

McDonald, Jeffrey

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From: Lucinda Swartz [lswartz@futgen.org]
Sent: Wednesday, March 12, 2014 5:51 AM
To: McDonald, Jeffrey
Cc: Gilmore, Tyler J; Paul Champagne; Tiago, Joseph; Greenhagen, Andrew; Krueger, Thomas; McAuliffe, Mary; Smith, Robert H; Bayer, MaryRose; John Buchovecky
Subject: Re: Information on AIG - Update 3/12
Attachments: Draft - Carbon Storage Covered Ops Endt (subject to AIG legal approval) 31...[1].pdf; Response to EPA Review of Insurance Policy 01-28-14 3-11-14 responses.docx; 2010 PLS CISC.PDF; AIG Renewal end't.pdf

Hello again, Jeff,

Here is additional information from the Alliance insurance broker:

We are continuing to work with AIG and have made further progress on broadening the Carbon Storage Covered Operations endorsement (please see attached). Please note that this language is still in draft form and is subject to final review and sign off by AIG Legal. Additionally we have received AIG's comments to the items raised by the EPA and have added them to the Insurance Review document. Please pass these comments on and let us know if the EPA has any feedback or wishes to discuss further.

The structure of a deductible policy is such that the carrier pays first dollar and then looks to the insured for reimbursement. They may require some type of collateral (such as an LOC) to ensure reimbursement. They won't be able to revise the policy to state they will pay first dollar, but the policy does have language that addresses this (see page 8 of the attached Specimen policy - attached):

"F. Deductible Subject to Paragraphs V.A. through V.E. above, this Policy is to pay covered Loss for Each Incident in excess of the Deductible amount stated in Item 3. of the Declarations for the applicable coverage, up to but not exceeding the applicable "Each Incident" limit of coverage. If Each Incident results in coverage under more than one coverage section in Coverages A through I, only the highest Deductible amount stated in Item 3. of the Declarations among all the coverage sections applicable to the Loss will apply. The Insured shall promptly reimburse the Company for advancing any element of Loss falling within the Deductible."

The Coverage F – Emergency Response Costs gives an insured coverage for costs incurred in response to a Pollution Condition that requires immediate action on the insured's part. Reimbursement for any costs the insured has incurred for Emergency Response must be forwarded to AIG within 10 days of the first commencement of the Pollution Condition. There might be some confusion about the coverage provided by this policy in general. There has to be a Pollution Condition that a) results in a loss that requires clean up or b) causes third party bodily injury for coverage to apply. The policy will not respond to an event that does not trigger coverage.

ENDORSEMENT NO.

This endorsement, effective 12:01AM,

Forms a part of Policy No:

Issued to:

By:

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CARBON STORAGE COVERED OPERATIONS ENDORSEMENT

Solely with respect to **Loss** arising from the Underground Injection Control (UIC) wells presented in the Underground Injection Control Permit Applications for the FutureGen 2.0 Morgan County Class VI UIC Wells 1, 2, 3, and 4, Supporting Documentation, March 2013 (Revised May 2013 in accordance with the U.S. Environmental Protection Agency's Completeness Review) by FutureGen Alliance, is hereby agreed that:

1. Section **I. INSURING AGREEMENTS, 1 COVERAGES** is deleted in its entirety and replaced with the following:

COVERAGE B - ON-SITE CLEAN-UP OF NEW CONDITIONS

1. To pay on behalf of the **Insured**, **Clean-Up Costs** resulting from a **Pollution Condition** arising from **Covered Operations** on or under the **Insured Property** that first commenced on or after the **Continuity Date**, provided:
 - (a) A **Responsible Insured** first becomes aware of such **Pollution Condition** during the **Policy Period** and such **Pollution Condition** is reported to the Company in writing as soon as possible after such discovery and in any event during the **Policy Period** in accordance with Section III. of the Policy.
 - (b) Where required, such **Pollution Condition** has been reported to the appropriate governmental agency in substantial compliance with applicable **Environmental Laws** in effect as of the date of discovery.
2. To pay on behalf of the **Insured**, **Loss** that the **Insured** is legally obligated to pay as a result of a **Claim** for **Clean-Up Costs** resulting from a **Pollution Condition** arising from **Covered Operations** on or under the **Insured Property**, which **Pollution Condition** first commenced on or after the **Continuity Date**, provided such **Claim** is first made against the **Insured** and reported to the Company in writing during the **Policy Period** in accordance with Section III. of the Policy, or during the **Extended Reporting Period** if applicable.

COVERAGE D - THIRD - PARTY CLAIMS FOR OFF-SITE CLEAN-UP RESULTING FROM NEW CONDITIONS

To pay on behalf of the **Insured**, **Loss** that the **Insured** becomes legally obligated to pay as a result of a **Claim** for **Clean-Up Costs** resulting from a **Pollution Condition** arising from **Covered Operations**, beyond the boundaries of the **Insured Property**, that first commenced on or after the **Continuity Date** shown below, and migrated from or through the **Insured Property**, provided such **Claims** are first made against the **Insured** and reported to the Company in writing during the **Policy Period**, or during the **Extended Reporting Period** if applicable.

COVERAGE E - THIRD - PARTY CLAIMS FOR BODILY INJURY AND PROPERTY DAMAGE

To pay on behalf of the **Insured**, **Loss** that the **Insured** becomes legally obligated to pay as a result of a **Claim** for **Bodily Injury** or **Property Damage** resulting from a **Pollution Condition** arising from **Covered Operations**, beyond the boundaries of the **Insured Property** that first commenced on or after the **Continuity Date** shown below, and migrated from the **Insured Property**, provided such **Claims** are first made against the **Insured** and reported to the Company in writing during the **Policy Period**, or during the **Extended Reporting Period** if applicable.

COVERAGE F - EMERGENCY RESPONSE COSTS

1. The Company will pay **Emergency Response Costs** resulting from a **Pollution Condition** arising from **Covered Operations** on, under or migrating from the **Insured Property**. **Emergency Response Costs** must be first incurred by the **Insured** and reported to the Company during the **Policy Period**.

For this Coverage to apply, all of the following conditions must be satisfied:

ENDORSEMENT NO. CONTINUED

- (a) The **Insured** must report the **Emergency Response Costs** to the Company in accordance with Section III. of the Policy.
 - (b) **COVERAGE B – ON-SITE CLEAN UP OF NEW CONDITIONS** is purchased.
2. The Company will pay **Emergency Response Costs** resulting from a **Pollution Condition** caused by **Transportation**. **Emergency Response Costs** must be first incurred by the **Insured** and reported to the Company during the **Policy Period**.

For this Coverage to apply, all of the following conditions must be satisfied:

- (a) The **Insured** must report the **Emergency Response Costs** to the Company in accordance with Section III. of the Policy.
- (b) With respect to **Transportation**, **COVERAGE I – THIRD-PARTY CLAIMS RESULTING FROM THE TRANSPORTATION OF CARGO** is purchased.

Continuity Date: (Inception Date)

2. Section **VIII. DEFINITIONS**, Paragraph **F. Clean-Up Costs** and **H. Covered Operations** is deleted in its entirety and replaced with the following:

F. Clean-Up Costs means reasonable and necessary expenses, including legal expenses incurred with the Company's written consent which consent shall not be unreasonably withheld or delayed, for the investigation, removal, treatment including in-situ treatment, remediation including associated monitoring, or disposal of soil, surfacewater, groundwater, or other contamination beyond the boundaries of the **Injection Zone**:

- 1. To the extent required by **Environmental Laws**; or
- 2. That have been actually incurred by the government or any political subdivision of the United States of America or any state thereof or Canada or any province thereof, or by third parties.

Clean-Up Costs also include **Restoration Costs**.

H. Covered Operations means:

- i. the injection and storage of Carbon Dioxide and all other materials or components captured into the **Injection Zone** through the permitted underground injection control (UIC) wells, including all ancillary and associated operations, at the **Insured Property**;
- ii. the transfer, temporary storage, capture, scrubbing, compression, and dehydration of Carbon Dioxide in preparation for such injection including equipment utilized to support such activities; and
- iii. the construction, drilling and installation of the permitted underground injection control (UIC) wells and associated equipment and infrastructure.

3. Solely with respect to any **Pollution Condition** below ground surface, Section **VIII. DEFINITIONS**, Paragraph **CC. Pollution Condition** is deleted in its entirety and replaced with the following:

CC. Pollution Condition means the discharge, dispersal, release or escape of any solid, liquid, gaseous or thermal irritant or contaminant, including, but not limited to, smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, hazardous substances, low-level radioactive material, electromagnetic fields, medical waste including infectious and pathological waste and waste materials, beyond the boundaries of the **Injection Zone**, including carbon dioxide and other materials captured pursuant to the **Permit for Injection**, provided such conditions 1) are not naturally present in the environment in the amounts or concentrations discovered, or 2) otherwise result from man-made activities.

4. Section **VII. EXTENDED REPORTING PERIOD FOR CLAIMS - COVERAGES A THROUGH I**, Paragraph **B. Optional Extended Reporting Period** is deleted in its entirety.
5. Section **III. NOTICE REQUIREMENTS AND CLAIM PROVISIONS**, Paragraph **B. NOTICE OF POSSIBLE CLAIM** is deleted in its entirety.

ENDORSEMENT NO. CONTINUED

6. The following is added to Section II. **EXCLUSIONS**:

4. COVERAGE B and D EXCLUSIONS

The following Exclusions apply to Coverage B and D.

This Policy does not apply to **Clean-Up Costs** or **Claims for Clean-Up Costs**:

MONITORING COSTS:

Due to monitoring costs associated with the **Covered Operations** as specified and otherwise required pursuant to the **Permit for Injection**.

