

**ENVIRONMENTAL RISK SERVICES CORPORATION**

① Copy 2 Responses to  
McCarthy  
Personal ins  
**ers**

October 29, 2012

11/29/12

JENNYER —

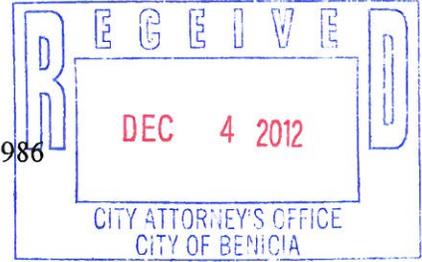
*Via Certified Mail, Return Receipt, and E-Mail*

PLEASE SEE OUR COVERAGE  
RESPONSE(S) ATTACHED.

Jim Hill, ARM-P  
Risk Management Officer  
ABAG PLAN Corporation  
P.O. Box 2050  
Oakland, CA 94604-2050

JIM HILL

**Re: Insured:** City of Benicia  
**Policies:** ABAG PLAN  
Policy Number GAL 2012-13  
Policies Preceding GAL 2012-13 from 1986  
Illinois Union Insurance Company  
Policy Number PPE G24544837-001  
Policy Number PPE G24544837-002



Dear Mr. Hill:

I am a licensed insurance broker and am acting as agent for the City of Benicia in connection with its response to the Draft Imminent and Substantial Endangerment Determination and Remedial Action Order ("Draft Remedial Action Order") from the California Environmental Protection Agency, Department of Toxic Substances Control ("Department").

The City's records indicate that it was insured under the above-referenced policies during the indicated term. This letter constitutes a claim under the ABAG Plan and Illinois Union Insurance Company Public/Educational Entity Pollution Liability Insurance Policy (PEPIP) policies.

On October 4, 2012, you indicated in a phone conversation with my agent William Most that we should tender the City's claim under the PEPIP policy to you, and you will in turn tender it to Illinois Union Insurance Company. This claim under the PEPIP policies is tendered to you in accordance with these directions.

Copies of the ABAG PLAN policies have not been located in the City's files. Please send me copies of the policies. In your communications with William Most you also indicated that you have not yet received the Illinois Union Insurance Company policy number PPE G24544837-002. I appreciate that you will send me a copy of that policy as soon as you receive it.

A copy of the Draft Remedial Action Order is enclosed for your immediate reference. Further information about the Draft Remedial Action Order and developments related to the Order may be found at the following website:

[http://www.ci.benicia.ca.us/index.asp?Type=B\\_BASIC&SEC={EE025B5A-169D-4F4D-87A9-F00C10B15CD5}](http://www.ci.benicia.ca.us/index.asp?Type=B_BASIC&SEC={EE025B5A-169D-4F4D-87A9-F00C10B15CD5}).

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The Draft Remedial Action Order concerns the U.S. Army's (former) Benicia Arsenal. The U.S. Army closed the Arsenal in 1964. It was converted to civilian use and sold to the City of Benicia. The City of Benicia sold certain areas of the Arsenal property and they are privately owned. The City of Benicia still owns the remainder of the Arsenal property.

The Draft Remedial Action Order specifies that hazardous substances have been found on the Arsenal property and there has been a release or threatened release of the hazardous substances. The Draft Remedial Action Order requires a comprehensive remediation plan for the Arsenal property.

The Department has notified the City of Benicia that as the owner of property where hazardous substances exist or may exist, the City of Benicia has responsibility for the remediation regardless it has not been shown that the City of Benicia was responsible for any contamination. The Department's notice to the City of Benicia dated September 15, 2010 also is enclosed for your reference.

We believe the remediation order and the Department's claims that the City of Benicia has responsibility for the remediation gives rise to coverage under the above-referenced insurance policies. This letter is notice of a claim under the policies. Please respond regarding coverage as specified in the California Insurance Regulations, Cal. Code Regs., tit. 10, § 2695.1 et seq. Please also let me know if the insurer requires additional proof of claim forms and if so please send copies of the forms to me.

I also remind you that private owners and businesses at the former Arsenal must not be contacted in connection with your investigation, and the insurer may not instigate any actions against them or tender claims to them for contribution. As the private owners and businesses are not common insureds, Hartford Accident and Indemnity Company has no right of contribution against them. (*Golden Eagle Insurance Co. v. Insurance Co. of the West* (2002) 99 Cal.App.4<sup>th</sup> 837, 853; *American Continental Insurance Co. v. American Casualty Co.* (2001) 86 Cal.App.4<sup>th</sup> 929, 938.) If the insurer disagrees and takes the position that the private owners and businesses may be contacted either in connection with its investigation or claims for contribution, we require that the insurer notify me before taking any further action so the issue may be resolved before there is any contact with the owners and businesses.

You are welcome to contact me if you require additional information that I can provide or you otherwise wish to discuss these matters further.

Sincerely,  
ERS Corp



Mark O'Brien

Enclosures

cc: Heather McLaughlin, Benicia City Attorney