

INDIAN HARBOR INSURANCE COMPANY
STAMFORD, CONNECTICUT
(A Stock Insurance Company Herein Called the "Company")

REMEDIATION STOP LOSS POLICY

THIS POLICY REQUIRES THAT A STOP LOSS EXPENSE FIRST ARISE AND BE REPORTED TO THE COMPANY DURING THE POLICY PERIOD. THE POLICY PROVIDES NO COVERAGE FOR LEGAL DEFENSE EXPENSES. IN ADDITION, THIS POLICY MAY HAVE PROVISIONS OR REQUIREMENTS DIFFERENT FROM OTHER POLICIES YOU MAY HAVE PURCHASED. PLEASE READ CAREFULLY.

THE PREMIUM FOR THIS POLICY IS 100% MINIMUM EARNED AS OF THE INCEPTION DATE OF THE POLICY.

In consideration of the payment of the Policy Premium stated in Item 7. of the Declarations and in reliance upon the statements contained in the Application and any other supplemental materials and information submitted herewith, and subject to all the terms and conditions of this Policy, and the Limit of Liability, RETENTION and CO-INSURANCE PARTICIPATION stated in the Declarations, the Company and the INSURED agree as follows:

I. INSURING AGREEMENT

The Company will pay on behalf of the INSURED for STOP LOSS EXPENSE as a result of

- (a) the DISCOVERY OF POLLUTANTS,
- (b) GOVERNMENT ACTION or
- (c) a CHANGE IN LAW

first reported to the Company during the POLICY PERIOD in accordance with the reporting provisions set forth in **Section VI. REPORTING, SETTLEMENT AND COOPERATION.**

The amount the Company will pay on behalf of the INSURED for STOP LOSS EXPENSE shall be in excess of the RETENTION and subject to any CO-INSURANCE PARTICIPATION.

II. DEFINITIONS

- A. CHANGE IN LAW** means a change during the POLICY PERIOD in a Federal, State, Local or Provincial law applicable to POLLUTANTS to the extent the change affects the SCOPE OF WORK.
- B. CONTRACT PARTY** means any party to the REMEDIATION CONTRACT.
- C. CONTRACTOR(S)** means any individual or entity specified in the Remediation Stop Loss Schedule.
- D. CO-INSURANCE PARTICIPATION** means the percentage of STOP LOSS EXPENSE, as stated in Item 3a. of the Declarations, which the INSURED is responsible to pay in excess of the RETENTION. CO-INSURANCE PARTICIPATION erodes the applicable Limit of Liability stated in Item 3. of the Declarations.

- E. DISCOVERY OF POLLUTANTS** means the discovery, during the POLICY PERIOD, of the following:
1. POLLUTANTS unknown to an INSURED REPRESENTATIVE as of the inception date of the Policy; or
 2. increased levels or quantities of known POLLUTANTS where such increased levels or quantities are unknown to an INSURED REPRESENTATIVE as of the inception date of the Policy.
- F. FIRST NAMED INSURED** means the person or entity stated in Item 1. of the Declarations.
- G. GOVERNMENT ACTION** means action taken during the POLICY PERIOD by the Federal, State, Local or Provincial governmental body responsible for approving and supervising the SCOPE OF WORK, or by any other entity delegated such responsibility pursuant to Federal, State, Local or Provincial laws, statutes or regulations, where such action is initiated by the governmental body or other entity and requires the INSURED to revise the SCOPE OF WORK. GOVERNMENT ACTION includes a change during the POLICY PERIOD in any applicable legally executed State voluntary clean-up agreement entered into to address POLLUTANTS where such change was initiated by a governmental body during the POLICY PERIOD.
- H. INSURED** means the FIRST NAMED INSURED, any Additional Named INSURED and any Additional INSURED endorsed onto the Policy.
- I. INSURED CONTRACT(S)** means contract(s) designated in the INSURED CONTRACT(S) Schedule.
- J. INSURED REPRESENTATIVE** means an officer, director, partner, or other employee responsible for environmental affairs of an INSURED including but not limited to any person responsible in whole or in part for the execution of the SCOPE OF WORK at the REMEDIATION PROJECT SITE(S) whether or not such person is an employee of the INSURED.
- K. POLICY PERIOD** means the period stated in Item 2. of the Declarations or any shorter period arising as a result of cancellation or completion of the SCOPE OF WORK.
- L. POLLUTANTS** means any solid, liquid, gaseous or thermal pollutant, irritant or contaminant, including but not limited to smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, hazardous materials and waste materials that are present on, at, under or migrating from the REMEDIATION PROJECT SITE(S) prior to the inception date of the Policy.
- M. PROJECT STATUS REPORT** means a series of written summaries of all remediation activities, sampling, testing and monitoring which are prepared in accordance with the Update Interval set forth in the Remediation Stop Loss Schedule. The written summaries must include a statement detailing all project costs to date, as well as projected activities and costs for the upcoming interval as specified in the report format set forth in the Remediation Stop Loss Schedule.
- N. REMEDIATION CONTRACT** means a legally binding agreement entered into by the FIRST NAMED INSURED for the execution of the SCOPE OF WORK where such agreement is listed in the INSURED CONTRACT(S) Schedule.
- O. REMEDIATION PROJECT SITE(S)** means the location(s) stated in the Remediation Stop Loss Schedule.
- P. RETENTION** means the amount set forth in Item 4. of the Declarations.