CLOSURE/POST CLOSURE ACTIVITIES

Due to costs for Closure or Post Closure Activities

7. Section **VI. CONDITIONS** is amended by the addition of the following:

Compliance with Permit - By acceptance of this Policy, the **Responsible Insured** agrees to comply with and enforce the **Permit for Injection** and acknowledges that this Policy is issued in reliance upon such agreement.

8. Section **VIII. DEFINITIONS** is amended by the addition of the following:

Injection Zone means the Mount Simon Sandstone and the Elmhurst Sandstone member of the Eau Claire formation as described in the Underground Injection Control Permit Applications for the FutureGen 2.0 Morgan County Class VI UIC Wells 1, 2, 3, and 4, Supporting Documentation, March 2013 (Revised May 2013 in accordance with the U.S. Environmental Protection Agency's Completeness Review) by FutureGen Alliance

Permit for Injection means the Underground Injection Control Permit Applications for the FutureGen 2.0 Morgan County Class VI UIC Wells 1, 2, 3, and 4, Supporting Documentation, March 2013 (Revised May 2013 in accordance with the U.S. Environmental Protection Agency's Completeness Review) by FutureGen Alliance (this citation will be modified when the final UIC permit is issued by EPA)

All other terms, conditions, and exclusions shall remain the same.

AUTHORIZED REPRESENTATIVE
or countersignature (in states where applicable)

Preliminary Review of Insurance Policy

This document includes requests for additional information and questions regarding FutureGen's proposed insurance policy as a financial responsibility instrument. The requests and questions below are based on the review of the "Specimen" insurance policy provided in the Class VI permit application, requirements defined under 40 CFR 146.85 and recommendations in the Class VI Financial Responsibility Guidance. The exact coverage amounts have not yet been assessed and are still subject to change based on the full evaluation of the cost estimates provided in the permit application. The intent of this preliminary assessment is to provide feedback to the permittee in the effort to establish an acceptable insurance policy.

Coverage Amounts:

After further consideration, the two-tiered coverage plan may be acceptable to cover the relevant emergency and remedial response (E&RR) risks (i.e., a low coverage amount to cover E&RR during the well construction phase, and a significantly higher coverage amount to cover the E&RR costs before commencement of injection). However, the insurance provider must be identified and a policy must be in place prior to approval of the permit application. The first coverage tier must be active before drilling begins, and the second tier must be active before injection begins. The exact values of coverage proposed in the permit application have not been assessed in detail and are subject to change.

The first coverage tier (tier I) contemplates a multi-year policy term with a term of approximately 2.5-3 years, with a term limit of \$10mm. The carrier (AIG) has agreed, in concept, to bind tier I coverage in advance of construction, setting the expiration date to be "the earlier of the expiration date stated on the Declarations Page (3 years from binding date) or the date at which permitted injection begins, whichever is earlier". This allows for coverage continuity through the expected maximum term of tier I. As FutureGen approaches the expected commencement of injection activities (tier II), we will work to increase the limits to support the requirements for permitted injection coverage.

Type of Coverage

The permit application provides definitions of key terms that ultimately determine the events and costs will be covered by the insurance policy (see section 9.4.2.1 of the application). These definitions appear reasonable to protect USDWs, as required at CFR 40 146.85(a)(3), with the exception that the events listed in the application do not include migration of fluids potentially damaging to USDWs other than CO₂ and brine. It is recommended that the policy clearly state that it covers adverse impacts associated with the migration of any fluids damaging to USDWs.

AIG has agreed to broaden the definition of Pollution Condition (see the updated Carbon Storage Covered Operations (CSCO) Endorsement). Note that the Pollution Condition definition now expressly includes injected materials captured pursuant to the Permit for Injection and which have migrated, released, etc. beyond the boundaries of the Injection Zone.

Note also the definition of Property Damage, as defined within the base policy form, which includes a broad reaching damages definition and specifically includes Natural Resource Damages.

Required Specifications for Insurance Policy:

1. Cancellation [40 CFR 146.85(4)]: Insurance policy may not cancel, terminate or fail to renew except for failure to pay the financial instrument. AIG cannot issue a non-cancellable policy. The financial institution must provide written notification to the owner or operator and the UIC Program Director 120 days prior to cancellation. AIG can provide 120 days notice of cancellation except in the event of non-payment of premium, in which case, it's 10 days notice of cancellation.

Inconsistencies with this requirement:

- a. The policy requires written notification only 90 days prior to cancellation (and only 10 days for nonpayment of the premium). This timeframe is not in compliance with the rule and should be expanded to 120 days. [Section VI "Conditions," part G "Cancellations" of the policy.]

AIG can provide 120 days notice of cancellation except in the event of non-payment of premium, in which case, it's 10 days notice of cancellation.

- b. The policy allows for cancellation in the event of material misrepresentation by the insured, or upon the insured's failure to comply with the conditions of the policy (the insured will have 30 days to cure such failure). This condition may leave open the possibility that the policy could be cancelled and financial protection removed.

AIG is not able to remove the Material Misrepresentation and failure to comply stipulations.

- c. Furthermore, the policy allows for cancellation upon "a change in use or a change in operations which is different from the uses or operations identified" during the underwriting process. This condition is not in compliance with the rule. It is reasonable for GS projects to change over the course of the project. Please explain what is meant by "change in use or change in operations" and its implications for continued coverage of E&RR costs.

AIG may agree to delete this as we have a condition of coverage that the insured adhere to / enforce the permit. Also, AIG has agreed to redefine "Responsible Insured" within the base form to mean " (1) the manager or supervisor of the Named Insured responsible for environmental affairs, control or compliance; or 2) any officer, director, partner or member of the Named Insured." (softened language).

- d. The policy should specify that written notice of cancellation will be provided to the insured and the UIC Program Director. [40 CFR 146.85(a)(4)(i)(A) and Chapter V, Section E of the Class VI FR Guidance]

AIG can provide notice in the event of cancellation

2. Renewal [40 CFR 146.85(a)(4)]: The owner or operator must renew the insurance policy for the term of the GS project.
 - a. The permit application specifies that insurance providers are likely to offer policies for terms of 3 to 5 years (page D.4). To comply with the Class VI rule, the owner or operator must negotiate renewal of the policy with the insurance company prior to the completion of the term specified in the policy. If the insurance company fails to renew the policy, then the insurance company must provide written notice of this decision to the owner or operator and the UIC Program Director at least 120 days prior to the end of the policy. The owner or operator must then establish an alternative insurance policy or another form of financial responsibility within 60 of the notice not to renew the existing policy [40 CFR 146.85(a)(4)(i)(A)].

AIG can give 120 day notice of non-renewal.

3. Strength of Insurance Company [40 CFR 146.85(a)(6)(ii)]: Upon selecting an insurance provider, the applicant must provide proof of the insurance company's financial strength before the financial responsibility instrument can be approved.

AIG carries an AM Best's rating of A (Excellent) XV (\$2 Billion or greater)

4. Proof of Third Party Standing [40 CFR 146.85(a)(6)(vii)]: Upon selecting an insurance provider, the owner or operator must demonstrate that the insurance company is an independent third party before the financial responsibility instrument can be approved.

Such demonstration can be provided

Additional Concerns

1. EPA requests that the permittee submit a Certificate of Insurance. Suggested wording of this document can be found in the Class VI FR Guidance on page B.17.

The language in the Class VI FR Guidance does not match the policy language and AIG is not able to sign such a certificate as written. They are unable to sign a certificate that does not match the policy terms and conditions. AIG is willing to dedicate legal and senior underwriting resources to negotiate language that is acceptable to them and the EPA.

2. The Specimen insurance policy includes several exclusions for noncompliance. Specifically, Section II "Exclusions;" part G "Intentional Noncompliance;" and Endorsement Part 6 "Non-Compliance with Permit." These exclusions indicate that the insurance policy does not apply to any costs arising in the insured's non-compliance with regulations or the permit for injection. Also, Section VI "Conditions," part I "Concealment or Fraud" renders the policy void if the insured has concealed or misrepresented information. Of particular concern is that many events that could lead to the need for an emergency response would technically be violations of the Class VI rule or the permit, e.g., failure to maintain mechanical integrity.

See the updated CSCO Endorsement - note that the "Non-compliance with Permit" exclusion has been removed. For clarity, the "Intentional Noncompliance" exclusion of the base form applies, but such exclusion ties to intentional, willful or deliberate noncompliance by a Responsible Insured.

As previously advised, the carrier has agreed to redefine "Responsible Insured" within the base form to mean "(1) the manager or supervisor of the Named Insured responsible for environmental affairs, control or compliance; or 2) any officer, director, partner or member of the Named Insured."

The Concealment or Fraud exclusion will remain. However, note that AIG will include a Disclosed Documents endorsement on the policy. The EPA, along with the insured, can review all disclosure and applications at binding to confirm complete disclosure.

3. A bankruptcy provision is briefly mentioned in Section VI "Conditions," part C "Action Against Company." If the insured files for bankruptcy after injection has begun and can no longer cover the costs associated with E&RR, does this bankruptcy provision ensure that the insurance provider will pay the value of the insurance policy or cover E&RR costs?

"Bankruptcy or insolvency of the Insured or of the Insured's estate shall not relieve the Company of any of its obligations hereunder" is language protective of the interest of coverage (note that "the Company" refers to the insurance carrier - AIG).

For clarity to the comment above, the carrier does not intend to tender the value of limits upon request by the EPA. The intent is to provide a claim response in the event of loss, subject to the terms and conditions of the Policy.

4. Section V "Limits of Liability and Deductible," part F "Deductible" specifies that the Insured is responsible for paying the value of the deductible. Currently, the deductible is estimated at \$250,000 (2.5% of the value of the policy, 40% of the estimated annual premium). EPA recommends that the policy has no deductible (to provide full coverage for the E&RR costs as required by rule). However, it is likely that this is unattainable, and the policy should be written with the lowest deductible possible.

