



**MISSOURI PETROLEUM  
STORAGE TANK  
INSURANCE FUND**

**UNDERGROUND STORAGE TANK  
PARTICIPATION AGREEMENT**



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## THIS IS A CLAIMS-MADE AND REPORTED POLICY POLLUTION LIABILITY COVERAGE

This agreement is limited by law to funds appropriated under Sections 319.100 to 319.139, RSMo, and to funds available and committed under these sections. Depletion of funds shall terminate any further obligations of this policy. The general funds of the state of Missouri are not in any way obligated by this policy, and this policy shall not be construed to broaden the liability of the state of Missouri beyond the provisions of Sections 537.600 to 537.610, RSMo, nor to abolish or waive any defense which might otherwise be available to the state, nor should this policy be construed to confer jurisdiction over the terms in this policy to the Missouri Department of Insurance under Chapters 374 through 379, RSMo. This policy is subject to applicable statutes and regulations of the state of Missouri, and any discrepancy between the terms and conditions of this policy and the statutes and regulations of the state of Missouri shall be resolved in favor of said statutes and regulations.

There are provisions which restrict and/or limit coverage. Please read the policy to determine rights, duties, and what is not covered. We use the words "you" and "your" in this policy; they refer to all insureds shown in the Declarations. The words "we," "us," and "our" refer to the Missouri Petroleum Storage Tank Insurance Fund. Other words and phrases that appear in quotation marks have special meanings; refer to SECTION V.

### SECTION I - POLLUTION LIABILITY COVERAGE

#### 1. AGREEMENT

- a. We will pay on your behalf those sums in excess of any deductible amount that you become legally obligated to pay as "cleanup costs" caused by the "release" of "petroleum" from an "underground storage tank" to which this insurance applies.
- b. We will pay on your behalf those sums that you become legally obligated to pay as compensatory damages because of "bodily injury" or "property damage".
- c. We will pay on your behalf legal expenses to defend any "suit" seeking damages. But:
  - (1) We may investigate and settle any "claim" or "suit" at our discretion;
  - (2) Our obligation to defend ends when we have used up the limit of insurance for "cleanup costs", "property damage" and "bodily injury" as set forth in the Declaration in the payment of judgments, settlements, "cleanup costs", compensatory damages, or offers of judgment; and
  - (3) We have no obligation to defend any "claim" or "suit" not covered by this insurance.
- d. The amount we will pay for compensatory damages and "cleanup costs" is limited as described in SECTION III-LIMITS OF INSURANCE.
- e. No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under SECTION I Part 5, Supplemental Payments.
- f. This insurance applies only to "bodily injury", "property damage" or "cleanup costs" caused by a "release" of "petroleum" from an "underground storage tank" that commences on or after the Retroactive Date shown in the Declarations for the applicable location for which a "claim" is reported in accordance with SECTION I Part 2, Claims Reporting. The "release" must be from an "insured site" in the State of Missouri.
- g. Your responsibility to pay compensatory damages because of "bodily injury" or "property damage" must be determined in a "suit" or in a settlement made with our prior consent.

#### 2. CLAIMS REPORTING

- a.
  - (1) This insurance applies to "bodily injury" and "property damage" only if a "claim" for compensatory damages because of the "bodily injury" or "property damage" to which this insurance applies is first made in writing and received by us during the policy period.
  - (2) Any written notice you receive of a "claim" must be submitted to us immediately.
- b.
  - (1) This insurance applies to "cleanup costs" only if a notice asserting an obligation to pay "cleanup costs" to which this insurance applies, under statutory authority of the government of the United States of America, the State of Missouri or any political subdivision, is first made in writing and received by us during the policy period.
  - (2) Any written notice you receive of the assertion of an obligation to pay "cleanup costs" must be submitted to us immediately.
  - (3) Notice provided to us of a "release" to which this insurance applies which may give rise to an obligation to pay "cleanup costs" may, at our option, be deemed adequate notice.
  - (4) Prior to the initiation of any work where "cleanup costs" will be incurred, whether within the deductible or in excess of the deductible, the "cleanup costs" must first be approved by us or our representative. Failure to obtain our advance approval of the "cleanup costs" may subject you to reduction in benefits under this policy.
- c. Each specific "claim" for compensatory damages or "cleanup costs" covered under this insurance as a result of a single "release" will be deemed to have been made at the time the first "claim" from that "release" was made. However, each specific "claim" must be made in writing and received by us during the policy period.

