



Administrative Offices  
 301 E. 4<sup>th</sup> Street  
 Cincinnati, Ohio 45202  
 Tel: 1-513-369-5000

**GREAT AMERICAN E & S INSURANCE COMPANY**

**EXCESS ENVIRONMENTAL LIABILITY DECLARATIONS**

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**SOME OF THE PROVISIONS CONTAINED IN THIS POLICY RESTRICT COVERAGE, SPECIFY WHAT IS AND IS NOT COVERED AND DESIGNATE RIGHTS AND DUTIES.**

Policy Number:  
 Renewal Of:  
 Customer Number:

1. Named Insured: \_\_\_\_\_  
 Street Address: \_\_\_\_\_  
 City/State/Zip: \_\_\_\_\_

2. Policy Period: From: \_\_\_\_\_ To: \_\_\_\_\_  
 (12:01 A.M. standard time at the mailing address shown in Item 1. above)

3. Coverage: Excess Environmental Liability Insurance

4. Limits of Liability: \$ \_\_\_\_\_ each LOSS  
 \$ \_\_\_\_\_ Aggregate

5. Total Underlying Limits:  
 \$ \_\_\_\_\_ each LOSS  
 \$ \_\_\_\_\_ Aggregate

6. Followed Policy:  
 Company:  
 Policy Number:  
 Coverage:  
 Policy Period:  
 Limit of Liability:  
 Self-Insured Retention:

**7. Schedule of Policies: (excess of FOLLOWED POLICY)**

	Company	Policy Number	Coverage	Policy Period	Limits of Liability
a.					\$
b.					\$
c.					\$
d.					\$

**8. Premium:** \$ \_\_\_\_\_  
 -TRIA (Terrorism Coverage): \$ \_\_\_\_\_  
 Assessments and Surcharges: \$ \_\_\_\_\_  
  
**TOTAL:** \$ \_\_\_\_\_

**9. Broker:** \_\_\_\_\_  
 Street Address: \_\_\_\_\_  
 City/State/Zip: \_\_\_\_\_

**10. Forms and Endorsements applicable to all Coverage parts and made part of this Policy at the time of issue are listed on the attached Forms and Endorsements Schedule.**



## **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 Application and submission materials, the Company agrees with the Named Insured set forth in Item 1. of 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 UNDERLYING LIMITS. The amount the Company will pay is limited as set forth in Section II. LIMITS OF LIABILITY.
- B.** Subject to Items C. and D. of this Section I, 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 as of the first day of the Policy Period set forth in Item 2. of the Declarations.
- C.** 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 and shall be solely determinative.
- D.** This Policy does not, and should not be construed to, provide coverage for any LOSS or liability of a kind that is not covered by all UNDERLYING POLICIES.

#### **II. LIMITS OF LIABILITY**

- A.** The Limits of Liability set forth Item 4. of the Declarations and the terms of this Section II. describe the most the Company will pay regardless of the number of:
  - 1. Insureds;
  - 2. claims made or suits brought;
  - 3. persons or organizations making claims or bringing suits; or
  - 4. COVERED EVENTS.
- B.** The Limits of Liability set forth Item 4. of the Declarations apply only to LOSS in excess of the UNDERLYING LIMITS, but only after both of the following have occurred:
  - 1. the total UNDERLYING LIMITS have been fully exhausted by the actual payment of money directly by each insurer issuing the UNDERLYING POLICIES because of one or more COVERED EVENTS; and
  - 2. all applicable deductible or self-insured retention amounts have been paid by the Insured.

The Aggregate Limit of Liability set forth in Item 4. of the Declarations is the most the Company will pay for the sum of all LOSS to which this Policy applies. Subject to that Aggregate Limit of Liability, the Each LOSS Limit of Liability set forth in Item 4. of the Declarations is the most the Company will pay for the sum of all LOSS because of any one COVERED EVENT to which this Policy applies.

- C. If, for any reason other than the full exhaustion of the applicable limits by the actual payment of money directly by each insurer issuing the UNDERLYING POLICIES because of one or more COVERED EVENTS, any such insurer fails, refuses, or becomes unable to pay all or any part of any loss, damages, or costs that should be covered under its policy, 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 issuing the UNDERLYING POLICIES; or
  3. pay all or any part of any loss, damages, or costs that is within the UNDERLYING LIMITS.

This Section II., Part C., applies regardless of whether such insurer's failure, refusal, or inability to pay arises from any:

1. bankruptcy, insolvency, or other financial impairment of any insurer,
2. cancellation, expiration, or lapse of any UNDERLYING POLICY, or
3. other cause or causes whatsoever.

The risk of any such insurer's failure, refusal, or inability to pay is expressly retained by the Named 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 set forth in the Declarations for that UNDERLYING POLICY.
- B. LOSS or liability of a kind that is excluded, or otherwise not covered, by any UNDERLYING POLICY, unless the only reason the LOSS or liability is not covered by an UNDERLYING POLICY is the full exhaustion of the limits of liability by the actual payment of money directly by each insurer issuing the UNDERLYING POLICIES because of one or more COVERED EVENTS.

