



Premises Pollution Liability  
Insurance Policy  
ACE Westchester Elite<sup>SM</sup> Form

PLEASE READ THIS POLICY CAREFULLY. SOME OF THE PROVISIONS CONTAINED IN THIS POLICY RESTRICT COVERAGE, SPECIFY WHAT IS AND IS NOT COVERED AND DESIGNATE RIGHTS AND DUTIES. DEFENSE AND CLAIMS EXPENSE IS SUBJECT TO AND WILL SERVE TO ERODE THE LIMITS OF INSURANCE AND ANY APPLICABLE DEDUCTIBLE.

Throughout this Policy, the words "the Insurer" shall refer to the company providing this insurance. Other words and phrases that appear in **bold** have special meanings and are defined in Section IV. Definitions.

In consideration of the payment of the Premium and in reliance upon all statements made in the Application, 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.

**THIS POLICY PROVIDES LIABILITY COVERAGE ON A CLAIMS-MADE AND REPORTED BASIS, WHICH COVERS ONLY CLAIMS FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD AND REPORTED TO THE INSURER, IN WRITING, DURING THE POLICY PERIOD OR WITHIN THIRTY DAYS THEREAFTER, UNLESS AN EXTENDED REPORTING PERIOD APPLIES. THIS POLICY ALSO PROVIDES FIRST-PARTY CLEANUP COSTS ON A DISCOVERED AND REPORTED BASIS, WHICH COVERS ONLY POLLUTION CONDITIONS FIRST DISCOVERED DURING THE POLICY PERIOD AND REPORTED TO THE INSURER, IN WRITING, DURING THE POLICY PERIOD OR WITHIN THIRTY DAYS THEREAFTER.**

#### I. INSURING AGREEMENTS

The following coverages apply only if scheduled on the Declarations of this Policy. The Insurer agrees to pay on behalf of the **insured** for **loss and defense and claims expense**, in excess of the deductible, resulting from:

##### COVERAGE A – Cleanup Costs for New Pollution Conditions

A. Cleanup costs arising out of a **pollution condition** on, at, under or migrating from or onto a **covered location**, provided that the **pollution condition** first commences on or after the **retroactive date** and before the end of the **policy period**; and

- 1) The **pollution condition** is first discovered by a **responsible insured** during the **policy period** and reported to the Insurer, in writing, during the **policy period** or within thirty (30) days after the expiration of the **policy period**, in accordance with Section VII. Duties In The Event Of A Pollution Condition, Loss Or Claim; or
- 2) The claim is first made during the **policy period** and reported to the Insurer, in writing, during the **policy period** or within thirty (30) days after the expiration of the **policy period**, or during any applicable extended reporting period, in accordance with Section VII. Duties In The Event Of A Pollution Condition, Loss Or Claim.

##### COVERAGE B – Bodily Injury and Property Damage for New Pollution Conditions

B. Bodily injury and property damage that the **insured** becomes legally obligated to pay as a result of a **claim** arising from a **pollution condition** on, at, under or migrating from or onto a **covered location**, provided that:

- 1) The **pollution condition** first commences on or after the **retroactive date** and before the end of the **policy period**; and
- 2) The claim is first made during the **policy period** and reported to the Insurer, in writing, during the **policy period** or within thirty (30) days after the expiration of the **policy period**, or during any applicable extended reporting period, in accordance with Section VII. Duties In The Event Of A Pollution Condition, Loss Or Claim.

##### COVERAGE C – Cleanup Costs for Pre-Existing Pollution Conditions

C. Cleanup costs arising out of a **pollution condition** on, at, under or migrating from or onto a **covered location**, provided that the **pollution condition** first commences in whole or part prior to the **retroactive date**; and

- 1) The **pollution condition** is first discovered by a **responsible insured** during the **policy period** and reported to the Insurer, in writing, during the **policy period** or within thirty days after the expiration of the **policy period**, in accordance with Section VII. Duties In The Event Of A Pollution Condition, Loss Or Claim; or

- 2) The claim is first made and reported to the Insurer, in writing, during the **policy period** or within thirty (30) days after the expiration of the **policy period**, or during any applicable extended reporting period, in accordance with Section VII. Duties In The Event Of A Pollution Condition, Loss Or Claim.

#### **COVERAGE D – Bodily Injury and Property Damage for Pre-Existing Pollution Conditions**

- D. Bodily injury and property damage that the **insured** becomes legally obligated to pay as a result of a **claim** arising from a **pollution condition** on, at, under or migrating from or onto a **covered location**, provided that:
- 1) The **pollution condition** first commences in whole or part prior to the **retroactive date**; and
  - 2) The **claim** is first made and reported to the Insurer, in writing, during the **policy period** or within thirty (30) days after the expiration of the **policy period**, or during any applicable extended reporting period, in accordance with Section VII. Duties In The Event Of A Pollution Condition, Loss Or Claim.

