

COVERAGE H3 - FARMER'S LIMITED POLLUTION LIABILITY INSURANCE

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 on the “Declaration Page”. The words “**we**”, “**us**” and “**our**” refer to the insurer providing this insurance.

The word “insured” means any person or organization qualifying as such under SECTION II-WHO IS AN INSURED. Other words and phrases that appear in quotation marks have special meaning. Refer to SECTION V-DEFINITIONS.

SECTION I - COVERAGES

1. INSURING AGREEMENTS

A) Bodily Injury and Property Damage

- (a) “We” will pay those sums that the insured becomes legally obligated to pay as compensatory damages because of “bodily injury” or “property damage” to which this insurance applies, provided that:
1. such “bodily injury” or “property damage” is caused by a “pollution incident” which commences during the policy period; and
 2. the claim for such compensatory damages is first made against the insured during the policy period or within one year after its termination and reported to us in accordance with Section VI Condition 5.

A claim by a person or organization seeking compensatory damages will be deemed to have been made when notice of such claim is received and recorded by any insured or by “us”, whichever comes first.

All claims for compensatory damages because of “bodily injury” or “property damage” sustained by any one person or organization as a result of any one “pollution incident” shall be deemed to have been made at the time the first of those claims is made.

- (b) “We” have the right and duty to defend claims made or “actions” brought in Canada against the insured seeking such compensatory damages and to pay for the “defence expense”. This right and duty is limited as described in Clause 2 of Section I-DEFENCE OF CLAIMS OR ACTIONS.

- (c) Compensatory damages include pre-judgment interest awarded against the insured on that part of the judgment “we” pay.

B) Clean-up Costs

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

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

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

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

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

2. DEFENCE OF CLAIMS OR ACTIONS

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

3. EXCLUSIONS

This insurance does not apply to:

- (a) “Bodily injury”, “property damage” or “clean-up costs” which are expected or intended from the standpoint of any insured;
- (b) “Bodily injury”, “property damage” or “clean-up costs” arising out of a “pollution incident” which “pollution incident” is expected or intended from the standpoint of any insured;

- (c) Liability assumed by any insured under any contract or agreement, but this exclusion does not apply to liability that such insured would have in the absence of such contract or agreement;
- (d) Any obligation of any insured pursuant to any employment standards law, workers' compensation law, unemployment insurance law, disability benefits law, occupational health and safety law or any similar law;
- (e) 1) "Bodily injury" to an employee of any insured arising out of or in the course of employment by any insured; or
2) any claim for damages by the spouse, child, parent, brother, sister or other dependent of an employee of any insured as a result of "bodily injury" to an employee arising out of or in the course of employment by any insured.

This exclusion applies:

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

- (b) the furnishing by an insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility; and
- (c) the possession, consumption, use, handling, disposal or transportation of fissionable substances, or of other radioactive material (except radioactive isotopes, away from a nuclear facility, which have reached the final stage of fabrication so as to be usable for any scientific, medical, agricultural, commercial or industrial purpose) used, distributed, handled or sold by an insured.

As used in this policy:

- i) The term “nuclear energy hazard” means the radioactive, toxic, explosive, or other hazardous properties of radioactive material
- ii) The term “radioactive material” means uranium, thorium, plutonium, neptunium, their respective derivatives and compounds, radioactive isotopes of other elements and any other substances that the Atomic Energy Control Board may, by regulation, designate as being prescribed substances capable of releasing atomic energy, or as being requisite for the production, use or application of atomic energy;
- iii) The term “nuclear facility” means
 - (a) any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of plutonium, thorium and uranium or any one or more of them;
 - (b) any equipment or device designed or used for
 - i) separating the isotopes of plutonium, thorium, and uranium or any one or more of them;
 - ii) processing or utilizing spent fuel; or
 - iii) handling, processing or packaging waste;
 - (c) any equipment or device used for the processing, fabricating or alloying of plutonium, thorium or uranium enriched in the isotope uranium 233 or in the isotope uranium 235, or any one or more of them if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;
 - (d) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste radioactive material;

