

# WASHINGTON HEATING OIL STORAGE TANK POLLUTION LIABILITY POLICY

THIS IS A CLAIMS MADE AND REPORTED POLICY  
PLEASE READ CAREFULLY

## PROVISIONS

Colony Insurance Company (the Company) agrees with the Named Insured shown in the Declarations as follows:

### I. INSURING AGREEMENT

- A. The Company will pay those sums the insured becomes legally obligated to pay as:
1. "corrective action", and
  2. "bodily injury" or "property damage"
- because of a "release" of "heating oil" from a registered "heating oil tank" to which this insurance applies.
- B. The Company will have the right and duty to defend the insured against a "claim" seeking "corrective action" or damages because of "bodily injury" or "property damage". However, the Company will have no duty to defend the insured against any "claim" seeking "corrective action", "bodily injury" or "property damage" to which this insurance does not apply. The Company or "PLIA" may, at its discretion, investigate any "release" and settle any "claim" that may result. But:
1. The amount the Company will pay for damages is limited as described in Article III. **LIMITS OF INSURANCE**;
  2. The Company's right and duty to defend end when the Company has used up the applicable limit of insurance in the payment of "corrective action", damages because of "bodily injury" or "property damage", or Defense costs;
  3. Defense costs shall be included within the Limits of Insurance as described in Article III. **LIMITS OF INSURANCE**; and
  4. No other obligation or liability to pay sums or perform acts or services is covered.
- C. This insurance applies only if:
1. The "release" emanates from a "heating oil tank" that is not "abandoned" or "decommissioned";
  2. The "release" first commences subsequent to the "heating oil tank" "registration date"; and
  3. **The "release" is reported in writing to "PLIA" subsequent to the effective date and prior to the expiration date of the Policy or Extended Reporting Period, if applicable.**
- D. All "claims" for "corrective action" or for "bodily injury" or "property damage" from the "release" will be deemed to have been made at the time the first of those "claims" is made against any insured and reported to "PLIA" or the Company.

### II. WHO IS AN INSURED

Individuals and their spouses who are "heating oil tank" owners and have registered for coverage with "PLIA" under the Heating Oil Pollution Liability Protection Act (Chapter 70.149 RCW) are insureds under this policy.

### III. LIMITS OF INSURANCE

- A. The Company's total liability for each "claim" first reported to "PLIA" during the "policy period" and the Extended Reporting Period, if applicable, shall not exceed \$60,000 each "claim", per site, per year. The Extended Reporting Period described in Article IX. **EXTENDED REPORTING PERIOD** shall not reinstate or increase the Limit of Insurance of this Policy.
- B. Regardless of the number of "claims", claimants or insureds, the Company's total liability for "claims" during one or more "policy periods" arising out of the same, intermittent, interrelated, associated, repeated or continuous "release" shall be considered a single "claim" subject to the Each Claim Limit of Insurance shown in the Declarations of the Policy in effect when the first "claim" is reported to "PLIA" or the Company, and shall be deemed first reported to "PLIA" or the Company during the "policy period" in which the initial "claim" is first reported to "PLIA" or the Company.
- C. Multiple "claims": The inclusion herein of more than one insured or the making of "claims" or the bringing of a "claim" or suit by more than one person or organization shall not operate to increase the Company's Limit of Insurance. One or more "claims" arising out of the same or related "release" shall be considered a single "claim", and the Limit of Insurance shown in the Declarations as applicable to Each Claim shall apply.
- D. Subject to the \$60,000 Limit of Insurance described in III. A above, third party property damage restoration to premises owned by parties other than the insured, including landscaping, is limited to \$1,500 each "claim", per site, per year. This limit is included within and decreases the Each Claim limit of insurance.

### IV. DEFINITIONS

Defined terms are in quotation marks throughout this Policy and may be used in either the singular or plural, as appropriate.

- A. "Abandoned heating oil tank" means a "heating oil tank" that has been left unused and that is no longer connected to an oil-fired furnace used for space heating of human living or working space on the premises where the tank is located.
- B. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death at any time, resulting from the injury, sickness or disease.
- C. "Claim" means:
  - 1. Under Insuring Agreement A.1., written notice to "PLIA" during the "policy period" of a "release" of "heating oil" from a registered "heating oil tank";
  - 2. Under Insuring Agreement A.2., written notice to "PLIA" during the "policy period" of any statement of potential responsibility or demand for money made against the insured alleging damages because of "bodily injury" or "property damage" arising out of a "release" of "heating oil" from a registered "heating oil tank".
- D. "Corrective action" means those actions reasonably required to be undertaken by the insured to remove, treat, neutralize, contain, or clean up an accidental "release" in order to comply with a statute, ordinance, rule, regulation, directive, order, or similar legal requirement, in effect at the time of an accidental "release", of the United States, the state of Washington, or a political subdivision of the United States or the state of Washington. "Corrective action" includes, where agreed to in writing, in advance by the Company or by "PLIA", action to remove, treat, neutralize, contain, or clean up an accidental "release" to avert, reduce, or eliminate the liability of the insured for "corrective action", "bodily injury", or "property damage". "Corrective action" also includes actions reasonably necessary to monitor, assess, and evaluate an accidental "release". "Corrective action" will be accomplished by the most cost-effective method available.
- E. "Decommissioned heating oil tank" means a "heating oil tank" that is no longer connected to an oil-fired furnace used for space heating of human living or working space on the premises where the