### 3. EXTENDED REPORTING PERIOD

An Insured may, subject to our approval, purchase an Extended Reporting Period upon non-renewal or cancellation of the policy or upon cancellation of coverage as defined herein. The Extended Reporting Period may be purchased for all benefits, or for "cleanup costs" only.

- a. A notice of a "claim" for "cleanup costs" reported to us during the Extended Reporting Period will be deemed to have been made and reported on the last day of the Policy Period. Such "claim" must arise from a "release" of "petroleum" that commenced on or after the retroactive date shown in the Declarations for the applicable location and before the date of cancellation or non-renewal.
- b. We may issue an endorsement providing an Extended Reporting Period in twelve month increments but no more than a total of 60 months from cancellation or non-renewal of coverage hereunder for the insured site or individual tank(s) listed in the Declarations, provided that you:
  - (1) Make a written request for such endorsement which we receive within 30 days after cancellation of coverage as defined in Section VI-Policy Conditions; and
  - (2) Pay the additional participation fees when due.

The purchase of an Extended Reporting Period shall not serve to reinstate or increase the limit of liability shown in the Declarations.

### 4. EXCLUSIONS

This insurance does not apply to:

- a. "Bodily injury", "property damage" or "cleanup costs" caused or contributed to by any "release" that was discovered and/or commenced prior to the Retroactive Date shown in the Declarations for the applicable location.
- b. "Bodily injury", "property damage" or "cleanup costs" which are expected or intended.
- c. "Bodily injury", "property damage" or "cleanup costs" that you knew of, or should have known of, prior to the applicable Retroactive Date.
- d. "Cleanup costs" or damages for "bodily injury" or "property damage" which you are obligated to pay by reason of the assumption of liability in a contract or agreement, other than a contract or agreement to assume ownership of the insured property. This exclusion does not apply to liability that you would have in the absence of the contract or agreement.
- e. Any obligation you incur under a workers' compensation, disability benefits or unemployment compensation law, or any similar law.
- f. "Bodily injury" to:
  - (1) Any of your employees which arises out of and in the course of employment; or
  - (2) The spouse, child, parent, brother or sister of that employee as a consequence of (1) above.

This exclusion applies:

- (i) Whether you may be liable as an employer or in any other capacity; and

- (ii) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

- g. "Cleanup costs" for, or "property damage" to:
  - (1) Property you own, rent, occupy, or use, other than the "insured site";
  - (2) Premises you sell, give away or abandon, or which are repossessed, if the "property damage" or "cleanup costs" arise out of any part of those premises unless scheduled in the Declarations;
  - (3) Property loaned to you; or
  - (4) Personal property in your care, custody or control.
- h. Any expense incurred by you or others to test for, monitor, cleanup, remove, contain, treat, detoxify or neutralize "petroleum" on or at a "waste facility", or to any "bodily injury", "property damage" or "cleanup cost" claimed or awarded as a result of such activities.
  - i. "Bodily injury", "property damage" or "cleanup costs" which originate away from your "insured site" and move or migrate to your "insured site".
  - j. (1) "Bodily injury", "property damage" or "cleanup costs" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, auto, rolling stock, motorized or self-propelled equipment and its attachments, or water craft. Use includes operation and "loading or unloading".
    - (2) This exclusion does not apply to "bodily injury", "property damage" or "cleanup costs" which arise out of the "loading or unloading" of an "auto" owned by you, or rented or loaned to you at an "insured site", provided that any "release" commences on or after the Retroactive Date stated in the Declarations.
- k. "Bodily injury", "property damage" or "cleanup costs" arising out of a "release" which results from or is directly or indirectly attributable to failure to comply with an 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 by you or any of your members, partners or executive officers.
- l. Any governmental, civil or criminal fines or penalties, or "punitive damages" of any kind or nature.
- m. "Bodily injury", "property damage" or "cleanup costs" arising out of any "cleanup" operation reasonably considered to be routine and normal in connection with the business of the insured or occupancy of the property. This includes, but is not limited to, septic systems, sewage systems, and de-watering systems.
- n. "Bodily injury", "property damage" or "cleanup costs" arising out of asbestos, fiberglass and PCB's.
- o. "Bodily injury" or "property damage" arising out of any loss or damages of an intangible nature, including, but not limited to, loss or interruption of business, pain and suffering of any person, lost income, mental distress, loss of use of any benefit, or punitive damages.

