

COMMERCE AND INDUSTRY INSURANCE COMPANY OF CANADA

CLEAN-UP COST CAP INSURANCE POLICY

NOTICE: TERMS APPEARING IN BOLDFACE OTHER THAN SECTION HEADINGS ARE DEFINED IN SECTION VII. OF THE POLICY.

THE COVERAGE PROVIDED BY THIS POLICY IS FOR CLEAN-UP COSTS. THIS POLICY HAS CERTAIN PROVISIONS AND REQUIREMENTS UNIQUE TO IT AND MAY BE DIFFERENT FROM OTHER POLICIES THE NAMED INSURED MAY HAVE PURCHASED.

VARIOUS PROVISIONS THROUGHOUT THIS POLICY RESTRICT OR EXCLUDE COVERAGE. PLEASE READ THE ENTIRE POLICY CAREFULLY.

In consideration of the payment of the premium, in reliance upon the statements in the Declarations and Application made a part hereof and upon the **Remedial Plan** attached to and made a part hereof, and subject to all terms of the Policy, the Company agrees with the **Named Insured** as follows:

I. INSURING AGREEMENT

The following coverages are in effect only if scheduled in Item 4 of the Declarations:

COVERAGE A - KNOWN POLLUTANTS

The Company will pay on behalf of the **Insured**, **Clean-Up Costs** in excess of the **Self-Insured Retention** that the **Insured** incurs for the **Clean-Up** of **Pollutants** identified in the **Remedial Plan**. For this coverage to apply:

1. The **Named Insured** must timely and routinely report the **Clean-Up Costs** to the Company prior to the **Termination Date** in accordance with Section III. RIGHTS OF THE COMPANY AND DUTIES OF THE INSURED IN CONNECTION WITH CLEAN-UP, Paragraph E.; and
2. **Clean-Up** must occur on or after the **Inception Date** and before the **Termination Date**.

COVERAGE B - UNKNOWN POLLUTANTS

The Company will pay on behalf of the **Insured**, **Clean-Up Costs** in excess of the **Self-Insured Retention** that the **Insured** incurs for the **Clean-Up** of **Pollutants** different from those identified in the **Remedial Plan**. For this coverage to apply:

1. The **Pollutants** must be first discovered pursuant to the execution of the **Remedial Plan**;
2. The **Pollutants** must originate from a **Covered Location**;
3. The **Insured** must report, in accordance with Section III. RIGHTS OF THE COMPANY AND DUTIES OF THE INSURED IN CONNECTION WITH CLEAN-UP, Paragraph D. the discovery of **Pollutants** different from those identified in the **Remedial Plan** to the Company as soon as practicable after discovery of such **Pollutants** and in any event included in the submission of the next scheduled **Clean-Up Progress Report** and not after the date set forth in Item 2(b) of the Declarations;
4. The **Named Insured** must timely and routinely report the **Clean-Up Costs** to the Company prior to the **Termination Date** in accordance with Section III. RIGHTS OF THE COMPANY AND DUTIES OF THE INSURED IN CONNECTION WITH CLEAN-UP, Paragraph E.; and
5. **Clean-Up** must occur on or after the **Inception Date** and before the **Termination Date**.

II. EXCLUSIONS APPLICABLE TO COVERAGE A AND COVERAGE B

This insurance does not apply to **Clean-Up Costs** arising from or in any way in connection with:

A. BODILY INJURY

Any **Bodily Injury**.

B. PROPERTY DAMAGE

Any **Property Damage**.

C. THIRD-PARTY LIABILITY

Any liability to any third-party for any reason whatsoever, other than for **Clean-Up Costs** otherwise covered under this Policy.

D. FINES, PENALTIES AND MULTIPLIED DAMAGES

Any fines, penalties, punitive damages, exemplary damages, statutory assessments or the multiplied portion of any multiplied damages or any interest payments.