#### **COVERAGE E – Non-Owned Location Pollution Liability**

- E. Bodily injury, property damage and cleanup costs that the **insured** becomes legally obligated to pay as a result of a **claim** arising from a **pollution condition** on, at, under or migrating from a **non-owned location**, provided that the **claim** is first made during the **policy period** and reported to the Insurer, in writing, during the **policy period** or within thirty (30) days after the expiration of the **policy period**, or during any applicable extended reporting period, in accordance with Section VII. Duties In The Event Of A Pollution Condition, Loss Or Claim; and
- 1) For locations listed specifically in a Schedule of Non-Owned Locations attached to this Policy, the **pollution condition** first commences on or after the **retroactive date** shown in the Schedule of Non-Owned Locations and before the end of the **policy period**; or
  - 2) For locations where waste generated from a **covered location** or a **job location** is sent for treatment, storage, processing, recycling or disposal, the **pollution condition** first commences on or after the **retroactive date** shown on the Declarations.

#### **COVERAGE F – Transportation Pollution Liability**

- F. Bodily injury, property damage and cleanup costs that the **insured** becomes legally obligated to pay as a result of a **claim** arising from a **pollution condition** that takes place in the **coverage territory** and is caused during the course of **transportation**, including loading and unloading, provided that:
- 1) The **pollution condition** first commences on or after the **retroactive date** and before the end of the **policy period**; and
  - 2) The **claim** is first made during the **policy period** and reported to the Insurer, in writing, during the **policy period** or within thirty (30) days after the end of the **policy period**, or during any applicable extended reporting period, in accordance with Section VII. Duties In The Event Of A Pollution Condition, Loss Or Claim.

#### **COVERAGE G – Contractors Pollution Liability**

- G. Bodily injury, property damage and cleanup costs caused by the **insured's work** that the **insured** becomes legally obligated to pay as a result of a **claim** arising from a **pollution condition**, provided that:
- 1) The **insured's work** occurred on or after the **retroactive date** and before the end of the **policy period**; and
  - 2) The **claim** is first made and reported to the Insurer, in writing, during the **policy period** or within thirty (30) days after the expiration of the **policy period**, or during any applicable extended reporting period, in accordance with Section VII. Duties In The Event Of A Pollution Condition, Loss Or Claim.

#### **COVERAGE H – Product Pollution Liability**

- H. Bodily injury, property damage and cleanup costs that the **insured** becomes legally obligated to pay as a result of a **claim** arising from a **pollution condition** that takes place in the **coverage territory** and is caused by the **insured's product**, provided that:
- 1) The **pollution condition** first commences on or after the **retroactive date** and before the end of the **policy period**; and
  - 2) The **pollution condition** occurs at or from any premises, site or location that at no time was ever owned or occupied by, rented or loaned to any **insured**; and

- 3) The **pollution condition** occurs after the **insured** has relinquished physical possession of the **insured's** product to others; and
- 4) The **claim** is first made during the **policy period** and reported to the Insurer, in writing, during the **policy period** or within thirty (30) days after the expiration of the **policy period**, or during any applicable extended reporting period, in accordance with Section VII. Duties In The Event Of A Pollution Condition, Loss Or Claim.

## II. LIMITS OF INSURANCE AND DEDUCTIBLE

### A. Limits of Insurance

- 1) The Limits of Insurance shown on the Declarations, or as amended by endorsement, and the rules below fix the most the Insurer will pay regardless of the number of **insureds**, **claims**, **pollution conditions**, **emergency response expense** or persons or organizations making **claims**.
- 2) The applicable Each Pollution Condition Limit stated on the Declarations is the most the Insurer will pay for applicable **claims**, **losses**, **emergency response expense** and **defense and claims expense** afforded by this Policy arising from the same, related, or continuous **pollution condition**. The most the Insurer will pay with respect to any **pollution condition** that continues during the policy period(s) of more than one Pollution Liability Policy is the Each Pollution Condition Limit shown on the Declarations applicable to the first policy period during which the **pollution condition** commenced.
- 3) The Policy Aggregate Limit stated on the Declarations is the most the Insurer will pay for the sum of damages under all Coverage Parts for applicable **claims**, **losses**, **emergency response expense** and **defense and claims expense** afforded by this Policy.
- 4) Subject to Paragraphs 1) through 3) above, if a **claim** from the same, related, or continuous **pollution condition** results in coverage being triggered under more than one purchased coverage in Section I. Insuring Agreements, the most the Insurer will pay for **loss and defense and claims expense** arising from the same, related, or continuous **pollution condition** is the highest Each Pollution Condition Limit stated on the Declarations for purchased Coverage Parts applicable to the **loss**.
- 5) The Limits of Insurance apply to the **policy period** shown on the Declarations or as amended by endorsement.

### B. Deductible

- 1) Subject to the provisions of Subsection A. Limits of Insurance above, the Insurer will pay for applicable **claims**, **losses**, **emergency response expense** and/or **defense and claims expense** that exceed the applicable deductible amount set forth on the Declarations or as amended by endorsement. The Limits of Insurance apply in excess of the deductible.
- 2) The deductible amount is the obligation of the **named insured** and applies once to **claims**, **losses**, **emergency response expense** and **defense and claims expense** arising from the same, related or continuous **pollution condition(s)**. If the same, related or continuous **pollution condition** results in coverage being triggered under more than one purchased coverage in Section I. Insuring Agreements, then only the highest deductible amount stated on the Declarations for purchased Coverage Parts applicable to the **pollution condition** will apply.
- 3) The Insurer, at its sole election and option, may either:
  - a. Pay any part of the deductible amount to effect settlement or expense of any **claim**, and upon notification of the action taken, the **insured** shall promptly reimburse the Insurer for such part of the deductible amount that has been paid by the Insurer; or
  - b. Simultaneously upon receipt of notice of any **claim** or at any time thereafter, call upon the **insured** to pay or deposit with the Insurer all or any part of the deductible amount, to be held and applied by the Insurer at its sole discretion.
- 4) The Insurer has the right, but not the obligation, to make any payments associated with **cleanup costs**, a **claim**, **emergency response expense** and/or **defense and claims expense** within the amount of the applicable deductible if the Insurer, in its discretion, deems it advisable to do so. If the Insurer exercises this right, the **insured** must promptly upon request, but in no event later than thirty (30) days after such request, reimburse the Insurer for any payments made by the Insurer within the amount of the applicable deductible.