AIG is not willing to provide a deductible lower than \$250,000. However, note that the retention amount has been contemplated as a “deductible” and not a “self-insured retention” which should be in line with addressing EPA concerns with regard to credit risk for the deductible / retention layer.

CHARTIS SPECIALTY INSURANCE COMPANY

POLLUTION LEGAL LIABILITY SELECT® POLICY

MANY OF THE COVERAGES CONTAIN CLAIMS-MADE AND REPORTED REQUIREMENTS. PLEASE READ CAREFULLY. ADDITIONALLY, THIS POLICY HAS CERTAIN PROVISIONS AND REQUIREMENTS UNIQUE TO IT AND MAY BE DIFFERENT FROM OTHER POLICIES THE INSURED MAY HAVE PURCHASED. DEFINED TERMS, OTHER THAN HEADINGS, APPEAR IN BOLD FACE TYPE.

NOTICE: THE DESCRIPTIONS IN ANY HEADINGS OR SUB-HEADINGS OF THIS POLICY ARE INSERTED SOLELY FOR CONVENIENCE AND DO NOT CONSTITUTE ANY PART OF THE TERMS OR CONDITIONS HEREOF.

Various provisions in this Policy restrict coverage. Read the entire Policy carefully to determine the rights and duties hereunder and what is and is not covered. This Policy is issued in reliance upon the statements in the Application, deemed to be annexed hereto. In consideration of the payment of the premium and pursuant to all of the terms of this Policy, the Company agrees with the **Named Insured** as follows:

I. INSURING AGREEMENTS

1. COVERAGES:

THE FOLLOWING COVERAGES ARE IN EFFECT ONLY IF SCHEDULED IN THE DECLARATIONS.

COVERAGE A - ON-SITE CLEAN-UP OF PRE-EXISTING CONDITIONS

1. To pay on behalf of the **Insured**, **Clean-Up Costs** resulting from a **Pollution Condition** on or under the **Insured Property** that first commenced prior to the **Continuity Date** provided:
 - (a) A **Responsible Insured** first becomes aware of such **Pollution Condition** during the **Policy Period** and such **Pollution Condition** is reported to the Company in writing as soon as possible after such discovery and in any event during the **Policy Period** in accordance with Section III. of the Policy.
 - (b) Where required, such **Pollution Condition** has been reported to the appropriate governmental agency in substantial compliance with applicable **Environmental Laws** in effect as of the date of discovery.
2. To pay on behalf of the **Insured**, **Loss** that the **Insured** is legally obligated to pay as a result of a **Claim** for **Clean-Up Costs** resulting from a **Pollution Condition** on or under the **Insured Property**, which **Pollution Condition** first commenced prior to the **Continuity Date**, provided such **Claim** is first made against the **Insured** and reported to the Company in writing during the **Policy Period** in accordance with Section III. of the Policy, or during the **Extended Reporting Period** if applicable.

COVERAGE B - ON-SITE CLEAN-UP OF NEW CONDITIONS

1. To pay on behalf of the **Insured**, **Clean-Up Costs** resulting from a **Pollution Condition** on or under the **Insured Property** that first commenced on or after the **Continuity Date**, provided:
 - (a) A **Responsible Insured** first becomes aware of such **Pollution Condition** during the **Policy Period** and such **Pollution Condition** is reported to the Company in writing as soon as possible after such discovery and in any event during the **Policy Period** in accordance with Section III. of the Policy.
 - (b) Where required, such **Pollution Condition** has been reported to the appropriate governmental agency in substantial compliance with applicable **Environmental Laws** in effect as of the date of discovery.
2. To pay on behalf of the **Insured**, **Loss** that the **Insured** is legally obligated to pay as a result of a **Claim** for **Clean-Up Costs** resulting from a **Pollution Condition** on or under the **Insured Property**, which **Pollution Condition** first commenced on or after the **Continuity Date**, provided such **Claim** is first made against the **Insured** and reported to the Company in writing during the **Policy Period** in accordance with Section III. of the Policy, or during the **Extended Reporting Period** if applicable.

NOTICE: THIS INSURER IS NOT LICENSED IN THE STATE OF NEW YORK AND IS NOT SUBJECT TO ITS SUPERVISION

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COVERAGE C – THIRD-PARTY CLAIMS FOR OFF-SITE CLEAN-UP RESULTING FROM PRE-EXISTING CONDITIONS

To pay on behalf of the **Insured**, **Loss** that the **Insured** becomes legally obligated to pay as a result of a **Claim** for **Clean-Up Costs** resulting from a **Pollution Condition**, beyond the boundaries of the **Insured Property**, that first commenced prior to the **Continuity Date**, and migrated from or through the **Insured Property**, provided such **Claim** is first made against the **Insured** and reported to the Company in writing during the **Policy Period** in accordance with Section III. of the Policy, or during the **Extended Reporting Period** if applicable.

COVERAGE D – THIRD-PARTY CLAIMS FOR OFF-SITE CLEAN-UP RESULTING FROM NEW CONDITIONS

To pay on behalf of the **Insured**, **Loss** that the **Insured** becomes legally obligated to pay as a result of a **Claim** for **Clean-Up Costs** resulting from a **Pollution Condition**, beyond the boundaries of the **Insured Property**, that first commenced on or after the **Continuity Date**, and migrated from or through the **Insured Property**, provided such **Claim** is first made against the **Insured** and reported to the Company in writing during the **Policy Period** in accordance with Section III. of the Policy, or during the **Extended Reporting Period** if applicable.

COVERAGE E – THIRD-PARTY CLAIMS FOR BODILY INJURY AND PROPERTY DAMAGE

To pay on behalf of the **Insured**, **Loss** that the **Insured** becomes legally obligated to pay as a result of a **Claim** for **Bodily Injury** or **Property Damage** resulting from a **Pollution Condition** on, under or migrating from or through the **Insured Property**, provided such **Claim** is first made against the **Insured** and reported to the Company in writing during the **Policy Period** in accordance with Section III. of the Policy, or during the **Extended Reporting Period** if applicable.

COVERAGE F – EMERGENCY RESPONSE COSTS

1. The Company will pay **Emergency Response Costs** resulting from a **Pollution Condition** on, under or migrating from the **Insured Property**. **Emergency Response Costs** must be first incurred by the **Insured** and reported to the Company during the **Policy Period**.

For this Coverage to apply, all of the following conditions must be satisfied:

- (a) The **Insured** must report the **Emergency Response Costs** to the Company in accordance with Section III. of the Policy.
- (b) **COVERAGE B – ON-SITE CLEAN UP OF NEW CONDITIONS** is purchased.

2. The Company will pay **Emergency Response Costs** resulting from a **Pollution Condition** caused by **Transportation** or **Covered Operations**. **Emergency Response Costs** must be first incurred by the **Insured** and reported to the Company during the **Policy Period**.

For this Coverage to apply, all of the following conditions must be satisfied:

- (a) The **Insured** must report the **Emergency Response Costs** to the Company in accordance with Section III. of the Policy.
- (b) With respect to **Covered Operations**, **COVERAGE H – THIRD-PARTY CLAIMS FOR COVERED OPERATIONS** is purchased and with respect to **Transportation**, **COVERAGE I – THIRD-PARTY CLAIMS RESULTING FROM THE TRANSPORTATION OF CARGO** is purchased.

COVERAGE G – THIRD-PARTY CLAIMS FOR NON-OWNED LOCATIONS

To pay on behalf of the **Insured**, **Loss** that the **Insured** becomes legally obligated to pay as a result of a **Claim** for **Bodily Injury** or **Property Damage** of parties other than the owners, operators or contractors of the **Non-Owned Location**, or their employees, or **Clean-Up Costs** resulting from a **Pollution Condition** on, under or migrating from the **Non-Owned Location**, provided such **Claim** is first made against the **Insured** and reported to the Company in writing during the **Policy Period** in accordance with Section III. of the Policy, or during the **Extended Reporting Period** if applicable.

COVERAGE H – THIRD-PARTY CLAIMS FOR COVERED OPERATIONS

To pay on behalf of the **Insured**, **Loss** that the **Insured** becomes legally obligated to pay as a result of a **Claim** for **Bodily Injury**, **Property Damage** or **Clean-Up Costs** resulting from a **Pollution Condition** caused by **Covered Operations**, provided such **Claim** is first made against the **Insured** and reported to the Company in

writing during the **Policy Period** in accordance with Section III. of the Policy, or during the **Extended Reporting Period** if applicable.

For this Coverage to apply, the **Covered Operations** which result in a **Claim** must be performed on or after the **Continuity Date** shown in Item 8. of the Declarations.

COVERAGE I – THIRD-PARTY CLAIMS RESULTING FROM THE TRANSPORTATION OF CARGO

To pay on behalf of the **Insured**, **Loss** that the **Insured** becomes legally obligated to pay as a result of a **Claim** for **Bodily Injury, Property Damage** or **Clean-Up Costs** resulting from a **Pollution Condition** caused by **Transportation of Cargo**, provided such **Claim** is first made against the **Insured** and reported to the Company in writing during the **Policy Period** in accordance with Section III. of the Policy, or during the **Extended Reporting Period** if applicable. Provided, however, this Coverage shall not be utilized to evidence financial responsibility of any **Insured** under any federal, state, provincial or local law.

COVERAGE J – BUSINESS INTERRUPTION EXPENSES

To pay the **Named Insured's** **Interruption Expenses**, resulting from an **Interruption** caused directly by a **Pollution Condition** on or under the **Insured Property** that results in on-site **Clean-Up Costs** covered by this Policy. If the **Interruption** is caused by such **Pollution Condition** and any other cause, the Company shall pay only for that portion of **Interruption Expenses** caused solely and directly by such **Pollution Condition**. An **Interruption** must be reported to the Company in accordance with Section III. of the Policy and the **Named Insured** shall resume normal operation of the business and dispense with **Extra Expense** as soon as practicable.

