

CONTRACTORS POLLUTION LIABILITY

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

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

Other words and phrases that appear in bold have special meaning. Refer to Section **VI. Definitions**.

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

I. INSURING AGREEMENT

1. We will pay those sums that the **insured** becomes legally obligated to pay as damages because of **bodily injury** or **property damage** in excess of the deductible or self insured retention, if any, resulting from **pollution conditions** to which this insurance applies. We will have the right and duty to defend the **insured** against any **suit** seeking those damages. However, we will have no duty to defend the **insured** against any **suit** seeking damages to which this insurance does not apply. We may, at our discretion, investigate any **pollution conditions** and settle any claim or **suit** that may result. But:
 - a. The amount we will pay for damages is limited as described in Section **IV. Limits Of Insurance**; and
 - b. Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Section **III. Supplementary Payments**.

2. This insurance applies to **bodily injury** and **property damage** only if:
 - a. The **bodily injury** or **property damage** is caused by a **pollution condition** that takes place in the **coverage territory** and is caused by an **occurrence**;
 - b. The **bodily injury** or **property damage** first occurs during the policy period; and
 - c. The **bodily injury** or **property damage** arises out of **your work**.
3. In the event that a **pollution condition** continues to take place during more than one policy issued by us, only the policy during which the **pollution condition** first commenced will respond. Under no circumstances will more than one policy issued by us provide coverage for **bodily injury** or **property damage** arising from the same **pollution condition**.

II. EXCLUSIONS

This insurance does not apply to:

1. **Auto, Aircraft, Watercraft Or Rolling Stock**

Damages based upon or arising out of the ownership, maintenance, use or the entrustment to others of any auto, aircraft, watercraft, or rolling stock owned or operated by or rented or loaned to any **insured**. Use includes operation and **loading or unloading**.

However, this exclusion does not apply to **pollution conditions** arising out of the ownership, maintenance, use, operation, **loading or unloading** of any auto, aircraft, watercraft, or rolling stock within the boundaries of the site where **your work** is being performed.

2. **Bankruptcy**

Claims based upon or arising out of the bankruptcy or insolvency of an **insured** or of any other firm, person, or organization.

3. **Contractual Liability**

Damages based upon or arising out of the liability of others assumed by an **insured** under any contract or agreement. This exclusion does not apply to liability for damages:

- a. Assumed in a contract or agreement that is an **insured contract**, provided the **pollution condition** occurs subsequent to the execution of the contract or agreement; or
- b. That the **insured** would have in the absence of the contract or agreement.

4. **Employer's Liability**

Damages based upon or arising out of injury to any employee, director, officer, partner, or leased worker of an **insured**. This exclusion does not apply to liability assumed by you while performing **your work** under an **insured contract**.

5. **Faulty Workmanship**

Damages based upon or arising out of the cost to repair or replace faulty construction or workmanship in any construction erection, fabrication, installation, assembly, manufacture or remediation performed by the **insured**, including the cost of any materials, parts or equipment furnished in connection with it.

6. **Fines And Penalties**

Any claim seeking payment of:

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

7. **Fungi**

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

8. **Insured's Property**

Damages based upon or arising out of the **insured's** ownership, rental, lease, maintenance, operation, use, repair, voluntary or involuntary sale, transfer, exchange, gift, abandonment or condemnation of real property. This exclusion does not apply to any **suit** or claim arising from property rented or leased by the **Named Insured** during the course of performing **your work** for parties other than the **Named Insured**.

9. Knowingly Wrongful Acts

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

10. Known Conditions

Damages based upon or arising out of **your work** performed prior to the inception date of this policy, if any of your management, directors, partners or employees responsible for environmental affairs knew or reasonably could have foreseen that **your work** could give rise to a claim under this policy.

11. Nuclear Hazard

a. Bodily injury or property damage:

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

b. Bodily injury or property damage resulting from the hazardous properties of nuclear material, if:

- (1) The **nuclear material**
 - (a) is at any **nuclear facility** owned by, or operated by or on behalf of, an **insured** or
 - (b) has been discharged or dispersed therefrom;
- (2) The **nuclear material** is contained in **spent fuel** or **waste** at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an **insured**; or
- (3) The **bodily injury** or **property damage** arises out of the furnishing by an **insured** of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any **nuclear facility**, but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (3) applies only to **property damage** to such **nuclear facility** and any property thereat.

