respect to **confirmed release** or **contamination** that the **named insured** discovers during the **policy period** and reports to us in writing during the **policy period**, provided that such **confirmed release** or **contamination** is otherwise covered by this policy.
3. You must apply for this extension in writing, accompanied by payment of premium, prior to the expiration of the one-hundred and eighty (180) day automatic **extended reporting period** under paragraph **A.** of **Section IX.**, above.

C. Extended Reporting Periods

The **extended reporting periods** are subject to the following conditions, as applicable:

1. All premium paid with respect to a supplemental extended reporting period shall be deemed to be fully earned as of the first day of the extension period.
2. The supplemental **extended reporting period** described herein shall commence upon the day that the automatic **extended reporting period** terminates.

3. For the purpose of any **extended reporting period**, any change in premium, deductible, Limits of Insurance or other terms or conditions at renewal is not a refusal to renew.
4. Limits of Insurance available during any **extended reporting period** shall not exceed the balance of the Limits of Insurance in effect at the time the policy terminated.
5. In the event similar insurance is in force covering any **claims** first made during the automatic **extended reporting period**, there is no coverage under this policy.
6. In the event similar insurance is in force covering any **claims** first made during the supplemental **extended reporting period**, coverage provided by this policy shall be excess over any such other insurance, including any applicable deductible or self-insured retention amounts of such other insurance. For purposes of this provision, other insurance includes all types of self-insurance, indemnification or other funding arrangement or program that is available to compensate an **insured** for liability.
7. Any **extended reporting period** does not extend the **policy period**. Any **claim** first made against you during an **extended reporting period** will be deemed to have been first made during the last day of the **policy period**.

X. General Conditions

A. Subrogation

If we pay any amount under this policy, we shall be subrogated to the **insured's** rights of recovery against any individual, firm or organization. The **insured** shall execute and deliver instruments and papers and do whatever is necessary to secure such rights. The **insured** shall not waive or prejudice such rights subsequent to when a **claim** is first made or when the insured discovers **contamination**.

Any recovery as a result of a subrogation proceeding arising out of payment of a **loss** or **remediation expense** covered under this insurance shall accrue first to you to the extent of any payments in excess of the Limits of Insurance; then to us to the extent of our payment under the policy; and then to you to the extent of your deductible. Expenses incurred in such subrogation proceedings will be apportioned among the interested parties in the recovery, in the proportion that each interested party's share in the recovery bears to the total recovery.

Notwithstanding the foregoing, we hereby waive our right of subrogation against your client where required by written contract provided that such contract is fully executed prior to the first commencement of **contamination** to which this insurance applies.

B. Changes

Notwithstanding anything to the contrary, no provision of this policy may be amended, waived or otherwise changed except by endorsement issued by us to form part of this policy.

C. Financial Responsibility and Reimbursement

In the event that this policy is issued to certify your compliance with federal or state financial responsibility requirements, we shall comply with such financial responsibility requirements. However, the **insured** agrees to reimburse us for any payment made by

us, on behalf of the **insured**, that would we would not have been otherwise obligated to make under the terms and conditions of this policy but for the certification of your compliance with federal or state financial responsibility requirements utilizing this policy.

D. Action Against Us

No person or organization has a right under this insurance:

1. To join us as a party or otherwise bring us into a **claim**; or
2. To sue us under this insurance unless all of its terms have been fully complied with.

A person or organization may sue us to recover on a fully executed settlement agreement or on a final judgment against the **insured** obtained after an actual trial; but we will not be liable for **loss, corrective action, or defense expense** that is not payable under the terms of this insurance or that is in excess of the applicable Limits of Insurance.

E. Bankruptcy

Your bankruptcy or insolvency, or that of your successors in interest, shall not relieve us of our obligations under this policy.

F. Cancellation or Non-Renewal

You may cancel this policy by surrendering it to us or to one of our authorized agents or by mailing written notice to us and providing to us a future date when cancellation shall be effective. If you cancel this policy, we shall retain the customary short-rate portion of the premium less the minimum earned premium, if applicable.

