

**ATTACHMENT 8**

**INSURING AGREEMENT REVISIONS**

The proposed revisions to the MSI Insuring Agreement are as follows:

1. Add a new section 1.E, INCIDENTAL COSTS, and revise sections 1.G, LOSS, and 4.B, AMOUNT OF LOSS PAID, to expand coverage so that compensation is provided for incidental costs, as defined in the proposed Incidental Costs Report, Attachment 7 to the MSI Board meeting agenda.  
Note: For clarification purposes, APPURTENANCES were added to the revision in 4.B.
2. Revise section 2.A, COVERAGE, so that it more clearly establishes that the subsidence event must occur during the policy period.
3. Organize section 1, DEFINITIONS, into alphabetical order.



## INSURING AGREEMENT

1. **DEFINITIONS.** Throughout this policy, "you" and "your" refer to the Policyholder(s) named on the Certificate of Mine Subsidence Insurance, and the "Fund" refers to the Coal and Clay Mine Subsidence Insurance Fund and its designated representatives. In addition, certain words and phrases are defined as follows:

- A. **APPURTENANCES** refer to fences, retaining walls, paved or improved patios, walks, driveways, and in ground swimming pools. All **APPURTENANCES** must be permanently affixed and securely attached to the land surface and adjacent to and used in conjunction with the part of the **INSURED STRUCTURE** that is the building;
- B. **CERTIFICATE** refers to the Certificate of Mine Subsidence Insurance;
- C. **COST OF REPAIR** refers to the cost of repairing or replacing the **LOSS** to the **INSURED STRUCTURE** with material of like kind and quality, within a reasonable time after the **LOSS**;
- D. **DAMAGE CLAIM NOTICE** refers to the form supplied by the Fund and used by the claimant to list all damages being claimed;
- E. **INCIDENTAL COSTS** refer to expenses incurred that are consequential to the repair of a **LOSS**, which include expenses for temporary relocation, increased utilities, reduced income, increased living costs and security of the **INSURED STRUCTURE**, the compensation for which is set forth in the Incidental Cost Table that has been adopted by the Board;
- F. **INSURED STRUCTURE** refers to a complete building and its **APPURTENANCES**, or a building under construction and its **APPURTENANCES**, that is described in the **CERTIFICATE** and in the Mine Subsidence Insurance Application, and to which you can establish legal title; it does not include grounds surrounding the described building;
- G. **LOSS** refers only to physical damage to the **INSURED STRUCTURE** and to any permanent improvements within the structure; it does not include damage to contents, personal property of any nature, or loss of use of the **INSURED STRUCTURE** or other loss, except as may be provided by the Fund as **INCIDENTAL COSTS**;
- H. **MINE SUBSIDENCE** refers to the movement of the ground surface as a result of the collapse of underground coal or clay **MINE WORKINGS**;
- I. **MINE WORKINGS** refers to the roof, floor, or pillars within an underground coal or clay mine;
- J. **POLICY** refers to the **CERTIFICATE**, this **INSURING AGREEMENT** and the Application for Mine Subsidence Insurance;
- K. **POLICY PERIOD** refers to the time beginning when the **POLICY** is issued through all subsequent and continuous renewals of the **POLICY**.

2. **COVERAGE.**

- A. Except as provided for in paragraph B of this section this **POLICY** covers only **LOSS** to the **INSURED STRUCTURE** which occurs during the **POLICY PERIOD** and which is caused by **MINE SUBSIDENCE** which occurs during the **POLICY PERIOD** or which is caused by movement of the ground surface resulting from a surface discharge due to a sudden and unexpected breakout of water directly emanating from underground coal or clay mine workings which occurs during the **POLICY PERIOD**. This policy does not cover losses due to discharges from a man-made system designed to collect or convey mine water, or damages that are related in any way to surface mining activities.
- B. **LOSS** to **APPURTENANCES** are covered only if it is first determined that the same event is responsible for a covered **LOSS** to that part of the **INSURED STRUCTURE** that is the building.

3. **COVERAGE UNDER THIS POLICY SHALL BE VOID** where:

- A. the **LOSS** is due to mining operations under the insured's control;
- B. you fail to comply with any of your obligations under this agreement unless noncompliance is consented to by the Fund; or
- C. you have waived, bargained away or forfeited whatever right you have to recover a loss from a third party.

4. **AMOUNT OF LOSS PAID.** All **LOSS** covered by the **POLICY** that results from a single covered event shall be adjusted under the same claim provided that the amount of the paid **LOSS** attributed to the covered **LOSS** to the **APPURTENANCES** shall not exceed 10% of the amount of the insurance shown on the **CERTIFICATE**. For a **LOSS** covered by this **POLICY**, the Fund will pay the smaller of the following amounts:

- A. the amount of insurance shown on the **CERTIFICATE**; or
- B. the **COST OF REPAIR** including **APPURTENANCES** and **INCIDENTAL COSTS**, less the deductible shown on the **CERTIFICATE**.

5. **POLICY DURATION.** The duration of this **POLICY** will be limited to one year.

6. **POLICY RENEWAL.** Except as set forth in Section 10, a **POLICY** is renewable without a new inspection.