- 5) If a claim has not entered into litigation, and the Insurer and the **named insured** mutually agree to **mediation** as a means to settle a **claim** made against the **insured**, and if such **claim** is settled as a direct result of and during the **mediation**, the applicable deductible stated on the Declarations or applicable endorsement(s) shall be waived up to a maximum of \$25,000. When this occurs, the Insurer will reimburse the **named insured** as soon as practicable up to a maximum of \$25,000 for any qualifying deductible amount that was already paid by the **named insured** prior to the mediation.

### III. DEFENSE AND SETTLEMENT

- 1) The Insurer may, at its discretion, investigate any **loss** and settle any **claim**.
- 2) The Insurer will have the right and the duty to defend the **insured** against a **claim** brought in the **coverage territory** to which this insurance applies. However, such duty to defend ends once the Limits of Insurance as shown on the Declarations, or amended by endorsement, are exhausted or are tendered into a court of competent jurisdiction, or once the **insured** refuses a settlement offer as provided in Paragraph 7), below.
- 3) The Insurer shall have no duty to defend the **insured** against any **claim** to which this insurance does not apply.
- 4) The Insurer has the right to select legal counsel to represent the **insured** for the investigation, adjustment and defense of any **claim** covered under this Policy. However, **defense and claims expense** incurred prior to the selection of legal counsel by the Insurer shall not be covered under this Policy and cannot be applied against any deductible.
- 5) **Defense and claims expense** is subject to and will erode the applicable Limits of Insurance and any applicable deductible. In addition, **defense and claims expense** is included within any applicable deductible stated on the Declarations to this Policy.
- 6) All duties of the Insurer under this Policy, including the duty to defend, end when the applicable Limits of Insurance are exhausted or are tendered into a court of competent jurisdiction, or once the **insured** refuses a settlement offer as provided in Paragraph 7), below.
- 7) The Insurer will present all settlement offers to the **insured**. The Insurer will not settle without the consent of the **insured**. If the Insurer recommends a settlement which is acceptable to a claimant, which exceeds any applicable deductible, is within the Limits of Insurance, and the **insured** refuses to consent to such settlement offer, the Insurer's duty to defend shall end. The Insurer's liability for **claim(s)** shall not exceed the amount for which the **claim** could have been settled if the recommendation made by the Insurer had been accepted, exclusive of the deductible.

### IV. DEFINITIONS

- 1) **Automobile** means a land motor vehicle, trailer or semi-trailer designed for travel on public roads, including any attached machinery or equipment.
- 2) **Bodily injury** means:
  - a. Physical injury, illness or disease 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; and
  - b. Mental anguish, emotional distress or shock.
- 3) **Claim** means any written demand or request for defense, request for indemnity or other legal proceeding against any **insured**.
- 4) **Cleanup costs** mean reasonable and necessary expenses incurred in the investigation, removal, containment, treatment, response, disposal, remediation, detoxification or neutralization of any **pollution condition**, including associated evaluation, monitoring and testing:
  - a. To the extent required by applicable **environmental laws**; or
  - b. In the absence of any applicable **environmental laws**, to the extent recommended in writing by an **environmental consultant**.

Cleanup costs also include **replacement costs**.