- p. "Bodily injury", "property damage" or "cleanup costs" at an "insured site" where an authorized representative of the Missouri Petroleum Storage Tank Insurance Fund is denied access to the site or its records.
- q. "Bodily injury", "property damage" or "cleanup costs" caused in whole or in part by a "release" if, at the time of reporting, the "insured site" has been sold, given away or abandoned by you, unless this policy has been properly assigned or transferred.
- r. "Bodily injury", "property damage" or "cleanup costs" arising out of any "claim" or "suit" seeking damages for "personal injury" of any kind.
- s. "Bodily injury", "property damage" or "cleanup costs" arising out of any "release" from tank(s) where equipment installed does not meet the representations in the application.
- t. "Bodily injury", "property damage" or "cleanup costs" arising out of a "release" of any other substance, other than "petroleum".

## 5. SUPPLEMENTAL PAYMENTS

We will pay, within the limits specified in all subsequent subparagraphs, with respect to any "claim" we adjust or "suit" we defend, not to exceed the limits of the policy:

- a. All costs taxed against you by the court in a "suit" except:
  - (1) Governmental, civil or criminal fines or penalties; or
  - (2) "Punitive damages" of any kind or nature.
- b. Pre-judgment interest awarded against you on that part of the judgment we pay up to the applicable limits of insurance. We will not pay any pre-judgment interest based on the period of time after we have made an offer of settlement to the claimant.
- c. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay or deposited in court the part of the judgment that is within the applicable limit of insurance.
- d. Expenses incurred by the insured for first aid to others at the time of any "bodily injury" to which this insurance applies.

## SECTION II - WHO IS AN INSURED

- 1. If you are:
  - a. An individual, then you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owners.
  - b. A partnership or joint venture, then you, your spouse, your members, their spouses, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
  - c. A corporation, then your executive officers and directors are also insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
  - d. A governmental entity, then your officials and employees are also insureds, but only with respect to their duties as your officials or employees.

- 2. Each of the following is also an insured:
  - a. Your employees other than your executive officers, but only for acts within the scope of their employment by you. However, none of these employees is an insured for:
    - (1) "Bodily injury" to you or to a co-employee while in the course of their employment; or
    - (2) "Property damage" to property owned or occupied by or rented or loaned to that employee, any of your other employees or any of your partners or members (if you are a partnership or joint venture).
  - b. Any person or organization having proper temporary custody of your "real" property if you die; but only:
    - (1) With respect to liability arising out of the maintenance or use of that property; and
    - (2) Until your legal representative has been appointed.
  - c. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this policy.
- 3. No person or organization is an insured with respect to the conduct of any current or past partnership or joint venture that is not shown as a Named Insured in the Declarations.

