

TankAdvantage Pollution Liability Insurance

THIS FORM PROVIDES CLAIMS MADE COVERAGE. PLEASE READ THE ENTIRE FORM CAREFULLY.

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the **Named Insured** shown in the Declarations, and any other person or organization qualifying as a **Named Insured** under this policy. The words "we", "us", and "our" refer to the Company providing this insurance.

Other headings, words and phrases that appear in bold have special meaning (refer to Section XI. Definitions). This policy provides Claims Made and Reported Coverage, and has **claims** reporting requirements. Coverage provided herein only applies to a **claim** that is made against you and reported to us during the policy period or applicable **Extended Reporting Period**.

The application is the basis of this policy and is incorporated in and constitutes a part of this policy. A copy of the application is attached hereto. Any material received with the application will be maintained on file with the Company and will be deemed to be attached thereto as if physically attached. It is agreed by all **insureds** that the statements in the application are their representations, that they are material and that this policy is issued in reliance upon the truth of such representations. The policy includes all of the agreements existing between the **insureds** and the Company or any of its agents relating to this policy.

I. INSURING AGREEMENT

COVERAGE A – COVERED STORAGE TANK SYSTEM CLEANUP COSTS

1. We will pay on behalf of the **insured** those sums the **insured** becomes legally obligated to pay as damages because of **cleanup costs** in excess of the deductible, if any, resulting from **pollution conditions** on, at or under the **covered location(s)** listed in the Declarations and/or in the Schedule of Covered Location(s) and Covered Storage Tank System(s) endorsement attached to this policy which result from a **release** of contents from any **covered storage tank system(s)**, provided that the **pollution conditions** are first discovered during the policy period and reported to us in writing, during the policy period or **Extended Reporting Period**, if applicable. Such **pollution conditions** must commence on or after the Retroactive Date set forth in the Declarations and/or the Schedule of Covered Location(s) and Covered Storage Tank System(s) endorsement attached to this policy.
2. We will pay on behalf of the **insured** those sums the **insured** becomes legally obligated to pay as damages because of **cleanup costs** in excess of the deductible, if any, resulting from **pollution conditions** emanating from the **covered location(s)** listed in the Declarations and/or in the Schedule of Covered Location(s) and Covered Storage Tank System(s) endorsement attached to this policy which result from a **release** of contents from any **covered storage tank system(s)**, provided that the **pollution conditions** are first discovered during the policy period and reported to us in writing, during the policy period or **Extended Reporting Period**, if applicable. Such **pollution conditions** must commence on or after the Retroactive Date set forth in the Declarations and/or the Schedule of Covered Location(s) and Covered Storage Tank System(s) endorsement attached to this policy.

COVERAGE B – COVERED STORAGE TANK SYSTEM THIRD PARTY BODILY INJURY AND PROPERTY DAMAGE LIABILITY

We will pay on behalf of the **insured** those sums the **insured** becomes legally obligated to pay as damages because of **bodily injury** or **property damage** in excess of the deductible, if any, resulting from **pollution conditions** on, at, under or emanating from the **covered storage tank system(s)** listed in the Declarations and/or in the Schedule of Covered Location(s) and Covered Storage Tank System(s) endorsement attached to this policy, provided that the **claim** or **suit** is first brought against the **insured** during the policy period, and provided that the **insured** reports the **claim** or **suit** to us, in writing, during the policy period or **Extended Reporting Period**, if applicable. Such **pollution conditions** must commence on or after the Retroactive Date set forth in the Declarations and/or in the Schedule of Covered Location(s) and Covered Storage Tank System(s) endorsement attached to this policy.

COVERAGE C – COVERED LOCATIONS CLEANUP COSTS

1. We will pay on behalf of the **insured** those sums the **insured** becomes legally obligated to pay as damages because of **cleanup costs** in excess of the deductible, if any, resulting from **pollution conditions** on, at or under the **covered location(s)** listed in the Declarations and/or in the Schedule of Covered Location(s) and Covered Storage Tank System(s) endorsement attached to this policy, provided that the **pollution conditions** are first discovered during the policy period and reported to us, in writing, during the policy period or **Extended Reporting Period**, if applicable. Such **pollution conditions** must commence on or after the Retroactive Date set forth in the Declarations and/or in the Schedule of Covered Location(s) and Covered Storage Tank System(s) endorsement attached to this policy.
2. We will pay on behalf of the **insured** those sums the **insured** becomes legally obligated to pay as damages because of **cleanup costs** in excess of the deductible, if any, resulting from **pollution conditions** emanating from the **covered location(s)** listed in the Declarations and/or in the Schedule of Covered Location(s) and Covered Storage Tank System(s) endorsement attached to this policy, provided that the **claim** or **suit** is first brought against the **insured** during the policy period, and provided that the **insured** reports the **claim** or **suit** to us, in writing, during the policy period or **Extended Reporting Period**, if applicable. Such **pollution conditions** must commence on or after the Retroactive Date set forth in the Declarations and/or in the Schedule of Covered Location(s) and Covered Storage Tank System(s) endorsement attached to this policy.

