



STATE FISCAL ACCOUNTABILITY AUTHORITY

INSURANCE RESERVE FUND
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POLLUTION LIABILITY COVERAGE FOR OWNERS OF UNDERGROUND STORAGE TANKS

Policy provides claims-made coverage. Please read entire form carefully.

I. Coverage

The **Fund** will pay on behalf of the **insured** all sums which the **insured** shall become legally obligated to pay as damages because of:

Coverage A. Personal injury, property damage, or environment injury for claims which are first made against the **insured** after **February 18, 1994** or the **original policy inception date**, whichever is later, and only if reported to the **Fund** during the **policy period**, or applicable Extended Reporting Period, arising out of an **environmental impairment** emanating from an **insured site**.

Coverage B. Pollution clean-up liability arising out of an **environmental impairment** emanating from an **insured site** which first becomes known to the **insured** after February 18, 1994 or the **original policy inception date**, whichever is later, and only if reported to the **Fund** during the **policy period**.

II. Definitions

"Claim" means a written demand made against the **insured** for **damages**.

"Damages" means:

- (A) monetary awards or settlements of compensatory damages, or;
- (B) reasonable and necessary costs or expenses incurred to remove, treat, neutralize, contain, or clean up any petroleum or petroleum product; provided, however, **damages** shall not include, and the policy shall not pay for the cost of:
 1. replacement or repair of storage tanks or other receptacles;
 2. replacement or repair of piping, connections, and valves in conjunction with (A);
 3. excavation or backfilling done in conjunction with (A) or (B); or;
 4. testing for a suspected **environmental impairment** if the results of the testing indicate that there has been no **environmental impairment**.

"Environmental Impairment" means the release, spillage, leakage, emission, discharge, escape, leach, or dispersal from an **underground storage tank** containing petroleum or petroleum products into ground water, surface water or subsurface soils. Provided that such release, spillage, leakage, emission, discharge, escape, leach or dispersal is neither expected nor intended.

All such releases, spillages, leakages, emissions, discharges, escapes, leaches, or dispersals that

- (A) are attributable directly to the same event(s), circumstance(s), condition(s), or cause(s) or;
- (B) emanate from any one **insured site** and are subject of a single program to treat, neutralize, contain, and/or clean up the petroleum or petroleum products in order to comply with applicable legal requirements.

shall be treated as one **environmental impairment**, respective of the time period or area over which they occur.

"Environmental Injury" means impairment or diminution of or interference with any governmental right or amenity protected by law not included in **personal injury** or **property damage**.

"Fund" means the South Carolina Budget & Control Board Office of Insurance Reserve Fund.

"Insured" means the entity named in the Declarations of this Policy as the **named insured** and any director, officer or employee thereof acting in the scope of his/her duties as such.

"Insured Site" means a contiguous plot of land as set forth in the Declarations within which one or more underground storage tanks, including piping, are located. An **insured site** may be scheduled in one or more segments in the Declarations.

"Named Insured" means the entity named in the Declarations of this Policy.

"Original Policy Inception Date" means the date in the Declarations representing the inception date of this Policy, or, if this Policy is a renewal policy, the inception date of the first policy issued by the **Fund** to the Insured in the continuous and uninterrupted succession of policies that includes this Policy.

"Personal Injury" means bodily injury, sickness, disease, mental anguish, shock, or disability sustained by any person, including death resulting therefrom.

"Policy Period" means the period set forth in the Declarations, or any shorter period resulting from cancellation.

"Pollution Clean-up Liability" means:

- (A) the obligation of the **insured** to remove, treat, neutralize, contain, or clean up any petroleum or petroleum product in order to comply with any statute, ordinance, rule, regulation, directive, order, or similar legal requirement, or;
- (B) action by the **insured**, consented to in advance, in writing from the **Fund**, to remove, treat, neutralize, contain or clean up any petroleum or petroleum product to avert, reduce, or eliminate liability for **personal injury, property damage** or **environmental injury** that is, or otherwise would have been, covered hereunder.