## SECTION III - LIMITS OF INSURANCE

- 1. The limits of insurance shown in the Declaration and the rules below fix the most we will pay regardless of:
  - a. The number of insureds;
  - b. The number of "claims" made or "suits" brought as a result of any one "release";
  - c. The number of persons or organizations making claims or bringing "suits" as a result of one "release";
  - d. The sum of all "cleanup costs" incurred as a result of any one "release"; or
  - e. Expenses incurred as supplemental payments.
- 2. The annual Aggregate Limit is the most we will pay for the sum of:
  - a. All compensatory damages because of "bodily injury" and "property damage";
  - b. All "cleanup costs" incurred; and
  - c. All supplemental payments.
- 3. The per Occurrence Limit is the most we will pay per any one release, and the amount we will pay is the sum of:
  - a. All compensatory damages because of "bodily injury" and "property damage";
  - b. All "cleanup costs" incurred; and
  - c. All supplemental payments.

- d. We will pay the lesser of:
  - (1) The per Occurrence Limit reduced by the deductible amount shown on the Declaration, or
  - (2) The sum of "cleanup costs" and "supplemental payments" reduced by the deductible amount plus compensatory damages incurred.
- 4. This agreement is limited by law to funds appropriated, available and committed. Depletion of funds shall terminate any further obligations of this policy.

**SECTION IV - POLLUTION LIABILITY CONDITIONS**

**1. BANKRUPTCY**

Bankruptcy or insolvency of you or your estate will not relieve us of our obligations under this policy.

**2. YOUR DUTIES IN THE EVENT OF A "RELEASE", "CLAIM" OR "SUIT"**

- a. You are required to promptly notify us within twenty-four (24) hours of a "release" which may result in a "claim", or of any action or proceeding to impose an obligation on you for "bodily injury", "property damage" or "cleanup costs". Notice should include how, when and where the "release" took place and the names and addresses of any injured persons and witnesses.

NOTE: Notice of a "release" is not necessarily a "claim". See Section 1 Part 2, Claims Reporting.

- b. You must immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "claim" or "suit"; authorize us to obtain all records and other information available to you; cooperate with us in the investigation, settlement or defense of the "claim" or "suit"; and assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to you because of injury or damage to which this insurance may also apply.
- c. No insured will, except at his own cost, voluntarily make any payments of compensatory damages because of "bodily injury" or "property damage", or of "cleanup costs", without our prior consent. No insured will, except at his own cost, assume any obligation or incur any expenses under this policy, other than for first aid or "emergency response", without our prior consent. We retain the right, but not the obligation, to approve all environmental and other consultants used on your behalf, as well as their project budgets.

**3. LEGAL ACTION AGAINST US**

- a. No person or organization has a right under this policy:
  - (1) To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
  - (2) To sue us under this policy unless all of its terms have been fully complied with.
- b. A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured obtained after an actual trial; but we will not be liable for damages that are not payable under the terms of this policy or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

- c. The State of Missouri has no obligation under this policy.

**4. OTHER INSURANCE**

If the insured site is covered by other insurance our obligations are limited as follows:

- a. This insurance shall be excess over the limits of other collectible insurance. If the other insurance is also excess, the loss shall be shared as noted in b. below.
- b. Method of Sharing
  - (1) Should other coverages state they are excess in conjunction with this policy, each policy shall contribute equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.
  - (2) Should other insurance specifically not permit contribution by equal shares, this policy shall contribute by limits. Each policy share will be based on the ratio of its applicable limit of insurance to the total applicable limits of insurance coverage of all insurers.

**5. REPRESENTATIONS**

By accepting this policy, you agree:

- a. The statements in the application and Declarations are accurate and complete;
- b. We have issued this policy in reliance upon your representations.

You also agree to maintain your equipment so it meets State and/or Federal regulations. This insurance is void in any case of fraud by you. It is also void if you intentionally conceal or misrepresent a material fact in obtaining coverage. Representations made on the application are deemed to be material, and are a part of this policy.

**6. TRANSFER OF RIGHTS OF RECOVERY TO US**

If you have rights to recover all or part of any payment we have made under this policy, those rights are transferred to us. You must do nothing after loss to impair them. At our request, you will bring suit and help us enforce them.