COVERAGE D – COVERED LOCATIONS THIRD PARTY BODILY INJURY AND PROPERTY DAMAGE LIABILITY

We will pay on behalf of the **insured** those sums the **insured** becomes legally obligated to pay as damages because of **bodily injury** or **property damage** in excess of the deductible, if any, resulting from **pollution conditions** on, at, under or emanating from the **covered location(s)** listed in the Declarations and/or in the Schedule of Covered Location(s) and Covered Storage Tank System(s) endorsement attached to this policy, provided that the **claim** or **suit** is first brought against the **insured** during the policy period, and provided that the **insured** reports the **claim** or **suit** to us, in writing, during the policy period or **Extended Reporting Period**, if applicable. Such **pollution conditions** must commence on or after the Retroactive Date set forth in the Declarations and/or in the Schedule of Covered Location(s) and Covered Storage Tank System(s) endorsement attached to this policy.

COVERAGE E – DEFENSE

We will pay on behalf of the **insured** those costs to defend a **claim** or **suit** for **bodily injury, property damage** or **cleanup costs** to which this insurance applies. We will have no duty to defend the **insured** against any **claim** or **suit** for **bodily injury, property damage** or **cleanup costs** to which this policy does not apply. Our duty to defend or continue defending any such **claims** or **suits** and to pay any **bodily injury, property damage, cleanup costs** or defense costs, charges and/or expenses, shall cease once the applicable Limit of Liability, as described in the Declarations and Section IV. Limits of Liability, has been exhausted.

II. EXCLUSIONS

This insurance does not apply to:

1. Asbestos and Lead Based Paint

Bodily injury, property damage or cleanup costs based upon the existence, removal, or abatement of asbestos, asbestos containing products, asbestos fibers, asbestos dust, asbestos containing materials, or lead-based paint in, on, or applied to any structure.

2. Auto, Aircraft, Watercraft or Rolling Stock

Bodily injury, property damage or cleanup costs based upon or arising out of the ownership, maintenance, use, **loading or unloading** or the entrustment to others of any **auto**, aircraft, watercraft, or rolling stock owned or operated by or rented or loaned to any **insured**. This exclusion also applies to any **carrier** transporting your wastes, products or materials beyond a **covered location(s)**, unless specifically endorsed onto this policy.

This exclusion does not apply to the **loading or unloading** of any **covered storage tank system(s)** which is reported to us within 72 hours from the time of the **release**.

3. Business Interruption

Bodily injury, property damage or cleanup costs arising out of any loss of income or consequential loss of any kind or nature, unless specifically endorsed onto this policy.

4. Contractual Liability

Bodily injury, property damage or cleanup costs for which the **insured** is obligated to pay by reason of the assumption of liability in a contract or agreement.

5. Costs to Repair, Replace, or Upgrade a Storage Tank System

For any costs arising out of the reconstruction, repair, replacement, upgrading or rebuilding of any **covered storage tank system(s)** or for any other improvement, site enhancements or routine maintenance on, within or under the **covered location(s)** at which the **covered storage tank system(s)** are located, unless specifically endorsed onto this policy.

6. Divested Property

Bodily injury, property damage or cleanup costs based upon or arising from **pollution conditions** on, at, under or emanating from any **covered location(s)** and/or **covered storage tank system(s)**, where the actual discharge, dispersal, **release**, seepage, migration or escape of **pollution conditions** begins subsequent to the time such **covered location(s)** and/or **covered storage tank system(s)** is sold, given away, condemned, abandoned, leased or subleased, unless the lease or sublease has been approved in writing by the us prior to the commencement of the lease or sublease.

7. Employer's Liability

(a) **Bodily injury** to an employee of the **insured** arising out of and in the course of:

- (1) Employment by the **insured**; or
- (2) Performing duties related to the conduct of the **insured's** business; or

(b) The spouse, child, parent, brother or sister of that employee as a consequence of Paragraph (a) above.

(c) Damages based upon or arising under any workers compensation, unemployment compensation or disability benefits law or similar law.