"Property Damage" means:

- (A) physical injury to or destruction of tangible property, including the resulting loss of use thereof, or;
- (B) loss of use of tangible property which has not been physically injured or destroyed, provided such loss of use is caused by **environmental impairment**.

"Underground Storage Tank" means any one or combination of tanks, including underground pipes connected thereto, which is used to contain an accumulation of petroleum or petroleum products, and the volume of which including the volume of the underground pipes connected thereto, is ten percent or more beneath the surface of the ground. The term does not include any:

- (A) farm or residential tank of one thousand one hundred (1,100) gallons or less capacity used for storing motor fuel for non commercial purposes

- (B) septic tank,
- (C) pipeline facility, including gathering line, regulated under Federal Natural Gas Pipeline Safety Act of 1968, or the Federal Hazardous Liquid Pipeline Safety Act of 1979. A pipeline facility which is an intrastate pipeline facility regulated under state laws comparable to the above provisions of law referred to in this subitem (D) is also not included within the definition of an **underground storage tank**,
- (D) Surface impoundment, pit, pond, or lagoon,
- (E) Storm water or wastewater collection system,
- (F) flow-through process tank,
- (G) liquid trap or associated gathering lines directly related to oil or gas production and gathering operations,
- (H) storage tank situated in an underground area, such as a basement, cellar, mineworking drift, shaft, or tunnel, if the petroleum storage tank is situated upon or above the surface of the floor,
- (I) hydraulic lift reservoirs, such as for automobile hoists and elevators, containing hydraulic oil, or;
- (J) any pipes connected to any tank which is described in subitems (A) through (I).

III. TERRITORY

This policy applies only to **claims** or **pollution clean-up liability** arising from **environmental impairments** that emanate from an **insured site** in the **state of South Carolina**.

IV. EXCLUSIONS

This insurance does not apply to, and the **Fund** shall have no liability hereunder in respect of, the following:

- (A) any **personal injury, property damage, environmental injury** or **pollution clean-up liability** arising from:
 1. any **environmental impairment** that was known or should have been known to the **insured** prior to the **original policy inception date**, or;
 2. any **environmental impairment** with respect to any location newly acquired or activated during the **policy period** if such **environmental impairment** was known or should have been known to the **insured** prior to such acquisition or activation;
- (B) **personal injury, property damage, environmental injury** or **pollution clean-up liability** that arises out of or is directly or indirectly attributable to any failure to comply with any applicable statute, regulation, ordinance, directive, or order relating to the protection of the environment and promulgated by any governmental body, provided that failure to comply is a willful or deliberate act or omission of the **insured**;
- (C) any obligation for which the **insured** or any carrier as his/her insurer may be held liable under any Workers' Compensation, unemployment compensation or disability benefits law or under any similar law;
- (D) **Personal injury** to any employee of the **insured** if such injury occurs during and in course of said employment, or to any obligation of the **insured** to indemnify another because of **damages** arising out of such injury;
- (E) Except as provided by **Coverage B**, damage to property:

1. owned by, occupied by, or rented to the **insured**;
 2. used by the **insured**, or;
 3. in the care, custody, or control of the **insured** or over which the **insured** is for any purpose exercising physical control;
- (F) any liability assumed by the **insured** under any contract or agreement;
 - (G) **Property damage** to goods or products manufactured, sold, handled, or distributed by the **insured**, or **property damage** to work performed by or on behalf of the **insured**;
 - (H) **Personal injury, property damage, environmental injury** or **pollution clean-up liability** arising out of an **environmental impairment** emanating from an **insured site** that is not reported by or for the **insured** to the **Fund** before the **insured site**, or the portion thereof from which the **environmental impairment** emanates, is sold, given away, or abandoned by the **insured**;
 - (I) **Personal injury, property damage, environmental injury** or **pollution clean-up liability** arising out of the ownership, maintenance, use, or entrustment to others of any motor vehicle (meaning any land motor vehicle, automobile, trailer, or semi-trailer designed for travel on public roads including any machinery or apparatus attached thereto), aircraft, watercraft, or rolling stock owned or operated by or rented or loaned to any **insured**. Use includes operation and loading or unloading;
 - (J) **Personal injury, property damage, environmental injury** or **pollution clean-up liability** arising out of:
 1. any clean-up operation reasonably considered to be routine and normal in connection with the business of the **insured**,
 2. the dumping of any petroleum or petroleum products in international waters, or;
 3. the testing, monitoring, clean-up removal, containment, treatment, detoxification, or neutralization of petroleum or petroleum products at any waste disposal site or Superfund site;
 - (K) **Personal injury, property damage, environmental injury** or **pollution clean-up liability** arising out of acid rain;
 - (L) 1. **Personal injury, property damage, environmental injury** or **pollution clean-up liability** :
 - a. with respect to which an **insured** under this Policy is also an insured under a nuclear energy liability policy issued by the Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, or Nuclear Insurance Association of Canada, or would be an insured under any such policy but for its termination upon exhaustion of its limits of liability, or;
 - b. 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;