2. LEGAL EXPENSE AND DEFENSE

When a **Claim** is made against the **Insured** to which Section I. **INSURING AGREEMENTS, I. COVERAGES, COVERAGES A, B, C, D, E, G, H** or **I** applies, and provided the **Named Insured** has purchased such Coverage(s), the Company has the right to defend, including but not limited to the right to appoint counsel, and the duty to defend such **Claim**, even if groundless, false, or fraudulent. With respect to any such **Claim** being defended by the Company, the Company shall pay all reasonable expenses incurred by the **Insured** at the Company's request to assist it in the investigation or defense of the **Claim**, including actual loss of earnings up to \$500 a day because of time off from work; provided, however, that the Company's aggregate liability for all such expenses under this Policy shall not exceed \$5,000.

Upon the **Insured's** satisfaction of any applicable deductible amount for the Coverage Section that applies and is shown in Item 3. of the Declarations, defense costs, charges and expenses shall be paid by the Company and such payments shall be included as **Loss** and reduce the available limits of liability (except for the expenses incurred by the **Insured** as described and limited above). The Company shall not be obligated to defend or continue to defend any **Claim** after the applicable limit of liability has been exhausted by payment of **Loss**.

3. SETTLEMENT

The Company will present any monetary settlement offers to the **Insured**, and if the **Insured** refuses to consent to any monetary settlement within the applicable limits of liability of this Policy recommended by the Company and acceptable to the claimant, the Company's duty to defend the **Insured** shall then cease and the **Insured** shall thereafter negotiate or defend such **Claim** independently of the Company and the Company's liability shall not exceed the amount, less the Deductible or any outstanding Deductible balance, for which the **Claim** could have been settled if such recommendation was consented to by the **Insured**.

4. DISCOVERY OF A POLLUTION CONDITION OR CLAIMS ARISING FROM EACH INCIDENT

1. If the **Insured** first discovers a **Pollution Condition** during this **Policy Period** and reports it to the Company in accordance with Section III. of the Policy, such **Pollution Condition** arising from **Each Incident** and reported to the Company under a subsequent **Pollution Legal Liability Policy** issued by the Company or its affiliate providing substantially the same coverage as this Policy shall be deemed to have been first discovered and reported during this **Policy Period**.
2. If the **Insured** first notifies the Company of a **Claim** or **Emergency Response Costs** during this **Policy Period** in accordance with Section III. or during the **Extended Reporting Period**, if applicable, then all **Claims** or **Emergency Response Costs** arising from **Each Incident** that are reported to the Company under a subsequent **Pollution Legal Liability Policy** issued by the Company or its affiliate providing substantially the same coverage as this Policy, shall be deemed to have been first made and reported during this **Policy Period**.
3. Coverage under this Policy for such **Pollution Condition, Claim** or **Emergency Response Costs** shall not apply

unless, at the time such **Pollution Condition, Claim or Emergency Response Costs** are first discovered or made and reported, the **Insured** has maintained with the Company or its affiliate Pollution Legal Liability coverage substantially the same as this coverage on a continuous, uninterrupted basis since the first **Pollution Condition** was discovered and reported to the Company, or such **Claim** was made against the **Insured** and reported to the Company or such **Emergency Response Costs** were reported to the Company.

II. EXCLUSIONS

1. COMMON EXCLUSIONS - APPLICABLE TO ALL COVERAGES

The following Exclusions apply to all Coverages:

This Policy does not apply to **Claims** or **Loss**:

A. ASBESTOS AND LEAD:

Arising from asbestos or any asbestos-containing materials or lead-based paint installed or applied in, on or to any building or other structure. However, this Exclusion does not apply to:

1. **Claims for Bodily Injury or Property Damage;** or
2. **Clean-Up Costs** for the remediation of soil, surfacewater or groundwater.

B. CHANGE IN INTENDED USE OR OPERATIONS:

Based upon or arising from a change in use or a change in operations which is different from the uses or operations identified in writing by the **Insured** to the Company during the underwriting process or in the application and which materially increases a risk covered hereunder.

C. CONTRACTUAL LIABILITY:

Arising from liability of others assumed by the **Insured** under any contract or agreement, unless the liability of the **Insured** would have attached in the absence of such contract or agreement or the contract or agreement is an **Insured Contract**.

D. CRIMINAL FINES, PENALTIES, OR ASSESSMENTS:

Due to any criminal fines, criminal penalties or criminal assessments.

E. EMPLOYER LIABILITY:

For **Bodily Injury** sustained by any employee while engaged in employment by any **Named Insured**, or by any person whose right to assert a **Claim** against any **Named Insured** arises by reason of any employment, blood, marital, or any other relationship with such employee. This Exclusion applies:

1. Whether any **Named 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 **Bodily Injury**.

F. IDENTIFIED UNDERGROUND STORAGE TANK:

Arising from a **Pollution Condition** resulting from an **Underground Storage Tank** whose existence is known by a **Responsible Insured** as of the **Inception Date** and which is located on the **Insured Property** unless such **Underground Storage Tank** is scheduled on the Policy by an **Underground Storage Tank Endorsement** attached to this Policy. However, this Exclusion shall not apply to an **Underground Storage Tank(s)** which was removed prior to the **Inception Date**.

G. INTENTIONAL NONCOMPLIANCE:

Arising from a **Pollution Condition** based upon, due to or attributable to any **Responsible Insured's** intentional, willful or deliberate noncompliance 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 does not apply to such non-compliance based upon:

1. The **Insured's** good faith reliance upon the written advice of qualified outside counsel received in advance of such non-compliance or upon the Company's written consent; or
2. The **Insured's** reasonable response to emergency circumstances in order to mitigate such **Pollution Condition** or **Loss**, provided such emergency circumstances are reported in writing to the Company within seventy-two (72) hours of the discovery of such emergency circumstances.

H. INTERNAL EXPENSES:

For costs, charges or expenses incurred by the **Insured** for goods supplied or services performed by the staff or salaried employees of the **Insured**, or its parent, subsidiary or affiliate. However, this Exclusion does not apply to such costs, charges or expenses if incurred:

1. In response to an emergency including **Emergency Response Costs**; or
2. Pursuant to **Environmental Laws** that require immediate remediation of a **Pollution Condition**; or
3. With the prior written approval of the Company, in its sole discretion.

I. INSURED vs. INSURED:

By any **Insured** against any other person or entity who is also an **Insured** under this Policy. However, this Exclusion does not apply to:

1. **Claims** initiated by third parties including cross-claims, counterclaims, or claims for contribution; or
2. **Claims** that arise out of an indemnification provided by one **Named Insured** to another **Named Insured** in an **Insured Contract**.

J. PRIOR KNOWLEDGE/NON-DISCLOSURE:

Arising from a **Pollution Condition** existing prior to the **Inception Date** and known by a **Responsible Insured** and not disclosed in the application for this Policy, or any previous policy for which this Policy is a renewal thereof.

K. WAR:

Based upon or arising out of any consequence, whether direct or indirect, of war, invasion, act of foreign enemy hostilities, whether war be declared or not, civil war, rebellion, revolution, insurrection or military or usurped power, strike, riot or civil commotion.

2. COVERAGE H EXCLUSIONS

The following Exclusions apply to Coverage H.

This Policy does not apply to **Claims** or **Loss**:

A. DAMAGE TO INSURED'S PRODUCTS AND WORK:

For **Property Damage** to the **Insured's Products** or for **Property Damage** to work performed by, or on behalf of, the **Insured** arising out of the work or any portion thereof.

B. INSURED'S PROFESSIONAL SERVICES:

Arising out of professional services performed or rendered by the **Named Insured**, including but not limited to, recommendations, opinions or strategies rendered for architectural, consulting or engineering work, such as drawings, designs, maps, reports, surveys, change orders, plan specifications, assessment work, remedy selections, site maintenance equipment selection, and supervisory, inspection or engineering service.

C. PRODUCTS LIABILITY:

Arising from the **Insured's Products** after possession of such **Insured's Products** have been relinquished to others by the **Insured** or others trading under its name. However, this Exclusion shall not apply solely for the period during which such **Insured's Products** are being stored or transported by others on behalf of the **Named Insured**.

3. COVERAGE I EXCLUSION

The following Exclusion applies to Coverage I.

This Policy does not apply to **Claims** or **Loss**:

A. PROPERTY DAMAGE TO CONVEYANCES:

For **Property Damage** to any conveyance utilized during the **Transportation** of **Cargo**. However, this Exclusion does not apply to **Claims** arising from the **Insured's** negligence.

III. NOTICE REQUIREMENTS AND CLAIM PROVISIONS

A. NOTICE OF A POLLUTION CONDITION, EMERGENCY RESPONSE COSTS, CLAIM OR AN INTERRUPTION

1. The **Insured** shall provide written notice to the Company of a **Pollution Condition, Claim, Emergency Response Costs** or an **Interruption** to the following:

Manager, Pollution Insurance Products Dept.
Chartis Claims, Inc.
Attn.: CID
101 Hudson Street, 31st Floor
Jersey City, NJ 07302
Fax: 866-260-0104
Email: SeverityFNOL@Chartisinsurance.com

or other address(es) as substituted by the Company in writing.

