



**ACE North American Claims**

ACE North American Claims  
Environmental  
PO Box 5103  
Scranton, PA 18505-0510

201-479-6395 *tel*  
866-635-5698 *fax*

Rachel.schulman@acegroup.com

Rachel Schulman  
Sr. Claims Specialist

November 21, 2012

**VIA CERTIFIED MAIL**

City of Benicia  
PO Box 2050  
Oakland, CA 94604  
Attn: Jim Hill

RECEIVED  
DEC 3 - 2012  
ABAG PLANCORP.

Re:	Named Insured:	Public Entity Property Insurance Program ("PEPIP")
	Entity:	ABAG-City of Benicia
	Date of Loss:	9/15/2012
	Site:	Former Benicia Arsenal, Benicia CA
	Policy No.:	PPE G24544837 001 and PPE G24544837 002
	<u>ACE Claim No.:</u>	<u>JY12J0591558</u>

Dear Mr. Hill:

Thank you for the notice you provided through your broker, Alliant Insurance Services, advising of the potential claim at the above location. ACE North American Claims is handling the referenced matter on behalf of Illinois Union Insurance Company (collectively "ACE"). ACE understands that the ABAG- City of Benicia ("Benicia") has requested coverage consideration under the Public/Educational Entity Pollution Liability Policy issued to the Public Entity Property Insurance Program ("PEPIP"). Regrettably, the purpose of this correspondence is to deny coverage for this matter.

**The Claim**

By way of background, we have been advised that the City of Benicia received a Draft Remedial Action order from the California Environmental Protection Agency, Department of Toxic Substances Control ("Department") due to hazardous substances existing on the former US Army's Benicia Arsenal, located in Benicia CA. The Arsenal has been closed since 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 still owns the remainder of the Arsenal property. The City of Benicia was notified initially, by letter dated September 15, 2010, from the Department of existence of contamination at this location.

**The Policy**

Illinois Union Insurance Company issued to PEPPIP a Public/Educational Entity Pollution Liability Policy, number PPE G24544837 001, for the period July 1, 2011 through July 1, 2012 and PPE G24544837 002 for the period July 1, 2012 through July 1, 2013 (the "Policies"). The available limits of insurance are dependent upon the Total Insurable Value ("TIV"). Based on the TIV OCS&D is subject to limits of \$1,000,000 per pollution condition and \$25,000,000 in the aggregate subject to a self-insured retention of \$100,000.

The relevant portions of the Policies are quoted below:

**I. INSURING AGREEMENTS (Policy PPL G24544837 001)**

Solely to the extent that the Coverages, below, are identified on the Declarations to this Policy as being underwritten by the Insurer, the Insurer agrees to pay on behalf of the “insured” for:

**A. NEW POLLUTION CONDITIONS (Coverage A.)**

“Claims”, “remediation costs”, and associated “legal defense expenses”, in excess of the “self-insured retention”, arising out of a “pollution condition” on, at, under, or migrating from a “covered location”, provided the “claim” is first made, or the “insured” first discovers such “pollution condition”, during the “policy period”. Any such discovery of a “pollution condition” must be reported to the Insurer, in writing, during the “policy period”. Any such “claim” must be reported to the Insurer, in writing, during the “policy period” or any applicable “extended reporting period”.

The coverage afforded pursuant to this Coverage **A.** only applies to “pollution conditions” that first commence, in their entirety, on or after the inception date identified in Item **2.a.** of the Declarations to this Policy.

**B. POLLUTION CONDITIONS FROM COVERED OPERATIONS (Coverage B.)**

“Claims” and associated “legal defense expenses”, in excess of the “self-insured retention”, arising out of a “pollution condition” resulting from “covered operations”, provided the “claim” is first made during the “policy period”. Any such “claim” must be reported to the Insurer, in writing, during the “policy period” or any applicable “extended reporting period”.

The coverage afforded pursuant to this Coverage **B.** only applies to “pollution conditions” that first commence, in their entirety, on or after the inception date identified in Item **2.a.** of the Declarations to this Policy.

**II. INSURING AGREEMENTS (Policy PPL G24544837 002)**

Solely to the extent that the Coverages, below, are identified on the Declarations to this Policy as being underwritten by the Insurer, the Insurer agrees to pay on behalf of the “insured” for:

**B. NEW POLLUTION CONDITIONS (Coverage A.)**

“Claims”, “remediation costs”, and associated “legal defense expenses”, in excess of the “self-insured retention”, arising out of a “pollution condition” on, at, under, or migrating from a “covered location”, provided the “claim” is first made, or the “insured” first discovers such “pollution condition”, during the “policy period”. Any such discovery of a “pollution condition” must be reported to the Insurer, in writing, during the “policy period”. Any such “claim” must be reported to the Insurer, in writing, during the “policy period” or any applicable “extended reporting period”.