tank is located and that has been taken out of operation in accordance with the International Fire Code and any pertinent local requirements.

- F. "Heating oil" means any petroleum product used for space heating in oil-fired furnaces, heaters, and boilers, including stove oil, diesel fuel, or kerosene. "Heating oil" does not include petroleum products used as fuels in "motor vehicles", marine vessels, trains, buses, aircraft, or any off-highway equipment not used for space heating, or for industrial processing or the generation of electrical energy.
- G. "Heating oil tank" means a tank and its connecting pipes, whether above or below ground, or in a basement, with pipes connected to the tank for space heating of human living or working space on the premises where the tank is located. "Heating oil tank" does not include a "decommissioned" or "abandoned" "heating oil tank" or a tank used solely for industrial process heating purposes or generation of electrical energy.
- H. "Loading or unloading" means the delivery or pick up of "heating oil" to or from a registered "heating oil tank".
- I. "Motor vehicle" means any land motor vehicle, trailer or semitrailer designed for travel on public roads.
- J. "MTCA" means the Model Toxics Control Act (Chapter 70.105D RCW).
- K. "PLIA" means the state of Washington Pollution Liability Insurance Agency established pursuant to Chapter 70.148 RCW. "PLIA" is the Company's designated representative for this program.
- L. "Policy period" means the period shown as such in the Declarations, unless earlier cancelled pursuant to Article **VIII. CONDITIONS**, E. of this Policy.
- M. "Property damage" means:
  - 1. Physical injury to, destruction of, or contamination of tangible property, including the loss of use of the property resulting from the injury, destruction or contamination; or
  - 2. Loss of use of tangible property that has not been physically injured, destroyed or contaminated but has been evacuated, withdrawn from use, or rendered inaccessible because of accidental "release".
- N. "Registration date" means the date on which "PLIA" receives and accepts a program registration form.
- O. "Release" means a spill, leak, emission, escape or leaching into the environment.

## **V. EXCLUSIONS**

This Policy does not apply to:

- A. Any "claim" based on or arising from a known or unknown "release" occurring prior to the registration of a "heating oil tank".
- B. Any "claim" based on a known "release" occurring prior to inception of this Policy.
- C. Any "claim" based on or arising out of the insured's obligation to pay damages by reason of assumption of liability in a contract or agreement unless the insured is otherwise legally obligated in the absence of the contract or agreement.
- D. Any "claim" submitted by an employee, partner, shareholder or joint venturer of any insured or by a business enterprise or individual or its agents, employees, assignees or subrogees that wholly or partly owns, leases, operates, manages or otherwise controls the insured.
- E. Any "claim" based on or arising out of any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or similar law.
- F. Any "claim" based on or arising out of "bodily injury" to:

1. An employee of the insured arising out of and in the course of:
  - a. Employment by the insured; or
  - b. Performing duties related to the conduct of the insured's business; or
2. The spouse, child, parent, brother or sister of that employee as a consequence of paragraph 1. above.

This exclusion applies:

1. Whether the insured may be liable as an employer or in any other capacity; and
  2. To any obligation to share damages with or repay someone else who must pay damages because of the injury.
- G. Any "claim" based on or arising out of any knowingly unlawful, dishonest, fraudulent, criminal, malicious or wrongful act, error or omission committed by, at the direction of or with the knowledge of an insured, its agents, contractors or consultants, whether or not such act is committed in the course and scope of employment or duties with or on behalf of the insured.
- H. Any "claim" based on or arising out of the ownership, entrustment, use, operation, "loading or unloading" of any "motor vehicle", aircraft, watercraft or rolling stock.
- I. Any "claim" based on or arising out of the intentional, willful or deliberate non-compliance with or the reckless disregard of any statute, regulation, ordinance, administrative complaint, notice of violation, notice letter, court order, executive order or instruction of any governmental agency or body where the insured caused, aided, assisted, encouraged or concealed such non-compliance.
- J. Any "claim" based on or arising from 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 or military or usurped power, strike, riot, civil commotion, confiscation, nationalization, requisition or destruction of or damage to property by or under the order of any government or public or local authority.
- K. Any "claim" based on or arising out of a "release" commencing after the date any premises at which a registered "heating oil tank" is located is sold, abandoned, given away, leased, subleased or ceases to be operated by or otherwise under the control of the insured.
- L. Any costs, charges or expenses for the reconditioning or replacement of "heating oil".
- M. Any costs, charges or expenses to repair, rebuild, replace, recondition, maintain, or remove any "heating oil tank" or piping, connections, or valves of tanks or other receptacles.
- N. Any "claim" for punitive, exemplary or multiplied compensatory damages or statutory assessments or any civil, administrative or criminal fines or penalties or the return of or reimbursement for legal fees, costs or expenses imposed upon an insured.
- O. Any "claim" based on or arising out of a "release" that is intended or expected from the standpoint of the insured.
- P. Any "claim" arising from a "decommissioned" or "abandoned" "heating oil tank".
- Q. Any "claim" arising from a "heating oil tank" that is not registered with "PLIA".
- R. Any costs to perform "corrective action" beyond that which is required by "MTCA".
- S. Any costs covered by other valid insurance or warranties.
- T. Any costs or expenses incurred by the insured to investigate the source and extent of a suspected "release".
- U. Any costs to repair or replace a furnace.
- V. Any "claim" based on or arising from contamination from sources other than a registered "heating oil

tank”.

- W. Any “release” not reported to “PLIA” as soon as practicable after the registered “heating oil tank” becomes “abandoned” or “decommissioned”.

## **VI. TERRITORY**

This Policy only applies to “claims” which are brought in the state of Washington.

## **VII. NOTICE OF CLAIM**

- A. The insured must provide notice to “PLIA” that a potential “claim” exists as soon as practicable after the registered “heating oil tank” becomes “abandoned” or “decommissioned”. The insured shall provide written notice to “PLIA” as soon as practicable following any “claim” or any event which the insured shall have reason to believe might result in a “claim”. Notice must be made to “PLIA”, 300 Desmond Dr SE, Lacey, WA 98503.
- B. The notice must include:
1. Details of how, when and where the “release” took place; and
  2. The names and addresses of any injured persons or witnesses.
- C. The insured shall notify “PLIA” in writing of any of the following:
1. Any “claim” or suit made against or received by the insured;
  2. Any action or proceeding which may impose a legal obligation on the insured for a “claim”;
  3. Any conditions, events or circumstances that may give rise to a “claim” that, if first reported to “PLIA” during the “policy period”, may be covered by this Policy; or
  4. Any conditions, events or circumstances for which notification to any governmental agency is required.
- D. The insured shall provide documentation to “PLIA” that coverage will not be provided by the owner’s homeowners’ insurer.
- E. In the event a “release” migrates off-site, or is suspected to have migrated, the insured shall notify “PLIA” and provide the adjacent property owner’s name, address and telephone number.
- F. The insured shall comply with all Federal, state and local “release” reporting requirements.

## **VIII. CONDITIONS**

- A. Other Insurance: In the event other valid and collectible insurance issued by another insurer exists with respect to “claims” asserted under this Policy, the insurance afforded by this Policy shall apply as follows:
1. This insurance shall apply as excess insurance over any other valid and collectible insurance, be it primary or excess. This excess insurance shall in no way be increased or expanded as a result of the receivership, insolvency or inability to pay of any insurer with respect to both the duty to indemnify and the duty to defend.
  2. Where this insurance is excess over other valid and collectible insurance, the Company will pay only its share of the amount of the “claim”, if any, that exceeds that total amount that all such other insurance will pay for the “claim” in the absence of this insurance.

The insured shall, upon request, promptly provide “PLIA” with copies of all policies potentially applicable to a “claim” covered by this Policy.

- B. Inspection and Audit: The Company and “PLIA” shall be permitted but not obligated to inspect, sample and monitor on a continuing basis the insured’s property or operations, at any time. Neither

the Company's or "PLIA's" right to make inspections, sample and monitor, nor the actual undertaking thereof nor any report thereon, shall constitute an undertaking, on the insured's behalf 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. The Company or "PLIA" may examine, audit, copy and inspect the insured's books, records and services at any time during the "policy period" and within three years after the final termination of this Policy, as far as they relate to the subject matter of this Policy.