This exclusion applies:

(a) Whether the **insured** may be liable as an employer or in any other capacity; and

(b) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

8. Fines and Penalties

Any **claim** seeking payment of:

- (a) Fines, penalties, or multiplied damages;
- (b) Punitive or exemplary damages; or
- (c) The cost of injunctive relief based upon or arising out of non-compliance with any statute, regulation, ordinance or administrative complaint.

9. Fungi

- (a) **Bodily injury, property damage or cleanup costs** which would not have occurred, in whole or in part, but for the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of, any **fungi** regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to such injury or damage.
- (b) Any loss, cost or expense arising out of the testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to, or assessing the effects of **fungi** by any **insured** or by any other person or entity.

10. Insured vs. Insured

Damages **claimed** by any **insured** against any other **insured** under this policy.

11. Insured's Property

Property damage to property owned, leased, rented, occupied, operated by, or loaned to an **insured**, even if such **property damage** is incurred to avoid or mitigate damages arising from **bodily injury, property damage or cleanup costs** which may be covered under this policy.

12. Internal Expense

Expenses incurred by the **insured** for services performed by employees of the **insured**.

13. Known Pollution Conditions

Pollution conditions known to exist prior to the inception of this policy by any **insured**.

14. Knowingly Wrongful Acts

Bodily injury, property damage or cleanup costs based upon or arising from, whether directly or indirectly, the **insured's** intentional, dishonest, fraudulent, malicious, or knowingly wrongful act, error or omission or non-compliance with any statute, regulation, ordinance, administrative complaint, notice of violation, notice letter, executive order, or instruction of any governmental agency or body. However, this exclusion shall not apply to any **insured** that did not commit, participate in, or have knowledge of any of the acts described above.

15. Market Share Liability

Any liability imposed as a result of market share liability, concept of action liability, alternative liability, enterprise liability and/or any other type of liability that is established without proof that the **bodily injury, property damage or cleanup costs** was caused directly by a **release** from a **covered location(s)** and/or a **covered storage tank system(s)**.

16. Non-Covered Storage Tank System(s)

Bodily injury, property damage or cleanup costs arising from **pollution conditions** emanating from any **storage tank system(s)** which are not listed within the Schedule of Covered Location(s) and Covered Storage Tank System(s) endorsement attached to this policy.

17. Non-Owned Disposal Sites

Bodily injury, property damage or cleanup costs based upon or arising out of **pollution conditions** on, at or emanating from any non-owned disposal site to which your wastes, products or materials have been delivered. This exclusion shall not apply to those non-owned disposal sites that are listed within the Non-Owned Disposal Site Coverage endorsement attached to this policy, if applicable.

18. Nuclear Hazard

(a) **Bodily injury, property damage or cleanup costs:**

- (1) With respect to which an **insured** under the policy is also an **insured** under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada or any of their successors, or would be an **insured** under any such policy but for its termination upon exhaustion of its limit of liability; or
- (2) Resulting from the **hazardous properties of nuclear material** and with respect to which:
 - a. any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or
 - b. the **insured** is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

(b) **Bodily injury, property damage or cleanup costs** resulting from the **hazardous properties of nuclear material**, if:

- (1) The **nuclear material**:
 - a. is not at any **nuclear facility** owned by, or operated by or on behalf of, an **insured** or
 - b. has been discharged or dispersed therefrom;
- (2) The **nuclear material** is contained in a **spent fuel** or **waste** at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an **insured**; or
- (3) The **bodily injury** or **property damage** arises out of the furnishing by an **insured** of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any **nuclear facility**, but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (3) applies only to **property damage** to such **nuclear facility** and any property thereat.

As used in this exclusion:

- (a) **Hazardous properties** include radioactive, toxic or explosive properties;
- (b) **Nuclear material** means source material, special nuclear material or by-product material;
- (c) **Source material, special nuclear material, and by-product material** have the meanings given them in the Atomic Energy Act of 1954 or any law amendatory thereof; **spent fuel** means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a **nuclear reactor**;
- (d) **Waste** means any waste material:
 - (1) Containing **by-product material** other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its **source material** content, and
 - (2) Resulting from the operation by any person or organization of any **nuclear facility** included under the first two paragraphs of the definition of **nuclear facility**.
- (e) **Nuclear facility** means:
 - (1) Any nuclear reactor;
 - (2) Any equipment or device designed or used for:
 - a. separating the isotopes of uranium or plutonium,

- b. processing or utilizing **spent fuel**, or
 - c. handling, processing or packaging **waste**;
- (3) Any equipment or device used for the processing, fabricating or alloying of **special nuclear material** if at any time the total amount of such material in the custody of the **insured** at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;
- (4) Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of **waste**;
- (f) **Nuclear reactor** means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material;
- (g) **Property Damage** includes all forms of radioactive contamination of property.

