

AGRICULTURAL ENVIRONMENTAL IMPAIRMENT LIABILITY ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY POLICY

SECTION I-COVERAGES

(1) INSURING AGREEMENTS

(a) Bodily Injury and Property Damage

- (i) We will pay those sums that the insured becomes legally obligated to pay as compensatory damages because of "bodily injury" or "property damage" to which this insurance applies, provided that:
 - 1. such "bodily injury" or "property damage" is caused by a "pollution incident" which commences during the policy period; and
 - 2. the claim for such compensatory damages is first made against the insured during the policy period or within two years after its termination and reported to us in accordance with Section VI-Duties in the Event of "Pollution Incident", Claim or "Action".

A claim by a person or organization seeking compensatory damages will be deemed to have been made when notice of such claim is received and recorded by any insured or by us, whichever comes first. All claims for compensatory damages because of "bodily injury" or "property damage" sustained by any one person or organization as a result of any one "pollution incident" shall be deemed to have been made at the time the first of those claims is made.

- (ii) We have the right and duty to defend claims made or "actions" brought in Canada against the insured seeking such compensatory damages and to pay for the "defense expense". This right and duty is limited as described in Clause 2 of Section I-DEFENSE OF CLAIMS OR ACTIONS.
- (iii) Compensatory damages include pre-judgment interest awarded against the insured on that part of the judgment we pay.

(b) Clean-up Costs

We will pay the insured for reasonable and necessary "clean-up costs" incurred by the insured as a result of the performance by the insured of an obligation imposed by law on the insured provided that:

- (i) such "clean-up costs" are incurred because of "environmental damage" to which this insurance applies; and
- (ii) the "environmental damage" is caused by a "pollution incident" which commences during the policy period and is reported to us during the policy period or within thirty days after its termination.

We shall have the right, but not the duty, to participate at our expense in any proceeding seeking to impose legal obligations because of such "environmental damage".

Each payment we make for compensatory damages, "defense expense" or "clean-up costs" reduces the Amount of Insurance available, as provided under SECTION III-LIMITS OF INSURANCE AND DEDUCTIBLE.

We have no obligation under this insurance to make payments or to perform acts or services except as provided for above.

(2) DEFENSE OF CLAIMS OR ACTIONS

- (a) We have the right and duty to defend claims made or "actions" brought in Canada against the insured seeking compensatory damages payable under this policy for "bodily injury" or "property damage". We may make:
 - (i) such investigation of any claim or "actions"; and
 - (ii) such settlements within the applicable amount of insurance available as we think appropriate.
- (b) Our right and duty to defend such claims or "actions" ends when we have used up the amount of insurance available, as provided under SECTION III LIMITS OF INSURANCE AND DEDUCTIBLE. This applies both to claims and "actions" pending at that time and those filed thereafter.
- (c) When we control the defense for such claims or "actions", we will pay for the "defense expense". If by mutual agreement or court order the insured assumes control of the defense before the applicable amount of insurance available is used up, we will reimburse the insured for reasonable "defense expense". In either case, however, the amounts we pay will reduce the amount of insurance available, as provided under SECTION III-LIMITS OF INSURANCE AND DEDUCTIBLE.

(3) EXCLUSIONS

This insurance does not apply to:

- (a) "Bodily injury", "property damage" or "clean-up costs" which are expected or intended from the standpoint of any insured;
- (b) "Bodily injury", "property damage" or "clean-up costs" arising out of a "pollution incident" which "pollution incident" is expected or intended from the standpoint of any insured;
- (c) Liability assumed by any insured under any contract or agreement, but this exclusion does not apply to liability that such insured would have in the absence of such contract or agreement;
- (d) Any obligation of any insured pursuant to any employment standards law, workers' compensation law, unemployment insurance law, disability benefits law, occupational health and safety law or any similar law;
- (e)
 - (i) "Bodily injury" to an employee of any insured arising out of or in the course of employment by any insured; or
 - (ii) any claim for damages by the spouse, child, parent, brother, sister or other dependent of an employee of any insured as a result of "bodily injury" to an employee arising out of or in the course of employment by any insured.