E. NONCOMPLIANCE/CRIMINAL ACTS

The **Insured's** intentional, willful or deliberate noncompliance with any statute, regulation, ordinance, administrative complaint, notice of violation, notice letter, executive order, instruction of any governmental agency or body, or any criminal acts of any **Insured** (provided that, if the Policy is governed by the laws of Quebec, this exclusion applies only if such noncompliance or criminal acts constitutes an indictable offence); however, this exclusion does not apply to such noncompliance or criminal acts which resulted in the necessity for the **Remedial Plan**.

F. LABOR DISPUTES

Delay due to labor disputes, including, but not limited to, strikes.

G. LICENSE SUSPENSION

Suspension, lapse, modification or cancellation of any license, permit, lease or contract of a **Scheduled Contractor** performing work pursuant to the execution of the **Remedial Plan** which is required by the governmental entity or quasi-governmental entity responsible for supervision of the **Clean-Up**.

H. BANKRUPTCY

Default, bankruptcy or insolvency of any entity(s) involved in the **Clean-Up**, but this exclusion does not apply if the entity(s) involved in the **Clean-Up** has a performance bond issued by a surety company on the Treasury Board of Canada which in fact provides coverage for the **Clean-Up** at the time of such default, bankruptcy or insolvency.

I. DENIAL OF ACCESS

Prohibition of access to any property by a third-party, but this exclusion does not apply to any governmental entity or quasi-governmental entity responsible for supervision of the **Clean-Up** unless such prohibition is premised upon a suspension, lapse, modification or cancellation of any license, permit, lease or contract of a **Scheduled Contractor** as set forth in Paragraph G. above.

J. UNREASONABLE DELAY

Unreasonable delay in a **Scheduled Contractor's** performance of **Clean-Up**, if such delay is within the control of the **Scheduled Contractor** performing the **Clean-Up**.

K. FAULTY WORKMANSHIP

Faulty workmanship or defective materials.

L. INTERNAL EXPENSES

Costs, charges or expenses incurred by the **Named Insured** for goods supplied or services performed by employees of the **Named Insured** or its parent, subsidiary or affiliate, except if in response to an emergency or pursuant to Environmental Laws that require immediate remediation of **Pollutants**, or unless such costs, charges or expenses are incurred with the prior written approval of the Company in its sole discretion or are incurred by a **Scheduled Contractor**.

M. MODIFICATION OF THE REMEDIAL PLAN

Any modification of the **Remedial Plan** unless:

1. Such modification is required by the governmental entity or quasi-governmental entity responsible for supervision of the **Clean-Up**; or
2. The Company has consented to such modification in advance, in writing.

N. PRIOR KNOWLEDGE/NON-DISCLOSURE

Pollutants existing prior to the **Inception Date** and known by any manager or supervisor responsible for environmental affairs or any officer, director or partner of the **Named Insured** and not disclosed in the application for this Policy.

III. RIGHTS OF THE COMPANY AND DUTIES OF THE INSURED IN CONNECTION WITH CLEAN-UP

- A. The Company shall have the right, but not the duty to review, assess and inspect all aspects of any **Clean-Up** to which the Policy applies, regardless of whether the **Insured** has incurred and paid **Clean-Up Costs** in excess of the **Self-Insured Retention**. Neither the Company's rights nor its exercise of its rights under this paragraph shall constitute an undertaking to determine or warrant that the **Clean-Up** is safe or in conformity with applicable law.
- B. The **Insured** shall take all reasonable and prudent steps to minimize **Clean-Up Costs**, to limit access to the **Covered Location**, and to prevent the spread of further contamination. If Coverage A applies, the **Insured** shall report as soon as practicable that the concentration, disbursement or quantity of any **Pollutant** exceeds the concentration, disbursement or quantity identified by the **Remedial Plan**.
- C. The **Insured** shall retain a **Scheduled Contractor** to undertake and complete **Clean-Up**.
- D. The **Insured** shall report increased quantity, concentration or disbursement of **Pollutants**, the discovery of **Pollutants** beyond the boundaries of the **Covered Location**, the discovery of **Pollutants** different from those identified in the **Remedial Plan** and all notices hereunder to:

Manager for Canada
Commerce and Industry Insurance Company of Canada
145 Wellington St. W
Toronto, Ontario M5J 1H8
Fax: (416) 596-3584

and

Manager, Pollution Insurance Products Unit
AIG Technical Services, Inc.
Environmental Claims Department
80 Pine Street, Sixth Floor
New York, New York 10005
Fax: (212) 344-2761

or such other address(s) as the Company may designate.