19. Products Liability

Damages arising out of **your product**. This includes, but is not limited to, any **property damage to your product**.

20. Radioactive Matter

Any liability of whatever nature arising out of, resulting from, caused by or contributed to by:

- (a) Ionizing radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel.
- (b) The radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof.
- (c) Any weapon of war employing atomic or nuclear fission and/or fusion of other like reaction or radioactive force of matter.

Radioactive contamination however caused, whenever or wherever happening.

21. Routine Business Costs

Bodily injury, property damage or cleanup costs reasonably considered to be routine and normal in connection with the business of the **insured** or occupancy of the property. This includes, but is not limited to, septic or sewage systems, oil water separator systems and dewatering systems. This exclusion shall not apply to those oil water separator systems that are listed within the Schedule of Covered Location(s) and Covered Storage Tank System(s) endorsement attached to this policy.

22. Storage Tank System(s) Contents

- (a) **Bodily injury, property damage or cleanup costs** arising out of or in any way related to the reimbursement of product inventory loss, removal, replacement, re-use, or recycling of the contents of any **storage tank system(s)**.
- (b) **Bodily injury, property damage and cleanup costs** based upon or arising from the use of any **storage tank system(s)** to store any content that is not compatible with the **storage tank system(s)**.

23. War

Any liability of whatever nature arising out of, resulting from, caused by or contributed to by:

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

III. SUPPLEMENTARY PAYMENTS

We will pay, with respect to any **claim** we investigate or settle, or any **suit** against an **insured** we defend:

1. All expenses we incur.
2. All reasonable expenses incurred by the **insured** at our request to assist us in the investigation or defense of the **claim** or **suit**, including actual loss of earnings up to \$250 a day because of time off from work.
3. All costs taxed against the **insured** in the **suit**.
4. Prejudgment interest awarded against the **insured** on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
5. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.
6. Expenses incurred by the **insured** for first aid administered to others at the time of any accident, for **bodily injury** to which this insurance applies.
7. In the event the **insured** is entitled by law to select independent counsel to defend the **insured** at our expense, the following shall apply:
 - (a) The attorney fees and all other litigation expenses we must pay to that counsel are 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** or **suits** in the community where the **claim** or **suit** arose or is being defended.
 - (b) We may exercise the right to require that such counsel have certain minimum qualifications with respect to their competency, including experience in defending **claims** or **suits** similar to the one pending against the **insured**, and to require such counsel to have errors and omissions insurance coverage. As respects, any such counsel, the **insured** agrees that counsel will timely respond to our request for information regarding the **claim** or **suit**. The **insured** may at any time, by its signed consent, freely and fully waive its right to select independent counsel.
8. These payments will reduce the limits of insurance.

IV. LIMITS OF INSURANCE

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
 - (a) **Insureds**;
 - (b) **Covered locations**;
 - (c) **Covered storage tank systems**;
 - (d) **Claims** made or **suits** brought; or
 - (e) Persons or organizations making **claims** or bringing **suits**.
2. The Total All Claims Limit set forth on the Declarations is the most we will pay for the sum of:
 - (a) All damages because of all **bodily injury, property damage and cleanup costs**; and
 - (b) All defense expenses incurred.
3. Subject to 2. above, the Per Claim Limit set forth on the Declarations is the most we will pay for the sum of:
 - (a) All **bodily injury and property damage**;
 - (b) All **cleanup costs**; and

- (c) All defense expenses incurred;
arising from any one **pollution condition**.
- 4. Subject to 3. above, we will pay the lesser of:
 - (a) The Per Claim Limit, reduced by the deductible amount, if one is shown in the Declarations; or
 - (b) The sum of those **bodily injury, property damage, cleanup costs** or defense expenses minus any such deductible amount.
- 5. We will, if required by law, pay part or all of any deductible amount, if applicable, to affect settlement of any **claim or suit**. Any deductible amount we pay shall be due and payable by you to us without interest within 30 days of our notice to you.

V. CONDITIONS

1. Audit and Inspection

- (a) We may examine and audit your books and records as they relate to this policy at any time during the policy period and up to three (3) years after the end of the policy period;
- (b) We may be permitted but not obligated to, interview persons employed by the **insured**; or
- (c) We shall be permitted but not obligated to inspect, sample and monitor the **insured's covered location(s)** and/or **covered storage tank system(s)** during the policy period or any time thereafter. Neither our right to make inspections, sample and monitor nor the actual undertaking thereof nor any report thereon shall constitute an undertaking, on behalf of the **insured** or others, to determine or warrant that **covered location(s), covered storage tank system(s)**, property or operations are safe, healthful or conform to acceptable engineering practice or are in compliance with any law, rule or regulation. The **Named Insured** agrees to provide appropriate personnel to assist our representatives during any inspection.