- 5) **Conveyance** means **automobile**, aircraft, watercraft, train or railcar, and equipment designed for use off public roads which is intended to be used primarily for the movement of cargo.
- 6) **Coverage territory** means:
- a. The United States of America, its territories and possessions, and Puerto; and
  - b. International waters or airspace, but only if **bodily injury** or **property damage** occurs in the course of travel or **transportation** between any places included in Subparagraph a. above.
- 7) **Covered location** means any location(s) in the **coverage territory** that is specifically listed on the Declarations or by endorsement.
- 8) **Defense and claims expense** means reasonable costs incurred in the investigation, adjustment or defense of **claims**. Such costs include, but are not limited to, costs of appeal, premium on appeal bonds or bonds to release attachments. However, the Insurer will have no duty to procure such bonds.
- 9) **Emergency response expense** means reasonable **cleanup costs** incurred by the **insured** to abate and/or respond to an imminent and substantial threat to human health or the environment arising from a **pollution condition**. Such reasonable **cleanup costs** must be incurred within seven (7) days of the discovery of a **pollution condition** by an **insured**.
- 10) **Environmental consultant** means a person approved by the Insurer in writing who is duly certified and licensed in a recognized field of environmental science as required by an applicable state or provincial board, a professional association, or both, and fulfills certain minimum qualifications and maintains errors and omissions insurance. The Insurer shall consult with the **insured** in conjunction with the selection of the **environmental consultant**.
- 11) **Environmental laws** mean any federal, state, provincial, municipal or other local laws, statutes, ordinances, regulations, and all amendments thereto, including state voluntary cleanup or risk-based corrective action guidance, governing the liability of the **insured** with respect to a **pollution condition**.
- 12) **Illicit abandonment** means the intentional placement, abandonment or disposal by a person or entity other than the **insured** and without the knowledge of a **responsible insured** of materials that would result in **cleanup costs** if such materials were to discharge, disperse, release or escape on, in, into or upon a **covered location**.
- 13) **Insured** means the **named insured**, any additional **insured** specifically endorsed onto this Policy, and any past or present director, officer, partner, employee, temporary or leased worker of the **named insured** while acting within the scope of his or her duties as such. With respect to a limited liability company or a trust, **insured** also means any member or trustee while acting within the scope of his or her duties as such.
- 14) **Insured contract** means:
- a. A sidetrack agreement; or
  - b. Any easement or license agreement; or
  - c. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality; or
  - d. An elevator maintenance agreement; or
  - e. That part of any other contract or agreement pertaining to the **insured's** business (including an indemnification of a municipality in connection with work performed for a municipality) under which the **insured** assumes the tort liability of another party to pay for **bodily injury**, **property damage** or **cleanup costs** to a third party or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.
- Subparagraph e. does not include that part of any contract or agreement:
1. That indemnifies an architect, engineer, or surveyor for **bodily injury**, **property damage** or **cleanup costs** arising out of:
    - a) Preparing, approving or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys field orders, change orders or drawings and specifications; or

- b) Giving directions or instructions, or failing to give them, if that is the primary cause of the **bodily injury, property damage or cleanup costs**; or
2. Under which the **insured**, if an architect, engineer, or surveyor, assumes liability for **bodily injury, property damage, or cleanup costs** arising out of the **insured's** rendering or failure to render professional services, including those listed in Subparagraph. e.1. above and supervisory, inspection, architectural or engineering activities.
- 15) **Insured's product** means:
- a. Any goods or products, other than real property, that are manufactured, sold, handled, distributed, altered or repaired by the **insured** or by others trading under the name of the **insured**.
  - b. Containers (other than a **conveyance**), materials, parts or equipment furnished in connection with such goods or products in 15a. above.
- The **insured's product** includes:
- a. Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of the **insured's product**; and
  - b. The providing or failure to provide warnings or instructions.
- 16) **Insured's work** means:
- a. work or operations performed for a third party by the **insured** or on the **insured's** behalf at a **job location**; and
  - b. Materials, parts or equipment furnished in connection with such work or operations.
- The **insured's work** includes:
- a. Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of the **insured's work**; and
  - b. The providing or failure to provide warnings or instructions.
- 17) **Job location** means a location in the **coverage territory** where the **insured's work** is performed; however, **job location** does not include:
- a. A **covered location**; or
  - b. A **non-owned location**; or
  - c. Any location owned or leased by an **insured**, except those locations that the **insured** temporarily rents, leases, or uses solely to house materials, parts or equipment furnished in connection with the **insured's work** during the duration of the **insured's work** performed for a specific job or project.
- 18) **Loss** means:
- a. Monetary awards or settlements of compensatory damages arising out of **bodily injury or property damage**;
  - b. **Cleanup costs**;
- 19) **Mediation** means the non-binding intervention of a neutral third-party to effect resolution of a **claim**.
- 20) **Mold** means mildew, fungus or **mold**; including mycotoxins, spores or byproducts produced or released by fungi.
- 21) **Named insured** means the person or entity shown on the Declarations or by endorsement.
- 22) **Natural resource damages** means damages for, injury to, or destruction 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 (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, any foreign government, or any Native American Indian Tribe, or, if such resources are subject to a trust restriction on alienation, any members of any Native American Tribe.

23) **Non-owned location** means:

- a. A location in the **coverage territory** that is neither owned nor operated by the **insured**, or any related entity, and that is listed on a Schedule of Non-Owned Locations attached to this Policy; or
- b. A location in the **coverage territory** where waste generated from a **covered location** or a **job location** is sent for treatment, storage, processing, recycling or disposal provided that:
  1. The location was not at any time owned, operated, leased or maintained by the **insured** or any related entity; and
  2. The location was not owned or operated by a bankrupt or financially insolvent entity at the time the material or waste was transferred to the location; and
  3. The location was permitted and/or licensed by the applicable federal, state, provincial or municipal authorities at the time the material or waste was transferred to the location; and
  4. The location was not listed on the proposed or final Federal National Priorities List or Superfund database, or any state, provincial and/or municipal equivalent of the National Priorities List or Superfund database, at or prior to the time the material or waste is transferred to the location.

24) **Policy period** means the period shown on the Declarations, or any shorter period resulting from the cancellation or termination of this Policy, or any other period as amended by endorsement.

25) **Pollution condition** means the discharge, dispersal, release, escape, migration, seepage or **illicit abandonment** of any solid, liquid, gaseous or thermal irritant including smoke, soot, vapors, fumes, acids, alkalis, toxic chemicals, hazardous substances, hazardous materials, low level radiological waste, mixed waste or waste materials, including medical, infectious or pathological wastes, on, in, into or upon land and structures thereupon, the atmosphere, surface water or groundwater, provided such conditions are not naturally present in the environment in the concentrations or amounts discovered. **Pollution condition** also includes:

- a. Electromagnetic fields, **mold** and bacteria, including *legionella pneumophila*; and
- b. The discharge, dispersal, release or escape of silt or sedimentation that originated at and migrated from a **job location** or a **covered location**.