We may cancel the policy by mailing to you at the address stated in **ITEM 2.** in the Declarations written notice stating when, not less than ninety (90) days thereafter; or ten (10) days in the case of cancellation for non-payment of premium or deductible, such cancellation shall become effective. If we cancel the policy, earned premium shall be computed pro-rata. The mailing of Notice of Cancellation as aforementioned shall be sufficient proof of notice of cancellation. The effective date of cancellation specified in the notice shall terminate this **policy period**.

This policy may only be cancelled by us for:

1. Non-payment of premium or deductible;
2. Fraud or material misrepresentation by you; or
3. Your failure to comply with terms and conditions or your contractual obligations under this policy. You shall have a right of sixty (60) days from the date of notice of cancellation to remedy such non-compliance. If the remedy is satisfactory to us, we shall rescind such notice in writing and the policy shall remain in force. Notwithstanding the foregoing, if the policy is cancelled due to non-payment of premium, at the Company's option, upon receipt of all outstanding premium payments, the policy may be reinstated, but only from the date we receive such outstanding premium payments.

H. Assignment

Assignment of interest under this policy shall not bind us and such assignment is void unless our consent is endorsed hereon.

I. Authorization Clause

By acceptance of this policy, you agree that:

1. The statements in the Declarations, your application, and any other supplemental information thereto are complete and accurate;
2. The statements in your application and any other supplementary information thereto are your representations and warranties and that those representations and warranties are material;
3. This policy is issued in reliance upon the truth and accuracy of such representations and warranties; and
4. The statements in your application and any other supplemental information thereto are incorporated into this policy. This policy embodies all existing agreements between you and us relating to this insurance; and
5. Breach of those representations or warranties will result, at our election, forfeiture of coverage for any **claim** reported to us under the policy, or voiding of the policy from inception.

J. Other Insurance

If other valid and collectible insurance is available to the **insured** for coverage granted under this policy, our obligations are limited as follows:

1. Except as provided in subparagraph 3. below, this insurance is primary, and our obligations are not affected unless any other insurance is also primary. In that case, we will share with all such other insurance by the method described in subparagraph 2. below.
2. If all of the other insurance permits contribution by equal shares, we will also follow this method. In this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first. If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. In contribution by limits, each insurer's share is based upon the ratio of its applicable limit of insurance bears to the total applicable limits of insurance of all insurers;
3. This insurance will apply as excess insurance over any governmental trust fund, administered insurance program or restoration funding for **storage tanks**, however in the event such funds or programs are uncollectible, this insurance shall act as primary insurance. If this insurance is excess, we will pay only our share of loss, remediation expense or defense expense, if any, that exceeds the total amounts available and collectible from such governmental funds or programs.

For purposes of this provision, other insurance includes all types of self-insurance, indemnification or other funding arrangement or program that is available to compensate an **insured** for liability.

K. Headings

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

L. Consent

Where consent by us or an **insured** is required under this policy, such consent shall not be unreasonably withheld, delayed, conditioned or denied.

M. Access and Inspection

In connection with underwriting of this insurance or with our defense or adjustment of any **claim, loss, remediation expense** or any other coverage afforded under this policy, we shall be allowed, but not obligated to, conduct inspections, surveys, audits or reviews of your location, operations or other information deemed pertinent by us. Such inspections, surveys, audits or reviews could involve the taking of samples, interviewing of **employees**, physical access to locations or access to materials or information concerning your operations, structure or financials of your company.

The **insured** agrees to cooperate with us, and provide us with access to locations, information, and **employees** for such inspections, surveys, audits, or reviews, whether or not you deem such location or information relevant to the underwriting of this insurance, or with our defense or adjustment of any **claim, loss, corrective action** or any other coverage afforded under this policy.

Neither our right to conduct such inspections, surveys, audits or reviews nor the results or conclusions of such actual inspections, surveys, audits or reviews shall warrant, in any way, that the operations or location are safe, healthful or compliant with or conform to applicable laws, standards or accepted practices. This condition applies to any agents or representatives that we allow to conduct such inspections, surveys, audits or reviews on our behalf.