2. The **Insured** shall give written notice of a **Pollution Condition** or **Interruption** as soon as possible. Notice under all coverages shall include, at a minimum, information sufficient to identify the **Named Insured**, the **Insured Property**, the names of persons with knowledge of the **Pollution Condition** or **Interruption** and all known and reasonably obtainable information regarding the time, place, cause, nature of and other circumstances of the **Pollution Condition** or **Interruption**. With respect to an **Interruption**, the **Insured** must supply the Company with relevant historical revenue and rental data as reasonably requested by the Company.
3. When **Emergency Response Costs** have been incurred, the **Insured** shall forward to the Company within ten (10) days of the first commencement of the **Pollution Condition** for which the **Emergency Response Costs** have been incurred, all information pertaining to the **Emergency Response Costs** that has become available during the ten (10) day period. At a minimum such information shall include the cause and location of the **Pollution Condition**, costs incurred and associated invoices. Additional information including but not limited to: technical reports, laboratory data, field notes, expert reports, investigations, data collected, additional invoices, regulatory correspondence or any other documents relating to such **Emergency Response Costs** must be forwarded to the Company immediately upon receipt.
4. The **Insured** shall give notice of all **Claims** as soon as possible, but in any event during the **Policy Period** or during the **Extended Reporting Period**, if applicable. The **Insured** shall furnish information at the request of the Company. When a **Claim** has been made, the **Insured** shall, in addition to furnishing other information as requested by the Company, forward the following to the Company as soon as possible:
 - (a) All reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of the claimant(s) and available witnesses; and
 - (b) All demands, summonses, notices or other process or papers filed with a court of law, administrative agency or an investigative body; and

- (c) Other information in the possession of the **Insured** or its hired experts which the Company reasonably deems necessary.

B. NOTICE OF POSSIBLE CLAIM

1. If during the **Policy Period**, the **Insured** first becomes aware of a **Possible Claim**, the **Insured** may provide written notice to the Company during the **Policy Period** containing all the information required under Paragraph 2. below. If the **Insured** provides such notice, any **Possible Claim** which subsequently becomes a **Claim** made against the **Insured** and reported to the Company within five (5) years after the end of the **Policy Period** of this Policy or any continuous, uninterrupted renewal thereof, shall be deemed to have been first made and reported during the **Policy Period** of this Policy. Such **Claim** shall be subject to the terms, conditions and limits of coverage and liability of the policy under which the **Possible Claim** was reported.
2. It is a condition precedent to the coverage afforded by this Section III.B. that written notice under Paragraph 1. above contain all of the following information:
 - (a) The cause of the **Pollution Condition**; and
 - (b) The address of the **Insured Property** or other location where the **Pollution Condition** took place; and
 - (c) The **Bodily Injury, Property Damage or Clean-Up Costs** which has resulted or may result from such **Pollution Condition**; and
 - (d) The name(s) of the **Insured(s)** which may be subject to the **Claim** and any potential claimant(s); and
 - (e) All engineering information available on the **Pollution Condition**; and
 - (f) Any other information that the Company deems reasonably necessary; and
 - (g) The circumstances by which and the date the **Insured** first became aware of the **Possible Claim**.

C. MEDIATION

If the **Named Insured** and the Company jointly agree to utilize **Mediation** as a means to resolve a **Claim** made against the **Insured**, and if such **Claim** is resolved as a direct result of the **Mediation**, the **Named Insured's** deductible obligation shall be reduced by 50% subject to a maximum reduction of \$25,000. The Company shall reimburse the **Named Insured** for any such reimbursable deductible payment made prior to the **Mediation** as soon as practicable after the conclusion of the **Mediation**.

IV. RIGHTS OF THE COMPANY AND DUTIES OF THE INSURED IN THE EVENT OF A POLLUTION CONDITION

A. The Company's Rights

The Company shall have the right but not the duty to clean up or mitigate a **Pollution Condition** upon receiving notice as provided in Section III. of this Policy. Any sums expended in taking such action by the Company will be deemed incurred or expended by the **Insured** and shall be applied against the limits of liability and deductible under this Policy. The Company shall have the right but not the duty to participate in decisions regarding **Clean-Up Costs** and to assume direct control over all aspects of the cleanup and the adjustment of any **Claim** or **Emergency Response Costs** up to the applicable limits of liability. In case of the exercise of this right, the **Insured**, on demand of the Company, shall promptly reimburse the Company for any element of **Loss** falling within the **Insured's** deductible.

B. Duties of the Insured

The **Named Insured** shall have the duty to mitigate a **Pollution Condition**, and it shall have the duty to clean up a **Pollution Condition** to the extent required by **Environmental Laws**, by retaining competent professional(s) or contractor(s) mutually acceptable to the Company and the **Named Insured**. The Company may also exercise the right to require that such professional(s) or contractor(s) have certain qualifications with respect to their competency, including experience with a similar **Pollution Condition** and clean-up, mitigation or methodologies. The Company shall have the right but not the

duty to review and approve all aspects of any such clean-up. The **Named Insured** shall notify the Company of actions and measures taken pursuant to this Paragraph.

V. LIMITS OF LIABILITY AND DEDUCTIBLE

Regardless of the number of **Claims**, claimants, **Insureds**, **Pollution Condition(s)**, **Emergency Response Costs** or **Interruption(s)** under this Policy, the following limits of liability apply:

A. Policy Aggregate Limit

The Company's total liability for all **Loss** shall not exceed the "Policy Aggregate Limit" stated in Item 4. of the Declarations. The Company's internal expenses do not erode the limit of liability available for any **Loss**.

B. Coverage Section Aggregate Limit

Subject to Paragraph V.A. above, the Company's total liability for all **Loss** under each Coverage in Coverages A through I, shall not exceed the "Coverage Section Aggregate" limit of liability for that particular coverage stated in Item 3. of the Declarations.

C. Each Incident Limit - Coverages A Through I

Subject to Paragraphs V.A. and V.B. above, the most the Company will pay for all **Loss** arising from **Each Incident** under each Coverage in Coverages A through I is the "Each Incident" limit of coverage for that particular coverage stated in Item 3. of the Declarations.

D. Maximum for All Business Interruption Expenses

Subject to Paragraph V.A. above, the maximum amount for which the Company is liable for all **Interruption Expenses** under Coverage J is 90% of the amount stated in Item 3. of the Declarations.

It is a condition of Coverage J that the remaining 10% of such amount be borne by the **Insured** at its own risk and remain uninsured.

E. Multiple Coverages – Each Incident Aggregate Limit

Subject to Paragraphs V.A. through V.D. above, if **Each Incident** results in coverage under more than one Coverage under Coverages A through I, every applicable "Each Incident" limit of coverage among such coverage sections shall apply to the **Loss**; however, the most the Company will pay for all **Loss** arising from **Each Incident** shall not exceed the highest "Each Incident" limit of Coverage stated in Item 3. of the Declarations among all the coverage sections applicable to the **Loss**.

F. Deductible

1. Coverages A through I

Subject to Paragraphs V.A. through V.E. above, this Policy is to pay covered **Loss** for **Each Incident** in excess of the Deductible amount stated in Item 3. of the Declarations for the applicable coverage, up to but not exceeding the applicable "Each Incident" limit of coverage.

If **Each Incident** results in coverage under more than one coverage section in Coverages A through I, only the highest Deductible amount stated in Item 3. of the Declarations among all the coverage sections applicable to the **Loss** will apply.

The **Insured** shall promptly reimburse the Company for advancing any element of **Loss** falling within the Deductible.

2. Coverage J

Subject to Paragraphs V.A. through V.E. above, this Policy is to pay **Interruption Expenses** under Coverage J in excess of the **Interruption Expenses** sustained during the first three (3) days of an **Interruption** during the **Period of Restoration**. The three (3) day period applies to all **Interruption Expenses** arising out of **Each Incident**.

VI. CONDITIONS

- A. **Access to Information** – The **Named Insured** agrees to provide the Company with access to any information developed or discovered by an **Insured** concerning a **Claim, Loss** or a **Pollution Condition** covered under this Policy, whether or not deemed by an **Insured** to be relevant to such **Loss** and to provide the Company access to interview any **Insured** and review any documents of an **Insured**.
- B. **Acknowledgment of Shared Limits** – By acceptance of this Policy, the **Named Insureds** and all other **Insureds** understand, agree and acknowledge that the Policy contains a "Policy Aggregate Limit" as set forth in Item 4. of the Declarations that is applicable to, and will be shared by, all **Named Insureds** and all other **Insureds** who are or may become insured hereunder. In view of the operation and nature of such shared "Policy Aggregate Limit", the **Named Insureds** and all other **Insureds** understand and agree that prior to filing a **Claim** or giving notice of a **Pollution Condition, Interruption** or incurring **Emergency Response Costs** under the Policy, the Policy Aggregate Limit may be exhausted or reduced by prior payments for other **Loss** under the Policy.
- C. **Action Against Company** – No third-party action shall lie against the Company, unless as a condition precedent thereto there shall have been full compliance with all of the terms of this Policy, nor until the amount of the **Insured's** obligation to pay shall have been finally determined either by judgment against the **Insured** after actual trial or by written agreement of the **Insured**, the claimant and the Company.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this Policy to the extent of the insurance afforded by the Policy. No person or organization shall have any right under this Policy to join the Company as a party to any action against the **Insured** to determine the **Insured's** liability, nor shall the Company be impleaded by the **Insured** or its legal representative. Bankruptcy or insolvency of the **Insured** or of the **Insured's** estate shall not relieve the Company of any of its obligations hereunder.

- D. **Addition of Named Insureds** – The Company agrees that upon the written request of the **Named Insured** first listed in Item 1. of the Declarations, the Company shall add to the Policy as a **Named Insured** any subsequent purchaser of an **Insured Property(ies)** if such purchase is finalized during the **Policy Period** and provided:
1. There is not a proposed change in use or operations at an **Insured Property(ies)** that is different than the use or operations at the **Insured Property(ies)** at the **Inception Date** or those otherwise consented to by the Company in writing; and
 2. The purchaser has no actual, alleged or potential legal liability prior to the time of purchase for a **Pollution Condition** on, under or migrating from or through the **Insured Property**; and
 3. The purchaser has no prior affiliation of any kind with the **Insured Property**; and
 4. Notice of the finalization of the purchase of the **Insured Property** is given to the Company prior to a **Claim** or **Loss** involving the such subsequent purchaser; and
 5. The purchaser of an **Insured Property** added as a **Named Insured** shall only be covered as a **Named Insured** for liability arising out of the ownership, operation, maintenance or use of such **Insured Property**; and
 6. The addition of any purchaser as a **Named Insured** shall not affect the rights and duties of the **Named Insured** first listed in Item 1. of the Declarations and shall not be effective until endorsed onto the Policy.