26) **Products-completed operations pollution hazard** includes **bodily injury, property damage** and **clean-up costs** occurring at or from any premises, site or location that at no time was ever owned or occupied by, rented or loaned to any **insured** and caused by a **pollution condition** arising out of the **insured's work** or the **insured's product** except:

- a. Products that are still in the physical possession of the **insured**; or
- b. Work that has not yet been completed or abandoned. However, the **insured's work** will be deemed to be completed at the earliest of the following times:
  1. When all of the work called for in the **insured's** contract has been completed; or
  2. When all of the work to be done at the **job location** has been completed if the **insured's** contract calls for work at more than one **job location**; or
  3. When that part of the work done at a **job location** has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

**Products-completed operations pollution hazard** does not include **bodily injury, property damage** and **clean-up costs** arising out of **transportation**.

27) **Property damage** means:

- a. Physical injury to tangible property of parties other than the **insured**, including resulting loss of use of that property; or
- b. Loss of use of tangible property of parties other than the **insured** that is not physically injured; or
- c. Diminished value of tangible property of parties other than the **insured**; or

d. Natural resource damages.

Property damage does not include cleanup costs.

- 28) **Replacement costs** mean those reasonable expenses necessarily incurred by the **insured** to repair or replace real property or physical improvements to such real property that were made prior to the **pollution condition** and damaged during the course of responding to the **pollution condition**. **Replacement costs** do not include costs associated with improvements or betterments, except to the extent that such betterments or improvements are exclusively associated with the use of building materials which are environmentally superior to those materials which comprised the original damaged property. Any such environmentally superior material must be: a) certified as such by an applicable independent certifying institution, where such certification is available; or b) in the absence of any such certification, based solely on the judgment of the Insurer and at its sole discretion.
- 29) **Responsible insured** means any employee of an **insured** responsible for environmental affairs, control or compliance, or any officer, director, partner, branch manager, operations manager or project manager of an **insured**.
- 30) **Retroactive date** means the retroactive date applicable to each specific Coverage Part as set forth on the Declarations, or any applicable endorsements.
- 31) **Third party carrier** means any person or entity other than the **insured** that is in the business of transportation for hire and is engaged by or on behalf of the **insured**.
- 32) **Transportation** means the movement of goods, products, merchandise, supplies or waste in a conveyance beyond the boundaries of a **covered location**, **job location**, or a **non-owned location** by the **insured** or a **third party carrier** until such time as the goods, products, merchandise, supplies or waste arrives at the boundaries of its final destination, provided that the **insured** or **third party carrier** is properly licensed to conduct transportation activities.
- 33) **Underground storage tank** means any tank which has more than 10% of its volume below ground, and associated piping and appurtenances connected thereto. **Underground storage tank** does not include a flow-through process tank including but not limited to; septic tank, sump pump or oil/water separator, stormwater or wastewater collection/treatment vessel or system, or any tank that is located on or above the floor of a basement of a building or on or above the floor of any shaft or tunnel.

## V. EXCLUSIONS

### A. EXCLUSIONS APPLICABLE TO ALL COVERAGES UNLESS OTHERWISE NOTED

This insurance does not apply to any claim, loss, emergency response expense or defense and claims expense, arising out of or related to:

#### 1) Asbestos

- a. **Bodily injury, property damage or cleanup costs** at any time arising out of the manufacture of, mining of, sale or distribution of, or installation of asbestos products, asbestos fibers or asbestos dust, or to any obligation of the **insured** to indemnify any party because of damages arising out of such **bodily injury, property damage or cleanup costs** at any time as a result of the manufacture of, mining of, sale or distribution of, or installation of asbestos products, asbestos fibers or asbestos dust.

Furthermore, the Insurer shall not be obligated to defend any claim or suit against any **insured** alleging **bodily injury, property damage or cleanup costs** resulting from or contributed to, by any and all manufacture of, mining of, sale or distribution of, or installation of asbestos products, asbestos fibers or asbestos dust.

For purposes of this exclusion, **bodily injury** shall also include disability, disease, occupational disease and sickness.

- b. Asbestos and asbestos-containing materials in, on, migrating from or applied to any **covered location** or **non-owned location**; however, this exclusion does not apply to **cleanup costs** arising out of or related to asbestos or asbestos-containing materials in soil or groundwater.

#### 2) Contractual Liability

Liability of others assumed by the **insured** through contract or agreement. This exclusion shall not apply to liability for damages:

- a. That would have otherwise attached to the **insured** in the absence of such contract or agreement; or
- b. Assumed in a contract specifically listed in any Schedule of Insured Contracts attached to this Policy, provided that the **bodily injury, property damage or cleanup costs** occurs subsequent to the execution of the contract.

This exclusion does not apply to coverage provided under Section I., Insuring Agreements, Coverage F. Transportation Pollution Liability, Coverage G. Contractors Pollution Liability, and Coverage H. Product Pollution Liability.