2. **Personal injury, property damage, environmental injury or pollution clean-up liability** resulting from the Hazardous Properties of Nuclear Material, if:

- a. 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,
- b. 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;
- c. the injury, damage, or liability 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 c. applies only to **property damage** to such Nuclear Facility and any property thereat;

3. as used in this exclusion: **"Hazardous Properties"** include radioactive, toxic or explosive properties;

"Nuclear Material" means Source Material, Special Nuclear Material or Byproduct Material;

"Source Material", **"Special Nuclear Material"**, and **"Byproducts 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;

"Waste" means any waste material (1) containing Byproduct Material and (2) resulting from the operation by any person or organization of any Nuclear Facility included within the definition of Nuclear Facility under paragraph (a) or (b) thereof;

"Nuclear Facility" means

- a. any Nuclear Reactor;
- b. any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing Spent Fuel, or (3) handling, processing, or packaging Waste;
- c. any equipment or device used for the processing, fabricating, or alloying of Special Nuclear Material if at anytime 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; or;
- d. 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;

"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;

Property damage includes all forms of radioactive contamination of property;

(M) **Personal injury, property damage, environmental injury or pollution clean-up liability** directly or indirectly occasioned by, happening through or in consequence of war (declared or undeclared), invasion acts of foreign enemies, hostilities, civil war, rebellion, revolution, insurrection, military or usurped power, or confiscation or nationalization or requisition or destruction of or damage to property by or under the order of any government or public or local authority;

(N) **Personal injury, property damage, environmental injury or pollution clean-up liability** arising out of an **environmental impairment** emanating from an inactive or closed location unless:

1. such location is listed in the Declarations; and
2. such location continues to be either owned or leased by the **named insured**; and
3. tanks and piping have been properly deactivated and secured per existing rules and regulations;

(O) **Personal injury, property damage, environmental injury or pollution clean-up liability** arising out of an **environmental impairment** that originates away from any **insured site**,

- (P) 1. any governmental, civil, or criminal fines or penalties or;
2. punitive damages of any kind or nature.

V. EXTENDED REPORTING PERIOD

In the event of termination of insurance either by non-renewal or cancellation of this policy, or termination of a reporting period, the **insured** shall have the right upon the payment of an additional premium (to be computed in accordance with the **Fund's** rules, rates, rating plans and premiums applicable on the effective date of the endorsement) to purchase 12 months extension from the date of cancellation or expiration of the policy. Such right hereunder must, however, be exercised by the insured by written notice not later than thirty (30) days after such termination date.

The extension of coverage granted hereunder shall only apply as respects **claims** covered hereunder under **Coverage A** which are reported to the **Fund** during the extended reporting period as the result of an **environmental impairment** existing at or prior to the date of expiration or cancellation of this Policy, and otherwise covered by this Policy. Any extension of coverage hereunder shall not result in the reinstatement of the limits of liability set forth in the Declarations.

