



Public/Educational Entity Pollution Liability Insurance Policy

This Policy is issued by the stock insurance company identified in the Declarations (hereinafter *the Insurer*).

THIS POLICY PROVIDES LIABILITY COVERAGE ON A CLAIMS-MADE AND REPORTED BASIS, WHICH COVERS ONLY CLAIMS FIRST MADE AGAINST THE INSURED AND REPORTED TO THE INSURER, IN WRITING, DURING THE POLICY PERIOD. THIS POLICY PROVIDES COVERAGE FOR REMEDIATION COSTS ON A DISCOVERED AND REPORTED BASIS, WHICH COVERS ONLY POLLUTION CONDITIONS FIRST DISCOVERED AND REPORTED TO THE INSURER, IN WRITING, DURING THE POLICY PERIOD. PLEASE READ THIS POLICY CAREFULLY. SOME OF THE PROVISIONS CONTAINED IN THIS POLICY RESTRICT COVERAGE, SPECIFY WHAT IS AND IS NOT COVERED AND DESIGNATE YOUR RIGHTS AND DUTIES. LEGAL DEFENSE EXPENSES ARE SUBJECT TO AND SHALL ERODE THE LIMITS OF LIABILITY AND ANY APPLICABLE SELF-INSURED RETENTION.

Throughout this Policy the words *the Insurer* shall refer to the company providing this insurance. Other words and phrases that appear in quotation marks have special meanings and are defined in Section **V., DEFINITIONS**.

In consideration of the payment of the premium and in reliance upon all statements made in the Application to this Policy, including the information furnished in connection therewith, and subject to all terms, definitions, conditions, exclusions and limitations of this Policy, the Insurer agrees to provide insurance coverage to the "insured" as described herein.

I. INSURING AGREEMENTS

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:

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 **3.e.** of the Declarations to this Policy.

II. LIMITS OF LIABILITY AND SELF-INSURED RETENTION

- A.** It is expressly agreed that the Insurer’s obligation to pay for any covered “claims”, “remediation costs” or “legal defense expense” pursuant to this Policy shall attach to the Insurer only after the “first named insured” has paid, or has provided evidence to the Insurer that another “named insured” has paid, the full amount of the “self-insured retention” with respect to any covered “pollution condition”. Under no circumstances shall the Insurer be liable to pay any amount within the “self-insured retention”. In the event that the “first named insured” cannot provide satisfactory evidence that a “named insured” has paid the full amount of the “self-insured retention” with respect to any covered “pollution condition”, the “first named insured” shall remain responsible to pay the “self-insured retention” before the Insurer’s payment obligation pursuant to this Policy shall attach with respect to coverage sought by any “insured”.
- B.** The Retroactive Dates identified in Items **2.e.** and **3.e.** of the Declarations to this Policy apply to govern the coverage provided herein. Therefore, this Policy does not apply to: **1)** “pollution conditions” that first commence, in whole or in part; or **2)** “covered operations” that are performed, respectively, prior to those Retroactive Dates.
- C.** One “self-insured retention” shall apply to all “claims”, “remediation costs” and “legal defense expenses” arising out of the same, continuous, repeated, or related “pollution condition”.
- D.** With respect to Coverage **A.**, and subject to Subsections **E.** and **H.**, below, the most the Insurer shall pay for all “claims”, “remediation costs” and “legal defense expenses” arising out of the same, continuous, repeated, or related “pollution condition” is the Limit of Liability identified in Item **2.b.** of the Declarations to this Policy.
- E.** With respect to Coverage **A.**, and subject to Subsection **D.**, above, and Subsection **H.**, below, the Aggregate Limit of Liability identified in Item **2.c.** of the Declarations to this Policy shall be the maximum liability of the Insurer pursuant to this Policy with respect to all “claims”, “remediation costs” and “legal defense expenses” for all “pollution conditions”.
- F.** With respect to Coverage **B.**, and subject to Subsections **G.** and **H.**, below, the most the Insurer shall pay for all “claims” and “legal defense expenses” arising out of the same, continuous, repeated, or related “pollution condition” resulting from “covered operations” is the Limit of Liability identified in Item **3.b.** of the Declarations to this Policy.
- G.** With respect to Coverage **B.**, and subject to Subsection **F.**, above, and Subsection **H.**, below, the Aggregate Limit of Liability identified in Item **3.c.** of the Declarations to this Policy shall be the maximum liability of the Insurer pursuant to this Policy with respect to all “claims” and “legal defense expenses” for all “pollution conditions” resulting from “covered operations”.
- H.** Subject to Subsections **D.**, **E.**, **F.**, and **G.**, above, the Total Policy Aggregate Limit of Liability identified in Item **4.** of the Declarations to this Policy shall be the maximum liability of the Insurer pursuant to this Policy with respect to all “claims”, “remediation costs” and “legal defense expense” for all “pollution conditions” covered pursuant to Coverages **A.** and **B.**, and any Supplemental Coverages added by endorsement to this Policy, if any.
- I.** If the Insurer or an affiliate has issued pollution liability coverage afforded on a discovered and reported basis or claims-made and reported basis consistent with Coverages **A.** or **B.**, herein, in one or more policy periods, and a “pollution condition” is first discovered and reported to the Insurer, or a “claim” is first made and reported to the Insurer with respect to a “pollution condition”, in accordance with the terms and conditions of this Policy, then:
 1. Any continuous, repeated, or related “pollution condition” that is subsequently reported to the Insurer during later policy periods shall be deemed to be one “pollution condition” discovered during this “policy period”; and
 2. All “claims” seeking “bodily injury”, “property damage” or “remediation costs” arising out of:

- a. That same, continuous, repeated, or related “pollution condition” that was discovered and reported during this “policy period”; or
 - b. That same, continuous, repeated, or related “pollution condition” that was the subject of a “claim” first made and reported during this “policy period” or any applicable “extended reporting period”,
- shall be deemed to have been first made and reported during this “policy period” and no other policy shall respond.

III. DEFENSE AND SETTLEMENT

- A. The Insurer shall have the right and, subject to the “self-insured retention” obligation, the duty to defend the “insured” against a “claim” to which this insurance applies. The Insurer shall have no duty to defend the “insured” against any “claim” to which this insurance does not apply. The Insurer’s duty to defend the “insured” ends once the Limits of Liability are exhausted or are tendered into a court of applicable jurisdiction, or once the “insured” refuses a settlement offer as provided in Subsection E., below.
- B. The Insurer shall have the right to select legal counsel to represent the “insured” for the investigation, adjustment, and defense of any “claims” covered pursuant to this Policy. Selection of legal counsel by the Insurer shall not be done without the consent of the “insured”; such consent shall not be unreasonably withheld. “Legal defense expenses” incurred prior to the selection of legal counsel by the Insurer shall not be covered pursuant to this Policy, or credited against the “self-insured retention”.

In the event the “insured” is entitled by law to select independent counsel to defend itself at the Insurer’s expense, the attorney fees and all other litigation expenses the Insurer shall pay to that counsel are limited to the rates the Insurer actually pays to counsel that the Insurer normally retains in the ordinary course of business when defending “claims” or lawsuits of similar complexity in the jurisdiction where the “claim” arose or is being defended. In addition, the “insured” and the Insurer agree that the Insurer may exercise the right to require that such counsel: **1)** have certain minimum qualifications with respect to their competency, including experience in defending “claims” similar to those being asserted against the “insured”; **2)** maintain suitable errors and omissions insurance coverage; **3)** be located within a reasonable proximity to the jurisdiction of the “claim”; and **4)** agree in writing to respond in a timely manner to the Insurer’s requests for information regarding the “claim”. The “insured” may at anytime, by its signed consent, freely and fully waive its right to select independent counsel.

- C. The “insured” shall have the right and the duty to retain a qualified environmental consultant to perform any investigation and/or remediation of any “pollution condition” covered pursuant to this Policy. The “insured” must receive the written consent of the Insurer prior to the selection and retention of such consultant, except in the event of an “emergency response”. Any costs incurred prior to such consent shall not be covered pursuant to this Policy, or credited against the “self-insured retention”, except in the event of an “emergency response”.
- D. “Legal defense expenses” reduce the Limits of Liability identified in Items **2.**, **3.** and **4.** of the Declarations to this Policy and shall be applied to the “self-insured retention”.
- E. The Insurer shall present all settlement offers to the “insured”. If the Insurer recommends a settlement which is acceptable to a claimant, exceeds any applicable “self-insured retention”, is within the Limits of Liability, and does not impose any additional unreasonable burdens on the “insured”, and the “insured” refuses to consent to such settlement offer, then the Insurer’s duty to defend shall end. Thereafter, the “insured” shall defend such “claim” independently and at the “insured’s” own expense. The Insurer’s liability shall not exceed the amount for which the “claim” could have been settled if the Insurer’s recommendation had been accepted, exclusive of the “self-insured retention”.

IV. COVERAGE TERRITORY

The coverage afforded pursuant to this Policy shall only apply to “pollution conditions” located, and “claims” made, within the United States of America.

V. DEFINITIONS

- A. **“Additional insured”** means any person or entity specifically endorsed onto this Policy as an “additional insured”, if any. Such “additional insured” shall maintain only those rights that are specified by endorsement to this Policy.
- B. **“Bodily injury”** means physical injury, illness, disease, mental anguish, emotional distress, or shock, sustained by any person, including death resulting therefrom, and any prospective medical monitoring costs that are intended to confirm any such physical injury, illness or disease.
- C. **“Claim”** means the written assertion of a legal right received by the “insured” from a third-party, including, but not limited to, a “government action”, suits or other actions alleging responsibility or liability on the part of the “insured” for “bodily injury”, “property damage” or “remediation costs” arising out of “pollution conditions” to which this insurance applies.