As used in this exclusion:

- a. Hazardous properties** include radioactive, toxic or explosive properties;
- b. Nuclear material** means **source material**, **special nuclear material** or **by-product material**;
- c. Source material**, **special nuclear material**, and **by-product material** have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof; **spent fuel** means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a **nuclear reactor**;

d. **Waste** means any waste material:

- (1) Containing **by-product material** other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its **source material** content, and
- (2) Resulting from the operation by any person or organization of any **nuclear facility** included under the first two paragraphs of the definition of **nuclear facility**.

e. **Nuclear facility** means:

- (1) Any **nuclear reactor**;
- (2) Any equipment or device designed or used for:
 - (a) separating the isotopes of uranium or plutonium,
 - (b) processing or utilizing **spent fuel**, or
 - (c) handling, processing or packaging **waste**;
- (3) Any equipment or device used for the processing, fabricating or alloying of **special nuclear material** if at any time the total amount of such material in the custody of the **insured** at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;
- (4) Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of **waste**;

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations;

f. **Nuclear reactor** means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material;

g. **Property damage** includes all forms of radioactive contamination of property.

12. **Off-Site Waste Disposal**

Damages, including **cleanup costs**, based upon or arising out of **pollution conditions** on, at or migrating from any location to which wastes, products or materials have been delivered beyond the boundaries of any site where **your work** is being performed.

13. **Products Liability**

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

14. **Professional Liability**

Claims based upon or arising out of the rendering of or failure to render **professional services**.

15. **Project-Specific Coverage**

Damages based upon or arising out of any project to which any **insured** is an **insured** on a project-specific policy issued by any carrier.

16. **Radioactive Matter**

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

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

17. Related Entities

Damages claimed by your parent company or any affiliated subsidiary, or any entity which is owned, operated, managed, or controlled by you.

18. War

Bodily injury or property damage, however caused, arising directly or indirectly out of:

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

19. Workers Compensation

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

III. SUPPLEMENTARY PAYMENTS

- 1. We will pay, with respect to any claims or **occurrences** we investigate or settle, or any **suit** against an **insured** we defend:
 - a. All expenses we incur.
 - b. Up to \$250 for the cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
 - c. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
 - d. All reasonable expenses incurred by the **insured** at our request to assist us in the investigation or defense of the claim or **suit**, including actual loss of earnings up to \$250 a day because of time off from work.
 - e. All costs taxed against the **insured** in the **suit**.
 - f. Prejudgment interest awarded against the **insured** on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
 - g. All interest on the full amount of any judgment that accrues after entry of the judgment and before we

have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These payments will reduce the Limits of Insurance.

2. If we defend an **insured** against a **suit** and an indemnitee of the **insured** is also named as a party to the **suit**, we will defend that indemnitee if all of the following conditions are met:
 - a. The **suit** against the indemnitee seeks damages for which the **insured** has assumed the liability of the indemnitee in an **insured contract**;
 - b. This insurance applies to such liability assumed by the **insured**;
 - c. The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the **insured** in the same **insured contract**;
 - d. The allegations in the **suit** and the information we know about the **occurrence** are such that no conflict appears to exist between the interests of the **insured** and the interests of the indemnitee;
 - e. The indemnitee and the **insured** ask us to conduct and control the defense of that indemnitee against such **suit** and agree that we can assign the same counsel to defend the **insured** and the indemnitee; and
 - f. The indemnitee:
 - (1) Agrees in writing to:
 - (a) Cooperate with us in the investigation, settlement or defense of the **suit**;
 - (b) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the **suit**;
 - (c) Notify any other insurer whose coverage is available to the indemnitee; and
 - (d) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and
 - (2) Provides us with written authorization to:
 - (a) Obtain records and other information related to the **suit**; and
 - (b) Conduct and control the defense of the indemnitee in such **suit**.