This exclusion applies:

- (i) whether any insured may be liable as an employer or in any other capacity; or
- (ii) to any claim for contribution or indemnity by any person, Commission, Board, corporation or organization required to pay compensatory damages to an employee of any insured because of "bodily injury" to that employee;
- (f) "Property damage" to or "clean-up costs" at, in or on
 - (i) any property owned, rented or occupied by any insured;
 - (ii) any property loaned to or used by any insured;
 - (iii) any property in the care, custody or control of any insured;
 - (iv) any property sold, given away or abandoned by any insured;
 - (v) arising from Pollution Conditions at any property owned, leased, rented or occupied by the Insured, which the Insured sold, leased, gave away, abandoned or relinquished operational control of prior to the Inception Date.
- (g) "Property damage" to or "clean-up costs" at, in or on any "waste facility";
- (h) "Bodily injury", "property damage" or "clean-up costs" caused by a "pollution incident" originating at, in or on any "waste facility" or caused by a "pollution incident" arising from or incidental to the delivery, handling, storage, disposal, processing or treatment of waste at, in or on any "waste facility";
- (i) "Bodily injury", "property damage" or "clean-up costs" that are within the "products-completed operations hazard";
- (j) "Bodily injury", "property damage" or "clean-up costs" caused by a "pollution incident" originating
 - (i) below the surface of the ground or water or
 - (ii) from "pollutants" which have, at any time, been buried under the surface of the ground or water, and then subsequently exposed by erosion, excavation or other means;
- (k) "Bodily injury" in the form of genetic damage or birth defects;
- (l) "Bodily injury", "property damage", or "clean-up costs" arising out of the ownership, use or operation by or on behalf of any insured of any "self-propelled land motor vehicle", trailers or semi-trailers while attached to such vehicle or unattached, including accessories and equipment while attached to or mounted on such vehicle, trailers or semi-trailers;
- (m) (i) "Bodily injury", "property damage" or "clean-up costs" arising out of the ownership, maintenance, use, operation, loading or unloading, or the entrustment to others, by or on behalf of any insured of:
 - 1. any railway rolling stock;
 - 2. any watercraft;
 - 3. any air cushion vehicle;
 - 4. any aircraft.
- (ii) "Bodily injury", "property damage" or "clean-up costs" arising out of the ownership, existence, use or operation by or on behalf of any insured of any premises for the purpose of an airport or aircraft landing area and all operations necessary or incidental thereto.
- (n) (i) "Bodily injury", "property damage" or "clean-up costs" arising out of a "pollution incident" which results from or is attributable to a failure to comply with any applicable statute, regulation, ordinance, directive or order relating to the protection of the environment and promulgated by any governmental body, provided that failure to comply is a willful or deliberate act or omission of any insured;
- (ii) "Clean-up costs" caused by a "pollution incident" if any insured is convicted of an offence under any applicable statute or regulation, relating to the protection of the environment and promulgated by any governmental body, as a result of any insured's failure to comply with a legal duty to report the "pollution incident" to a governmental body or to take remedial steps after the "pollution incident";
- (o) "Bodily injury" or "property damage" or "clean-up costs" outside Canada;
- (p) (i) Liability imposed by or arising under the Nuclear Liability Act;
- (ii) "Bodily injury", "property damage", or "clean-up costs" or "defense expense" with respect to which an insured under this policy is also insured under a contract of nuclear energy liability insurance (whether the insured is unnamed in such contract and whether or not it is legally enforceable by the Insured) issued by the Nuclear Insurance Association of Canada or any other insurer or group or pool of insurers or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability;
- (iii) "Bodily injury", "property damage", "clean-up costs" or "defense expense" resulting directly or indirectly from the nuclear energy hazard arising from:
 - 1. the ownership, maintenance, operation or use of a nuclear facility by or on behalf of an insured;
 - 2. 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; and
 - 3. the possession, consumption, use, handling, disposal or transportation of fissionable substances, or of other radioactive material (except radioactive isotopes, away from a nuclear facility, which have reached the final stage of fabrication so as to be usable for any scientific, medical, agricultural, commercial or industrial purpose) used, distributed, handled or sold by an insured.