With respect to any coverage afforded for “non-owned disposal sites”, covered “claims” are limited to those made by or on behalf of third-parties for “pollution conditions” allegedly attributable to an “insured’s” waste that is: 1) generated at a “covered location” other than a “non-owned disposal site”; and 2) received at the “non-owned disposal site”, in its entirety: a) during the “policy period”; or b) if prior to the “policy period”, on or after the Retroactive Date identified in Item 2.e. of the Declarations to this Policy.

- D. **“Covered location”** means:
1. Any location specifically identified in Item 8. of the Declarations to this Policy;
 2. Any “non-owned disposal site”, provided that any coverage afforded with respect to such “non-owned disposal sites” is limited to third-party “claims” pursuant to Subsection C., above.
 3. Any location that meets the prerequisites to coverage identified in Automatic Acquisition and Due Diligence Endorsement attached to this Policy, if any; and
 4. Any other location specifically scheduled as a “covered location” by endorsement attached to this Policy, if any.
- E. **“Covered operations”** means:
1. “Transportation”; and
 2. Any operations that are identified in the Application and any supporting documentation provided to the Insurer by the “first named insured” prior to the inception date of this Policy, which are performed by or on behalf of a “named insured” outside of the physical boundaries of a “covered location”.
- F. **“Emergency response”** means actions taken and reasonable “remediation costs” incurred within seventy-two (72) hours following the discovery of a “pollution condition” by an “insured” in order to abate or respond to an imminent and substantial threat to human health or the environment arising out of such “pollution condition”.
- G. **“Environmental law”** means any federal, state, provincial, municipal or other local law, statute, ordinance, rule, guidance document, regulation, and all amendments thereto, including state voluntary cleanup or risk-based corrective action guidance, governing the liability or responsibilities of the “insured” with respect to a “pollution condition”.
- H. **“Extended reporting period”** means the additional period of time in which to report a “claim” first made against the “insured” during or subsequent to the end of the “policy period”.
- I. **“First named insured”** means the person or entity as identified in Item 1. of the Declarations to this Policy. The “first named insured” is the party responsible for the payment of any premiums and the payment of, or evidencing payment of, any applicable “self-insured retention” amounts. The “first named insured” shall also serve as the sole agent on behalf of all “insureds” with respect to the provision and receipt of notices, including notice of cancellation or non-renewal, receipt and acceptance of any endorsements or any other changes to this Policy, return of any premium, assignment of any interest pursuant to this Policy, as well as

the exercise of any applicable “extended reporting period”, unless any such responsibilities are otherwise designated by endorsement.

- J. **“Fungi”** means any type or form of fungus, including mold or mildew, and any mycotoxins, spores, scents, or byproducts produced or released by “fungi”.
- K. **“Government action”** means action taken or liability imposed by any federal, state, provincial, municipal or other local government agency or body acting pursuant to the authority of “environmental law”.
- L. **“Insured”** means the “first named insured”, any “named insured”, any “additional insured”, and any of the following:
 - 1. If any “named insured” pursuant to this Policy is a Public Entity, the following entities are additional “insureds”:
 - a. A governmental agency or subdivision, department, municipal body, commission or board, or a not-for profit corporation which is owned or controlled by any “named insured”;
 - b. An individual while acting in the capacity as a director of, officer of, trustee of, employee of, temporary or leased worker of, or staff member of, any “named insured”;
 - c. A volunteer, but solely while acting within the scope of such duties and at the direction of any “named insured”;
 - d. A paramedic or emergency technician, but solely while acting within the course and scope of employment or while acting as a volunteer pursuant to the direction of any “named insured”;
 - e. An elective or appointive officer or a member of any such commission, board or agency of any “named insured” but solely while acting within the scope of duties as such; or
 - f. A joint venture or partnership, including a mutual assistance pact, joint powers agreement or similar association, but only with respect to the conduct of the business of any “named insured” on behalf of that entity or association and only to the extent of such “named insured’s” participation or interest in that entity or association.
 - 2. If the “named insured” is an Educational Entity, the following persons or entities are additional “insureds”, individually and collectively, when acting solely within the scope of their duties, office, or employment for, and pursuant to the supervision of, any “named insured”:
 - a. Members of the School Board;
 - b. Officers;
 - c. Employees;
 - d. Temporary or Leased Workers;
 - e. Authorized individual volunteers; or
 - f. Student Body Organizations pursuant to the jurisdiction of the governing board, but only while pursuant to the supervision required by the governing board.
- M. **“Legal defense expense”** means reasonable legal costs, charges, and expenses, including expert charges, incurred by the “insured” in the investigation, adjustment, or defense of “claims” or suits.
- N. **“Low-level radioactive waste”** means waste that is radioactive but not classified as the following: high-level waste (spent nuclear fuel or the highly radioactive waste produced if spent fuel is reprocessed), uranium milling residues, and waste with greater than specified quantities of elements heavier than uranium.
- O. **“Mixed waste”** means waste containing both radioactive and hazardous components as defined pursuant to United States law within the Atomic Energy Act and the Resource Conservation and Recovery Act as either may be amended.