Q. SCOPE OF WORK means solely and exclusively the planned activities, stated in the Remediation Stop Loss Schedule, to be performed by CONTRACTOR(S) in accordance with the REMEDIATION CONTRACT(S) after the inception date of the Policy to address POLLUTANTS, including any changes to such activities approved by the Company and added to the Policy by endorsement.

R. STOP LOSS EXPENSE means

- (1) costs incurred to investigate, remove, remediate, dispose of, treat, or neutralize POLLUTANTS, including any monitoring and testing costs associated with such investigation, removal, disposal, treatment or neutralization, to the extent necessary to execute the SCOPE OF WORK as a result of any condition to coverage set forth in **Section I. INSURING AGREEMENT**; and
- (2) legal fees necessarily incurred, with the prior approval of the Company, to negotiate changes to the SCOPE OF WORK as a result of GOVERNMENT ACTION.

STOP LOSS EXPENSE does not include:

- a. Defense Costs
any costs, charges or expenses incurred in the investigation, adjustment, or defense of any claim, or any suit or other legal proceeding, either in law or in equity, or for litigation, arbitration or any other form of dispute resolution;
- b. Fines, Penalties or Assessments
any civil, administrative or criminal fines, penalties or assessments;
- c. Punitive, Exemplary or Multiplied Damages
any amounts assessed or paid as punitive, exemplary or multiplied damages;
- d. Bodily Injury
any amounts assessed or paid as a result of physical injury, sickness, disease, mental anguish, emotional distress, shock or building related illness sustained by any person, death resulting therefrom;
- e. Property Damage
any amounts assessed or paid as a result of physical injury to or destruction of tangible property, including the personal property of third parties; loss of use of such property that has not been physically injured or destroyed; or diminished third party property value;
- f. Natural Resource Damages
any amounts assessed or paid as a result of physical injury to or destruction of, including the resulting loss of value of, land, fish, wildlife, biota, air, water, groundwater, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et. seq.)), any state or local government, any foreign government, any Native American tribe, or, if such resources are subject to a trust restriction on alienation, any member of a Native American tribe;
- g. Routine Maintenance Expenses
any expenses incurred for maintenance at or of the REMEDIATION PROJECT SITE(S) including expenses incurred at such site(s), which would have to be incurred regardless of whether the planned remediation was taking place; and
- h. Maintenance Expenses for Institutional and Other Controls
any expenses incurred to maintain or replace institutional, engineering or other controls designed to prevent or limit exposure to POLLUTANTS or to assure the effectiveness of a chosen remedy at REMEDIATION PROJECT SITE(S) unless such expenses are specified in the SCOPE OF WORK.

III. TERRITORY

This Policy only applies to STOP LOSS EXPENSE at REMEDIATION PROJECT SITE(S) located within the United States, its Territories or possessions, or Canada.

IV. EXCLUSIONS

This insurance does not apply to STOP LOSS EXPENSE or any other coverages afforded by endorsement based upon or arising out of:

1. Contractual Liability

liability of others assumed by the INSURED under any contract or agreement.

This exclusion does not apply to STOP LOSS EXPENSE incurred by the INSURED pursuant to the REMEDIATION CONTRACT or INSURED CONTRACT(S), if any, listed in the INSURED CONTRACT(S) Schedule.

2. Intentional Actions or Misrepresentations

the intentional disregard of, or the deliberate, willful or dishonest non-compliance with any statute, regulation, ordinance, administrative complaint, notice letter, or instruction from any governmental agency or representative, or the failure to comply with any institutional control or other land use restriction, by an INSURED REPRESENTATIVE or CONTRACT PARTY.