As used in this policy:

- a) The term "nuclear energy hazard" means the radioactive, toxic, explosive, or other hazardous properties of radioactive material
- b) The term "radioactive material" means uranium, thorium, plutonium, neptunium, their respective derivatives and compounds, radioactive isotopes of other elements and any other substances that the Atomic Energy Control Board may, by regulation, designate as being prescribed substances capable of releasing atomic energy, or as being requisite for the production, use or application of atomic energy;

- c) The term "nuclear facility" means
 - (i) any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of plutonium, thorium and uranium or any one or more of them;
 - (ii) any equipment or device designed or used for
 - 1) separating the isotopes of plutonium, thorium, and uranium or any one or more of them;
 - 2) processing or utilizing spent fuel; or
 - 3) handling, processing or packaging waste;
 - (iii) any equipment or device used for the processing, fabricating or alloying of plutonium, thorium or uranium enriched in the isotope uranium 233 or in the isotope uranium 235, or any one or more of them 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;
 - (iv) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste radioactive material; and includes the site on which any of the foregoing is located, together with all operations conducted thereon and all premises used for such operations.
- (iv) The term "fissionable substance" means any prescribed substance that is, or from which can be obtained, a substance capable of releasing atomic energy by nuclear fission.
- (q) "Bodily injury", "property damage" or "clean-up costs" caused by a "pollution incident" resulting from war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military power, riot or civil commotion, sabotage or any other act of deliberate destruction of property or terrorism.
- (r) the erasure, destruction, corruption, misappropriation or misinterpretation of "data";
- (s) erroneously creating, amending, entering, deleting or using "data";
- (t) "Bodily injury" or "property damage" or "clean-up costs" caused by a "pollution incident" arising out of any actual or alleged liability whatsoever for any claim or claims in respect of loss or losses, damage, cost or expenses directly or indirectly caused by, resulting from or in consequence of, or in any way involving asbestos, or any materials containing asbestos in whatever form or quantity. This exclusion applies regardless of any other cause that contributes concurrently or in any sequence to the loss, damages, cost or expense.

(4) CLARIFICATION OF INTENTION

For greater certainty in interpreting the Insuring Agreements, the parties to this policy confirm that the Insuring Agreements are not intended to apply to:

- (a) "bodily injury", "property damage" or "clean-up costs" which result from or are caused by anything other than a "pollution incident";
- (b) punitive, aggravated or exemplary damages;
- (c) fines or penalties imposed by law.

SECTION II - WHO IS AN INSURED

If you are designated in the Declarations as:

- (1) An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
- (2) A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
- (3) An organization other than a partnership or joint venture, you are an insured. Your executive officers and directors are insureds, but only with respect to their duties as your officers or directors. Your shareholders are also insureds, but only with respect to their liability as shareholders.

Each of the following is also an insured:

- (1) Your employees, other than your executive officers, but only for acts within the scope of their employment by you. However, none of these employees is an insured for:
 - (a) "Bodily injury" to you or to a co-employee while in the course of his or her employment; or
 - (b) "Bodily injury" to any person who at the time of injury is entitled to benefits under any workers' compensation law; or
 - (c) "Property damage" to property owned or occupied by or rented or loaned to that employee, any of your other employees, or any of your partners or members (if you are a partnership or joint venture).
- (2) Any person (other than your employee), or any organization while acting as your real estate manager.
- (3) Any person or organization having proper temporary custody of your property if you die, but only:
 - (a) With respect to liability arising out of the maintenance or use of that property; and
 - (b) Until your legal representative has been appointed.
- (4) Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this policy.

No person or organization is an insured with respect to the conduct of any current or past partnership or joint venture that is not shown as a Named Insured in the Declarations.