- P. “Named insured”** means any person or entity specifically endorsed onto this Policy as a “named insured”, if any. Such “named insured” shall maintain the same rights pursuant to this Policy as the “first named insured”, except for those rights specifically reserved to the “first named insured” that are identified in Subsection I., above.
- Q. “Natural resource damage”** means injury to, destruction of, or loss of, including the resulting loss of value of, fish, wildlife, biota, land, air, water, groundwater, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States of America (including the resources of the fishery conservation zone established by the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. § 1801 et. seq.)), any state or local government, or any Native American Tribe, or, if such resources are subject to a trust restriction on alienation, any members of any Native American Tribe, including the reasonable costs of assessing such injury, destruction or loss resulting therefrom.
- R. “Non-owned disposal site”** means a site located within the United States of America that has not at any time been owned or operated, in whole or in part, by an “insured”, which receives, or has historically received, a “named insured’s” waste for disposal, provided that the “non-owned disposal site”:
1. Was properly permitted and licensed pursuant to “environmental law” to accept the “named insured’s” wastes at the time of such disposal by all federal, state, or other administrative or regulatory bodies or agencies with applicable jurisdiction;
 2. Was not owned or operated by any person, corporation or unincorporated association that was in bankruptcy at the time the “named insured’s” waste was received for disposal;
 3. Has not, at any time prior to the inception date of this Policy, been identified on the United States EPA (CERCLA) National Priorities List, CERCLIS List or pursuant to any functional equivalent of those listings made by federal, state, or other administrative or regulatory bodies or agencies with applicable jurisdiction pursuant to “environmental law”; and
 4. Was not undergoing voluntary or regulatory-required remediation activities at the time the “named insured’s” waste was received for disposal.
- S. “Policy period”** means:
1. The period of time specifically identified in Item **2.a.** of the Declarations to this Policy for Coverage **A.**, and/or Item **3.a.** of the Declarations to this Policy for Coverage **B.**;
 2. With respect to “covered locations” added pursuant to the Automatic Acquisition and Due Diligence Endorsement attached to this Policy, if any, the period of time following the closing date of the acquisition transaction or the effective date of the lease, as applicable, through the expiration date of the Policy identified in Item **2a.** of the Declarations to this Policy; or
 3. Any shorter period resulting from the cancellation of this Policy.
- T. “Pollution condition”** means the discharge, dispersal, release, escape, migration, or seepage of any solid, liquid, gaseous or thermal irritant, contaminant, or pollutant, including smoke, soot, vapors, fumes, acids, alkalis, chemicals, hazardous substances, hazardous materials, or waste materials, on, in, into, or upon land and structures thereupon, the atmosphere, surface water, or groundwater. For the purpose of this definition, waste materials include, but are not limited to, “low-level radioactive waste”, “mixed waste” and medical, infectious or pathological wastes.
- U. “Property damage”** means:
1. Physical injury to, or destruction of, tangible property of a third-party, including all resulting loss of use of that property;
 2. Loss of use of tangible property of a third-party, that is not physically injured or destroyed;
 3. Diminished value of tangible property owned by a third-party; or

4. "Natural resource damages".

V. "**Remediation costs**" means reasonable expenses incurred to investigate, quantify, monitor, mitigate, abate, remove, dispose, treat, neutralize, or immobilize "pollution conditions" to the extent required by "environmental law".

"Remediation costs" shall also include:

1. Reasonable legal cost, where such cost has been incurred by an "insured" with the written consent of the Insurer; and
2. Reasonable expenses required to restore, repair or replace real or personal property, to substantially the same condition it was in prior to being damaged during the course of responding to a "pollution condition".

W. "**Responsible person**" means any employee of an "insured" responsible for environmental affairs, control, or compliance at a "covered location", and any officer or director of, or partner in, or elected official of, an "insured".

X. "**Self-insured retention**" means the dollar amount identified in Item 2.d. of the Declarations to this Policy for Coverage A., and/or Item 3.d. of the Declarations to this Policy for Coverage B., or as otherwise designated by endorsement to this Policy, if any.

Y. "**Terrorism**" means activities against persons, organizations or property of any nature:

1. That involve the following or preparation for the following:
 - a. Use or threat of force or violence; or
 - b. Commission or threat of a dangerous act; or
 - c. Commission or threat of an act that interferes with or disrupts an electronic, communication, information, or mechanical system; and
2. When one or both of the following applies:
 - a. The effect is to intimidate or coerce a government or the civilian population or any segment thereof, or to disrupt any segment of the economy; or
 - b. It appears that the intent is to intimidate or coerce a government, or to further political, ideological, religious, social or economic objectives or to express (or express opposition to) a philosophy or ideology.

Z. "**Transportation**" means:

1. The movement of the "insured's" waste or products by automobile, aircraft, watercraft, or other conveyance beyond the boundaries of a "covered location" by a "named insured", or by a person or entity, other than a "named insured", engaged in the business of transporting property for hire, until such time as the waste or product is unloaded from an automobile, aircraft, watercraft, railcar or other conveyance; and
2. Automobile livery services conducted by or on behalf of the "insured".