- E. **Arbitration** – It is hereby understood and agreed that all disputes or differences that may arise under or in connection with this Policy, whether arising before or after termination of this Policy, including any determination of the amount of **Loss**, may be submitted to the American Arbitration Association under and in accordance with its then prevailing commercial arbitration rules. The arbitrators shall be chosen in the manner and within the time frames provided by such rules. If permitted under such rules, the arbitrators shall be three disinterested individuals having knowledge of the legal, corporate management, or insurance issues relevant to the matters in dispute.

Any party may commence such arbitration proceeding and the arbitration shall be conducted in the **Insured's** state of domicile. The arbitrators shall give due consideration to the general principles of the law of the **Insured's** state of domicile in the construction and interpretation of the provisions of 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 shall be resolved in the manner most consistent with the relevant terms, conditions, provisions or exclusions of the Policy (without regard to the authorship of the language, the doctrine of reasonable expectation 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 shall set forth its reasoning, shall be provided simultaneously to both parties and shall be binding on them. The arbitrators' award shall not include attorney fees or other costs. Judgment on the award may be entered in any court of competent jurisdiction. Each party shall bear equally the expenses of the arbitration.

- F. **Assignment** – This Policy may be assigned with the prior written consent of the Company, which consent shall not be unreasonably withheld or delayed. Assignment of interest under this Policy shall not bind the Company until its consent is endorsed thereon.
- G. **Cancellation** – This Policy may be cancelled by the **Named Insured** by surrender thereof to the Company or any of its authorized agents or by mailing to the Company written notice stating when thereafter the cancellation shall be effective. This Policy may be cancelled by the Company only for the reasons stated below by mailing to the **Named Insured** at the address shown in the Policy, written notice stating when not less than ninety (90) days (ten (10) days for nonpayment of premium) thereafter such cancellation shall be effective. Proof of mailing of such notice shall be sufficient proof of notice.
1. Material misrepresentation by the **Insured**.
 2. The **Insured's** failure to comply with the material terms, conditions or contractual obligations under this Policy, including failure to pay any premium or Deductible when due. However, the **Insured** shall have the ability, within the first thirty (30) days (ten (10) days for non-payment of premium) of the ninety (90) day notice period stated above, to cure such failure to comply with the material terms, conditions or contractual obligations. The determination of whether or not the **Insured** has cured any such failure is within the sole discretion of the Company.
 3. A change in use or a change in operations which is different from the uses or operations identified in writing by the **Insured** to the Company during the underwriting process or in the application and which materially increases a risk covered hereunder. Solely with respect to this Paragraph 3. and solely with respect to such change in use or change in operations on or under a particular **Insured Property(ies)**, the Company shall have the right to cancel coverage only with respect to that **Insured Property(ies)** where such change in use or operations has taken place.

The time of surrender or the effective date and hour of cancellation stated in the notice shall become the end of the **Policy Period**. Delivery of such written notice either by the **Named Insured** or by the Company shall be equivalent to mailing. If the **Named Insured** cancels, earned premium shall be computed in accordance with the customary short rate table and procedure. If the Company cancels, earned premium shall be computed pro-rata. Premium adjustment may be either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

- H. **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.
- I. **Concealment or Fraud** – This entire Policy shall be void if, whether before or after **Loss** is incurred or a **Claim** is first made, the **Named Insured** has willfully concealed or misrepresented: (i) any fact or circumstance material to the granting of coverage under this Policy; (ii) the description of the **Insured Property(ies)** or the interest of the **Insured** therein; or (iii) any of the **Insured's** operations.
- J. **Condition of Payment** – It is hereby agreed that any payment under this Policy shall only be made in full compliance with all United States of America economic and trade sanction laws or regulations, including, but not limited to, sanctions, laws and regulations administered and enforced by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC").
- K. **Cooperation** – The **Insured** shall cooperate with the Company and offer all reasonable assistance in the investigation and defense of **Claims** and the clean up and mitigation of a **Pollution Condition**. 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.

- L. **Independent Counsel** – In the event the **Insured** is entitled by law to select independent counsel to oversee the Company's defense of a **Claim** at the Company's expense, the attorney fees and all other expenses the Company must pay to that counsel are limited to the rates the Company would actually pay to counsel that the Company retains in the ordinary course of business in the defense of similar **Claims** in the community where the **Claim** arose or is being defended.

Additionally, the Company may exercise the right to require that such counsel have certain minimum qualifications with respect to their competency, including experience in defending **Claims** 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 the Company's request for information regarding the **Claim**.

Furthermore, the **Insured** may at any time, by the **Insured's** signed consent, freely and fully waive these rights to select independent counsel.

- M. **Other Insurance** – Where other insurance may be available for **Loss** covered under this Policy, the **Insured** shall promptly upon request of the Company provide the Company with copies of all such policies. If other valid and collectible insurance is available to the **Insured** for **Loss** covered by this Policy, the Company's obligations are limited as follows:

1. Except as set forth in Paragraph 3. below, this insurance is primary, and the Company's obligations are not affected unless any of the other insurance is also primary. In that case, the Company will share with all such other insurance by the method described in Paragraph 2. below.
2. If all of the other insurance permits contribution by equal shares, the Company will follow this method also. Under 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, the Company will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.
3. Solely with respect to **Clean-Up Costs, Claims or Loss** arising in whole or in part from a **Pollution Condition** due to **Microbial Matter** and/or *Legionella pneumophila*, this insurance is excess of any other valid and collectible insurance. Where this insurance is excess insurance, the Company will pay only its share of the amount of **Loss**, if any, that exceeds the total amount of such other insurance.

- N. **Reduction of Interruption Expenses** – If the **Insured** could reduce the **Interruption Expenses** resulting from an **Interruption**:

1. By complete or partial resumption of operations; or
2. By making use of other property at the **Insured Property**, or elsewhere,

such reductions shall be taken into account in arriving at **Interruption Expenses**. In determining the amount of **Interruption Expenses** payable under Section I. **INSURING AGREEMENTS, 1 COVERAGES, COVERAGE J – BUSINESS INTERRUPTION EXPENSES**, due consideration shall be given to the financial performance of the business before the **Interruption** and the financial performance thereafter had no **Interruption** occurred.

- O. **Representations** – By acceptance of this Policy, the **Named Insured** agrees that the statements in the Declarations and the Application are their agreements and representations, that this Policy is issued in reliance upon the truth of such representations and that this Policy embodies all agreements existing between the **Insured** and the Company or any of its agents relating to this insurance.

- P. **Right of Access and Inspection** – To the extent an **Insured** has such rights, any of the Company's authorized representatives shall have the right and opportunity but not the obligation to interview persons employed by the **Insured** and to inspect at any reasonable time, during the **Policy Period** or thereafter, an **Insured Property** or any other location, facility or item associated with a **Claim, Loss or Pollution Condition**. Neither the Company nor its representatives shall assume any responsibility or duty to the **Insured** or to any other party, person or entity, by reason of such right or inspection. Neither the

Company's 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 the property or operations are safe, healthful or conform to acceptable engineering practices or are in compliance with any law, rule or regulation. The **Named Insured** agrees to provide appropriate personnel to assist the Company's representatives during any inspection.

- Q. Separation of Insureds** – It is hereby agreed that except with respect to the Limit of Liability, Section II. 1.I. (Insured vs. Insured exclusion), and any rights and duties specifically 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 **Named Insured** against whom a **Claim** is made. Misrepresentation, concealment, breach of a term or condition, or violation of any duty under this Policy by one **Named Insured** shall not prejudice the interest of coverage for another **Named Insured** under this Policy. Provided, however, that this Condition shall not apply to any entity or person who is a parent, subsidiary, affiliate, director, officer, partner, member or employee of the **Named Insured** that misrepresented, concealed or breached a term or condition, or violated a duty under this Policy. For the purposes of this Condition, an "affiliate" means an entity that directly or indirectly is controlled by or is under common control with the **Named Insured** that committed such misrepresentation, concealment or breach.
- R. Subrogation** – In the event of any payment under this Policy, the Company shall be subrogated to all the **Insured's** rights of recovery therefor against any third party and the **Insured** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights including without limitation, assignment of the **Insured's** rights against any person or organization who caused the **Pollution Condition** on account of which the Company made any payment under this Policy. The **Insured** shall do nothing to prejudice the Company's rights under this paragraph subsequent to **Loss**. Any recovery as a result of subrogation proceedings arising out of the payment of **Loss** covered under this Policy shall accrue first to the **Insured** to the extent of any payments in excess of the limit of liability; 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. Notwithstanding anything to the contrary in this Condition R., the Company hereby expressly waives any rights of subrogation against an entity where such right has been waived in writing by the **Insured** prior to **Loss** or **Claim**.
- S. Voluntary Payments** – No **Insured** shall voluntarily enter into any settlement, or make any payment or assume any obligation, without the Company's consent which shall not be unreasonably withheld, except at the **Insured's** own cost. This Condition shall not apply if such payment or obligation is an **Emergency Response Costs** or is pursuant to **Environmental Laws** that require immediate remediation of a **Pollution Condition**.
- T. Service Of Suit** – Subject to Section VI - CONDITIONS, Paragraph E. above, it is agreed that in the event of failure of the Company to pay any amount claimed to be due hereunder, the Company, at the request of the **Insured**, will submit to the jurisdiction of a court of competent jurisdiction within the United States. Nothing in this condition constitutes or should be understood to constitute a waiver of the Company's rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. It is further agreed that service of process in such suit may be made upon General Counsel, Law Department, Chartis Specialty Insurance Company, 175 Water Street, New York, New York 10038, or his or her representative, and that in any suit instituted against the Company upon this contract, the Company will abide by the final decision of such court or of any appellate court in the event of any appeal.