### 3) Divested Property – New Pollution Conditions

A **pollution condition** on, at, under or migrating from or onto a **covered location** where the actual discharge, dispersal, release, escape, migration or seepage began subsequent to the time that such **covered location** is sold, given away, abandoned or condemned.

### 4) Employers Liability

**Bodily injury** to:

- a. An **insured** or its parent, subsidiary or affiliate:
  1. Arising out of and in the course of employment by the **insured** or its parent, subsidiary or affiliate; or
  2. Performing duties related to the conduct of the **named insured's** business.
- b. The spouse, child, parent, brother or sister of such **insured** or its parent, subsidiary or affiliate as a consequence of Subparagraph a. above.

This exclusion applies:

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

However, for the purposes of Section I. Insuring Agreements, Coverage G – Contractors Pollution Liability, this exclusion does not apply to liability assumed by the **insured** under an **insured contract**.

### 5) Expected or Intended Loss

**Bodily injury, property damage or cleanup costs** expected or intended from the standpoint of a **responsible insured**.

### 6) Fines, Penalties, and Injunctive Relief

- a. Criminal fines, criminal penalties or criminal assessments; or
- b. Any claim seeking injunctive relief; or
- c. Punitive, exemplary or multiple damages, unless insurable by law; or
- d. Civil fines, penalties and assessments, unless insurable by law.

### 7) Insured's Internal Expenses

Expenses incurred by the **insured** for services performed by the salaried staff and employees of the **insured**. However, this exclusion shall not apply to **emergency response expense**.

### 8) Intentional Non-Compliance

The intentional disregard of or knowing, willful or deliberate non-compliance with any law, statute, regulation, administrative complaint, notice of violation, notice letter, instruction of any governmental agency or body or executive, judicial or administrative order by any **responsible insured**.

### 9) Known Conditions

A **pollution condition** in existence prior to the **policy period** and known to a **responsible insured** and not specifically listed on any Schedule of Known Conditions attached to this Policy.

**10) Lead-based Paint**

Lead-based paint in, on, migrating from, or applied to any **covered location** or **non-owned location**; however, this exclusion does not apply to **cleanup costs** arising out of or related to lead-based paint in soil or groundwater.

**11) Nuclear Hazard**

The radioactive, toxic, hazardous or explosive properties of source material, special nuclear material and by-product nuclear material, as those terms are defined in the Atomic Energy Act of 1954 and any amendments thereof, and for which the United States Department of Energy or any other government authority has indemnified the **insured**; or for which the Price Anderson Act provides protection for the **insured**.

**12) Other Named Insureds**

Any named **insured** against any other named **insured**.

**13) Product Liability and Completed Operations**

- a. A **pollution condition** arising out of the **insured's product** or any part of it and included in the **products-completed operations pollution hazard**. However, this exclusion does not apply to coverage provided under Section I., Insuring Agreements, Coverage H. Product Pollution Liability.
- b. A **pollution condition** arising out of the **insured's work** or any part of it and included in the **products-completed operations pollution hazard**. However, this exclusion does not apply to coverage provided under Section I., Insuring Agreements, Coverage G. Contractors Pollution Liability.

**14) Underground Storage Tanks**

A **pollution condition** emanating from an **underground storage tank** at a **covered location** or a **non-owned location**:

- a. The presence of which was known to a **responsible insured** prior to the **policy period**; and
- b. Which is not listed in any Schedule of Covered Underground Storage Tanks attached to this Policy.

However, this exclusion does not apply to an **underground storage tank** at a **covered location** or a **non-owned location** that has been abandoned in place in accordance with **environmental laws** or removed in accordance with **environmental laws** prior to the **policy period**.

**15) Vehicles**

- a. A **pollution condition** resulting from the use, maintenance or operation, including loading or unloading, of a **conveyance** beyond the boundaries of a **covered location** or a **job location** where the **insured's work** is being performed. However, this exclusion does not apply to coverage provided under Section I., Insuring Agreements, Coverage F. Transportation Pollution Liability; or
- b. A **claim** made by, on behalf of or pursuant to any subrogated interest of a **third party carrier** for **bodily injury, property damage or cleanup costs**. However, this exclusion shall not apply to a **claim** for **property damage** arising from the **insured's negligence**.

**16) War**

Any consequence, whether direct or indirect, of war, invasion, act of foreign enemy, terrorism, civil war, rebellion, revolution, insurrection or military or usurped power.

**17) Workers' Compensation**

Any obligation of any **insured** under any workers compensation, disability benefits or unemployment compensation law or any similar law.

**B. ADDITIONAL EXCLUSIONS APPLICABLE TO COVERAGE E – NON-OWNED LOCATION POLLUTION LIABILITY**

Solely with respect to Section I. Insuring Agreements, Coverage E, Paragraph 2), this insurance does not apply to any **claim, loss, emergency response expense or defense and claims expense**, arising out of or related to:

**1) Owners, Operators and Contractors**

**Bodily injury or property damage** as a result of a claim against an **insured** by an owner, operator or contractor, or their employees at a **non-owned location**. However, this exclusion shall not apply to a claim arising from the **insured's** negligence.

**C. ADDITIONAL EXCLUSIONS APPLICABLE TO COVERAGE G – CONTRACTORS POLLUTION LIABILITY**

This insurance does not apply to any claim, loss, emergency response expense or defense and claims expense, arising out of or related to:

**1) Damage to Insured's Work**

**Property damage** to the **insured's work** arising out of it or any part of it and included in the **products-completed operations pollution hazard**.