**SECTION V - DEFINITIONS**

- 1. "Auto" means a land motor vehicle, trailer or semi-trailer designed for travel on public roads, including any attached machinery or equipment. But "auto" does not include any other type of motorized or self-propelled vehicle or its attached machinery or equipment.
- 2. "Bodily injury"
  - a. "Bodily injury" means physical injury, sickness, disease or damage to the body sustained by a person, including death resulting from any of these at any time.
  - b. "Bodily injury" as defined does not include any loss or damage of an intangible nature, including pain and suffering, mental distress or loss of use of any benefit. Neither does it mean "personal injury". "Personal injury" means injury, other than "bodily injury", arising out of one or more of the following offenses:
    - (1) false arrest, detention, imprisonment;
    - (2) malicious prosecution;

- (3) wrongful entry into or eviction of a person from a room, dwelling, premises or property that the person occupies; or
- (4) invasion of right of private occupancy.

- 3. "Claim" means a written demand for money or services made upon you, including the service of "suit". To be valid, a "claim" must be filed under and be adjudicated consistent with Missouri law.
- 4. "Cleanup costs" means expenses incurred on or offsite for the removal or neutralization of "petroleum" including costs, charges and expenses incurred by geotechnical or environmental firms and their personnel to investigate, contain, control, analyze, treat, assess, remediate or monitor the effects of any "release" covered by this insurance.

But "cleanup costs" does not mean, and this insurance will not pay for, the following:

- a. The upgrading or repair of "underground storage tanks" or the replacement of their contents;
  - b. The upgrading or repair of piping, connections and valves used in conjunction with a.;
  - c. Excavation and backfilling done in conjunction with a. or b.;
  - d. Costs of emptying, cleaning, removal, transporting or disposal of an "underground storage tank";
  - e. Testing for a suspected "release";
  - f. Damage or injury to buildings, contents or other property; or
  - g. Administrative costs associated with preparing a "claim".
- 5. "Emergency response" means immediate actions taken to contain a release or eliminate a serious hazard.
  - 6. "Insured site" means the specific location or part thereof specified as such in the Declarations.
  - 7. "Loading or unloading" means the transfer of "petroleum" to or from an "auto" while the "petroleum" is being removed from or dispensed to an "underground storage tank".
  - 8. "Petroleum" means substances as defined in Section 319.100 (14)(b), RSMo.
  - 9. "Property damage" means physical injury to or destruction of tangible property, excluding all resulting loss of use of that property. "Property damage" does not include "cleanup costs".
  - 10. "Punitive damages" means any form of damages which are other than compensatory in nature, or are damages which are designed to punish the action or actions which caused the "claim" or "suit". Included in this definition would be exemplary damages or assessments of any nature.
  - 11. "Release" means any spilling, leaking, emitting, discharging, escaping, leaching or disposing of "petroleum" from an "underground storage tank" into groundwater, surface water, or subsurface soils. The entirety of any such continuous or repeated emission, discharge, release or escape shall be deemed to be one "release" unless it can be determined when the incident as described originated. Each incident is subject to limits and conditions as noted in this policy.

- 12. "Suit" means a civil proceeding filed in a court of applicable jurisdiction within the State of Missouri and adjudicated consistent with Missouri law. The suit must be one in which compensatory damages because of "bodily injury" or "property damage", to which this insurance applies, are sought. "Suit" includes an arbitration proceeding alleging such damages to which you must submit or submit with our consent.