2. Bankruptcy

Bankruptcy or insolvency of the **insured** or of the **insured's** estate will not relieve us of our obligations under this policy.

3. Changes

Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this Policy or estop the Company from asserting any rights under the terms of this Policy; nor shall the terms of this Policy be waived or changed, except by endorsement issued by the Company to form a part of this Policy.

4. Choice of Law

All matters arising hereunder including questions relating to the validity, interpretation, performance, and enforcement of this Policy shall be determined in accordance with the law and practices of the State of New York.

5. Cooperation

The **insured** shall cooperate with the Company and offer all reasonable assistance in the investigation and defense of **claims** and **suits** under the applicable coverages purchased. The Company may require that the **insured** submit to examination under oath, and attend hearings, depositions and trials. In the course of investigation or defense, the Company may require written statements or the **insured's** attendance at meetings with the Company. The **insured** must assist the Company in effecting settlement, securing and providing evidence and obtaining the attendance of witnesses.

6. Coverage Territory

The coverage provided under this policy shall apply to **covered location(s)** and/or **covered storage tank system(s)** located:

- (a) Within the United States of America (including its territories and possessions), Puerto Rico and Canada; or
- (b) Within all other parts of the World if the **insured's** responsibility to pay damages is determined in a **suit** on the merits, in the territory described in a. above or in a settlement we agree to.

7. Headings

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

8. Jurisdiction and Venue

It is agreed that in the event of the failure of the Insurer to pay any amount claimed to be due hereunder, the Insurer and the **insured** will submit to the jurisdiction of the State of New York and will comply with all requirements necessary to give such court jurisdiction. Nothing in this clause constitutes or should be understood to constitute a waiver of the Insurer's rights to remove an action to a United States District Court.

9. Legal Action Against Us

No person or organization has a right under this policy:

- (a) To join us as a party or otherwise bring us into a **suit** asking for damages from an **insured**; or
- (b) To sue us on this policy unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an **insured**; but we will not be liable for damages that are not payable under the terms of this policy or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the **insured** and the claimant or the claimant's legal representative. For purposes of this condition, a consent judgment, stipulated judgment, agreed judgment, consent decree or consent order reached without our written agreement is neither an agreed settlement nor a final judgment.

10. Other Insurance

If other valid and collectible insurance is available to the **insured** covering damages and supplementary payments also covered by this policy, other than a policy that is specifically written to apply in excess of this policy, the insurance afforded by this policy shall apply in excess of and shall not contribute with such other insurance. The **insured** shall promptly, upon the request of the Company, provide the Company with copies of all such policies or documentation.

11. Renewal

If we offer to renew or continue this policy and neither you nor your representative accepts, this policy will automatically terminate at the end of the current policy period. Failure to pay the required renewal or continuation premium when due shall mean that you have not accepted our offer to renew.

12. Representations

By accepting this policy, you agree:

- (a) The statements in the Declarations are accurate and complete;
- (b) Those statements are based upon representations you made to us; and
- (c) We have issued this policy in reliance upon your representations.

13. Separation of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this policy to the first **Named Insured**, this insurance applies:

- (a) As if each **Named Insured** were the only **Named Insured**; and
- (b) Separately to each **insured** against whom **claim** is made or **suit** is brought.

14. Settlement

We will present any settlement offers to the **insured**, and if the **insured** refuses to consent to any settlement within the limits of liability of this Policy recommended by us and acceptable to the claimant, our duty to defend the **insured** shall then cease and the **insured** shall thereafter negotiate or defend such **claim** or **suit** independently of us and our liability shall not exceed the amount, less the deductible or any outstanding deductible balance, for which the **claim** or **suit** could have been settled if such recommendation was consented to.

15. Sole Agent

The **Named Insured** shown in the Declarations shall serve as sole agent of all the **insureds** with respect to the return or payment of any premiums or retained amounts, as well as for any notices required by this policy.

16. Subrogation

In the event of any payment under this Policy by the Insurer, the Insurer shall be subrogated to all of the rights of recovery against any person or organization, and the **insured** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The **insured** shall do nothing to prejudice such rights.

Any recovery as a result of subrogation proceedings arising out of the payment of **bodily injury, property damage** or **cleanup costs** covered under this Policy shall accrue first to the **insured** to the extent of any payments in excess of the limits of insurance; then to the Company to the extent of its payment under the policy; and then to the **insured** to the extent of its deductible. Expenses incurred in such subrogation proceedings shall 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.