This exclusion does not apply:

- a. To **replacement costs**; or
- b. If the damaged work or work out of which the damage arises was performed on behalf of the **insured** by a subcontractor.

**2) Intentional Acts**

Any acts which are based upon or otherwise attributed to a **responsible insured's**:

- a. Dishonest, intentional, fraudulent, malicious, willful, deliberate or knowingly wrongful act; or
- b. Dishonest, intentional, fraudulent, malicious, willful or deliberate non-compliance with any statute, regulation, ordinance, administrative complaint, notice of violation, notice letter, executive order or instruction of any governmental agency or body prior to or after inception of the Policy.

**3) Professional Liability**

- a. Arising from or in any way related to the rendering of or failure to render professional services including but not limited to: Those architectural, engineering, consulting, project management or construction management services that are performed by the **insured** or any contractor or subcontractor working on the **insured's** behalf; and
- b. The making of recommendations for the site selection, **transportation**, disposal or treatment of a **pollution condition** by the **insured** or any subcontractor or subcontractor working on the **insured's** behalf.

This exclusion does not apply to damaged work or the work out of which the damage arises due to improper supervision or lack of supervision of a subcontractor by the **insured**.

**D. ADDITIONAL EXCLUSIONS APPLICABLE TO COVERAGE H – PRODUCT POLLUTION LIABILITY**

This insurance does not apply to any claim, loss, emergency response expense or defense and claims expense, arising out of or related to:

**1) Damage to Insured's Product**

**Property damage** to the **insured's product** arising out of it or any part of it and included in the **products-completed operations pollution hazard**.

**2) Lead**

- a. **Bodily injury, property damage or cleanup costs** arising out of or involving lead, paint containing lead or any other product containing lead; or
- b. Any fees, costs or expenses of any nature whatsoever in the investigation or defense of any **claim** arising out of or involving lead, paint containing lead or any other product containing lead.

**3) Recalled Products**

The loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of the **insured's product** if such product is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition.

E. **ADDITIONAL EXCLUSIONS APPLICABLE TO COVERAGE F – TRANSPORTATION POLLUTION LIABILITY, COVERAGE G – CONTRACTORS POLLUTION LIABILITY, AND COVERAGE H – PRODUCT POLLUTION LIABILITY**

This insurance does not apply to any claim, loss, emergency response expense or defense and claims expense, arising out of or related to:

1) **Contractual Liability**

Liability of others assumed by the insured through contract or agreement. This exclusion shall not apply to liability for damages:

- a. That would have otherwise attached to the insured in the absence of such contract or agreement; or
- b. Assumed in a contract or agreement that is an **insured contract**, provided the **bodily injury, property damage or cleanup costs** occur subsequent to the execution of the contract or agreement. Solely for the purpose of liability assumed in an **insured contract**, reasonable attorney fees and necessary litigation expenses incurred by or for a party other than the insured are deemed to be damages because of **bodily injury, property damage or cleanup costs** provided:
  1. Liability to such party for, or for the cost of, that party's defense has also been assumed in the same **insured contract**; and
  2. Such attorney fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

VI. **GENERAL CONDITIONS**

A. **CONDITIONS APPLICABLE TO ALL COVERAGES UNLESS OTHERWISE NOTED**

1) **Bankruptcy**

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve the Insurer of its obligations under this Policy.

2) **Cancellation**

- a. This Policy may be cancelled by the **named insured** by mailing to the Insurer, or through the insured's agent, written notice stating when such cancellation shall be effective.
- b. This Policy may be cancelled by the Insurer by mailing to the **named insured** at the **named insured's** last known address, written notice stating such cancellation shall be effective ten (10) days thereafter for the following reasons:
  1. Non-payment of premium; or
  2. Fraud or material misrepresentation on the part of a **responsible insured**.

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**.

- c. This Policy may be cancelled by the Insurer by mailing to the **named insured** at the **named insured's** last known address, written notice stating such cancellation shall be effective not less than ninety (90) days thereafter. 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**.

3) **Changes and Assignment**

The terms, definitions, conditions, exclusions and limitations of this Policy shall not be waived or changed, and no assignment of any interest under this Policy shall bind the Insurer, except as provided by endorsement and attached to this Policy, signed by the Insurer or its authorized representative.

4) **Inspection and Audit**

With reasonable notice to the insured, the Insurer shall be permitted, but not obligated, to inspect the insured's premises, equipment and/or operations. Neither the Insurer's right to make inspections nor the making thereof 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 laws, or any other law. Any recommendations or information provided is not intended as a substitute for advice from a safety expert or legal counsel the **insured** may retain for the **insured's** own purposes. It is not intended to supplant any legal duty the **insured** may have to provide a safe premises, workplace, product or operation.

#### 5) Legal Action against the Insurer

No person or organization has a right under this Policy:

- a. To join the Insurer as a party or otherwise bring the Insurer into a suit asking for damages from an **insured**; or
- b. To sue the Insurer on this Policy unless all of its terms have been fully complied with.

A person or organization may sue the Insurer to recover on an agreed settlement or on a final judgment against an **insured**; but the Insurer will not be liable for damages that are not payable under the terms of this Policy or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by the Insurer, the **insured** and the claimant or the claimant's legal representative.