AA. "**Underground storage tank**" means any tank, and associated piping and appurtenances connected thereto, which has more than ten percent (10%) of its volume below ground. "Underground storage tank" does not mean a septic tank or oil/water separator.

BB. "**War**" means war, whether or not declared, civil war, martial law, insurrection, revolution, invasion, bombardment or any use of military force, usurped power or confiscation, nationalization or damage of property by any government, military or other authority.

VI. EXCLUSIONS

This insurance shall not apply to:

A. Asbestos

"Claims", "remediation costs" or "legal defense expenses" arising out of or related to asbestos or asbestos-containing materials.

This exclusion shall not apply to:

1. Third-party "claims" for "bodily injury", and any associated "legal defense expenses", arising out of asbestos or asbestos-containing materials;
2. Third-party, non-governmental "claims" for "property damage", and any associated "legal defense expenses", arising out of asbestos or asbestos-containing materials; or
3. "Remediation costs" arising out of asbestos or asbestos-containing materials discovered in soil or groundwater.

B. Contractual Liability

"Claims", "remediation costs" or "legal defense expenses" arising out of or related to liability of others assumed by any "insured" through contract or agreement, except if the liability would have attached to the "insured" in the absence of such contract or agreement.

C. Divested Property

"Claims", "remediation costs" or "legal defense expenses" arising out of or related to a "pollution condition" on, at, under or migrating from a "covered location" when such "pollution condition" first commenced after the "covered location" had been sold, abandoned, or given away by any "insured", or was condemned.

D. Employers Liability

"Claims" or "legal defense expenses" arising out of or related to "bodily injury" to:

1. Any "insured" or any employee of its parent corporation, subsidiary or affiliate:
 - a. Arising out of, or in the course of, employment by any "insured", its parent corporation, subsidiary or affiliate; or
 - b. Performing duties related to the conduct of the business of any "insured", its parent corporation, subsidiary, or affiliate.
2. The spouse, child, parent, brother or sister of any "insured" or employee of its parent corporation, subsidiary or affiliate as a consequence of Paragraph 1., above.

This exclusion applies:

1. Whether an "insured" may be liable as an employer or in any other capacity; and
2. To any obligation to share damages with or repay someone else who must pay damages because of such "bodily injury".

E. Failure to Follow Asbestos and/or Lead-Based Paint Management Plans

"Claims", "remediation costs" or "legal defense expenses" arising out of or related to the presence of lead-based paint, asbestos or asbestos containing material and an "insured's" failure to properly maintain or manage any structure located on the "covered locations", or any system, fixture or personal property contained therein, in conformance with the asbestos management plans and lead-based paint management plans provided to the Insurer prior to the inception date identified in Item 2.a. of the Declarations to this Policy, or any asbestos management plans and lead-based paint management plans approved, in writing, by the Insurer during the "policy period".

F. Fines and Penalties

Payment of criminal fines, criminal penalties, punitive, exemplary or multiplied damages, or any associated "claims" seeking exclusively injunctive relief in addition to such fines, penalties or damages.

This exclusion also applies to any "legal defense expense" associated with such fines, penalties or damages.

This exclusion shall not apply to punitive or exemplary damages where such coverage is insurable by law.

G. First-Party Property Damage

"Claims" or "legal defense expenses" arising out of or related to damage to real or personal property owned by, leased to, loaned to, or rented by any "insured", or otherwise in the care, custody, or control of any "insured".

This exclusion shall not apply to "remediation costs".

H. Fraud or Misrepresentation

"Claims", "remediation costs" or "legal defense expenses" arising out of or related to:

1. Fraudulent acts or material misrepresentations on the part of the "first named insured" made:
 - a. Within the Application to this Policy; or
 - b. During the Application or underwriting process prior to the inception date identified in Item 2.a. or 3.a. of the Declarations to this Policy, as applicable, which would have affected the Insurer's decision to either issue this Policy, or issue this Policy and its endorsements pursuant to the financial terms identified in the Declarations to this Policy; or
2. Fraudulent acts or material misrepresentations on the part of any "responsible person" during the "policy period".

I. Fungi and Legionella

"Claims", "remediation costs" or "legal defense expenses" arising out of or related to, in whole or part, the actual, alleged, or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of, any "fungi" or *legionella pneumophila*, regardless of whether any other cause, event, material, or product contributed concurrently or in any sequence to such injury or damage.

This exclusion shall also apply to any costs or expense arising out of or related to the testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating, or disposing of, or in any way responding to or assessing the effects of, "fungi" or *legionella pneumophila*, by any "insured" or by any other person or entity.

J. Insured's Internal Expenses

"Claims", "remediation costs" or "legal defense expenses" arising out of or related to expenses incurred by any "insured" for services performed by its salaried staff and any employees.

This exclusion shall not apply to "emergency response" or any costs, charges or expenses incurred with the prior written approval of the Insurer at its sole discretion.

K. Insured vs. Insured

"Claims" made by any "insured" against any other "insured".