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments.

Our obligation to defend an **insured's** indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when:

- a. We have used up the applicable limit of insurance in the payment of judgments or settlements; or
- b. The conditions set forth above, or the terms of the agreement described in Paragraph f. above, are no longer met.

IV. LIMITS OF INSURANCE

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:

- a. **Insureds;**
 - b. Claims made or **suits** brought; or
 - c. Persons or organizations making claims or bringing **suits**.
2. The General Aggregate Limit is the most we will pay for the sum of damages and supplementary payments and will not exceed the aggregate limit of liability shown in the Declarations.

Once the aggregate limit of liability has been exhausted, we shall not be obligated to defend or continue to defend any claim made or **suit** brought.

3. Subject to 2. above, the Each **Occurrence** Limit is the most we will pay for the sum of damages and supplementary payments because of all **bodily injury** and **property damage** arising out of any one **occurrence**.

V. POLICY CONDITIONS

1. Bankruptcy

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

2. Cancellation

- a. This policy may be cancelled by the first **Named Insured** shown in the Declarations or by endorsement by mailing or delivering written notice to us stating when the cancellation date shall be effective.
- b. This policy may be cancelled by us for the following reasons:
 - (1) non-payment of premium;
 - (2) material misrepresentation or fraud by you;
 - (3) material change in the nature of risk as outlined in the application and submission materials on file with us; or
 - (4) the **insured's** failure to comply with the terms and conditions under this policy including the failure to pay any deductible amount or audit premium when due;

by mailing to the first **Named Insured**, at the last known address, written notice of not less than ten (10) days if cancellation is for either reasons (1) or (2) above, or thirty (30) days if cancellation is for either reasons (3) or (4) above. Proof of mailing of notice shall be sufficient proof of notice. The effective date and hour of cancellation stated in the notice shall be the end of the policy period.

3. Duties In The Event Of Occurrence, Claim, Or Suit

- a. You must see to it that we are notified as soon as practicable of an **occurrence** which may result in a claim or **suit**. To the extent possible, notice should include:
 - (1) How, when and where the **occurrence** took place;
 - (2) The names and addresses of any injured persons and witnesses; and
 - (3) The nature and location of any injury or damage arising out of the **occurrence**.
- b. If a claim is made or **suit** is brought against any **insured**, you must:
 - (1) Immediately record the specifics of the claim or **suit** and the date received; and

- (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or **suit** as soon as practicable.

c. You and any other involved **insured** must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or **suit**;
- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation or settlement of the claim or defense against the **suit**; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the **insured** because of injury or damage to which this insurance may also apply.

d. No **insured** will, except at that **insured's** own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

4. Headings

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

5. Inspection And Survey

With reasonable notice to the **insured**, we shall be permitted, but not obligated, to inspect the **insured's** property and/or operations. Neither our right to make inspections or any report thereon, shall constitute an undertaking, on behalf of or for the benefit of you or others, to determine or warrant that such property or operations are safe or in compliance with environmental law, or any other law.

6. Legal Action Against Us

No person or organization has a right under this policy:

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

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

7. Other Insurance

If other valid and collectible insurance is available to the **insured** covering damages and supplementary payments also covered by this policy, other than a policy that is specifically written to apply in excess of this policy, the insurance afforded by this policy shall apply in excess of and shall not contribute with such other insurance.

8. Premium Audit

- a. The first **Named Insured** must keep records of the information we need for premium computation, and send us copies at such times as we may request.

- b. We may examine and audit your books and records as they relate to this policy at any time during the policy period and up to (3) three years after the end of the policy period.

9. Premium Payment

The first **Named Insured** shown in the Declarations is responsible for the payment of all premiums due and will be the payee for any returned premiums we pay.