17. Transfer of Policy

Your rights and duties under this policy may not be transferred without our written consent.

18. Voluntary Notice of Covered Storage Tank System(s) Upgrade, Repair and/or Replacement.

You shall provide notice to us of your intent to perform a voluntary upgrade, repair, removal or replacement at least forty eight (48) hours prior to the **covered storage tank system(s)** upgrade, repair, removal or replacement. Notice shall be provided consistent with Section VI. Reporting of a Pollution Condition, Claim or Suit.

VI. REPORTING OF A POLLUTION CONDITION, CLAIM OR SUIT

1. You must see to it that we are notified as soon as reasonably possible, but in any event, not more than seven (7) days after the **insured** first became aware of, or should have become aware of a **pollution condition** which may result in a **claim** or any action or proceeding to impose an obligation on the **insured** for **cleanup costs**. Notice should include:
 - (a) How, when and where the **pollution condition** took place;
 - (b) The names and addresses of any injured persons and witnesses; and
 - (c) The nature and location of any injury or damage arising out of the **pollution condition**.
2. Notice of a **pollution condition** is not notice of a **claim**.

3. If a **claim** is made or **suit** is brought against any **insured** or an action is initiated, you must see to it that we receive written notice of the **claim, suit** or notice of action as soon as reasonably possible, but in any event, not more than seven (7) days after the **insured** first became aware of, or should have become aware of the **claim, suit** or notice of action.
4. You and any other involved **insured** must:
 - (a) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the **claim** or **suit**;
 - (b) Authorize us to obtain records and other information;
 - (c) Cooperate with us in the investigation or settlement of the **claim** or defense against the **suit**; and
 - (d) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the **insured** because of injury or damage to which this insurance may also apply.
5. No **insured** will, except at that **insured's** own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.
6. Upon the discovery of a **pollution condition**, the **insured** shall make every attempt to mitigate any loss and comply with the applicable environmental laws. The **insured** must cooperate with the Insurer in the selection and retention of qualified contractors or consultants. The Insurer shall have the primary responsibility, but not the duty, to select, retain, and oversee such contractors or consultants, on behalf of the **insured**. Any **cleanup costs** incurred by the Insurer shall be deemed incurred by the **insured** and shall be subject to the Deductible and Limit of Liability shown in the Declarations.
7. All continuous or related **pollution conditions** reported to the Company under a subsequent policy issued by the Company or its affiliates, providing substantially the same coverages as this Policy, shall be deemed to have been first discovered and reported during this policy period and shall be subject to the same Limit of Liability. All **claims** and reports of **pollution conditions** made during one or more policy periods issued by the Company or its affiliates, providing substantially the same coverages, resulting in **bodily injury, property damage** or **cleanup costs**, or in any combinations thereof, and arising out of the same, or continuous or related **pollution conditions**, shall be considered one incident and will be subject to the same Limit of Liability. Such **claims** or reports of **pollution conditions** shall be deemed first reported to the Company during the policy period in which the first such **claim** or report of a **pollution condition** was reported to the Company or an affiliate and will be subject to the Limit of Liability applicable to that policy period.

VII. CANCELLATION AND NON-RENEWAL

1. Cancellation

- (a) This policy may be canceled by the first **Named Insured** shown in the Declarations or by endorsement by mailing or delivering written notice to us stating when the cancellation date shall be effective. This policy may be canceled by us for the following reasons:
 - (1) non-payment of premium;
 - (2) material misrepresentation, concealment or fraud by you;
 - (3) material change in the use or operation of a **covered location(s)** and/or **covered storage tank system(s)** from the use contemplated in the Application and supporting materials which results in a materially increased likelihood of **claims, suits** or **pollution conditions**; or
 - (4) the **insured's** failure to comply with the terms and conditions under this policy including but not limited to the failure to pay any deductible amount when due;

by mailing to the first **Named Insured**, at the last known address, written notice of not less than ten (10) days if cancellation is for either reasons (1) or (2) above, or sixty (60) days if cancellation is for either reasons (3) or (4) above. Proof of mailing of notice shall be sufficient proof of notice. The effective date and hour of cancellation stated in the notice shall be the end of the policy period.

- (b) The minimum earned premiums due for this policy shall be calculated in accordance with the following:
- (1) The minimum earned premium due, if this policy remains in effect for ninety (90) days or less, shall be 25% of the amount entered as Policy Premium on the Declarations page of this policy.
 - (2) In the event of cancellation of this policy by the **Named Insured** after this policy as been in effect for more than ninety (90) days, the return premium due, if any, shall be computed at a rate equal to ninety percent (90%) of the pro-rata unearned policy premium.
 - (3) In the event of cancellation of this policy by the Company for reasons other than non-payment of premium, the earned premium for this policy shall be computed on a pro-rata basis.
 - (4) Premiums applicable to any subsequent endorsements will be in addition to the minimum premium shown in the policy.