L. Intentional Non-Compliance

"Claims", "remediation costs" or "legal defense expenses" arising out of or related to the intentional disregard of, or knowing, willful, or deliberate non-compliance with, any law, statute, regulation, ordinance, municipal code, administrative complaint, notice of violation, notice letter, administrative order, or instruction of any governmental agency or body, or executive, judicial or administrative order by any "responsible person".

M. Landfills or Recycling Facilities

“Claims”, “remediation costs” or “legal defense expenses” arising out of or related to “pollution conditions” on, at, or under any Landfills or Recycling Facilities that are now, or have been at any time, leased, owned or operated by an “insured”.

This exclusion shall not apply to “claims” for “bodily injury” or “property damage” arising out of “pollution conditions” allegedly migrating from landfills or recycling facilities that are specifically scheduled as “covered locations” pursuant to an endorsement attached to this Policy.

N. Lead-Based Paint

“Claims”, “remediation costs” or “legal defense expenses” arising out of or related to lead-based paint.

This exclusion shall not apply to:

1. Third-party “claims” for “bodily injury”, and any associated “legal defense expenses”, arising out of lead-based paint;
2. Third-party, non-governmental “claims” for “property damage”, and any associated “legal defense expenses, arising out of lead-based paint; or
3. “Remediation costs” arising out of lead-based paint discovered in soil or groundwater, provided such lead or lead-based paint does not arise out of a water storage tank.

O. Material Change in Risk

“Claims”, “remediation costs”, or “legal defense expenses” arising out of or related to a change in the:

1. Use or operations at a “covered location”; or
2. “Covered operations” performed by or on behalf of a “named insured”,

that materially increases the likelihood or severity of a “pollution condition” or “claim” from the intended uses or operations identified:

1. By the “first named insured” for the Insurer in the Application and accompanying underwriting materials provided prior to the inception date identified in Item **2.a.** or **3.a.** of the Declarations to this Policy, as applicable; or
2. With respect to “covered locations” added to the Policy pursuant to the Automatic Acquisition and Due Diligence Endorsement attached to this Policy, if any, as part of the due diligence materials and supplemental underwriting materials provided to the Insurer as part of the notice required pursuant to that endorsement.

This exclusion shall only apply to the “covered location” associated with the change in use or operations, or the modified “covered operations” at issue, and shall not limit coverage for other “covered locations” or “covered operations” to which this insurance applies.

P. Naturally Occurring Materials

“Claims”, “remediation costs” or “legal defense expenses” arising out of or related to the presence or removal of naturally occurring materials.

This exclusion shall not apply in those circumstances where naturally occurring substances are present at a “covered location” as a result of human activities or human processes.

Q. 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, or any Retroactive Date applicable to any Supplemental Coverage added to this Policy by endorsement; or

3. With respect to any “covered location” acquired or leased by a “named person” and added to this 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.

R. Products Liability

“Claims”, “remediation costs” or “legal defense expenses” arising out of or related to any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by any “insured”, including but not limited to:

1. Containers, materials, parts, or equipment furnished in connection with such goods or products; or
2. Warranties or representations made by any “insured” at any time, with respects to the fitness, quality, durability, performance, or use of any products; or
3. The provision of, or failure to provide, warnings or instructions.

This exclusion shall not apply to “claims” otherwise covered pursuant to Coverage B., that result from “pollution conditions” directly related to reclaimed or recycled water processed at any “covered location” that is also a wastewater treatment plant, if applicable.

S. Professional Liability

“Claims”, “remediation costs” or “legal defense expenses” arising out of or related to the rendering of or failure to render professional services, including, but not limited to, recommendations, opinions, and strategies rendered for architectural, consulting, design and engineering work, such as drawings, designs, maps, reports, surveys, change orders, plan specifications, assessment work, remedy selection, site maintenance, equipment selection, and related construction management, supervisory, inspection or engineering services.

T. Regulatory Compliance

“Claims”, “remediation costs” or “legal defense expenses” arising out of or related to an “insured’s” failure to comply with applicable Federal, State, or local regulations governing compliance with respect to any a covered “underground storage tank”.

This exclusion shall not apply to any such non-compliance that occurs subsequent to release from a covered “underground storage tank”.

U. Underground Storage Tanks

“Claims”, “remediation costs” or “legal defense expenses” arising out of or related to “pollution conditions” emanating from an “underground storage tank”.

This exclusion shall not apply to “underground storage tanks” specifically identified on the Schedule of Insured Underground Storage Tanks Endorsement attached to this Policy, if any.

V. Vehicles

“Claims”, “remediation costs” or “legal defense expenses” arising out of or related to “pollution conditions” resulting from the use, maintenance or operation, including loading or unloading, of an automobile, aircraft, watercraft, or other conveyance beyond the boundaries of a “covered location”.

This exclusion shall not apply to “transportation”.

W. War or Terrorism

“Claims”, “remediation costs” or “legal defense expenses” arising out of or related to “pollution conditions” attributable, whether directly or indirectly, to any acts that involve, or that involve preparation for, “war” or “terrorism”, regardless of any other cause or event that contributes concurrently or in any sequence to the injury or damage.