- C. Assignment: Assignment of interests under this Policy shall not bind the Company, except by Endorsement issued by the Company and made a part of this Policy.
- D. Insolvency of the insured: Bankruptcy or insolvency of the insured or the insured's estate shall not relieve the Company of any of its obligations hereunder.
- E. Cancellation and Non-Renewal:
  - 1. This policy may be canceled by mutual consent between the Company and "PLIA"; or
  - 2. This policy may be canceled by either the Company or by "PLIA" by mailing written notice stating when thereafter the cancellation shall be effective. The effective date of such cancellation shall be not less than 90 days following receipt of the notice of cancellation. The effective date of cancellation stated in the notice shall become the end of the "policy period".

Delivery of such written notice either by the Company or "PLIA" shall be equivalent to mailing. If notice is mailed by Certified Mail, the Return Receipt shall be sufficient proof of notice.

If the policy is canceled, the Company will return the unearned premium (calculated on a pro rata basis) as soon as practicable following the effective date of the cancellation. 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 the effective date of the cancellation.

If the Company elects not to renew this Policy for an additional "policy period", the Company shall mail written notice to "PLIA" at the address shown in this policy. Such written notice of non-renewal shall be mailed at least 60 days prior to the end of the "policy period".

- F. Subrogation: In the event the Company makes any payment under this Policy, the Company shall be subrogated to all the insured's rights of recovery thereof against any person or organization. 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 proceedings arising under this Policy after expenses incurred in such subrogation proceeding are deducted by the party bearing the expense shall accrue to the insured and the Company in proportion to each amount actually paid as a result of the judgment, settlement or defense of a "claim".

- G. Assistance and Cooperation: The insured shall:
  - 1. Permit "PLIA" or the Company to inspect the "heating oil tank" and the insured's premises;
  - 2. Take immediate action to stop or contain any "release";
  - 3. Cooperate with "PLIA" and upon request shall produce all requested information and documentation, within a reasonable time;
  - 4. Submit to examinations and interrogations by our representative, under oath if required;
  - 5. Attend hearings, depositions and trials; and
  - 6. Assist in effecting settlements and securing and giving evidence, obtaining the attendance of witnesses in the conduct of suits.

The insured shall not, except at its own cost, make any payment (other than for costs incurred to contain or mitigate a "release") or admit any liability for any "claims". The insured shall not, except

with the approval of "PLIA", undertake any "corrective action" on its own behalf or engage any person or entity to provide such services.

- H. Integration of All Agreements: This Policy and Endorsements attached hereto embody all agreements existing between the insured and the Company or any of its representatives relating to this insurance.
- I. Duty of Named Insured to Report Changes: At all times during the "policy period", the Named Insured shall have the duty to notify "PLIA" promptly of any change in the ownership of their "heating oil tank". Notwithstanding such notice, no coverage is afforded by this policy with respect to any "heating oil tank" which has not been properly registered with "PLIA". Persons acquiring property at which a "heating oil tank" is located must submit a new registration form to "PLIA" to be eligible for coverage, regardless of whether the "heating oil tank" was registered by the prior owner.
- J. Service of Suit: It is agreed that in the event of the failure of the Company hereon to pay any amount claimed to be due hereunder, the Company hereon, at the request of the insured, will submit to the jurisdiction of any court of competent jurisdiction within the state of Washington and will comply with all requirements necessary to give such court jurisdiction and all matters arising hereunder shall be determined in accordance with the law and practice of such court.

It is further agreed that service of process in such suit may be made upon:

Colony Insurance Company  
Attn: Claims Vice President  
8720 Stony Point Parkway, Suite 300  
Richmond, VA 23235

Pollution Liability Insurance Agency  
Attn: Director  
300 Desmond Drive, S.E.  
Lacey, WA 98503

and that in any suit instituted against any one of them upon this contract, the insurer will abide by the final decision of such court or of any Appellate Court in the event of an appeal.

The above named are authorized and directed to accept service of process on behalf of the insurer in any such suit and/or upon request of the insured to give a written undertaking to the insured that it or they will enter a general appearance upon the Insurer's behalf in the event such a suit shall be instituted.

#### **IX. EXTENDED REPORTING PERIOD**

In the event this Policy is cancelled or non-renewed, an Extended Reporting Period is automatically provided. This period starts with the end of the "policy period" and lasts for 30 days. This extension of coverage does not apply if coverage for the "claim" seeking "corrective action" or damages because of "bodily injury" or "property damage" is provided by other insurance.

This extension of coverage shall be subject to all the terms and Conditions of this Policy and shall apply to "claims" first made against the insured and reported to "PLIA" that result from a "release" of "heating oil", emanating from a "heating oil tank" that is not "abandoned" or "decommissioned", that first commences subsequent to the "registration date" and before the end of the "policy period".

The fact that the period during which "claims" may be reported to "PLIA" under this Policy is extended by virtue of the Extended Reporting Period does not in any way increase the Limits of Insurance of this Policy.