2. Nonrenewal

If we decide not to renew or continue this policy, we will mail notice of nonrenewal to you at the last known address appearing in our records. Notice will be mailed thirty (30) days before the end of the policy period. Proof of mailing of notice shall be sufficient proof of notice.

VIII. EXTENDED REPORTING PERIOD

1. We will provide one or more **Extended Reporting Periods**, as described below, if:
 - (a) This policy is canceled or not renewed, except for non-payment of premium, material misrepresentation, concealment or fraud, or material change in the use or extent of the risk;
 - (b) With respect to a **covered location(s)** and/or **covered storage tank system(s)**:
 - (1) The deletion of a **covered location(s)** or **covered storage tank system(s)**; or
 - (2) The sale, giving away, condemning, abandonment, leasing or subleasing unless the leasing or subleasing has been approved in writing by us prior to the commencing of the leasing or subleasing of such **covered location(s)** or **covered storage tank system(s)** by you.

or

 - (c) We renew or replace the coverage of this policy with insurance that has a Retroactive Date later than the date shown in the Declarations and/or in the Schedule of Covered Location(s) and Covered Storage Tank System(s) endorsement attached to this policy.
2. **Extended Reporting Periods** do not extend the policy period, change the scope of coverage provided, or reinstate or increase the Limits of Insurance. They apply only to **claims** or **suits** resulting from **pollution conditions** that commence before the end of the policy period but not before the Retroactive Date, if any, shown in the Declarations and/or in the Schedule of Covered Location(s) and Covered Storage Tank System(s) endorsement attached to this policy. Once in effect, **Extended Reporting Periods** may not be canceled.
3. A Basic **Extended Reporting Period** is automatically provided without additional charge. This period starts with the end of the policy period and lasts for:
 - (a) thirty (30) days with respect to **claims** or **suits** first made against you and reported to us in writing for **covered location(s)**.
 - (b) six (6) months with respect to **claims** or **suits** first made against you and reported to us in writing for **covered storage tank system(s)**, except where the new or renewed policy following this policy has the same Retroactive Date or a Retroactive Date earlier than that of this policy for **covered storage tank system(s)**. If the policy following this policy has the same Retroactive Date or a Retroactive Date earlier than that of this policy, then the Basic **Extended Reporting Period** of thirty (30) days shall apply to the **covered storage tank system(s)**.

The Basic **Extended Reporting Period** does not apply to **claims** or **suits** that are covered under any subsequent insurance you purchase, or that would be covered but for exhaustion of the amount of insurance applicable to such **claims** or **suits**.

4. A Supplemental **Extended Reporting Period** of up to thirty-six (36) months is available with respect to **claims** or **suits** first made against you and reported to us in writing but only by an endorsement and for an extra charge. This supplemental period starts when the Basic **Extended Reporting Period**, set forth in Paragraph 3. above, ends.
5. You must give us a written request for the Supplemental **Extended Reporting Period** endorsement within forty-five (45) days after the end of the policy period. The Supplemental **Extended Reporting Period** will not go into effect unless you pay the additional premium when due. We will determine the additional premium in accordance with our rules and rates. In doing so, we may take into account the following:
 - (a) The exposures insured;
 - (b) Previous types and amounts of insurance;
 - (c) Limits of Insurance available under this policy for future payment of damages; and
 - (d) Other related factors.
7. The additional premium for the Supplemental **Extended Reporting Period** endorsement will not exceed 200% of the annual premium for this policy.
8. The **Extended Reporting Period** endorsement shall set forth the terms, not inconsistent with this section, applicable to the Supplemental **Extended Reporting Period**, including a provision to the effect that the insurance afforded for **claims** or **suits** first received during such period is excess over any other valid and collectible insurance available under policies in force after the Supplemental **Extended Reporting Period** starts.

IX. DEFINITIONS

1. Above Ground Storage Tank

Means any tank with associated piping, and equipment connected thereto which has more than ninety (90) percent of its volume above ground and would otherwise not be defined as an **underground storage tank** by federal or state law.

2. Auto

Means a land motor vehicle, trailer or semi-trailer designed for and licensed for travel on public roads, including any machinery or equipment attached thereto.

3. Bodily injury

Means physical injury, sickness, disease, mental anguish, or emotional distress, sustained by any persons, including death resulting therefrom.