X. Work Product

"Claims", "remediation costs" or "legal defense expenses" arising out of or related to work or operations performed by you or on your behalf, unless such work or operations are "covered operations".

VII. REPORTING AND COOPERATION

A. The "insured" must see to it that the Insurer receives written notice of any "claim" or "pollution condition", as soon as practicable, at the address identified in Item 7.a. of the Declarations to this Policy. Notice should include reasonably detailed information as to:

1. The identity of the "insured", including contact information for an appropriate person to contact regarding the handling of the "claim" or "pollution condition";
2. The identity of the "covered location" or "covered operations";
3. The nature of the "claim" or "pollution condition"; and
4. Any steps undertaken by the "insured" to respond to the "claim" or "pollution condition".

In the event of a "pollution condition", the "insured" must also take all reasonable measures to provide immediate verbal notice to the Insurer.

B. The "insured" must:

1. As soon as practicable, send the Insurer copies of any demands, notices, summonses or legal papers received in connection with any "claim";
2. Authorize the Insurer to obtain records and other information;
3. Cooperate with the Insurer in the investigation, settlement or defense of the "claim";
4. Assist the Insurer, upon the Insurer's request, in the enforcement of any right against any person or organization which may be liable to the "insured" because of "bodily injury", "property damage", "remediation costs" or "legal defense expense" to which this Policy may apply; and
5. Provide the Insurer with such information and cooperation as it may reasonably require.

C. No "insured" shall make or authorize an admission of liability or attempt to settle or otherwise dispose of any "claim" without the written consent of the Insurer. Nor shall any "insured" retain any consultants or incur any "remediation costs" without the prior express written consent of the Insurer, except in the event of an "emergency response".

D. Upon the discovery of a "pollution condition", the "insured" shall make every attempt to mitigate any loss and comply with applicable "environmental law". The Insurer shall have the right, but not the duty, to mitigate such "pollution conditions" if, in the sole judgment of the Insurer, the "insured" fails to take reasonable steps to do so. In that event, any "remediation costs" incurred by the Insurer shall be deemed incurred by the "insured", and shall be subject to the "self-insured retention" and Limits of Liability identified in the Declarations to this Policy.

VIII. EXTENDED REPORTING PERIOD

A. The "first named insured" shall be entitled to a basic "extended reporting period", and may purchase an optional supplemental "extended reporting period", following Cancellation, as described in Subsection A., Paragraph 1. of Section IX., **GENERAL CONDITIONS**, or nonrenewal.

B. "Extended reporting periods" shall not reinstate or increase any of the Limits of Liability. "Extended reporting periods" shall not extend the "policy period" or change the scope of coverage provided. A "claim" first made against an "insured" and reported to the Insurer within the basic "extended reporting period" or supplemental "extended reporting period", whichever is applicable, shall be deemed to have been made and reported on the last day of the "policy period".

- C. Provided the “first named insured” has not purchased any other insurance to replace this Policy, the “first named insured” shall have a sixty (60) day basic “extended reporting period” without additional charge.
- D. Provided the “first named insured” has not purchased any other insurance to replace this Policy, the “first named insured” shall also be entitled to purchase a supplemental “extended reporting period” of up to thirty-four (34) months for not more than two hundred percent (200%) of the full premium identified in Item 5. of the Declarations to this Policy, and any additional premiums resulting from coverage added during the “policy period”. Such supplemental “extended reporting period” starts when the basic “extended reporting period” ends. The Insurer shall issue an endorsement providing a supplemental “extended reporting period” provided that the “first named insured”:
 - 1. Makes a written request, to the address identified in Item 7.b. of the Declarations to this Policy, for such endorsement which the Insurer receives prior to the expiration of the “policy period”; and
 - 2. Pays the additional premium when due. If that additional premium is paid when due, the supplemental “extended reporting period” may not be cancelled, provided that all other terms and conditions of the Policy are met.

IX. GENERAL CONDITIONS

A. Cancellation

- 1. This Policy may be cancelled only by the “first named insured”, or through the “first named insured’s” agent, by mailing to the Insurer at the address identified in Item 7.b. of the Declarations to this Policy, written notice stating when such cancellation shall be effective.
- 2. In the event of cancellation of this Policy, a minimum of twenty-five percent (25%) of the Premium amount in Item 5. of the Declarations to this Policy shall be deemed to be earned Premium upon inception of this Policy. Thereafter, the remaining seventy-five percent (75%) of the Premium shall be deemed earned by the Insurer on a pro rata basis over the remainder of the Policy Period. Any unearned Premium amounts due the “first named insured” will be refunded within thirty (30) days of the effective date of cancellation.
- 3. This Policy may be cancelled by the Insurer for the following reasons:
 - a. Non-payment of premium; or
 - b. Fraud or material misrepresentation on the part of any “insured”,by mailing to the “first named insured” at the “first named insured’s” last known address, written notice stating when, not less than sixty (60) days thereafter, fifteen (15) days if cancellation is for non-payment of any unpaid portion of the premium, such cancellation shall be effective. The mailing of notice shall be sufficient proof of notice. The effective date and hour of cancellation stated in the notice shall be the end of the “policy period”.

