

GREAT AMERICAN E & S INSURANCE COMPANY

EXCESS ENVIRONMENTAL LIABILITY POLICY

SOME PROVISIONS IN THIS POLICY RESTRICT COVERAGE. READ THE ENTIRE POLICY CAREFULLY TO DETERMINE RIGHTS, DUTIES, AND WHAT IS AND IS NOT COVERED.

Some words and phrases printed in all capital letters have special meaning. Refer to Section IV. DEFINITIONS or the specific policy provisions in which such words or phrases appear. Throughout this policy, the word "Company" refers to the Company providing this insurance.

In consideration of the payment of the premium, and in reliance on the statements in the Declarations, the Company agrees with the Named Insured shown in the Declarations to provide coverage as follows:

I. EXCESS INSURING AGREEMENT

- A.** The Company will pay, on behalf of the Insured, LOSS in excess of the total UNDERLYING LIMITS of insurance. The amount the Company will pay is limited as described in Section II. LIMITS OF LIABILITY.
- B.** Subject to C. and D., below, except for the declarations, terms, conditions, definitions, exclusions, policy period, and limits of liability of this Policy, the coverage provided by this Policy will follow the same warranties, terms, conditions, definitions, exclusions, and limitations as are contained in the FOLLOWED POLICY at the beginning of the policy period shown in the Declarations.
- C.** For the purposes of this insurance, if there is any conflict between any one or more provisions of this Policy and any one or more provisions of the FOLLOWED POLICY, the provisions of this Policy will control.
- D.** Except as respects its Limits of Liability, this Policy does not, and should not be construed to, provide coverage for any LOSS or liability of a kind that is not also covered by each and all of the UNDERLYING POLICIES.

II. LIMITS OF LIABILITY

- A.** The Limits of Liability shown in the Declarations and the rules below describe the most the Company will pay regardless of the number of:
 - 1.** Insureds;
 - 2.** claims made or suits brought; or
 - 3.** persons or organizations making claims or bringing suits.
- B.** The Limits of Liability shown in the Declarations apply as follows:
 - 1.** This Policy applies only:
 - a.** to LOSS in excess of the sum of the total applicable UNDERLYING LIMITS; and
 - b.** after the following have occurred:
 - (1)** the total applicable UNDERLYING LIMITS have first been fully exhausted by actual payment of money in satisfaction of one or more judgments or settlements, and
 - (2)** all applicable deductible amounts have been paid.

2. The aggregate limit shown in the Declarations is the most the Company will pay for the sum of all LOSS to which this Policy applies.
 3. Subject to B.2., the each event limit shown in the Declarations is the most the Company will pay for the sum of all LOSS because of any one occurrence to which this insurance applies.
- C. If, for any reason other than the full exhaustion of its applicable limit of insurance by actual payment of money in satisfaction of one or more judgments or settlements, any insurer issuing an UNDERLYING POLICY fails, refuses, or becomes unable to pay all or any part of LOSS within its applicable limit of insurance, then the insurance afforded by this Policy will not:
1. replace any insurance afforded by that UNDERLYING POLICY,
 2. perform any service or obligation which was to have been performed by any insurer that issued that or any other UNDERLYING POLICY, or
 3. pay any part of LOSS that is within the UNDERLYING LIMITS,
- but will apply as if that UNDERLYING POLICY were fully available and collectible.

This provision II.C. applies regardless of whether such failure, refusal, or inability to pay arises from any:

- a. bankruptcy, insolvency, or other financial impairment of any insurer,
- b. cancellation, expiration, or lapse of any UNDERLYING POLICY, or
- c. other cause or causes whatsoever.

The risk of any such failure, refusal, or inability to pay is expressly retained by the Insured and is not, in any way or under any circumstances, insured or assumed by the Company.