3. Non-disclosure of POLLUTANTS

the existence of POLLUTANTS known to an INSURED REPRESENTATIVE prior to the inception of the Policy and not disclosed to the Company in the application for this Policy or any materials submitted in connection with such application.

4. Negligence/Delay/Faulty Workmanship

any negligent acts, errors, or omissions, or any unreasonable time delays, in the design or performance of the SCOPE OF WORK at the REMEDIATION PROJECT SITE(S), unless the INSURED obtains the written consent of the Company for the delay; or the repair or replacement of faulty workmanship in any construction, erection, fabrication, installation, assembly, manufacture, remediation or any other type of work performed by or on behalf of the INSURED, including any materials, parts or equipment furnished in connection therewith.

5. Warranties

any warranties, or breach thereof, either stated or implied; however, this exclusion does not apply to a promise by the INSURED(S) set forth in the REMEDIATION CONTRACT to complete the SCOPE OF WORK for a fixed price.

6. Hostile Acts

any consequence, whether direct or indirect, of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power.

7. Labor Dispute, Civil Unrest or Vandalism

strike or other labor dispute, riot, civil commotion or unrest, or act of vandalism.

8. Force Majeure

any force majeure, act of God or event beyond human origin or control, including but not limited to lightning, windstorms, floods, landslides or earthquakes.

- 9. Bankruptcy**
insolvency, default or bankruptcy of any INSURED, CONTRACT PARTY or CONTRACTOR.
- 10. Radioactive Waste or Material**
the presence or required removal of any radioactive waste or material in, on, at, under or emanating from the REMEDIATION PROJECT SITE(S) except for those expenses incurred to address such waste or material specified in the SCOPE OF WORK. Radioactive waste or material includes but is not limited to: (a) low level radioactive waste or material; and (b) any naturally occurring radioactive material including but not limited to radon.
- 11. Naturally Occurring Material**
the presence or required removal of naturally occurring material in, on, at, under or emanating from the REMEDIATION PROJECT SITE(S) unless identified in the SCOPE OF WORK.
- 12. Suspension of Permits, Licenses or Contracts**
the suspension, revocation, lapse, or cancellation of any permit, license or contract of any CONTRACTOR(S), or any modification of such permit, license or contract unless such change is approved in advance by the Company in writing.
- 13. Change in SCOPE OF WORK, CONTRACTOR(S) or CONTRACT PARTY**
any Change in the SCOPE OF WORK, CONTRACTOR(S) or CONTRACT PARTY from that disclosed to the Company prior to the inception date of the Policy unless such change is approved in advance by the Company in writing.

V. LIMIT OF LIABILITY AND RETENTION

- A.** This Policy will pay any STOP LOSS EXPENSE after the INSURED pays the entire RETENTION, subject to any CO-INSURANCE PARTICIPATION. The RETENTION and CO-INSURANCE PARTICIPATION are to be borne by the INSURED and are not to be insured. In no event shall the Company be responsible for any RETENTION or CO-INSURANCE PARTICIPATION for any reason, including but not limited to any payments by reason of bankruptcy, insolvency or default of the INSURED or CONTRACT PARTY, or any retained CONTRACTOR(S) performing the SCOPE OF WORK for the REMEDIATION PROJECT SITE(S).
- B.** The RETENTION shall be eroded only by amounts paid to CONTRACTOR(S) for activities within the SCOPE OF WORK, which have been performed and completed, and by any STOP LOSS EXPENSE.
- C.** Subject to the foregoing, the Company's total liability for all STOP LOSS EXPENSE during the POLICY PERIOD shall not exceed the Limit of Liability shown in Item 3 of the Declarations less any CO-INSURANCE PARTICIPATION.

VI. REPORTING, SETTLEMENT AND COOPERATION

- A.** As a condition precedent to coverage the INSURED shall have the following reporting obligations:
1. The INSURED shall provide the Company with written PROJECT STATUS REPORTS on the progress of the SCOPE OF WORK in accordance with the Update Interval as stated in the Remediation Stop Loss Schedule.
 2. The INSURED shall notify the Company as soon as reasonably practicable of the DISCOVERY OF POLLUTANTS, GOVERNMENT ACTION or a CHANGE IN LAW, as applicable, even if any of the foregoing has been removed from **Section I. INSURING**

AGREEMENT as a condition to coverage, and of any other applicable condition to coverage set forth in **Section I. INSURING AGREEMENT**.