Further, pursuant to any statute of any state, territory, or district of the United States which makes provision therefor, the Company hereby designates the Superintendent, Commissioner, Director of Insurance, or other officer specified for that purpose in the statute, or his or her successor or successors in office as its true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the **Insured** or any beneficiary hereunder arising out of this contract of insurance, and hereby designates the above named Counsel as the person to whom the said officer is authorized to mail such process or a true copy thereof.

VII. EXTENDED REPORTING PERIOD FOR CLAIMS - COVERAGES A THROUGH I

The **Named Insured** shall be entitled to an **Automatic Extended Reporting Period**, and (with certain exceptions as described in Paragraph B. of this Section) be entitled to purchase an **Optional Extended Reporting Period** for Coverages A through I collectively, upon termination of coverage as defined in Paragraph B.3. of this Section. If the **Named Insured** renews this Policy, the **Named Insured** shall be entitled to an **Automatic Renewal Extended Reporting Period** (as described in Paragraph C. below). Neither the **Automatic**, the **Optional** or the **Automatic Renewal Extended Reporting Period** shall reinstate or increase any of the limits of liability of this Policy.

A. Automatic Extended Reporting Period

Provided (i) that the **Named Insured** has not renewed this policy or purchased any other insurance to replace this insurance which applies to a **Claim** otherwise covered hereunder and (ii) the **Named Insured** has not purchased the **Optional Extended Reporting Period** available under Paragraph B. of this Section, the **Named Insured** shall have the right to the following: a period of ninety (90) days following the effective date of such termination of coverage in which to provide written notice to the Company of **Claims** first made against the **Insured** during the **Policy Period**.

A **Claim** first made against the **Insured** and reported to the Company within the **Automatic Extended Reporting Period** will be deemed to have been made and reported on the last day of the **Policy Period**, provided that the **Claim** arises from a **Pollution Condition** that commenced before the end of the **Policy Period** and is otherwise covered by this Policy. No part of the **Automatic Extended Reporting Period** shall apply if the **Optional Extended Reporting Period** is purchased.

B. Optional Extended Reporting Period

The **Named Insured** shall be entitled to purchase an **Optional Extended Reporting Period** upon termination of coverage as defined herein (except in the event of nonpayment of premium), as follows:

1. A **Claim** first made against the **Insured** and reported to the Company within the **Optional Extended Reporting Period**, if purchased in accordance with the provisions contained in Paragraph 2. below, will be deemed to have been made and reported on the last day of the **Policy Period**, provided that the **Claim** arises from a **Pollution Condition** that commenced before the end of the **Policy Period** and is otherwise covered by this Policy.
2. The Company shall issue an endorsement providing an **Optional Extended Reporting Period** of up to forty (40) months from termination of coverage hereunder for all **Insured Property(ies)** and **Non-Owned Locations**, if applicable, or any specific **Insured Property** or **Non-Owned Location**, provided that the **Named Insured**:
 - (a) makes a written request for such endorsement which the Company receives within thirty (30) days after termination of coverage as defined herein; and
 - (b) pays the additional premium when due. If that additional premium is paid when due, the **Extended Reporting Period** may not be cancelled, provided that all other terms and conditions of the Policy are met.
3. Termination of coverage occurs at the time of cancellation or nonrenewal of this Policy by the **Named Insured** or by the Company, or at the time of the Company's deletion of a location which previously was an **Insured Property** or **Non-Owned Location**.
4. The **Optional Extended Reporting Period** is available to the **Named Insured** for not more than 200% of the full Policy premium stated in the Declarations.

C. Automatic Renewal Extended Reporting Period

Provided that the **Named Insured** has renewed this Policy with the Company or an affiliate of the Company, the **Named Insured** shall have the right to the following: a period of ninety (90) days following the expiration of the **Policy Period** in which to provide written notice to the Company of **Claims** first made against the **Insured** within ninety (90) days prior to the expiration of the **Policy Period**.

A **Claim** first made against the **Insured** within ninety (90) days prior to the expiration of the **Policy Period** and reported to the Company within the **Renewal Extended Reporting Period** will be deemed to have been made and reported on the last day of the **Policy Period** of this Policy.

VIII. DEFINITIONS

A. Actual Loss means the:

1. Net profit or loss before income taxes the **Insured** would have earned or incurred had there been no **Interruption**; and
2. Continuing normal operating expenses incurred during the **Period of Restoration**, including payroll expense for all employees of the **Insured**, except officers, executives, department managers and employees under contract.

B. Bodily Injury means:

1. Physical injury, sickness or disease sustained by any person, including death resulting therefrom and solely with respect to this item B.1, any accompanying medical monitoring; or
2. Mental anguish, emotional distress, or shock.

C. Cargo means goods, products, or waste transported for delivery by the **Named Insured** or by a carrier on behalf of the **Named Insured** provided the **Named Insured** or carrier is properly licensed to transport such goods, products, or waste.

D. Certified Industrial Hygienist means a licensed professional as established by the American Board of Industrial Hygiene, mutually agreed upon by the Company and the **Named Insured**. The Company may also exercise the right to require that such **Certified Industrial Hygienist** have certain minimum qualifications with respect to his or her competency, including experience with similar **Microbial Matter** remediation.

E. Claim means a written demand received by the **Insured** alleging liability or responsibility and seeking a remedy on the part of the **Insured** for **Loss** under Coverages A through I. For purposes of this Policy, a **Claim** does not include a **Possible Claim** that was reported under a prior policy but which has become a **Claim** during the **Policy Period** of this Policy as described in Section III. B.

F. Clean-Up Costs means reasonable and necessary expenses, including legal expenses incurred with the Company's written consent which consent shall not be unreasonably withheld or delayed, for the investigation, removal, treatment including in-situ treatment, remediation including associated monitoring, or disposal of soil, surfacewater, groundwater, **Microbial Matter**, Legionella pneumophila, or other contamination:

1. To the extent required by **Environmental Laws** or required to satisfy a **Voluntary Cleanup Program**; or
2. With respect to **Microbial Matter**, in the absence of any applicable **Environmental Laws**, to the extent recommended in writing by a **Certified Industrial Hygienist**; or
3. With respect to Legionella pneumophila, in the absence of any applicable **Environmental Laws**, to the extent required in writing by the Center for Disease Control or local health department; or
4. That have been actually incurred by the government or any political subdivision of the United States of America or any state thereof or Canada or any province thereof, or by third parties.

Clean-Up Costs also include **Restoration Costs**.

G. Continuity Date means the date stated in Item 8. of the Declarations.

H. Covered Operations means those activities performed for a third party for a fee by or on behalf of the **Named Insured** at a job site. **Covered Operations** does not include: (i) **Transportation** or the movement of any material by a conveyance beyond the boundaries of a job site; or (ii) those activities performed at any real property which is owned, leased, rented or managed by the **Insured**.

I. Each Incident means the same, related, or continuous **Pollution Condition**.

J. Emergency Response Costs means reasonable and necessary expenses, including legal expenses incurred with the Company's written consent which consent shall not be unreasonably withheld or delayed, incurred in the remediation of soil, surfacewater, groundwater or other contamination that must be incurred:

1. In response to a **Pollution Condition** that necessitates immediate action; and
 2. Within ninety-six (96) hours of the first commencement of such **Pollution Condition**; or as approved by the Company in writing.
- K. Environmental Laws** means any federal, state, provincial or local laws (including, but not limited to, statutes, rules, regulations, ordinances, guidance documents, and governmental, judicial or administrative orders and directives) that are applicable to the **Pollution Condition**.
- L. Extended Reporting Period** means either the automatic additional period of time, the optional additional period of time or the automatic renewal additional period of time, whichever is applicable, in which to report **Claims** following termination or renewal of coverage, as described in Section VII. of this Policy.
- M. Extra Expense** means necessary expenses the **Insured** incurs during the **Period of Restoration**:
1. That would not have been incurred if there had not been an **Interruption**; and
 2. That avoid or minimize an **Interruption**;
- but only to the extent such expenses reduce **Actual Loss** or loss of **Rental Value**, whichever is applicable, otherwise covered under this Policy.
- Extra Expense** will be reduced by any salvage value of property obtained for temporary use during the **Period of Restoration** that remains after the resumption of normal operations.
- N. Inception Date** means the first date set forth in Item 2. of the Declarations.
- O. Insured** means the **Named Insured**, and any past or present director, officer, partner, member, manager or employee thereof, including a temporary or leased employee, while acting within the scope of his or her duties as such.
- P. Insured Contract** means a contract or agreement submitted to and approved by the Company, and scheduled on an Insured Contract Endorsement attached to this Policy.
- Q. Insured's Products** means goods or products manufactured, sold, handled or distributed by the **Insured** or others trading under the **Insured's** name, and includes containers (other than automobiles, rolling stock, vessels or aircraft), materials, parts or equipment furnished in connection therewith, and includes warranties or representations made at any time with respect to the fitness, quality, durability, performance or use thereof, or the failure to provide warnings or instructions.
- R. Insured Property** means each of the locations identified in Item 5. of the Declarations.
- S. Interruption** means the necessary suspension of the **Named Insured's** business operations at an **Insured Property** during the **Period of Restoration**.
- T. Interruption Expenses** means **Actual Loss** or loss of **Rental Value**, and **Extra Expense**.
- U. Loss** means, under the applicable Coverages:
1. Monetary awards or settlements of compensatory damages; where allowable by law, punitive, exemplary, or multiple damages; and civil fines, penalties, or assessments for **Bodily Injury** or **Property Damage**;
 2. Costs, charges and expenses incurred in the defense, investigation or adjustment of **Claims** for such compensatory damages or punitive, exemplary or multiple damages, and civil fines, penalties or assessments, or for **Clean-Up Costs**;
 3. **Clean-Up Costs**;
 4. **Interruption Expenses**; or
 5. **Emergency Response Costs**.
- V. Mediation** means an alternative non-binding dispute resolution process involving a neutral third party.