Subparagraph 3.b., herein, shall apply only to that “insured” that engages in the fraud or misrepresentation. This exception shall not apply to any “insured” who is a parent corporation, subsidiary, employer of, or otherwise affiliated by ownership with, such “insured”.

B. Inspection and Audit

To the extent of the “insured’s” ability to provide such access, and with reasonable notice to the “insured”, the Insurer shall be permitted, but not obligated, to inspect and sample the “covered locations”. The “insured” shall have the concurrent right to collect split samples. Neither the Insurer’s right to make inspections, the making of said inspections, nor any report thereon shall constitute an undertaking, on behalf of or for the benefit of the “insured” or others, to determine or warrant that such property or operations are safe or in compliance with “environmental law”, or any other law.

The Insurer may examine and audit the “insured’s” books and records during this “policy period” and extensions thereof and within three (3) years after the final termination of this Policy.

C. Legal Action Against the Insurer

No person or organization other than an "insured" has a right pursuant to this Policy:

1. To join the Insurer as a party or otherwise bring the Insurer into a suit against any "insured"; or
2. To sue the Insurer in connection with this insurance unless all of the Policy terms have been fully complied with.

D. Bankruptcy

The insolvency or bankruptcy of any "insured" or any "insured's" estate shall not relieve the Insurer of its obligations pursuant to this Policy. However, any such insolvency or bankruptcy of the "insured" or the "insured's" estate shall not relieve the "insured" of its "self-insured retention" obligations pursuant to this Policy. This insurance shall not replace any other insurance to which this Policy is excess, nor shall this Policy drop down to be primary, in the event of the insolvency or bankruptcy of any underlying insurer.

E. Subrogation

In the event of any payment pursuant to this Policy by the Insurer, the Insurer shall be subrogated to all of the rights of recovery against any person or organization, and the "insured" shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The "insureds" shall do nothing to prejudice such rights. Any recovery as a result of subrogation proceedings arising pursuant to this Policy shall accrue first to the "insureds" to the extent of any payments in excess of the limit of coverage; then to the Insurer to the extent of its payment pursuant to the Policy; and then to the "insured" to the extent of the "self-insured retention". Expenses incurred in such subrogation proceedings shall be apportioned among the interested parties in the recovery in the proportion that each interested party's share in the recovery bears to the total recovery.

F. Representations

By accepting this Policy, the "first named insured" agrees that:

1. The statements in the Declarations, schedules and endorsements to, and Application for, this Policy are accurate and complete;
2. Those statements and representations constitute warranties that the "first named insured" made to the Insurer; and
3. This Policy has been issued in reliance upon the "first named insured's" warranties.

G. Separation of Insureds

Except with respect to the Limits of Liability, Cancellation condition **2.a.**, above, the Fraud or Misrepresentation Exclusion, the Insured vs. Insured Exclusion, the Intentional Non-Compliance Exclusion, the Pre-Existing Conditions Exclusion, the Material Change in Risk Exclusion, the Underground Storage Tanks Exclusion, and any obligations specifically assigned to the "first named insured", this Policy applies:

1. As if each "named insured" were the only "insured"; and
2. Separately to each "named insured" against whom a "claim" is made.

H. Other Insurance

If other valid and collectible insurance is available to any "insured" covering a loss also covered by this Policy, other than a policy that is specifically written to apply in excess of this Policy, the insurance afforded by this Policy shall apply in excess of and shall not contribute with such other insurance.

I. Jurisdiction and Venue

It is agreed that in the event of the failure of the Insurer to pay any amount claimed to be due hereunder, the Insurer and the "insured" shall submit to the exclusive jurisdiction of the State of New York and shall comply

with all requirements necessary to give such court jurisdiction. Nothing in this clause constitutes or should be understood to constitute a waiver of the Insurer's right to remove an action to a United States District Court.

J. Choice of Law

All matters arising hereunder, including questions relating to the validity, interpretation, performance, and enforcement of this Policy, and the rights, duties and obligations hereunder, shall be determined in accordance with the law and practices of the State of New York.

K. Changes and Assignment

Notice to or knowledge possessed by any person shall not effect waiver or change in any part of this Policy or estop the Insurer from asserting any right pursuant to the terms of this Policy. The terms, definitions, conditions, exclusions and limitations of this Policy shall not be waived or changed, and no assignment of any interest in this Policy shall bind the Insurer, except as provided by endorsement and attached to this Policy.

L. Headings

The descriptions in the headings and sub-headings of this Policy are inserted solely for convenience and do not constitute any part of the terms or conditions hereof.

M. Consent

Where the consent of the Insurer, or an "insured", is required pursuant to this Policy, such consent shall not be unreasonably withheld, delayed, conditioned, or denied.