- 13. "Underground storage tank" means any one, or combination of tanks, including pipes connected thereto, used to contain an accumulation of "petroleum", and the volume of which, including the volume of the underground pipes connected thereto, is ten percent (10%) or more beneath the surface of the ground. It does not mean:
  - a. farm or residential tanks of eleven hundred (1,100) gallons or less used for storing motor fuel for non-commercial purposes;
  - b. tanks used for storing heating oil for consumptive use on the premises where stored;
  - c. septic tanks;
  - d. pipeline facilities, including gathering lines regulated under the Federal Natural Gas Pipeline Act of 1968 (P.L. 90-481) and/or the Federal Hazardous Liquid Pipeline Act of 1929 (P.L. 96-129), as amended;
  - e. pipeline facilities regulated under state laws comparable to the provisions of law referred to in (d) above;
  - f. surface impoundments, pits, ponds or lagoons;
  - g. storm or wastewater collection systems;
  - h. flow-through process tanks;
  - i. liquid-traps or associated gathering lines directly related to oil or gas production; or
  - j. storage tanks situated in an underground area such as a basement, cellar, mine working, drift, shaft or tunnel, if the storage tank is situated upon or above the surface of the floor.

- 14. "Waste" means any solid, liquid or gaseous irritant or contaminant, including smoke, vapor, soot, fumes, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

- 15. "Waste facility" means any site to which "waste" from the operations of an "insured site" is legally consigned for delivery or delivered for storage, disposal, processing or treatment, provided that such site:
  - a. Is licensed by a government authority to perform such storage, disposal, processing or treatment; and
  - b. Is not and never was owned by, rented or loaned to you.

**SECTION VI - POLICY CONDITIONS**

All Coverage Parts included in this policy are subject to the following conditions.

- 1. CANCELLATIONS
  - a. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.

- b. We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
  - (1) Ten (10) days before the effective date of cancellation if we cancel for nonpayment of participation fees or misrepresentation; or
  - (2) Sixty (60) days before the effective date of cancellation if we cancel for any other reason.
- c. We will mail or deliver our notice to the first Named Insured's last mailing address known to us.
- d. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
- e. If notice is mailed, proof of mailing is evidence of notice.

## 2. AUTOMATIC CANCELLATIONS

- a. Coverage will cancel automatically, without additional notice, upon one of the following events:
  - (1) All "underground storage tanks" listed on the declarations page are sold or given away; or
  - (2) If the insured empties and takes out of service all "underground storage tanks". The effective date of cancellation will be at the expiration date of the policy period during which all "underground storage tanks" are emptied and taken out of service.
- b. An Insured may apply for an Extended Reporting Period pursuant to Section 1. Pollution Liability Coverage, paragraph 3. Extended Reporting Period, when cancellation is automatic.

## 3. CHANGES

This policy contains all the agreements between you and us concerning the insurance afforded. The first Named Insured shown in the Declarations is authorized to make changes in the terms of this policy with our consent. This policy's terms can be amended or waived only by endorsement issued by us and made a part of this policy, and cannot conflict with Sections 319.100 through 319.139, RSMo, and regulations promulgated thereunder.

## 4. EXAMINATION OF YOUR BOOKS AND RECORDS

We may examine and audit your books and records as they relate to this policy at any time during the policy period and up to three years afterward.

## 5. INSPECTION AND SURVEYS

We have the right, but are not obligated, to:

- a. Make inspections and surveys at any time;
- b. Give you reports on the conditions we find; and
- c. Recommend changes.

Any inspections, surveys, reports or recommendations relate only to insurability and the participation fees to be charged. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. We do not warrant that conditions are safe or healthful, or comply with laws, regulations, codes or standards.

These conditions apply not only to us but to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.

## 6. PARTICIPATION FEES

- a. The first Named Insured shown in the Declarations is responsible for the payment of all participation fees.
- b. Participation fees or installments are due by the date shown on notices of acceptance, renewals or billings.
- c. Upon termination of coverage, participation fees will be refunded on a pro-rata basis, unless you have an outstanding deductible or participation fees owed to the Missouri Petroleum Storage Tank Insurance Fund.

## 7. TRANSFER OF YOUR RIGHTS AND DUTIES UNDER THIS POLICY

Your rights and duties under this policy may not be transferred without our written consent except in the case of your death.