4. Carrier

Means any person or entity, other than the **insured** or any subsidiary or affiliated company of the **insured**, engaged by or on behalf of the **insured**, and in the business of transporting property for hire by **auto**, aircraft, watercraft or rolling stock.

5. Claim, Claims, or Claimed

Means a written demand received by an **insured** seeking a remedy and alleging liability or responsibility on the part of the **insured** for **bodily injury**, **property damage**, and/or **cleanup costs**.

6. Cleanup costs

Means the reasonable expenses incurred for the investigation, monitoring, testing, removal, disposal, neutralization, or treatment of **pollution conditions** to the extent required by applicable federal, state, or local governmental law pursuant under which the **insured** has or may have a legal obligation. **Cleanup costs** shall include **restoration costs**.

7. Covered Location(s)

Means any location(s) listed in the Declarations and/or listed within the Schedule of Covered Location(s) and Covered Storage Tank System(s) endorsement.

8. Covered Storage Tank System(s)

Means any **above ground storage tank** or **underground storage tank** listed in the Declarations and/or listed within the Schedule of Covered Location(s) and Covered Storage Tank System(s) endorsement.

9. Extended Reporting Period

Means the additional period of time in which to report **claims, suits** or **pollution conditions** following termination of coverage, as described in Section VIII. Extended Reporting Period of this Policy.

10. Fungi

Means any type or form of fungus, including mold or mildew and any mycotoxins, spores, scents or by-products produced or **released** by **fungi**, but does not include any **fungi** intended by the **insured** for consumption.

11. Insured

Means:

- (a) The **Named Insured**;
- (b) Any additional **insured** expressly endorsed onto this policy; or
- (c) Any current or former director, executive officer, partner or employee of the **Named Insured** while acting within the scope of his or her duties as such.

12. Loading or unloading

Means the transfer of contents to or from an **auto** while the contents are being removed from or dispensed to a **covered storage tank system(s)**.

13. Named Insured

Means the person, individual, partnership, corporation or entity listed in the Declarations or expressly added as a **Named Insured** by endorsement.

14. Pollution Condition(s)

Means the discharge, dispersal, **release**, seepage, migration, or escape of any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste into or upon land, or any structure on land, the atmosphere or any watercourse or body of water, including groundwater. Waste includes materials to be recycled, reconditioned or reclaimed.

15. Property Damage

Means:

- (a) Physical injury to, destruction of or contamination of tangible property, including all resulting loss of use of that property;
- (b) Loss of use of tangible property that is not physically injured, destroyed or contaminated, but has been evacuated, withdrawn from use or rendered inaccessible because of a **pollution condition**, but does not include diminution in value;
- (c) Diminution in value of third party properties located beyond the boundaries of the **covered location(s)**.

16. Release

Means the discharge, dispersal, or escape of any solid, liquid, gaseous or thermal irritant, contamination or pollutant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste from a **covered location(s)** and/or **covered storage tank system(s)** into groundwater, surface water, or surface or subsurface soils, which a **pollution condition** has been investigated and confirmed by or on behalf of an **insured**, utilizing a system tightness check, site check or other procedure approved by the Federal Environmental Protection Agency or a state or local agency having jurisdiction over the **covered location(s)** and/or **covered storage tank system(s)** and in accordance with 40 Code of Federal Regulations 280.52 or any other applicable federal or state regulation or state statute.

17. Restoration Costs

Means the costs incurred to restore real or personal property damaged during the course of incurring **cleanup costs** to the condition it was in prior to incurring **cleanup costs**. These costs shall not exceed the actual cash value of such real or personal property prior to incurring **cleanup costs**.

18. Storage tank system(s)

Means any tank(s) including any connected piping and equipment attached thereto.

19. Suit

Means a civil proceeding in which damages because of **bodily injury**, **property damage**, or **cleanup costs** to which this insurance applies are alleged. **Suit** includes:

- (a) An arbitration proceeding in which such damages are **claimed** and to which the **insured** must submit or does submit with our consent; or
- (b) Any other alternative dispute resolution proceeding in which such damages are **claimed** and to which the **insured** submits with our consent.

20. Underground Storage Tank

Means any tank with associated piping and equipment connected thereto which has more than ten (10) percent of its volume below ground and would otherwise not be defined as an **above ground storage tank** by federal or state law.

21. Your Product:

(a) Means

- (1) any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
 - a. You;
 - b. Others trading under your name; or
 - c. A person or organization whose business or assets you have acquired; and
- (2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

(b) Includes:

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of **your product**; and
- (2) The providing of or failure to provide warnings or instructions.

(c) Does not include vending machines or other property rented to or located for the use of others but not sold.