and includes the site on which any of the foregoing is located, together with all operations conducted thereon and all premises used for such operations.
- iv) The term “fissionable substance” means any prescribed substance that is, or from which can be obtained, a substance capable of releasing atomic energy by nuclear fission.
- (q) “Bodily injury”, “property damage” or “clean-up costs” caused by a “pollution incident” resulting from war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military power, riot or civil commotion, sabotage or any other act of deliberate destruction of property or terrorism.
- (r) the erasure, destruction, corruption, misappropriation or misinterpretation of data;
- (s) erroneously creating, amending, entering, deleting or using data;
- (t) “Bodily injury” or “property damage” or “clean-up costs” caused by a “pollution incident” arising out of any actual or alleged liability whatsoever for any claim or claims in respect of loss or losses, damage, cost or expenses directly or indirectly caused by resulting from or in consequence of, or in any way involving asbestos, or any materials containing asbestos in whatever form or quantity. This exclusion applies regardless of any other cause that contributes concurrently or in any sequence to the loss, damages, cost or expense.

4. CLARIFICATION OF INTENTION

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

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

SECTION II - WHO IS AN INSURED

- 1. If “you” are designated on the “Declaration Page” as:
 - (a) An individual, “you” and “your” spouse are insureds, but only with respect to the conduct of a business of which “you” are the sole owner.
 - (b) A partnership or joint venture, “you” are an insured. “Your” members, “your” partners, and their spouses are also insureds, but only with respect to the conduct of “your” business.

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

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

SECTION III - LIMITS OF INSURANCE AND DEDUCTIBLE

1. AGGREGATE LIMIT

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

2. INCIDENT LIMIT

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

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

SECTION IV - POLICY TERRITORY AND SCOPE

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

SECTION V- DEFINITIONS

1. **"Action"** means a civil proceeding in a Canadian Court in which compensatory damages to which this insurance applies are claimed. "Action" includes an arbitration proceeding in Canada in which such "compensatory damages" are claimed, provided that the insured is either required to submit or submits with our consent to such arbitration proceeding.
2. **"Bodily injury"** means "bodily injury", sickness or disease sustained by a person, including death resulting from any of these at any time.
3. **"Clean-up costs"** means expenses for the removal or neutralization of "pollutants".
4. **"Declaration Page"** means the Section of "your" Insurance Policy containing basic information such as "your" name and address, the description and location of the insured property, the policy term, the amount of coverage, and premium amounts.
5. **"Defence expense"** means payments allocated to a specific claim or "action" for its investigation, settlement, or defence, including:
 - (a) legal fees, expert fees, disbursements and all other litigation expenses;
 - (b) reasonable expenses incurred by the insured at our request to assist "us" in the investigation or defence of the claim or "action" including actual loss of earnings up to \$100 a day because of time off from work;
 - (c) all costs taxed against the insured in the "action"."Defence expense" does not include salaries and expenses of our employees or the Insured's employees, other than:
 1. that portion of our employed lawyers' fees, salaries and expenses allocated to a specific claim or "action"; and
 2. the expenses described in 4(b) above.
6. **"Environmental damage"** means the injurious presence of "pollutants" in or upon land, the atmosphere, or any watercourse or body of water.
7. The **"Insured's product"** means:
 - (a) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
 - (1) any insured;
 - (2) others trading under any insured's name; or
 - (3) a person or organization whose business or assets any insured has acquired; and
 - (b) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products. The "Insured's product" includes warranties or representations made at any time with respect to the fitness, quality, durability or performance of any of the items included in (a) and (b) above. The "Insured's product" does not include vending machines or other property rented to or located for the use of others but not sold.
8. The **"Insured's work"** means
 - (a) Work or operations performed by any insured or on behalf of any insured; and
 - (b) Materials, parts or equipment furnished in connection with such work or operations.The "Insured's work" includes warranties or representations made at any time with respect to the fitness, quality, durability or performance of any of the items included in (a) or (b) above.
9. **"Pollutants"** means any solid, liquid or gaseous contaminant other than heat, sound, vibration or radiation.
10. **"Pollution Incident"** means an unexpected and unintentional discharge, dispersal, release or escape of any "pollutants", that is sudden and accidental. Such discharge, dispersal, release or escape is the result of the normal farming operations of the insured resulting in "environmental damage". The entirety of any such occurrences which arises out of a continuous or repeated exposure to substantially the same conditions shall be deemed to be one "pollution incident".
11. (a) **"Products-completed operations hazard"** includes all "bodily injury", "property damage" and "clean-up costs" occurring away from premises any insured owns or rents and arising out of the "insured's product" or the "insured's work" except:
 - (a) Products that are still in "your" physical possession; or
 - (b) Work that has not yet been completed or abandoned.(b) The **"Insured's work"** will be deemed completed at the earliest of the following times:
 1. When all of the work called for in the Insured's contract has been completed.
 2. When all of the work to be done at the site has been completed if the Insured's contract calls for work at more than one site.
 3. When that part of work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