SECTION III - LIMITS OF INSURANCE AND DEDUCTIBLE

AGGREGATE LIMIT

- (1) Regardless of the number of insureds under this policy, or the number of persons or organizations who make claims or bring "actions", or the number of claims made or "actions" brought, or the amount of "clean-up costs" incurred, in no event shall our total limit of liability for:
 - (a) all "clean-up costs" incurred; AND
 - (b) all "defense expense" for claims and "actions" seeking compensatory damages because of "bodily injury" and "property damage", or both; AND
 - (c) all compensatory damages because of all "bodily injury" and all "property damage" exceed the limit of liability stated in the Declarations as Aggregate Limit.
- (2) Any and all payments made by us for such compensatory damages, "clean-up costs" or "defense expense" shall reduce, by the amount of the payment, the limit of liability stated in the Declarations as Aggregate Limit. In this policy, the Aggregate Limit as reduced by any such payment or payments is referred to as the amount of insurance available.
- (3) When the Aggregate Limit stated in the Declarations is reduced to the extent that there is no amount of insurance available, we shall have no further obligations or duties under this policy. Without limiting the generality of the foregoing, we shall have no further obligation to make any payments for damages, "clean-up costs" or "defense expense" and shall have no further duty to defend or to continue to defend any claims or "actions".
- (4) You agree to reimburse us for any amounts paid by us for compensatory damages, "clean-up costs" or "defense expense" in excess of the amount of insurance available forthwith upon demand.

INCIDENT LIMIT

- (1) Subject to part 1 of Section III above, and regardless of the number of insureds under this policy, or the number of persons or organizations who make claims or bring "actions", or the number of claims made or "actions" brought, or the amount of "clean-up costs" incurred, in no event shall our total limit of liability for:
 - (a) all "clean-up costs" incurred, AND
 - (b) all "defense expense" for claims and "actions" seeking compensatory damages because of "bodily injury" or "property damage" or both, AND
 - (c) all compensatory damages because of "bodily injury" and "property damage", from any one "pollution incident" exceed the limit of liability for each "pollution incident" stated in the Declarations, less any Deductible Amount stated in the Declarations.
- (2) We may, or if required by law shall, pay part or all of any Deductible Amount stated in the Declarations in order to effect settlement of any claim or "action". You shall reimburse us for any Deductible Amount so paid by us forthwith upon demand.
- (3) You agree to reimburse us for any amounts paid by us for compensatory damages, "clean-up costs" or "defense expense" in excess of the amount of insurance available forthwith upon demand.

The limits of this policy apply separately to each consecutive annual period, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

SECTION IV - POLICY TERRITORY AND SCOPE

This insurance applies only to "bodily injury", "property damage", "clean-up costs" or "defense expense" caused by or incurred by reason of a "pollution incident" occurring in Canada but not to any such "bodily injury", "property damage" or "clean-up costs" for which an action on the merits is brought outside Canada, nor to any "defense expense" incurred in, or as a result of, such an action on the merits being brought outside Canada.

SECTION V- DEFINITIONS

"Action" means a civil proceeding in a Canadian Court in which compensatory damages to which this insurance applies are claimed.

"Action" includes an arbitration proceeding in Canada in which such compensatory damages are claimed, provided that the insured is either required to submit or submits with our consent to such arbitration proceeding.

"Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.

"Clean-up costs" means expenses for the removal or neutralization of "pollutants".

"Defense expense" means payments allocated to a specific claim or "action" for its investigation, settlement, or defense, including:

- (1) legal fees, expert fees, disbursements and all other litigation expenses;
- (2) reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "action" including actual loss of earnings up to \$100 a day because of time off from work;
- (3) all costs taxed against the insured in the "action".

"Defense expense" does not include salaries and expenses of our employees or the Insured's employees, other than:

- (a) that portion of our employed lawyers' fees, salaries and expenses allocated to a specific claim or "action"; and
- (b) the expenses described in 4(b) above.

“Environmental damage” means the injurious presence of “pollutants” in or upon land, the atmosphere, or any watercourse or body of water.