10. Representations

By accepting this policy, you agree:

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

11. Separation Of Insureds

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

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

12. Sole Agent

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

13. Transfer Of Policy

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

14. Transfer Of Rights Of Recovery Against Others To Us

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

VI. DEFINITIONS

- 1. **Bodily Injury** means physical injury, sickness, disease, mental anguish, or emotional distress, sustained by any person, including death resulting from any of these at any time.
- 2. **Cleanup Costs** means the reasonable expenses incurred for the investigation, monitoring, testing, removal, disposal, neutralization, or treatment of **pollution conditions** to the extent required by applicable federal, state or local governmental law pursuant under which the **insured** has or may have a legal obligation.
- 3. **Coverage Territory** means:
 - a. The United States of America (including its territories and possessions), Puerto Rico and Canada; and
 - b. All other parts of the world if the **insured's** responsibility to pay damages is determined in a **suit** on the merits, in the territory described in **a.** above or in a settlement we agree to.
- 4. **Fungi** means any type or form of fungus, including mold or mildew and any mycotoxins, spores, scents or by-products produced or released by **fungi**, but does not include any **fungi** intended by the **insured** for

consumption.

5. **Insured** means:

- a. You;
- b. Any additional **insured** specifically endorsed onto this policy;
- c. Your former or current director, executive officer, partner, employee or leased worker while acting within the scope of his or her duties as such;
- d. Your clients, but only when required by a written contract or agreement and solely for **your work** performed by or on behalf of the you; and
- e. You, with regard to your participation in a joint venture, but solely with respect to your liability arising from the performance of **your work** under the respective joint venture.

6. **Insured Contract** means that part of any contract or agreement pertaining to **your work** whereby the **Named Insured** assumes the tort liability of another party to pay for damages because of **bodily injury** or **property damage** to a third person, firm or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

7. **Loading Or Unloading** means the handling of property:

- a. After it is moved from the place where it is accepted for movement into or onto an auto, aircraft, watercraft, or rolling stock;
- b. While it is in or on an auto, aircraft, watercraft, or rolling stock; or
- c. While it is being moved from an auto, aircraft, watercraft, or rolling stock to the place where it is finally delivered;

but **loading or unloading** does not include the movement of property by means of a mechanical device, other than a hand truck that is not attached to the auto, aircraft, watercraft, or rolling stock.

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

9. **Natural Resource Damage** means damage to, injury to, destruction of, or loss of, ground water, wildlife, biota, air, land, water, fish, drinking water supplies, and/or similar resources belonging to, held in trust by, managed by, appertaining to, or otherwise controlled by the United States, any State or local government, any foreign government, or any Indian Tribe, including the reasonable costs of assessing such injury, destruction or loss resulting therefrom.

10. **Occurrence** means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

11. **Pollutant(s)** means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapors, soot, fumes, acids, alkalis, chemicals, and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

12. **Pollution Conditions** means the discharge, dispersal, release, seepage, migration, or escape of **pollutants**.

13. **Professional Services** means those services performed by you or on your behalf, that are related to your practice as an engineer, consultant, architect, or surveyor that are performed for others for a fee.

14. **Property Damage** means:

- a. Physical injury to tangible property, including resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it;

- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the **occurrence** that caused it;
 - c. **Cleanup costs**; or
 - d. **Natural resource damage**.
15. **Suit** means a civil proceeding in which damages because of **bodily injury** or **property damage** to which this insurance applies are alleged. **Suit** includes:
- a. An arbitration proceeding in which such damages are claimed and to which the **insured** must submit or does submit with our consent; or
 - b. Any other alternative dispute resolutions proceeding in which such damages are claimed and to which the **insured** submits with our consent.

16. **Your Product**

- a. Means:
 - (1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
 - (a) You;
 - (b) Others trading under your name; or
 - (c) A person or organization whose business or assets you have acquired; and
 - (2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.
- b. Includes:
 - (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of **your product**; and
 - (2) The providing of or failure to provide warnings or instructions.
- c. Does not include vending machines or other property rented to or located for the use of others but not sold.

17. **Your Work:**

- a. Means:
 - (1) Work or operations performed by you or on your behalf; and
 - (2) Materials, parts or equipment furnished in connection with such work or operations.
- b. Includes:
 - (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of **your work**, and
 - (2) The providing of or failure to provide warnings or instructions.