

1 **Water Quality Insurance Syndicate**  
2 **Cargo Owner Policy Form (March 23, 2000)**

3 **PART I - INSURING PROVISIONS**

4 In consideration of the premium set forth on the Declarations Page of the Policy, and subject to the TERMS,  
5 CONDITIONS, LIMITATIONS, EXCLUSIONS and DEFINITIONS (as contained in PART V and shown in **bold type**  
6 **face** herein) of this Policy, the Subscribers to the WATER QUALITY INSURANCE SYNDICATE, as shown on the  
7 Signature Page hereof, hereafter "WQIS," do hereby agree to:

8  
9 Indemnify the **Assured** in its capacity as owner of a cargo of **oil or hazardous substances** for its legal liability  
10 arising from the discharge, emission, release, spillage or leakage, or the threat thereof, of such cargo from a **vessel** by  
11 reason of or with respect to:

12 **SECTION A**

- 13 (1) Liability imposed under Section 1002 of the Oil Pollution Act of 1990 (Public Law 101-380, as amended),  
14 hereafter the "Act;"
- 15 (2) Liability imposed under Section 107(a)(1) of the Comprehensive Environmental Response, Compensation and  
16 Liability Act (Public Law 96-510, as amended) with respect to the liability of an **owner or operator** of a **vessel**  
17 only, hereafter "CERCLA," however, liability imposed under any other Section or Subsection of CERCLA or  
18 liability for any **facility** is specifically EXCLUDED;
- 19 (3) Liability imposed by any **state** or any political subdivision thereof imposed under the laws of such **state** or  
20 political subdivision, but only if and to the extent that it would have been recoverable under SECTIONS A (1), (2),  
21 (4) or A (5) of PART I of this Policy, however, liability imposed under the laws of any **state** or any political  
22 subdivision thereof which is broader in scope or more extensive in kind or quantum than the liability recoverable  
23 under SECTIONS A(1) or (2) of PART I of this Policy is specifically EXCLUDED;
- 24 (4) Liability for interest imposed under Section 1005 of the Act;
- 25 (5) Reasonable costs or expenses incurred for advertisement required under Section 1014 of the Act; and
- 26 (6) Administrative penalties imposed pursuant to Section 311(b)(6)(B) of the Federal Water Pollution Control Act (33  
27 U.S.C. Section 1321(b)) as amended by the Act, hereafter "FWPCA," and arising under Section 311(b)(6)(A)(i)  
28 ONLY. Penalties imposed under any other Section of the FWPCA, any other federal statute, or any other provision  
29 of law including, but not limited to, the laws of any **State** or subdivision thereof, are specifically EXCLUDED.

30 **SECTION B**

31 Costs and expenses incurred by the **Assured** with the prior written consent of WQIS for investigation of, or  
32 defense against, any liabilities covered under this Policy.

33 **PART II - LIMITS**

34 The limit of liability provided by this Policy for all coverage hereunder is the amount shown on the Declarations  
35 Page.

36 **PART III - GENERAL EXCLUSIONS**

37 **SECTION A**

38 Notwithstanding any provision in this Policy to the contrary, this Policy does not provide coverage for any  
39 liability, loss, damage, cost or expenses arising from:

- 40 (1) Loss of life, bodily injury, mental anguish or any other emotional, physical or mental illness;
- 41 (2) Fines, penalties and punitive or exemplary damages of any kind or nature, however, this exclusion shall  
42 not apply to coverage provided under SECTION A (6) of PART I;
- 43 (3) The discharge, emission, release, spillage or leakage of any radioactive material or substance of any kind  
44 or nature or the threat of such discharge, emission, release, spillage or leakage;
- 45 (4) Fire fighting, salvage or removal of wreck or debris of any **vessel** or cargo carried aboard any such **vessel**

46 except to the extent that such actions are specifically taken for the sole purpose of stopping a discharge or release,  
47 preventing a substantial threat of a discharge under the Act, or a threatened release under CERCLA, whether or  
48 not such actions are at the order of the designated Federal On-Scene-Coordinator;

- 49 (5) Contractual obligations which would not have been imposed on the **Assured** by law;
- 50 (6) The willful misconduct of the **Assured**, or the willful misconduct of the **owner** or **operator** of the **vessel**  
51 if within the privity or knowledge of the **Assured**;
- 52 (7) The intentional or knowing discharge, emission, release, spillage or leakage of any substance of any kind  
53 or nature from the **vessel** if within the privity and knowledge of the **Assured**;
- 54 (8) An act of war; and
- 55 (9) Physical loss of or damage to any cargo or product, however, this Policy does insure against liability  
56 recoverable by a **claimant** under Section 1002(b)(2)(B) of the Act.