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

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

12. **"Property damage"** means:

(a) Physical injury to, destruction of, or contamination of tangible property, including all loss of use thereof at any time resulting therefrom, or

(b) Loss of use of tangible property which has not been physically injured, destroyed, or contaminated but which has been evacuated, withdrawn from use, or rendered inaccessible because of a "pollution incident".

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

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

SECTION VI-CONDITIONS

1. **Authorization**

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

2. **Bankruptcy**

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

3. **Cancellation**

(a) The first Named Insured shown on the "Declaration Page" may cancel this policy by mailing or delivering to "us" advance written notice of cancellation.

(b) "We" may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:

1) 15 days before the effective date of cancellation if "we" cancel for non-payment of premium; or

2) 30 days before the effective date of cancellation if "we" cancel for any other reason.

(c) "We" will mail or deliver our notice to the first Named Insured's last mailing address known to "us".

(d) Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.

(e) If this policy is cancelled, "we" will send the first Named Insured any premium refund due. If "we" cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if "we" have not made or offered a refund.

(f) If notice is mailed, proof of mailing will be sufficient proof of notice.

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

4. **Changes**

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

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

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

Notice should include:

1) how, when, where the "pollution incident" took place;

2) the names and addresses of any injured persons and of witnesses;

3) the nature and location of any "property damage" arising out of the "pollution incident".

Notice of a "pollution incident" is not notice of a claim.

(b) If a claim is made or "action" is brought against any insured, "you" must see to it that "we" receive immediate written notice of the claim or "action".

(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 "action";

2) Authorize "us" to obtain records and other information;

3) Cooperate with "us" in the investigation, settlement or defence of the claim or "action"; 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 its own cost, voluntarily make a payment, assume any obligation, or incur any expense, without our consent other than expenses for immediate "clean-up costs" which are required by any applicable statute or regulation related to the protection of the environment and promulgated by any governmental body.

6. Examination of Books and Records

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

7. Inspections and Surveys

"We" have the right but are not obligated to:

- (a) make inspections and surveys at any time;
- (b) give "you" reports on the conditions "we" find; and
- (c) recommend any changes.

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

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

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

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

8. 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 an "action" asking for compensatory 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 obtained after an actual trial, but "we" will not be liable for compensatory damages that are not payable under the terms of this policy or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by "us", the insured and the claimant or the claimant's legal representative. Every "action" or proceeding against "us" shall be commenced within one year next after the date of such judgment or agreed settlement and not afterwards.

9. Material Change in the Risk

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

10. Other Insurance

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

11. Premium Audit

- (a) "We" will compute all premiums for this policy in accordance with our rules and rates.
- (b) Premium shown in this policy as advance premium is a deposit premium only. At the close of each audit period "we" will compute the earned premium for that period. Audit premiums are due and payable on notice to the first Named Insured. If the sum of the advance and audit premiums paid for the policy term is greater than the earned premium, "we" will return the excess to the first Named Insured subject to the retention of the minimum premium shown on the "Declaration Page".
- (c) 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.

12. Priority of Payment

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

- (a) "clean-up costs";
- (b) "defence expense";
- (c) "property damage";
- (d) "bodily injury".

13. Representations

By accepting this policy, "you" agree that

- (a) the statements in the Application and 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" statements and representations.

14. Separation of Insureds, Cross Liability

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

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

15. Transfer of Rights of Recovery Against Others to Us

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

16. Transfer of "your" Rights and Duties Under this Policy

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

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