VI. LIMITS OF LIABILITY

Irrespective of the period over which the damages, injuries, or liabilities take place, the **Fund's** liability under this Policy shall be limited as follows:

The **Fund's** Limits of Liability for the **policy period** and inclusive of the Extended Reporting Period, if that right is exercised under this Policy by the **named insured**, in the aggregate for all **claims** (covered hereunder under **Coverage A**) and all **pollution clean-up liability** (covered hereunder **Coverage B**) shall not exceed the Limits of Liability as stated in the Declarations.

In no event shall the inclusion of **pollution clean-up liability** as provided in **Coverage B** increase the **insured's** Limits of Liability as set forth in the Declarations, nor shall the inclusion of more than one **insured** serve to increase the **Fund's** Limits of Liability as stated therein.

VII. INSURED'S DUTIES IN THE EVENT OF CLAIMS OR SUIT

A. If the **insured** becomes aware of an **environmental impairment** which could involve this Policy, the **Fund** shall be given:

1. immediate written notice containing particulars sufficient to identify the **insured**;
2. reasonably obtainable information with respect to the time, place, and circumstances thereof; and
3. the names and addresses of any injured persons, and of any available witnesses.

The above information shall be given by or for the **insured** to the **Fund** or any of its authorized agents as soon as practicable. Subject to the **insured's** obligation under this Policy to take promptly all reasonable steps necessary to prevent injury or damage from arising, no costs, charges, or expenses shall be incurred without the **Fund's** consent.

B. A claim considered **first made** when the **Fund** first receives written notice of the **claim**.

C. In the event of a **claim** or suit, immediate written notice containing particulars sufficient to identify the **insured**, and reasonably obtainable information with respect to the time, place, and circumstances thereof, and the names and addresses of any injured persons and of available witnesses, shall be given by or for the **insured** to the **Fund** or any of its authorized agents as soon as practicable.

D. If claim is made or suit is brought against the **insured**, the **insured** shall immediately forward to the **Fund** every demand, notice, summons or other process received by him or his representative.

E. The **Fund** shall have the right and duty to defend any claim or suit against the **insured** seeking **damages** to which **Coverage A** applies. The **Fund** may, at its discretion, investigate any **environmental impairment** and settle any claim or suit that may result without consent of the **insured**. The **Fund's** right and duty to defend end, and the **Fund** shall not be obligated to continue to defend any claim or suit, when the applicable limit of the **Fund's** liability has been exhausted.

F. The **insured** shall cooperate with the **Fund** and, upon the **Fund's** request, assist in making settlements, in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the **insured** because of injury or damage with respect to which insurance is afforded under this policy; and the **insured** shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The **insured** shall not, except at his own cost, voluntarily make any

payment, assume any obligation or incur any expense, without the **Fund's** written consent.

G. The **Fund** shall have the right, but not the duty, to participate at its expense in any governmental proceeding that seeks to impose legal obligations in respect of an **environmental impairment** covered hereunder.

VIII. OTHER CONDITIONS

A. INSPECTION AND AUDIT - The **Fund** shall be permitted but not obligated to inspect the **named insured's** property and operations at any time. Neither the **Fund's** right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking, on behalf of or for the benefit of the **named insured** or others, to determine or warrant that such property or operations are safe or healthful, or are in compliance with any law, rule or regulation.

The **Fund** may examine and audit the **named insured's** books and records at any time during the policy period and extensions thereof and within three years after the final termination of this policy, as far as they relate to the subject matter of this insurance.

B. PREVENTION OF LOSSES - In the event of any **environmental impairment** or knowledge of any circumstances, not previously disclosed, that might reasonably be expected to result in an **environmental impairment**, the **insured** shall promptly take all reasonable steps to prevent injury or damage from arising out of the impairment or circumstances and shall give notice of such circumstances or preventative measures to the **Fund** or any of its authorized agents.

C. PROMPT COMPLIANCE with CLEAN-UP OBLIGATION - In the event of any **pollution clean-up liability** that involves the legal requirements of the **insured** to remove, treat, neutralize, or clean-up any petroleum or petroleum products in order to comply with any statute, ordinance, rule, regulation, directive, order, or similar legal requirement, the **insured** shall, subject to first securing the **Fund's** consent to the extent required under this Policy, promptly undertake all reasonable steps necessary to satisfy its obligation to comply with such legal requirement. Failure to take such prompt action shall result in forfeiture of any rights to coverage under this Policy for such **pollution clean-up liability**.