#### 57 **SECTION B**

58 Notwithstanding any provisions to the contrary, this Policy does not provide coverage for any cost or expense  
59 incurred by the **Assured** without the prior written consent of WQIS, including investigation and defense costs.

#### 60 **SECTION C**

61 Where the **Assured**, or any subsidiary, affiliated or related company or entity of the **Assured**, has responded to an  
62 **occurrence** otherwise subject to the provisions of this Policy and has incurred costs or expenses that are claimed under this  
63 Policy, the indemnity provided by this Policy shall be limited to the actual out-of-pocket costs and expenses incurred by the  
64 **Assured**. No reimbursement shall be payable under this Policy for profit, mark-ups, nor for any portion of costs or  
65 expenses claimed that would have been incurred by the **Assured** or its subsidiary, affiliated or related company or entity  
66 had there been no **occurrence**.

#### 67 **SECTION D**

68 Notwithstanding any provision in this Policy to the contrary, this Policy does not provide coverage for any  
69 liability, loss, damage, cost or expenses arising from the discharge, emission, release, spillage or leakage of any substance  
70 of any nature from any **vessel, public vessel, facility, mobile offshore drilling unit, onshore facility**, structure, equipment  
71 or object of any kind which is owned, chartered, leased, rented or operated by the **Assured**.

### 72 **PART IV - GENERAL TERMS, CONDITIONS AND LIMITATIONS**

#### 73 **SECTION A**

- 74 (1) This Policy constitutes the entire agreement between WQIS and the **Assured**, and it may only be modified,  
75 amended or changed in writing by WQIS. The **Assured** also acknowledges that the broker is solely the agent of  
76 the **Assured** with respect to this Policy, and is not the agent, express or implied, of WQIS.
- 77 (2) The **Assured's** breach of any warranty, express or implied, contained in this Policy shall immediately void this  
78 Policy as of the time of the breach, and no claim shall be paid under this Policy for losses arising after the breach.  
79 WQIS may, at its sole discretion, continue coverage provided that: (i) it has received written notice of the breach  
80 from the **Assured**; (ii) the **Assured** has paid any additional premium as WQIS may require; and (iii) WQIS has  
81 confirmed in writing that coverage is continued.

#### 82 **SECTION B**

83 This Policy is deemed to have been issued to the **Assured** in New York, New York, and the law applicable to the  
84 interpretation of this Policy of insurance and the rights and obligations of WQIS and the **Assured** hereunder shall be federal  
85 maritime law or, in the absence of federal maritime law, the law of the State of New York, except for choice of law.

86 The **Assured** expressly acknowledges acceptance of this provision, unless the Policy has been endorsed at the  
87 request of the **Assured** to waive or modify this provision, for which additional premium may be required.

#### 88 **SECTION C**

89 In the event of any **occurrence** or incident, the **Assured** SHALL GIVE IMMEDIATE NOTICE OF SAID  
90 OCURRENCE OR INCIDENT TO WQIS. The **Assured** shall not make any admission of liability, either before or after  
91 any such **occurrence** or incident, without the prior consent of WQIS.

#### 92 **SECTION D**

93 The **Assured** shall immediately forward to WQIS all information, communications, processes, pleadings or other  
94 legal papers relating to any **occurrence**. It is a condition precedent to the payment of any claim under this Policy that, when

95 required by WQIS, the **Assured** shall: (i) aid in securing information, evidence and witnesses; and (ii) cooperate with  
96 WQIS, including testifying at the request of WQIS, in the defense of any claim or suit and in the appeal from any judgment.

97 **SECTION E**

98 If, at the time of an **occurrence** otherwise giving rise to liability insured by this Policy, there is any other valid and  
99 collectible insurance with any other insurer covering the **occurrence**, the insurance afforded by this Policy shall be in  
100 excess of and shall not contribute with such other insurance, regardless of the provisions of any other insurance policy.

101 **SECTION F**

102 If the **Assured** shall fail or refuse to settle any claim as authorized or requested by WQIS, the liability of WQIS to  
103 the **Assured** shall be limited to the amount for which settlement could have been made, or, if the amount is unknown, to  
104 that amount which WQIS authorized.