7. **YOUR DUTIES WHEN LOSS OCCURS.** In case of a **LOSS** covered by this **POLICY**, you shall see that the following duties are performed:

- A. notify the Fund immediately of a **LOSS** believed to be covered by this **POLICY**;
- B. within sixty (60) days of receiving the **FUND'S DAMAGE CLAIM NOTICE**, return the completed document to the Fund;

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- C. fully cooperate with the Fund's agents in carrying out the investigation of the claim. At a minimum you shall:
- i. allow the Fund to inspect the **INSURED STRUCTURE** and the surrounding grounds as often as may be necessary;
  - ii. allow the Fund to conduct any tests designed to determine the validity of the claim;
  - iii. be present at least for the initial investigation by representatives of the Fund and respond to all requests for information concerning the **INSURED STRUCTURE** and the history of the claim; and
  - iv. refrain from undertaking any activities which could hinder representatives of the Fund from conducting their investigation;
- D. take only those emergency preventive measures as authorized in writing by the Fund, in order to protect the **INSURED STRUCTURE** from further damage and provide the Fund with copies of all receipts of expenditures for the emergency measures;
- E. within sixty (60) days of the receipt of the Fund's list of Authorized Damages, submit to the Fund two (2) itemized bids from reputable experts for the cost of repairing the damages as authorized by the Fund. No bids are required if the Fund estimated that the cost of repair is less than six thousand dollars (\$6,000). The Fund may waive the number of bids required where you demonstrate an unsuccessful good faith effort to obtain the required bids.
8. **OPTION TO REPAIR.** The Fund will have the option to repair or replace the covered **LOSS**, instead of making a payment for the **LOSS** under Paragraph 4. To exercise this option the Fund will notify you within thirty (30) days of receiving the itemized estimates referred to in Subparagraph 7E.
9. **SUIT.** If your claim is denied by the Fund, in whole or in part, you may appeal the denial pursuant to Section 4 of the Environmental Hearing Board Act, 35 P.S. Section 7514, and the Administrative Agency Law, 2 Pa. C.S. Chapter 5A, to the Environmental Hearing Board (EHB), P.O. Box 8457, Harrisburg, PA 17105-8457, (717) 787- 3483. TDD users may contact the EHB through the Pennsylvania Relay Service, (800) 654-5984. Appeals must be filed with the EHB within 30 days of receipt of written notice of the Fund's denial unless the appropriate statute provides a different time period. Copies of the appeal form and the EHB's rules and practice and procedure may be obtained from the EHB. The appeal form and the EHB's rules of practice and procedure are also available in Braille or on audiotape from the Secretary to the EHB at (717) 787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decisional law.
10. **REPAIR OF DAMAGE.** The Insured shall provide the Fund with opportunities to inspect the repair work to the **INSURED STRUCTURE** as the work is being completed. Within one year of the settlement of a claim, the insured shall notify the Fund that the repairs authorized by the Fund have been completed and shall provide the Fund an opportunity to reinspect the **INSURED STRUCTURE**. If the insured fails to give the Fund this notice and opportunities to reinspect or if the Fund cannot verify that the repairs to the **INSURED STRUCTURE** were made in accordance with the settled claim, the Fund may refuse to issue or renew a Subsidence Insurance Policy for this **INSURED STRUCTURE**.
11. **SUBROGATION.** This **POLICY** does not release any person, partnership, or corporation, from liability for any **LOSS** which the **POLICY** covers. If the Fund makes repairs or makes a payment for a **LOSS**, you agree that you assign whatever right you may have to recover that **LOSS** from another party, but only to the extent of the payment or repairs made by the Fund.
12. **OTHER INSURANCE OR SOURCES OF REMUNERATION.** If you have or secure **OTHER INSURANCE OR SOURCES OF REMUNERATION** for a **LOSS** covered by this **POLICY**, the Fund will be liable for only the portion of the **LOSS** which the **OTHER INSURANCE OR SOURCES OF REMUNERATION** will not cover.
13. **CONCEALMENT OR FRAUD.** The Fund does not provide coverage for any Policyholder who has intentionally concealed or misrepresented any material fact or circumstance relating to this insurance.
14. **CANCELLATION OF INSURANCE.**
- A. The Fund will cancel this insurance:
    - i. if there has been a misrepresentation of fact which, if known to the Fund, would have prevented it from issuing this **POLICY**;
    - ii. if you fail to pay the premium; or
    - iii. if you sell or transfer your interest in the **INSURED STRUCTURE**. Upon cancellation of the **POLICY**, due to sale or transfer, the Fund will return to you a pro rata portion of your premium for the balance of the **POLICY PERIOD**, providing you notify the Fund in writing within thirty (30) days from the closing date of the transfer or sale. If notification is not received by the Fund within thirty (30) days, your refund will be pro rated from the date you notify the Fund of such sale or transfer.
  - B. Policyholders may cancel this insurance at their discretion. When the policyholder directs the Fund to cancel a policy, the Fund will prorate the amount of the refund from the date it receives your written notice or the date for which you are requesting a cancellation, whichever is later.
  - C. Any policy cancelled within the first ninety (90) days of effectiveness will be charged a processing fee of \$10.
15. **DEATH OF POLICYHOLDER.** If you die during the **POLICY PERIOD**, your interest in this insurance will automatically pass to the recipient(s) of your interest in the **INSURED STRUCTURE**.
16. **WAIVER.** Waiver of any provisions of this agreement by the Fund does not constitute a precedent for other actions under the same provisions, nor does it constitute a waiver of any other provisions of this agreement by the Fund.
17. **DISABILITY ANNOUNCEMENT.** If you are a person with a disability and you require auxiliary aid, service or other accommodation to read this **INSURING AGREEMENT**, please contact the Chief of the Mine Subsidence Insurance Section directly at 717-783-9586 or through the Pennsylvania AT&T Relay Service at 1-800-654-5984 (TDD) to discuss how the Fund may accommodate your needs.