N. Sole Agent

You shall act on behalf of all other **insureds**, if any, for the payment or return of any premium, payment of any deductible, receipt and acceptance of any endorsement issued by us to form a part of the policy, giving and receiving notice of cancellation or non-renewal, and the exercise of the rights provided in the **extended reporting period**, and the receipt and acceptance of any payment required to be made by us under the policy.

O. Severability

Except with respect to Limits of Insurance, Deductible, Cancellation or Non-Renewal and any rights and duties assigned in this policy to you, this insurance applies as if each **insured** were the only **insured** and separately to each **insured** against to whom a **claim** is made. Any misrepresentation, act, or omission that is in violation of a term, duty or condition under this policy by one **insured** shall not prejudice another **insured** under this policy. This condition shall not apply to an **insured** who is a parent, subsidiary or affiliate of the **insured** which committed the misrepresentation, act, or omission referenced above.

P. Shared Limits

You and all other **insureds** understand, agree and acknowledge that this policy contains an Aggregate Limit that is applicable to and shared by all **insureds** that are or may become an **insured**. As such all **insureds** understand and agree that the limits of this policy may be depleted or exhausted by payments made on behalf of other **insureds**.

Q. Arbitration

Any dispute, disagreement or controversy, arising out of the formation, interpretation, alleged breach, termination, or invalidity of this policy, or as to any other issue regarding the respective duties and responsibilities of us or any **insured** regarding this policy, shall be resolved through binding arbitration. Except with respect to the selection of the arbitration panel, the arbitration will be conducted in accordance with the rules of the American Arbitration Association ("AAA") that are in effect as of the date a party first provides notice of its demand for arbitration to the other party in accordance with the policy's notice provisions. The panel will consist of one arbitrator selected by the **insured**; one selected by us; and a third independent arbitrator will be selected by the first two arbitrators. If the first two arbitrators cannot agree on the selection of a third independent arbitrator within thirty (30) days of such notice, the third arbitrator will be selected by the AAA.

The arbitration proceeding will take place in the state shown in **ITEM 2.** in the Declarations or in the domicile of the entity seeking relief from us or from whom we are seeking relief. The arbitrators must give due consideration to the general principles of the law of the state shown in **ITEM 2.** in the Declarations in construing and interpreting this policy; provided however, that the terms, conditions, provisions and exclusions of this policy are to be construed in an evenhanded fashion as between the parties. Where the language of this policy is alleged to be ambiguous or otherwise unclear, the issue will be resolved in the manner most consistent with the relevant terms, conditions, provision or exclusions of the policy (without regard to the authorship of the language, the doctrine of reasonable expectations of the parties and without any presumption or arbitrary interpretation or construction in favor of either party or parties, and in accordance with the intent of the parties).

The written decision of the arbitrators (the "Underlying Award") will be binding on all parties, must set forth its reasoning and basis in law and fact, and must be provided to all parties simultaneously. The arbitrators' award shall not include attorney fees or other costs of arbitration. Judgment on the award may be entered in any court of competent jurisdiction. Each party shall bear the costs and expenses of arbitration equally.

Notwithstanding any language to the contrary, the parties hereby agree that: the Underlying Award may be appealed pursuant to the AAA's Optional Appellate Arbitration Rules ("Appellate Rules"); and that the Underlying Award shall not be considered final until after the time for filing the notice of appeal pursuant to the Appellate Rules has expired. Appeals must be initiated within thirty (30) days of a party's receipt of an Underlying Award, as defined by Rule A-3 of the Appellate Rules, by filing a Notice of Appeal with any AAA office and simultaneously serving such Notice on the other party. Following the appeal process the decision rendered by the appeal tribunal may be entered in any court having jurisdiction thereof.

IN WITNESS WHEREOF, WE HAVE CAUSED THIS POLICY TO BE SIGNED BY OUR PRESIDENT AND SECRETARY. THIS POLICY SHALL NOT BE VALID UNLESS SIGNED ON THE DECLARATIONS PAGE BY OUR DULY AUTHORIZED REPRESENTATIVE