- E. The **Named Insured** shall keep detailed records of all **Clean-Up Costs** and provide the Company with completed copies of the attached **Clean-Up Progress Report** at the time intervals prescribed in Item 8 of the Declarations.
- F. To the extent of the **Insured's** legal right of access, the **Insured** shall permit the Company to inspect the **Covered Location**, any location identified in the **Remedial Plan**, and all financial records, drawings, plans and specifications concerning the **Clean-Up** or **Clean-Up Costs** as often as the Company chooses after providing reasonable notice.
- G. The **Insured** shall cooperate with the Company by providing the Company:
1. Access to all information developed or discovered by the **Insured** concerning the **Clean-Up** whether or not deemed by the **Insured** to be relevant;
 2. Reasonable access to interview any agent, servant or employee of the **Insured** or any **Scheduled Contractor** or subcontractor involved in the **Clean-Up**; and
 3. Access to any other information or other responses to reasonable requests from the Company concerning the **Clean-Up**.

IV. SALE OR TRANSFER OF THE COVERED LOCATION

In the event that control of the **Remedial Plan** is relinquished by the **Named Insured** or a **Covered Location** is sold or ownership or operational control is transferred by the **Named Insured** prior to the completion of the **Clean-Up** to which this Policy applies, this Policy shall remain in full force and effect, subject to its terms and conditions only if:

1. The Company receives written notification at least forty-five (45) days prior to the effective date of such sale or transfer and consents to the sale or transfer, which consent shall not be unreasonably withheld; and
2. The new owner or operator of the **Covered Location** fully complies with all applicable conditions, duties and obligations set forth in this Policy.

V. LIMIT OF LIABILITY AND RETENTION

- A. Regardless of the number of **Insureds** or **Covered Locations** under this Policy, the Company's total liability under this Policy for all **Clean-Up Costs** in excess of the **Self-Insured Retention** shall not exceed its percentage, as stated in Item 6(b) of the Declarations, of the Limit of Liability stated in Item 4 of the Declarations, regardless of whether or not the **Insured** is financially unable, or is unwilling to pay its **Co-Insurance Participation** or its **Self-Insured Retention**. The **Self-Insured Retention** and **Co-Insurance Participation** are to be borne by the **Insured** and are not to be insured.
- B. Subject to, and as part of the Company's total liability under this Policy described in Paragraph A. above, the most the Company will pay for costs, charges or expenses expended for the preparation of a

supplementary remedial plan and the associated investigation of **Pollutants** different from those identified in the **Remedial Plan**, if any, under Coverage B, shall not exceed 5% of the Limit of Liability stated in Item 4 of the Declarations page.

VI. CONDITIONS

A. 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 canceled by the Company by mailing to the **Named Insured**, at the address shown in the Policy, written notice stating when, not less than 30 days (10 days for nonpayment of premium; 15 days for nonpayment if this Policy is governed by the laws of Quebec) thereafter, such cancellation shall be effective. Cancellation by the Company shall be for one or more of the following reasons only:

1. Nonpayment of premium;
2. Material misrepresentation or fraud by the **Insured**; or
3. Substantial breach by the **Insured** (which cannot be corrected prior to having a material effect) of the conditions or warranties of this Policy or the application thereto, which materially affects the insurability of the risk.

Written notice under this Section shall be given by registered mail or personal delivery. The time of surrender or the effective date and hour of cancellation stated in the notice shall become the **Termination Date**. Delivery of such written notice either by the **Named Insured** or by the Company shall be equivalent to mailing.