105 **SECTION G**

106 WQIS shall be subrogated to all the rights which the **Assured** may have against any other person, entity or fund, in  
107 respect of any payment made under this Policy, to the extent of such payment, and the **Assured** shall, upon the request of  
108 WQIS, execute all documents necessary to secure to WQIS such rights. In the event of any agreement or act, past or future,  
109 by the **Assured**, whereby any right of recovery of the **Assured** against any person, entity or fund is released or lost, to  
110 which WQIS on payment of loss would have been entitled, by subrogation, but for such agreement or act, WQIS shall be  
111 relieved of liability under this Policy to the extent that its rights of subrogation have been impaired thereby; in such event,  
112 the right of WQIS to retain or collect any premium paid or due hereunder shall not be affected.

113 **SECTION H**

- 114 (1) Either WQIS or the **Assured** may cancel this Policy, for any reason, by giving the other party thirty days' notice of  
115 such intention in writing and be delivered by hand, facsimile transmission, overnight delivery service, mail or  
116 telegraphic means sent to (i) the **Assured** at its last known address or (ii) WQIS at 14 Wall Street, New York, NY  
117 10005. At noon on the thirtieth day after such notice shall have been sent, this insurance shall be null and void.  
118 Any such notice sent to the **Assured's** broker of record for this insurance shall have the same effect as if sent to  
119 the **Assured** direct. If this Policy, is canceled by WQIS, such proportion of the premium as shall have been earned  
120 up to the time of such cancellation shall be retained by WQIS and a return of premium shall be computed on a pro  
121 rata daily basis; if canceled at the request of the **Assured**, the return shall be based on short rates subject to the  
122 Minimum and Deposit premium shown on the Declarations Page. From any return of premium, the same  
123 percentage of deduction, if any, shall be made as was allowed by WQIS on receipt of the original premium.
- 124 (2) In the event of non-payment of premium within 30 days after the due date(s) hereunder, this policy may be  
125 canceled by WQIS upon 10 (ten) days written notice delivered by hand, facsimile transmission, overnight delivery  
126 service, mail or telegraphic means to the **Assured** at its last known address. At noon on the tenth day after such  
127 notice shall have been sent, this insurance shall be null and void. Any such notice sent to the **Assured's** broker of  
128 record for this insurance shall have the same effect as if sent to the **Assured** directly. Such proportion of premium  
129 as shall have been earned up to the time of cancellation shall be payable.

130 **SECTION I**

131 No action shall lie against WQIS for the recovery of any liability, loss, damage, cost or expense sustained by the  
132 **Assured** unless such action is brought against WQIS within one year after a final judgment or decree is entered against the  
133 **Assured**, or in case the claim against WQIS accrues without the entry of such final judgment or decree, unless such action  
134 is brought within one year from the date of the payment of such liability, loss, damage, cost or expense by the **Assured**.

135 **SECTION J**

136 In the event that the **Assured** becomes insolvent, files an action for reorganization or liquidation in any court, or is  
137 granted protection by any court, immediate notice shall be given to WQIS.

138 **SECTION K**

139 If this Policy is a renewal of a prior WQIS policy, it shall be considered a separate policy of insurance, and not a  
140 continuation of the prior policy.

141 **PART V – DEFINITIONS**

- 142 (1) The following words shall have the meaning as defined in Section 1001 Of the Act:
- 143 (a) **Act of God**
  - 144 (b) **Claimant**
  - 145 (c) **Exclusive Economic Zone**

- 146 (d) **Facility**
- 147 (e) **Gross Ton**
- 148 (f) **Mobile Offshore Drilling Unit**
- 149 (g) **National Contingency Plan**
- 150 (h) **Navigable Waters**
- 151 (i) **Offshore Facility**
- 152 (j) **Oil**
- 153 (k) **Outer Continental Shelf Facility**
- 154 (l) **Owner or Operator**
- 155 (m) **Public Vessel**
- 156 (n) **Removal**
- 157 (o) **Tank Vessel**
- 158 (p) **United States and State**
- 159 (q) **Vessel**

160 (2) The following words shall have the meaning as defined in Section 101 of CERCLA:

161 (a) **Hazardous Substance**

162 (3) **Assured** means the Named Assured(s).

163 (4) **Occurrence** means any one accident or **occurrence** or series of accidents or **occurrences** arising out of one event  
164 which gives rise or may give rise to a loss, damage, cost, liability or expense claimed under this Policy, where  
165 such event occurs on or after the Inception Date and on or before the Expiry Date shown on the Declarations Page.