3. The INSURED shall notify the Company if at any time the INSURED believes that STOP LOSS EXPENSE appears likely to exceed the RETENTION.

Notice to the Company pursuant to A.2. and A.3. above may be made orally or in writing. In the event of oral notice, the INSURED agrees to furnish a written report to the Company as soon as practicable. The report shall contain particulars sufficient to identify the DISCOVERY OF POLLUTANTS, GOVERNMENT ACTION, a CHANGE IN LAW, or any other condition to coverage set forth in **Section I. INSURING AGREEMENT** as applicable, and all reasonably obtainable information with respect to such circumstances.

- B. No STOP LOSS EXPENSE not otherwise detailed in the SCOPE OF WORK in existence as of the effective date of this Policy, including but not limited to any amount in excess of the RETENTION, shall be incurred without the prior written consent of the Company, which consent shall not be unreasonably withheld or delayed. In the event that the Company permits the INSURED to incur any STOP LOSS EXPENSE using the INSURED'S own employees, any such allowable expense shall be exclusive of any profit.
- C. The Company shall have the right at any time but not the duty to assume the adjustment of any STOP LOSS EXPENSE or complete the SCOPE OF WORK. If the Company exercises this right, the INSURED, on demand of the Company, shall promptly reimburse the Company for any amount of STOP LOSS EXPENSE falling within the INSURED'S RETENTION or CO-INSURANCE PARTICIPATION. The INSURED shall assist and cooperate with the Company.
- D. Any requests for STOP LOSS EXPENSE or required notices under the Policy shall be sent to:

XL Insurance
Attention: Environmental Claims
600 Eagleview Boulevard
P. O. Box 688
Exton, PA 19341-0688
Tel: (800) 432-2481
Fax: (610) 458-2519

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

VII. CONDITIONS

- A. **INSPECTION AND AUDIT--** The Company shall be permitted but not obligated to inspect, sample and monitor on a continuing basis the REMEDIATION PROJECT SITE(S) and SCOPE OF WORK; and to inspect the INSURED'S or CONTRACT PARTY'S property or operations and review and obtain copies of all documents related to the project or operations at any time. Neither the Company's right to make inspections, sample and monitor nor the actual undertaking thereof nor any report thereon shall constitute an undertaking, on behalf of the INSURED or others, to determine or warrant that property or operations are safe, healthful or conform to acceptable engineering practice or are in compliance with any law, rule or regulation. Access for the inspection and audit will be coordinated through the broker or agent of the FIRST NAMED INSURED.
- B. **CANCELLATION**

1. The Company may cancel this Policy at any time for any of the following reasons:
 - a. Material misrepresentation on the part of the INSURED;

- b. A breach by the INSURED of any of its obligations under the Policy, including:
 - i) a material failure to comply with the Policy terms and conditions or contractual duties;
 - ii) failure to pay the Premium under the Policy; or
 - iii) failure to pay any RETENTION or CO-INSURANCE PARTICIPATION;
 - c. bankruptcy, insolvency or default of the INSURED, CONTRACT PARTY, or CONTRACTOR(S); or
 - d. the failure to obtain adequate funding for the SCOPE OF WORK; the withdrawal or reduction in funding for the SCOPE OF WORK; or the abandonment or cancellation of the SCOPE OF WORK.
2. Notice of cancellation will be mailed or delivered at least thirty (30) days [10 days for non-payment of premium] before the effective date of cancellation to both the FIRST NAMED INSURED and any Additional Named INSURED(S).
 3. Except in the case of cancellation as a result of B.1.a. above, the INSURED can attempt to cure any condition which triggered the Notice of Cancellation prior to the date of cancellation. Additional Named INSURED(S) have the right to pay premium if the FIRST NAMED INSURED fails to do so.
 4. The premium for this Policy will be one hundred percent (100%) minimum earned at the inception date of this Policy. This means that the premium stated in the Declarations is fully earned by the Company at the inception date of the Policy, and the INSURED is not entitled to any return of the minimum earned premium upon cancellation by the INSURED or cancellation by the Company.

C. DECLARATIONS AND REPRESENTATIVES-- By acceptance of this Policy, the INSURED agrees that the statements contained in the Declarations, application and any other supplemental materials and information submitted herewith are the INSURED'S agreements and representations, that they shall be deemed material, that this Policy is issued in reliance upon the truth of such representations and that this Policy embodies all agreements existing between the INSURED and the Company or any of its agents relating to this insurance.