B. Representation and Warranty - By acceptance of this Policy, the **Named Insured** agrees that the statements in the Declarations and application are accurate, that this Policy is issued in reliance upon the truth of such representations, and that this Policy embodies all agreements existing between the **Named Insured** and the Company or any of its agents relating to this insurance.

C. Assignment - Assignment of interest under this Policy, whether to another individual, corporate entity with the same parent or a third-party corporate entity, shall not bind the Company until its consent is endorsed onto this Policy. If, however, the **Named Insured** shall die or be adjudged bankrupt or insolvent within the **Policy Period**, this Policy, unless cancelled, shall if written notice is given to the Company within sixty (60) days after the date of such death or adjudication (except if this Policy is governed by the laws of Quebec in which event, no notice is required), cover the **Named Insured's** legal representative as the **Named Insured**.

D. Subrogation - In the event of any payment under this Policy, the Company shall be subrogated to all of the **Insured's** rights of recovery therefor against any person or organization, and the **Insured** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights including, without limitation, assignment of the **Insured's** rights against any person or organization responsible for any **Pollutants** on account of which the Company made any payment under this Policy. The **Insured** shall do nothing to prejudice such rights. Any recovery as a result of subrogation proceedings arising out of the payment of **Clean-Up Costs** covered under this Policy shall accrue first to the **Insured** to the extent of any payments in excess of the limit of coverage; then to the Company to the extent of its payment under the Policy and to the **Insured** to the extent of its **Co-Insurance Participation**; and then to the **Insured** to the extent of its **Self-Insured Retention**. 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.

E. Concealment or Fraud - This entire Policy shall be void as of its inception if, whether before or after **Clean-Up Costs** in excess of the **Self-Insured Retention** are incurred, the **Insured** has willfully omitted, concealed or misrepresented any fact or circumstance material to the granting of coverage under this Policy, the description of the **Covered Location**, or the interest of the **Insured** therein.

- F. Changes** - Notice to any agent of the Company or knowledge possessed by any such agent or by any other person shall not effect a waiver or a change in any part of this Policy or prevent the Company from asserting any right under the terms of this Policy; or shall the terms of this Policy be waived or changed, except by endorsement issued to form a part of this Policy.
- G. Other Insurance** - Where other insurance or surety bonds may be available for **Clean-Up Costs** 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 or surety bonds are available to the **Insured** for **Clean-Up Costs** covered by this Policy, the Company's obligations are limited as follows:
1. This insurance is excess over any other insurance and surety bonds which may be primary, and the Company's obligations are not affected unless any of the other insurance is also excess. 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.
- H. Sole Agent** - The **Named Insured** first named in Item 1. of the Declarations shall act on behalf of any **Insured** for the payment or return of premium, receipt and acceptance of any endorsement issued to form a part of this Policy, and giving and receiving notice of cancellation. The **Named Insured** has a mandate from all other **Insureds** to this effect.
- I. Choice of Law and Forum** - In the event that the **Insured** and the Company dispute the validity or formation of this Policy or the meaning, interpretation or operation of any term, condition, definition or provision of this Policy resulting in litigation, arbitration or other form of dispute resolution, the **Insured** and the Company agree that the law of the Province of Ontario shall apply (except with respect to Quebec **Insureds**, in which event, the law of the Province of Quebec shall apply) and that all litigation, arbitration or other form of dispute resolution shall take place in the Province of Ontario (except with respect to Quebec **Insureds** in which event all litigation, arbitration or other form of dispute resolution shall take place in the Province of Quebec).

Arbitration:

1. Any disputes or differences which the **Insured** and the Company agree to resolve through arbitration shall be submitted to the decision of two arbitrators, one to be chosen by each party, and in the event of the arbitrators failing to agree, to the decision of any umpire to be chosen by the arbitrators. The arbitrators and umpire shall be disinterested, active or retired executive officials of fire or casualty insurance or reinsurance companies or Underwriters at Lloyd's of London. If either of the parties fails to appoint an arbitrator within one month after being requested by the other party in writing to do so, or if the arbitrators fail to appoint an umpire within one month of a request in writing by either of them to do so, such arbitrator or umpire, as the case may be, shall at the request of either party, be appointed by a Judge of the Ontario Court (General Division) (except with respect to Quebec **Insureds**, in which event, the appointment shall be made by a judge of the Superior Court of Quebec).
2. The arbitration proceeding shall take place in Toronto, Ontario (except with respect to Quebec **Insureds**, in which event the arbitration shall take place in Montreal, Quebec). The Applicant shall submit its case within one month after the appointment of the court of arbitration, and the respondent shall submit its reply within one month after the receipt of the claim. The arbitrators and umpire are relieved from all judicial formality and may abstain from following the strict rules

of law. They shall settle any dispute under the Policy according to an equitable rather than a strictly legal interpretation of its terms.

3. Their written decision shall be provided to both parties and shall be final and not subject to appeal.
4. Each party shall bear the expenses of his arbitrator and shall jointly and equally share with the other the expenses of the umpire and of the arbitration.
5. This article shall survive the termination of the Policy.
6. Arbitration under this paragraph shall be covered by the Arbitrations Act (Ontario)(or, if this Policy is governed by the laws of Quebec, by Book VII – Arbitration of the Code of Civil Procedure of Quebec), except where in conflict with the procedure set forth above.

J. Earning of Premium – The premium stated in Item 7 of the Declarations is 100% earned at the **Inception Date** of this Policy. Any cancellation of the Policy by the **Insured** shall not result in a return of any premium.

K. Cooperation/Access - The **Insured** shall cooperate with the Company and offer all reasonable assistance in the evaluation of **Clean-Up Costs** and execution of the **Remedial Plan**. In addition, the **Insured** shall provide the Company with reasonable access to the **Covered Location(s)** for the purpose of evaluating the progress of any **Clean-Up**.

L. Canadian Currency Clause – All limits of insurance, premiums and other amounts expressed in this Policy are in Canadian currency unless otherwise stated in the Policy.

VII. DEFINITIONS

A. Bodily Injury means physical injury, or sickness, disease, mental anguish or emotional distress sustained by any person, including death resulting therefrom.

B. Clean-Up means:

1. With respect to Coverage A, those activities, identified in Endorsement 1, Definition of Clean-Up Endorsement, that are performed by a **Scheduled Contractor** in the execution of the **Remedial Plan**.
2. With respect to Coverage B, preparation of a supplementary remedial plan including the associated investigation of **Pollutants** different from those identified in the **Remedial Plan**, subject to the sub-limit set forth in Section V. LIMIT OF LIABILITY AND RETENTION, Paragraph B., and the removal, disposal, treatment (including in situ treatment) or neutralization of **Pollutants** different from those identified in the **Remedial Plan** to the standard governing the future use of the **Covered Location** and anticipated in the **Remedial Plan**, but **Clean-Up** does not include any monitoring activities required after the completion of such removal, disposal, treatment or neutralization.

C. Clean-Up Costs:

1. **Clean-Up Costs** means:

- (a) With respect to Coverage A, reasonable and necessary costs, charges, and expenses incurred solely for **Clean-Up**, as identified in Endorsement 1, Definition of Clean-Up Endorsement.
- (b) With respect to Coverage B, reasonable and necessary costs, charges, and expenses incurred solely for **Clean-Up**.

2. **Clean-Up Costs** does not include:

- (a) Costs, charges or expenses incurred for litigation, arbitration or other form of dispute resolution in any way related to or in connection with **Clean-Up**, including fees of attorneys, consultants, investigators, adjusters and experts, unless otherwise expressly consented to in writing and in advance by the Company and specifically included in the Definition of Clean-Up Endorsement; or
- b) Costs, charges or expenses expended in preparation of the **Remedial Plan**; provided, however, the sub-limit of liability described in Section V. LIMIT OF LIABILITY AND RETENTION, Paragraph B. shall apply to reasonable and necessary costs, charges or expenses expended in preparation of a supplementary remedial plan and the associated investigation of **Pollutants** different from those identified in the **Remedial Plan** under Coverage B.
- D. Clean-Up Cost Progress Reports** means reports completed by the **Insured** which summarize **Clean-Up** activities performed and anticipated to be performed and the costs and estimated costs of those activities. The form of the reports will be established by the Company and attached to this policy. The reports must be completed by the **Insured** and submitted to the Company at the time intervals prescribed in Item 8 of the Declarations.
- E. Co-Insurance Participation** means the percentage of **Clean-Up Costs** the **Insured** must bear in excess of the **Self-Insured Retention**, as shown in Item 6(b) of the Declarations.
- F. Covered Location(s)** means the site(s) designated in Item 3 of the Declarations.
- G. Inception Date** means the date set forth in Item 2(a) of the Declarations.
- H. Insured** means the **Named Insured(s)** and any additional insured(s).
- I. Named Insured** means the person or entity designated as such in Item 1 of the Declarations.
- J. Natural Resource Damage** means physical injury to or destruction of including the resulting loss of value of land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by any federal, provincial, territorial or municipal government, or any agency, board or commission thereof, any foreign government, or any Indian band or council.
- K. Pollutants** means wastes and any solid, liquid, gaseous or thermal irritant or contaminant, including, soot, acids, alkalis, or toxic chemicals that were present on, under or migrated from the **Covered Location** prior to the **Inception Date**.
- L. Property Damage** means:
1. Physical injury to or destruction of real or personal property, including the resulting loss of use or value thereof.
 2. Loss of use or value of real or personal property that has not been physically injured or destroyed.
 3. **Natural Resource Damage**.
- Property Damage** does not include **Clean-Up Costs**.
- M. Remedial Plan** means the documentation identified in the Definition of Remedial Plan Endorsement and attached thereto and forming a part of the Policy which describes the **Clean-Up** to be undertaken at the **Covered Location**, and, to the extent described therein, at areas beyond the boundaries of the **Covered Location** and any government mandated changes thereto.
- N. Self-Insured Retention** means the amount of **Clean-Up Costs** stated in Item 5 of the Declarations.

O. Scheduled Contractor means a remediation contractor approved by the Company and scheduled on the Definition of Scheduled Contractor Endorsement.

P. Termination Date means the earliest of the following:

1. With respect to Coverage A:

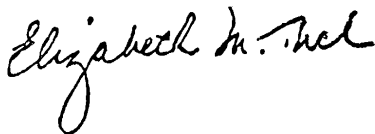
- (a) The date set forth in Item 2(b) of the Declarations;
- (b) The date on which the Limit of Liability shown in Item 4 of the Declarations is exhausted;
- (c) The date the **Insured** receives written approval from the governmental entity or quasi-governmental entity responsible for supervision of the **Clean-Up** that **Clean-Up** has been completed in accordance with the **Remedial Plan**, or the date the **Remedial Plan** is complete pursuant to the requirements of any applicable state voluntary cleanup agreement or program; or
- (d) Cancellation of the Policy pursuant to Section VI. CONDITIONS, Paragraph A. Cancellation.

2. With respect to Coverage B:

- (a) The date the Limit of Liability shown in item 4 of the Declarations is exhausted;
- (b) The date the **Insured** receives written approval from the governmental entity or quasi-governmental entity responsible for supervision of the **Clean-Up** that **Clean-Up** has been completed in accordance with the **Remedial Plan**, or the date the **Remedial Plan** is complete pursuant to the requirements of any applicable state voluntary cleanup agreement or program; or
- (c) Cancellation of the Policy pursuant to Section VI. CONDITIONS, Paragraph A. Cancellation.

The **Termination Date** shall not be extended by the exercise of any rights held by a governmental entity or quasi-governmental entity to reopen, reconsider or otherwise cause the **Insured** to perform **Clean-Up** after previously having approved or acknowledged that the **Remedial Plan** has been completed.

IN WITNESS WHEREOF, the Company has caused this Policy to be signed by its president and secretary and signed on the Declarations page by a duly authorized representative.



Elizabeth M. Tuck, Secretary



Joseph L. Boren, President