“Insured’s product” means:

- (1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
 - (a) any insured; or
 - (b) others trading under any insured’s name; or
 - (c) a person or organization whose business or assets any insured has acquired; and
- (2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

The “Insured’s product” includes warranties or representations made at any time with respect to the fitness, quality, durability or performance of any of the items included in (a) and (b) above.

The “Insured’s product” does not include vending machines or other property rented to or located for the use of others but not sold.

“Insured’s work” means

- (1) Work or operations performed by any insured or on behalf of any insured; and
- (2) Materials, parts or equipment furnished in connection with such work or operations.

The “Insured’s work” includes warranties or representations made at any time with respect to the fitness, quality, durability or performance of any of the items included in (a) or (b) above.

“Pollutants” means any solid, liquid or gaseous contaminant other than heat, sound, vibration or radiation.

“Pollution Incident” means an unexpected and unintentional discharge, dispersal, release or escape of any “pollutants”, that is sudden and accidental. The entirety of any such occurrences which arises out of a continuous or repeated exposure to substantially the same conditions shall be deemed to be one “pollution incident”.

“Products-completed operations hazard” “**Products-completed operations hazard**” includes all “bodily injury”, “property damage” and “clean-up costs” occurring away from premises any insured owns or rents and arising out of the “insured’s product” or the “insured’s work” except:

- (1) Products that are still in your physical possession; or
- (2) Work that has not yet been completed or abandoned.

The “Insured’s work” will be deemed completed at the earliest of the following times:

- (1) When all of the work called for in your contract has been completed.
- (2) When all of the work to be done at the site has been completed if your contract calls for work at more than one site.
- (3) When that part of work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement but which is otherwise complete will be treated as completed.

This hazard does not include “bodily injury”, “property damage” or “clean-up costs” arising out of the existence of tools, uninstalled equipment or abandoned or unused materials.

“Property damage” means:

- (1) Physical injury to, destruction of, or contamination of tangible property, including all loss of use thereof at any time resulting therefrom, or
- (2) Loss of use of tangible property which has not been physically injured, destroyed, or contaminated but which has been evacuated, withdrawn from use, or rendered inaccessible because of a “pollution incident”.

“Self-propelled land motor vehicle” means a land motor vehicle, trailer or semi-trailer designed for travel on public roads (including any machinery or apparatus attached thereto) but does not include, except while being towed by or carried on a motor vehicle, any of the following: crawler or farm type tractor, farm implement, or if not subject to motor vehicle registration, any farm equipment which is designed for use principally off public roads.

“Waste facility” means any site operated by any person or organization for the storage, disposal, processing or treatment of waste material, other than a site operated by any insured and disclosed in the Application for this policy.

SECTION VI-CONDITIONS

Authorization

By acceptance of this policy, the first Named Insured in the Declarations agrees to act on behalf of all other insureds, if any, named or described in the Declarations or included under Section II of this policy, with respect to all duties and obligations imposed on any insured under this policy, including, without limitation, the completion of the Application for this policy, the giving and receiving of notice of a “pollution incident”, claim or “action”, the giving or receiving of notice of cancellation, the payment of premiums and the receiving of any return premiums that may become due under this policy, and all other insureds agree that the first Named Insured in the Declarations is authorized to so act on their behalf.

Bankruptcy

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

Cancellation

- (1) The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
- (2) We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
 - (a) 15 days before the effective date of cancellation if we cancel for non-payment of premium; or
 - (b) 30 days before the effective date of cancellation if we cancel for any other reason.
- (3) We will mail or deliver our notice to the first Named Insured's last mailing address known to us.
- (4) Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
- (5) If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.
- (6) If notice is mailed, proof of mailing will be sufficient proof of notice.

In Quebec, our notice of cancellation takes effect either 15 or 30 days after receipt of the last known address of the first Named Insured, depending upon the reason for cancellation.

Changes

This policy contains all the agreements between you and us concerning the insurance afforded. This policy's terms can be amended or waived only by endorsement issued by us and made a part of this policy.