The coverage afforded pursuant to this Coverage **A.** only applies to “pollution conditions” that first commence, in their entirety:

1. During the “policy period” or
2. If prior to the “policy period”, on or after the Retroactive Date identified in Item **2.e.** of the Declarations to this Policy.

## B. POLLUTION CONDITIONS FROM COVERED OPERATIONS (Coverage B.)

“Claims” and associated “legal defense expenses”, in excess of the “self-insured retention”, arising out of a “pollution condition” resulting from “covered operations”, provided the “claim” is first made during the “policy period”. Any such “claim” must be reported to the Insurer, in writing, during the “policy period” or any applicable “extended reporting period”.

The coverage afforded pursuant to this Coverage B. only applies to “pollution conditions” that first commence, in their entirety:

1. During the “policy period” or
2. If prior to the “policy period”, on or after the Retroactive Date identified in Item 2.e. of the Declarations to this Policy.

The policies contain to following Exclusion:

## VI. Exclusions

### P. Pre-Existing Conditions

“Claims”, “remediation costs” or “legal defense expenses” arising out of or related to “pollution conditions” commencing in whole or in part, prior to:

1. The “policy period”;
2. The Retroactive Dates identified in Items 2.e and 3.e., as applicable to any Supplemental Coverage added to this Policy By endorsement; or
3. With respect to “covered locations” acquired or leased by a “named insured” and added to the Policy during the “policy period” pursuant to an Automatic Acquisition and Due Diligence Endorsement attached to this Policy, if any, prior to the closing date or the effective date of the acquisition or lease of such “covered location”, respectively.

## Coverage Discussion

As an initial matter, please note that these Policies shall not be triggered until each of the **self-insured retentions** are paid by the Insured and ACE reserves all rights in this regard.

Coverage A of the Policies will respond to **claims, remediation costs**, and associated **legal defense expenses**, arising out of a **pollution condition** on, at, under, or migrating from a **covered location** that first commence in their entirety on or after the inception date of the policy with reference to the earlier policy period, or July 1, 2011, or on or after the Retroactive Date with reference to the current policy period which again would be July 1, 2011. Such claims must be reported to the insurer in writing during the policy period or any extended reporting periods. In that this matter involves a historical release that may go back to years prior to 1964, there would be no coverage for this claim under Coverage A of the policies. The pollution condition did not first commence after the inception date of the policy or the Retroactive date of July 1, 2011. As such, ACE must regretfully deny coverage for this matter on this basis. Additionally, the policies provide for claims made coverage. In that no claim was made and reported during the earlier policy period, there would also be no coverage for this matter under the earlier policy period for this reason as well. As such, ACE must regretfully deny coverage for this matter on this basis as well.

Coverage **B** would not apply since this matter does not fall within the definition of **covered operations**. ACE must also deny coverage under Coverage **B** of the policies.

Additionally, the Policy contains exclusion for Pre-Existing Conditions. The Policy will not respond to claims arising out of pollutions conditions commencing prior to the policy period or the Retroactive date. Because the Insured was aware of the alleged conditions at the above location as early as September 2010 the conditions alleged exist the policy period and the Retroactive date of July 1, 2011. Accordingly, ACE must regretfully deny coverage for this matter on this basis based on Exclusion **P**.

Should you wish to take this matter up with the New York State Insurance Department, you may file with the Department either on its website at [www.ins.state.ny.us/complhow.htm](http://www.ins.state.ny.us/complhow.htm) or you may write to or visit the Consumer Services Bureau, New York State Insurance Department, at: 25 Beaver Street, New York, New York 10004; One Commerce Plaza, Albany, New York 12257; 200 Old Country Road, Suite 340, Mineola, New York 11501; or Walter J. Mahoney Office Building, 65 Court Street, Buffalo, New York 14202.

The foregoing communication is without prejudice to ACE's rights pursuant to the terms, conditions, provisions and exclusions of the Policy. ACE reserves the right to assert any other coverage or policy defense that may now be applicable or is later determined to be applicable upon further information provided. No act of any agent, servant, or employee of ACE, including its attorneys, shall constitute a waiver or estoppel with respect to these rights.

Should you have any questions concerning ACE's coverage determination, please do not hesitate to let me know.

Very truly yours,

A handwritten signature in blue ink that reads "p.p. Rachel Schulman / AJT". The signature is written in a cursive style.

Rachel Schulman

cc: Alliant Insurance Services, Inc.  
100 Pine Street, 11<sup>th</sup> Floor, San Francisco, California 94111  
Attn: David Sutton- [dsutton@alliantinsurance.com](mailto:dsutton@alliantinsurance.com)