D. ACTION AGAINST COMPANY-- No action shall lie against the Company unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this Policy, and 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 and the Company.

No person or organization shall have any right under this Policy to join the Company as a party to any action against the INSURED to determine the INSURED's liability, nor shall the Company be impleaded by the INSURED or his legal representative.

E. ASSIGNMENT-- This Policy shall be void if assigned or transferred without the prior written consent of the Company.

F. SUBROGATION-- In the event of any payment under this Policy, the Company shall be subrogated to all the INSURED's rights of recovery thereof 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 to prejudice such rights. Any

recovery as a result of subrogation shall accrue first to the INSURED to the extent of any payments in excess of the Limit of Liability; then to the Company to the extent of any payment under the Policy and to the INSURED to the extent of any CO-INSURANCE PARTICIPATION; and then to the INSURED to the extent of any payments within the RETENTION. The expenses incurred in connection with such subrogation shall be apportioned among the parties in accordance with each party's percentage share in the total amount recovered.

- G. CHANGES--** Notice to any agent or knowledge possessed by any agent or by any other person shall not waive or change in any part the Company's rights under the Policy, relieve the INSURED from any of its obligations, or estop the Company 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.
- H. SOLE AGENT--** The FIRST NAMED INSURED stated in Item 1. of the Declarations shall act on behalf of all INSURED(S) for the payment or return of Premium, receipt and acceptance of any endorsement issued to form a part of this Policy, giving and receiving notice of cancellation or non-renewal.
- I. OTHER INSURANCE OR FINANCIAL REMEDIES--** Subject to **Section V. LIMIT OF LIABILITY AND RETENTION**, this insurance shall be in excess of the RETENTION and shall be paid at the same time any CO-INSURANCE PARTICIPATION is paid by the INSURED. This insurance shall also be excess of any other valid and collectible insurance, any state funds or any surety bonds or other financial instruments or remedies available to the INSURED for STOP LOSS EXPENSE, regardless of whether such other insurance, funds, bonds or financial instruments or remedies are stated to be primary, pro rata, contributory, excess, contingent or otherwise. The only exception is other insurance written as specific excess insurance over the Limit of Liability provided in this Policy.
- J. HEADINGS--** The descriptions in the headings of this Policy are solely for convenience and form no part of the Policy terms and conditions.
- K. JURISDICTION AND VENUE--** It is agreed that in the event of the failure of the Company to pay any amount claimed to be due hereunder, the Company and the INSURED will submit exclusively to the jurisdiction of the State of New York and will comply with all the requirements necessary to give such court jurisdiction. Nothing in this clause constitutes or should be understood to constitute a waiver of the Company's right to remove an action to a United States District Court.
- L. CHOICE OF LAW--** All matters arising hereunder including questions related to the validity interpretation, performance and enforcement of this Policy shall be determined in accordance with the law and practice of the State of New York (notwithstanding New York's conflicts of law rules).
- M. REMEDIATION PROJECT SITE SALE OR TRANSFER OF OWNERSHIP--** If any REMEDIATION PROJECT SITE is sold or operational control is relinquished or transferred by any INSURED prior to the completion of the SCOPE OF WORK, this Policy will automatically be terminated as of the date of such sale or relinquishment or transfer of operational control, unless:
1. The Company receives notice in writing from the INSURED at least forty-five (45) days in advance of the sale or relinquishment or transfer of operational control from the INSURED;
 2. The new owner or operator agrees in writing to comply with all of the terms and conditions of the Policy; satisfy all obligations set forth in the REMEDIATION CONTRACT; and execute the SCOPE OF WORK; and
 3. The Company at its sole discretion consents in writing that the Policy will remain in effect after the sale or relinquishment or transfer of operational control.

- N. FRAUD, CONCEALMENT OR INTENTIONAL MISREPRESENTATION--** If an INSURED REPRESENTATIVE engages in fraud or conceals or intentionally misrepresents any material fact or circumstance related to this Policy, this Insurance shall be considered void. All obligations of the Company, including any obligations to pay STOP LOSS EXPENSE under this Policy, shall cease to exist. The INSURED shall not be entitled to any return premium.
- O. ADDITIONS OR MODIFICATIONS TO SCOPE OF WORK--** No additions, amendments, modifications, alterations, or changes of any kind shall be made to the SCOPE OF WORK after the effective date of the Policy, without the prior written consent of the Company.