Duties in the Event of "Pollution Incident", Claim or "Action"

- (1) You must see to it that we are notified immediately of a "pollution incident".

Notice should include:

 - (a) how, when, where the "pollution incident" took place;
 - (b) the names and addresses of any injured persons and of witnesses;
 - (c) the nature and location of any "property damage" arising out of the "pollution incident". Notice of a "pollution incident" is not notice of a claim.
- (2) If a claim is made or "action" is brought against any insured, you must see to it that we receive immediate written notice of the claim or "action".
- (3) 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 "action";
 - (b) Authorize us to obtain records and other information;
 - (c) Cooperate with us in the investigation, settlement or defense of the claim or "action"; 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.
- (4) No insured will, except at its own cost, voluntarily make a payment, assume any obligation, or incur any expense, without our consent other than expenses for immediate "clean-up costs" which are required by any applicable statute or regulation related to the protection of the environment and promulgated by any governmental body.

Examination of Books and Records

We may examine and audit any insured's books and records as they relate to this policy.

Inspections and Surveys

We have the right but are not obligated to:

- (1) make inspections and surveys at any time;
- (2) give you reports on the conditions we find; and
- (3) recommend any changes.

Any inspections, surveys, reports or recommendations relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And we do not warrant that conditions:

- (1) are safe or healthful; or
- (2) comply with statutes, regulations, ordinances, directives, orders, codes or standards.

This condition applies not only to us, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.

The insurer waives no right and undertakes no responsibility by reason of any such inspection, survey, report or recommendation or the omission thereof.

Legal Action Against Us

No person or organization has a right under this policy:

- (1) To join us as a party or otherwise bring us into an "action" asking for compensatory damages from an insured; or
- (2) 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 obtained after an actual trial, but we will not be liable for compensatory 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. Every "action" or proceeding against us shall be commenced within one year next after the date of such judgment or agreed settlement and not afterwards.

Material Change in the Risk

If any change shall occur materially varying any of the statements made in the Application or during any inspection or survey, or if the insured shall receive information indicating a material increase in the risks to which this policy relates, the insured shall, within thirty (30) days of such change of information becoming known, give us notice of such change in writing.

Other Insurance

If at the time of the "pollution incident" covered by this policy there is any other insurance applicable we, under this policy, will be liable only for the excess, if any, of any loss over the applicable limit of the other insurance covering such loss.

Premium Audit

- (1) We will compute all premiums for this policy in accordance with our rules and rates.
- (2) Premium shown in this policy as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period. Audit premiums are due and payable on notice to the first Named Insured. If the sum of the advance and audit premiums paid for the policy term is greater than the earned premium, we will return the excess to the first Named Insured subject to the retention of the minimum premium shown in the Declarations.
- (3) The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

Priority of Payment

Where the total of all compensatory damages because of "bodily injury" or "property damage" and all "clean-up costs" and all "defense expense" exceed the limits of liability for any one "pollution incident" or exceed the amount of insurance available, the available proceeds of this insurance shall be applied in the following descending order of priority:

- (1) "clean-up costs";
- (2) "defense expense";
- (3) "property damage";
- (4) "bodily injury".

Representations

By accepting this policy, you agree that

- (1) the statements in the Application and Declarations are accurate and complete;
- (2) those statements are based upon representations you made to us; and
- (3) we have issued this policy in reliance upon your statements and representations.

Separation of Insureds, Cross Liability

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

- (1) As if each Named Insured were the only Named Insured; and
- (2) Separately to each insured against whom claim is made or "action" is brought.

Transfer of Rights of Recovery against Others to Us

If the insured has rights to recover all or part of any payment we have made under this policy, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "action" or transfer those rights to us and help us enforce them.

Transfer of your Rights and Duties Under this Policy

Your rights and duties under this policy may not be transferred without our written consent except in the case of death of an individual Named Insured.

If you die, your rights and duties will be transferred to your legal representative but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having proper temporary custody of your property will have your rights and duties but only with respect to that property.

All other policy terms, limits and conditions apply.