### IV. DEFINITIONS

- A. FOLLOWED POLICY means the insurance policy as described in Item 6. of the Declarations.
- B. COVERED EVENT(S) means any claim, occurrence, or other event that is covered by the FOLLOWED POLICY.
- C. LOSS means those sums the Insured becomes legally obligated to pay on account of loss or liability that would have been insured by the FOLLOWED POLICY but for the full exhaustion of that policy's applicable limits of liability by the actual payment of money directly by each insurer issuing the UNDERLYING POLICIES because of one or more COVERED EVENTS.
- D. UNDERLYING POLICY(IES) means the FOLLOWED POLICY and each policy listed in the Schedule of Policies set forth in Item 7. of the Declarations.
- E. UNDERLYING LIMITS mean the greater of:
  1. the sum of:

- a. the total Underlying Limits set forth in Item 5. of 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 all UNDERLYING POLICIES, if any one or more of those limits is greater than the amount indicated for it in the Declarations; and
  - b. all applicable self-insured retentions and deductible amounts.

## V. UNDERLYING INSURANCE

- A. It is a condition precedent to coverage under this Policy that each UNDERLYING POLICY will 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 the applicable limits of Liability by the actual payment of LOSS, in money, by the insurer issuing the policy. If any UNDERLYING POLICY is not so maintained, then the Company will 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 the applicable change. No change to any UNDERLYING POLICY will 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 be bound by any change to any UNDERLYING POLICY.
- C. The Named Insured shall provide the Company, as soon as practicable thereafter, 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 being maintained in full force and effect during the Policy Period; (iii) insurer issuing any UNDERLYING POLICY becoming subject to bankruptcy, receivership, liquidation, dissolution, rehabilitation or any similar proceeding, or that is taken over by any regulatory authority; or (iv) events or circumstances which may void coverage under any UNDERLYING POLICY.
- D. The INSURED warrants that the Total UNDERLYING LIMITS set forth in Item 5. of the Declarations are fully available and unimpaired as of the first day of the Policy Period set forth in Item 5. of the Declarations. If the policy period of any UNDERLYING POLICY is, or becomes, different from the Policy Period of this Policy, only damages or costs paid pursuant to an UNDERLYING POLICY because of an event, or combination of events, triggering coverage during the Policy Period of this Policy will be considered in determining the extent of any erosion or exhaustion of the applicable UNDERLYING LIMITS, deductible, 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 coverage under this Policy, the Named Insured shall notify the Company of any claim, suit, occurrence, event, or potential LOSS that may trigger coverage under this Policy in accordance with the notification requirements in the FOLLOWED 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 may be incurred by or on behalf an Insured, nor any payment made, obligation assumed or remediation commenced by or on behalf an Insured, that would require the Company to incur any obligation or make any payment under this Policy, without the Company's prior written consent, which will not be unreasonably withheld.
- C. No Insured can 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 will not be liable, for any LOSS associated with that claim or suit, nor 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, associated with that claim or suit, will 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 fully exhausted by the actual payment of money directly by each insurer issuing the UNDERLYING POLICYIES because of one or more COVERED EVENTS, the Company has 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 Insured shall give the Company the opportunity to exercise that right effectively. If the Company exercises that right, it will 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 UNDERLYING LIMITS have first been fully exhausted by the actual payment of money directly by each insurer issuing the UNDERLYING POLICYIES because of one or more COVERED EVENTS;
  2. any sums the Company pays to defend a claim or suit will 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, the Company's duty to defend claims or suits, to pay sums, or to perform any other service or obligation under this Policy immediately ends.

## VII. GENERAL CONDITIONS

- A.** If the Insured receives or elects a discovery period, extended reporting period, or similar extension of coverage upon the cancellation or non-renewal as permitted by an UNDERLYING POLICY, the Company is not be obligated to follow such extension. Except as may be provided in a written endorsement issued by the Company, the Policy Period of this Policy cannot be extended, enlarged, or changed, and no discovery period, extended reporting period, or similar extension of coverage, not any expansion or broadening of any coverage afforded by the FOLLOWED POLICY will apply to this Policy.
- B.** All salvages, recoveries, and similar payments, recovered or received after a payment of LOSS under this Policy, will first be applied as if recovered or received before such LOSS payment had been made, and all necessary adjustments will 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  
397 Eagleview Blvd., Suite 100  
Exton, Pennsylvania 19341

- D.** Notice to, or knowledge possessed by, any person will 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 cannot be waived or changed, and no assignment of any interest under this Policy will bind the Company, except as provided by a written endorsement to form a part of this Policy issued by the Company.
- E.** The Named Insured listed in Item 1. of 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 cancellation for non-payment of premium, except as may be provided otherwise by an endorsement issued by the Company.
- G.** All matters arising under this Policy, including questions related to the validity, interpretation, performance and enforcement of this Policy, will be determined in accordance with the law and practice of the State of New York (not including New York's choice of law rules).