D. ACTION AGAINST FUND - No action shall lie against the **Fund** unless, as a condition precedent thereto, there shall have been full compliance with all the terms of this policy, nor until the amount of the **insured's** obligation to pay shall have been finally determined either by judgment against the **insured** after actual trial or by written agreement of the **insured**, the claimant and the **Fund**.

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

E. OTHER INSURANCE - The insurance afforded by this policy is primary insurance, except when stated to apply in excess of or contingent upon the absence of other insurance. When this insurance is primary and the insured has other insurance which is stated to be applicable to the loss on an excess or contingent basis, the amount of the **Fund's** liability under this policy shall not be reduced by the existence of such other insurance.

When both this insurance and other insurance apply to the loss of on the same basis, whether primary, excess or contingent, the **Fund** shall not be liable under this policy for a greater portion of the loss than that stated in the applicable contribution provision below:

- (a) Contribution by Equal Shares. If all of such other valid and collectible insurance provides for contribution by equal shares, the **Fund** shall not be liable for a greater portion of such loss than would be payable if each insurer contributes an equal share until the share of each insurer equals the lowest applicable limit of liability under any one policy or the full amount of the loss is paid and with respect to any amount of loss not so paid the remaining insurers then continue to contribute equal shares of the remaining amount of the loss until each such insurer has paid its limit in full or the full amount of the loss is paid.
- (b) Contribution by Limits. If any of such other insurance does not provide for contribution by equal share, the **Fund** shall not be liable for a greater proportion of such loss than the applicable limit of liability under this policy for such loss bears to the total applicable limit of liability of all valid and collectible insurance against such loss.

F. SUBROGATION - In the event of any payment under this policy, the **Fund** shall be subrogated to all the insured's rights of recovery therefore 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. The **insured** shall do nothing after loss to prejudice such rights.

G. OTHER RECOVERIES - In the event an **insured** recovers, from any governmental fund available to the **insured** or otherwise, any **damages** covered under this Policy, the **Fund** shall be entitled to recover from the **insured** the portion of such recovery that is equal to the amount of such **damages** paid by the **Fund**.

H. CHANGES - Notices to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this policy or stop the **Fund** from asserting any right under the terms of this policy; nor shall the terms of this policy be waived or changed, except by endorsement issued to form a part of this policy, signed by a duly authorized officer or representative of the **Fund**.

I. ASSIGNMENT - Assignment of interest under this policy shall not bind the **Fund** until its consent is endorsed hereon.

- J. CANCELLATION AND NON-RENEWAL
- (a) This policy may be cancelled by the **named insured** by mailing to the **Fund** a 90 day written advance notice stating when thereafter the cancellation shall be effective. A political subdivision may cancel all policies with the **Fund** by mailing to the **Fund** a 90 day written advance notice as provided in §15-78-140 of the South Carolina Code of Laws.
 - (b) The **Fund** may cancel this policy for non-payment of premium by mailing a notice of cancellation giving not less than 30 days notice of the cancellation as provided in §15-78-160 of the South Carolina Code of Laws.
 - (c) If this policy is cancelled in accordance with (a) or (b) above, earned premium shall be computed in accordance with the customary short rate table and procedure. Premium adjustment may be made either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.
 - (d) For the purposes of this policy, the term **non-renewal** shall mean **cancellation** if the insured is ceasing all coverages with the **Fund** and conditions as provided in sections (a), (b) and (c) above apply.

K. DECLARATIONS - By acceptance of this policy, the **named insured** agrees that the statements in the Declarations are their agreements and representations, that this policy is issued in reliance upon the truth of such representations and that this policy embodies all agreements existing between the **named insured** and the **Fund** or any of its agents relating to this insurance.

INSURANCE RESERVE FUND

By 

Director