W. Microbial Matter means fungi, mold or mildew.

X. Named Insured means: (i) the entity named in Item 1. of the Declarations; and (ii) any and all corporations, partnerships, companies or other entities as have existed at any time, or as now or may hereafter exist during the **Policy Period** and in which the entity named in Item 1. of the Declarations did or does have more than a 50% ownership interest but, with respect to such corporations, partnerships, companies or other entities, solely with respect to liability arising out of the ownership, operation, maintenance or use of an **Insured Property(ies)**.

The first **Named Insured** designated in Item 1. of the Declarations will 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 to form a part of this Policy, giving and receiving notice of cancellation or nonrenewal, and the exercise of the rights provided in the **Extended Reporting Period** clause.

Y. Natural Resource Damage means physical injury to or destruction of, including the resulting loss of value of, land, fish, wildlife, biota, air, water, groundwater, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.)), any state or local government, any foreign government, any Indian tribe, or, if such resources are subject to a trust restriction on alienation, any member of an Indian tribe.

Z. Non-Owned Location means:

1. A site that is not owned or operated by the **Insured** and that is scheduled on a Non-Owned Covered Locations Schedule Endorsement attached to this Policy; or
2. All waste treatment, waste storage or waste disposal facilities utilized by or on behalf of the **Named Insured** for waste generated from an **Insured Property**, provided that (i) the **Pollution Condition** first commenced on or after the **Continuity Date** shown in Item 2. of the Declarations; and (ii) as of the date that the waste was delivered to the treatment, storage or disposal facility, such facilities:
 - (a) Are located within the United States, its territories or possessions;
 - (b) Are not owned, operated or managed by the **Named Insured**;
 - (c) Are properly licensed to accept and dispose of such waste;
 - (d) Are not listed, are not proposed for listing and have never been listed on the federal National Priorities List (Superfund), State equivalent list, or local equivalent list;
 - (e) Are not subject to, and have not been subject to in the prior five years, a Federal information request under Section 104(e) of the Comprehensive Environmental Response, Compensation, and Liability Act or Section 3007(a) of the Resource Conservation and Recovery Act, or a State or Local equivalent request; and
 - (f) Are not owned or operated by a bankrupt or financial insolvent entity.

AA. Period of Restoration means the length of time as would be required with the exercise of due diligence and dispatch to restore the **Insured Property** to a condition that allows the resumption of normal business operations, commencing with the date operations are interrupted by a **Pollution Condition** and not limited by the date of expiration of the **Policy Period**. The **Period of Restoration** does not include any time caused by the interference by an **Insured** with restoring the property, or with the resumption or continuation of operations.

BB. Policy Period means the period set forth in Item 2. of the Declarations, or any shorter period arising as a result of:

1. Cancellation of this Policy; or
2. With respect to particular **Insured Property(s)** or **Non-Owned Location(s)** designated in the Declarations, the deletion of such location(s) from this Policy.

CC. Pollution Condition means:

1. The discharge, dispersal, release or escape; or
2. The illicit abandonment on or after the **Inception Date** by a third party without the **Insured's** consent,

of any solid, liquid, gaseous or thermal irritant or contaminant, including, but not limited to, smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, hazardous substances, low-level radioactive material, electromagnetic fields, medical waste including infectious and pathological waste and waste materials 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 in the amounts or concentrations discovered. **Pollution Condition** also means *Legionella pneumophila* or **Microbial Matter** in any structure on land and the atmosphere contained within that structure, provided that such **Pollution Condition** commences on or after the Indoor Air Quality Retroactive Date shown in Item 7. of the Declarations Page.

DD. Possible Claim means a **Pollution Condition** that first commenced on or after the **Inception Date** that the **Insured** reasonably expects may result in a **Claim**; provided, however, that **Possible Claim** shall not include a **Pollution Condition** that results in a **Claim** during the **Policy Period** or that is discovered and reported to the Company during the **Policy Period** under Coverage A., Paragraph 1. or Coverage B., Paragraph 1. and results in **Clean-Up Costs** covered by this Policy.

EE. Property Damage means:

1. Physical injury to or destruction of tangible property of parties other than an **Insured**, including the resulting loss of use and, except with respect to tangible property located on an **Insured Property**, diminution in value thereof;
2. Loss of use, but not diminution in value, of tangible property of parties other than an **Insured** that has not been physically injured or destroyed; or
3. **Natural Resource Damage**.

Property Damage does not include **Clean-Up Costs**.

FF. Rental Value means the:

1. Total anticipated rental income from tenant occupancy of the **Insured Property** as furnished and equipped by the **Insured**;
2. Amount of all charges that are the legal obligation of the tenant(s) pursuant to a lease and that would otherwise be the **Insured's** obligations; and
3. Fair rental value of any portion of the **Insured Property** that is occupied by the **Insured** during the **Period of Restoration**, less any rental income the **Insured** could earn:
 - (a) By complete or partial rental of the **Insured Property**; or
 - (b) By making use of other property on the **Insured Property** or elsewhere.

GG. Responsible Insured means (i) the manager or supervisor of the **Named Insured** responsible for environmental affairs, control or compliance; or (ii) any manager of the **Insured Property**; or (iii) any manager or supervisor responsible for the **Named Insured's Covered Operations**; or (iv) any officer, director, partner or member of the **Named Insured**.

HH. Restoration Costs means reasonable and necessary costs incurred by the **Insured** with the Company's written consent, which consent shall not be unreasonably withheld or delayed, to repair, replace or restore real or personal property, that is damaged during work performed in the course of incurring **Clean-Up Costs** whether or not such property is also damaged by the **Pollution Condition**, to substantially the same condition it was in prior to being damaged during work performed in the course of incurring **Clean-Up Costs**.

Restoration Costs shall not include costs associated with improvements or betterments, except to the extent that such improvements or betterments of the damaged property entail the use of materials which are environmentally preferable to those materials which comprised the damaged property. Such environmentally preferable material must be certified as such by an applicable independent certifying body, where such certification is available, or, in the absence of such certification, based on the judgment of the Company in its sole discretion.

II. **Transportation** means the movement of **Cargo** by a conveyance, from the place where it is accepted for transport until it is moved:

1. To the place where the carrier finally delivers it; or
2. In the case of waste, to a waste disposal facility to which the carrier delivers such waste.

Transportation includes the carrier's loading or unloading of **Cargo** onto or from a conveyance, provided that the loading or unloading is performed by or on behalf of the **Named Insured**.

Transportation does not include **Cargo** in storage off-loaded from the conveyance transporting it.

JJ. **Underground Storage Tank** means any one or combination of tanks, including underground pipes connected thereto, that has at least ten (10) percent of its volume beneath the surface of the ground. **Underground Storage Tank** does not include:

1. Septic tanks, sump pumps or oil/water separators;
2. A tank that is enclosed within a basement, cellar, shaft or tunnel, if the tank is upon or above the surface of the floor; or
3. Storm-water or wastewater collection systems.

KK. **Voluntary Cleanup Program** means a program of the United States or a state of the United States enacted pursuant to **Environmental Laws** which provides for a mechanism for the written approval of, or authorization to conduct, voluntary remedial action for the cleanup, removal or remediation of a **Pollution Condition** that exceeds actionable levels established pursuant to **Environmental Laws**.

The remainder of this page has been intentionally left blank. Policy Signature Page shall immediately follow.

SPECIMEN

ENDORSEMENT NO.

This endorsement, effective 12:01 AM:

Forms a part of policy no.:

SPECIMEN

Issued to:

By:

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AMENDMENT TO CONDITIONS ENDORSEMENT

It is hereby agreed that the following is added to Section VI. CONDITIONS:

Renewal - The Company agrees to renew this Policy upon its expiration date, provided that the Company continues to offer insurance substantially similar to the insurance provided by this Policy, and the **Insured** has complied, at the time of the expiration of this Policy, with all of the following conditions:

1. In the sole judgment of the Company, all terms and conditions of the Policy have been completely satisfied, including payment of premium;
2. The **Named Insured** provides the Company with a properly completed and signed renewal application not more than 30 days and not less than 10 days prior to the expiration date of this Policy;
3. Use of the **Insured Property(s)**, in the sole judgment of the Company, has not materially changed from the use described in the application which forms a part of this Policy. However, any such **Insured Property(s)** which has a material change in use shall not prejudice the **Named Insured's** rights to renewal as described herein provided the Company shall exclude such **Insured Property(s)** at the renewal of this Policy; and
4. At the time of policy expiration, Incurred Loss shall not exceed 50% of the policy premium stated in the Declarations. Incurred Loss means paid losses by the Company and outstanding loss reserves set by the Company for **Clean-Up Costs** and **Loss** covered under this Policy. For purposes of the Incurred Loss calculation, Incurred Loss shall not include the Self-insured Retention layer which is borne by the Insured.

The Company reserves the right to modify the terms and conditions of any subsequently issued policy as follows: (i) the renewal rate may increase but shall not be more than 20% higher than the rate offered for this Policy and (ii) the self-insured retention may increase but shall not be more than \$2,000,000 Each Incident. The **Insured** agrees that the Company in taking such action shall not be considered in violation of the agreement to renew this Policy pursuant to the conditions set forth above.

However, if the Company does not offer renewal terms for any reason, including the exceedance of loss ratios as set forth herein, the Company shall extend this policy by 90 days for additional