III. EXCLUSIONS

This insurance does not apply to any:

- a. LOSS or liability that any UNDERLYING POLICY makes subject to a limit or sublimit of insurance that is less than the applicable limit of insurance shown for that UNDERLYING POLICY in the Declarations.
- b. LOSS or liability of a kind that is excluded, or otherwise not covered, by any one or more of the UNDERLYING POLICIES. This exclusion does not apply if the exhaustion of an applicable limit of insurance is the only reason the LOSS or liability is covered by fewer than all the UNDERLYING POLICIES.

IV. DEFINITIONS

- A. FOLLOWED POLICY means the insurance policy described in the Declarations.
- B. LOSS means those sums the Insured becomes obligated to pay on account of liability that would be insured by the FOLLOWED POLICY if the FOLLOWED POLICY had no limit of insurance.
- C. UNDERLYING POLICY means any policy described in the Declarations.
- D. UNDERLYING LIMITS means the greater of Item D.1. or D.2. below:
 1. the sum of:
 - a. the applicable total UNDERLYING LIMITS shown in the Declarations, and

- b. all applicable self-insured retentions and deductible amounts; or
2. the sum of:
- a. the actual applicable limits of liability of the FOLLOWED POLICY and all other UNDERLYING POLICIES, if any one or more of such limits is greater than the amount shown for it in the Declarations, and
 - b. all applicable self-insured retentions and deductible amounts.

V. UNDERLYING INSURANCE

- A. It is a condition of any coverage under this Policy that each UNDERLYING POLICY shall be maintained in full force and effect with a solvent insurer during the Policy Period of this Policy, except for any reduction or exhaustion of their aggregate limits by the actual payment of LOSS. If any UNDERLYING POLICY is not so maintained, then the Company shall not be liable under this Policy to any greater extent than it would have been had such UNDERLYING POLICY been so maintained.
- B. If any of the terms, definitions, conditions, exclusions or limitations of any UNDERLYING POLICY is changed in any manner, whether retroactively or otherwise, the Insured shall provide the Company written notice of the full particulars thereof as soon as practicable, but in no event later than thirty (30) days following the effective date of such change. No such change shall bind the Company or be effective with respect to this Policy unless and until the Company has agreed to it in writing. The Company may require the payment of additional premium as a condition of its agreement to any such change.
- C. The Insured must provide the Company as soon as practicable with written notice and all available particulars of any (i) exhaustion of the Aggregate Limit of Liability of any UNDERLYING POLICY, (ii) UNDERLYING POLICY not maintained in full force and effect during the Policy Period, or (iii) insurer issuing any UNDERLYING POLICY that becomes subject to receivership, liquidation, dissolution, rehabilitation or any similar proceeding, or that is taken over by any regulatory authority.
- D. The INSURED warrants that the UNDERLYING LIMITS shown in the Declarations are fully available and unimpaired as of the beginning of the Policy Period shown in the Declarations. If the policy period of any UNDERLYING POLICY is, or becomes, different from the Policy Period of this Policy, only LOSS paid because of an event, or combination of events, triggering coverage during the Policy Period of this Policy shall be considered in determining the extent of any erosion or exhaustion of any underlying limit of insurance or self-insured retention. For the purposes of this provision, an event or combination of events triggers coverage only if it is required to take place during the Policy Period of this Policy for coverage to apply under this Policy.

VI. REPORTING, DEFENSE, SETTLEMENT AND COOPERATION

- A. As a condition precedent to the obligations of the Company under this Policy, the Named Insured must see to it that the Company is notified as soon as practicable of any claim, suit, occurrence, event, or potential LOSS that may involve this Policy. The Named Insured shall also provide the Company with other claim information or reports as may be reasonably requested by the Company from time to time.
- B. No cost, charge or expense shall be incurred, nor any payment made, obligation assumed or remediation commenced, that would require the Company to incur any obligation or make any payment under this Policy, without the Company's prior written consent, which shall not be unreasonably withheld.
- C. No Insured shall do anything to prejudice the Company's rights under this Policy. If:
 - 1. the FOLLOWED POLICY provides that the Insured's consent is required to effect settlement of a claim or suit, and
 - 2. the Company recommends a monetary settlement of a claim or suit, and
 - 3. that settlement is acceptable to the claimant, but the Insured refuses to consent to it;

then:

- a. if the settlement the Company recommends would not require the payment of LOSS in excess of the available UNDERLYING LIMITS, the Company shall not be liable, as respects that claim or suit, for any LOSS in excess of that recommended settlement; or
- b. if the settlement the Company recommends is for an amount that would require a payment of LOSS within the Limit of Liability of this Policy:
 - i. the Company's liability for LOSS, as respects that claim or suit, shall not exceed what it would have been had the recommended settlement been made; and
 - ii. the Company's responsibility, if any, for other costs, charges, and expenses of any kind, including but not limited to legal expenses and other defense costs, will not apply to any cost, charge, or expense incurred after the Insured refuses to agree to the recommended settlement.
- D. Until the UNDERLYING LIMITS have been exhausted, the Company shall have the right, but not the duty, to associate with the Insured and with any insurer issuing an UNDERLYING POLICY, in the investigation, settlement or defense of any claim, suit, or legal, equitable, administrative, or other proceeding that may involve this Policy or affect any of the Company's rights. The Company shall be given the opportunity to exercise that right effectively. If the Company exercises that right, it shall do so at its own expense.
- E. If the FOLLOWED POLICY provides that the Company has a duty to defend a claim or suit, the Company will do so. However:
 - 1. the Company has no duty to defend any claim or suit, to pay any sum, or to perform any other service, unless and until the total applicable UNDERLYING LIMITS have first been fully exhausted by actual payment of money in satisfaction of one or more judgments or settlements;
 - 2. sums the Company pays to defend a claim or suit shall erode, and may exhaust, the Company's applicable Limit of Liability, if the terms and conditions of the FOLLOWED POLICY so provide; and
 - 3. once the Company has paid its applicable Limit of Liability, all of the Company's duties to defend claims or suits, to pay sums, or to perform any other service, immediately end.

VII. GENERAL CONDITIONS

- A. Notwithstanding anything to the contrary in this Policy or any UNDERLYING POLICY, if the Insured receives or elects a discovery period, extended reporting period, or similar extension of coverage upon the cancellation or non-renewal of any UNDERLYING POLICY, the Company shall not be obliged to follow such extension. Except as may be provided in a written endorsement issued by the Company, the Policy Period of this Policy can not be extended, enlarged, or changed, and no discovery period, extended reporting period, or similar extension of coverage can apply to this Policy.
- B. All salvages, recoveries, and similar payments, recovered or received after a payment of LOSS under this Policy, shall first be applied as if recovered or received before such LOSS payment had been made, and all necessary adjustments shall then be made between the Insured and the Company, but this will not affect the time when LOSS is payable under this Policy.
- C. All notices under this Policy shall be given as provided for in the FOLLOWED POLICY, except that all notices to the Company shall be sent to the address below or to any substitute address the Company may expressly designate in writing:

GREAT AMERICAN INSURANCE COMPANY
 ENVIRONMENTAL DIVISION
 401 Plymouth Road
 Suite 100
 Plymouth Meeting, Pennsylvania 19462

- D.** Notice to or knowledge possessed by any person shall not affect a waiver or change in any part of this Policy or estop the Company from asserting any right under the terms of this Policy. The terms, definitions, conditions, exclusions and limitations of this Policy can not be waived or changed, and no assignment of any interest under this Policy shall bind the Company, except as provided by a written endorsement to form a part hereof, issued and signed by the Company or its authorized representative.
- E.** The Named Insured listed in the Declarations shall be responsible for, and act on behalf of all Insureds with respect to, the payment of any premiums and the determination and receipt of payments of LOSS due under this Policy.
- F.** Cancellation provisions of this Policy shall follow the cancellation provisions of the FOLLOWED POLICY, including as respects cancellation for non-payment of premium, except as may be provided otherwise by an endorsement issued by the Company.

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