#### 6) Other Insurance

If other valid and collectible insurance is available to the **insured** for a **loss** covered under this Policy, the obligations of the Insurer are limited as follows:

##### a. Primary Insurance

This insurance is primary except when Subparagraph b. below applies. If this insurance is primary, the obligations of the Insurer are not affected unless any other insurance is also primary. In the event that other insurance is also primary, then the Insurer will share with the other insurance by the method described in Subparagraph c. below.

##### b. Excess Insurance

If other insurance, whether collectible or not, is available to the **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 other such insurance. This Policy shall in no way be increased or expanded as a result of receivership, insolvency or inability to pay by any insurer with respect to both the duty to indemnify and the duty to defend. This also applies to the **insured** while acting as a self-insured for any coverage.

When this insurance is excess, the Insurer will have no duty under the Policy to defend a **claim** if any other insurer has a duty to defend the **insured** against a **claim**. If no other insurer defends a **loss** covered under this Policy, the Insurer may undertake to do so, but the Insurer will be entitled to the **insured's** rights against all those other insurers. When this insurance is excess over other insurance, the Insurer will pay only its share of the amount of the **loss**, if any, that exceeds the sum of:

1. The total amount that all such other insurance would pay for the **loss** in the absence of this insurance; and
2. The total of all deductible and self-insured amounts under all other insurance or under this Policy.

The Insurer will share the remaining **loss**, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown on the Declarations of this Policy.

##### c. Method of Sharing

If all of the other insurance permits contribution by equal shares, the Insurer will follow this method also. Under this approach each Insurer contributes equal amounts until the Insurer has paid its applicable limit of insurance or none of the **loss** remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, the Insurer will contribute by limits. Under this method, each Insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

#### 7) Representations

By accepting this Policy, the **insured** agrees:

- a. The statements on the Declarations, the Application for insurance, any other underwriting, loss control or claims related information and any other information submitted to the Insurer are accurate and complete at the time the **insured** reported that information; and
- b. Those statements are based upon representations the **insured** made to the Insurer; and
- c. The Insurer has issued this Policy in reliance upon the **insured's** representations.

**8) Separation of Insureds**

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Policy to the first **named insured**, this insurance applies:

- a. As if each **named insured** were the only **named insured**; and
- b. Separately to each **insured** against whom a **claim** is made.

**9) Sole Agent**

The first **named insured** shown on the Declarations shall act on behalf of all **insureds** for the payment or return of premium, receipt and acceptance of any endorsement issued to form a part of this Policy, giving and receiving notice of cancellation or non-renewal and the exercise of the rights provided in Section VIII. Extended Reporting Period, Paragraph 2) Optional Extended Reporting Period.

**10) Transfer of Rights of Recovery Against Others**

If the **insured** has rights to recover all or part of any payment made by the Insurer under this Policy, those rights are transferred to the Insurer. The **insured** must do nothing to impair these rights once a **loss** is known by a **responsible insured**.

**11) Consent or Approval**

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

**B. ADDITIONAL CONDITIONS APPLICABLE TO COVERAGE G. CONTRACTORS POLLUTION LIABILITY AND COVERAGE H. PRODUCT POLLUTION LIABILITY**

**1) Premium Audit**

- a. The Insurer will compute all premiums for this Policy in accordance with the rules, rates and minimum premium requirements of the Insurer.
- b. Premium shown on the Declarations page of this Policy as Premium is a deposit premium only. At the close of each audit period, the insurer will compute the earned premium for that period. Audit premiums are due and payable on notice to the **named insured**.
- c. The **insured** must keep records of the information needed by the Insurer for premium computation, and send copies at such times as requested by the Insurer.
- d. The Insurer may examine and audit books and records of the **insured** as they relate to this Policy at any time during the **policy period** and up to three years afterward.
- e. Premium adjustments as a result of premium audits will be done after the Policy expires or is terminated, but may be done by the Insurer while the Policy is in effect.
- f. Premium audit adjustment calculations will be made to determine additional premium only. The **insured** has agreed with the Insurer that there will be no downward adjustments of the Premium.

**VII. DUTIES IN THE EVENT OF A POLLUTION CONDITION, LOSS OR CLAIM**

- 1) Without limiting the specific requirements contained in any Coverage Part or any other exposure-specific reporting requirements contained within this Policy, if any, the **insured** shall also see to it that the Insurer receives notice of any **claim** or the discovery of any **pollution condition**, as soon as practicable, by one or more of the following:

- a. Provide written notice to the address, fax number, or email address identified in Item 10. of the Declarations to this Policy; or
- b. Provide verbal notice utilizing the **ACE ALERT<sup>SM</sup> 24-hour Emergency Response and Incident Reporting System** by calling the telephone number identified in Item 10. of the Declarations to this Policy.

Such notice should include reasonably detailed information as to:

- a. The identity of the **insured**, as well as contact information for the **responsible insured** handling the **claim** or **pollution condition**;
  - b. The location of the **pollution condition**;
  - c. The nature of the **claim** or **pollution condition** including details regarding any injury or damage; and
  - d. The steps undertaken by the **insured** to respond to the **claim** or mitigate the **pollution condition**.
- 2) The **insured** must:
- a. Immediately send the Insurer copies of any demands, notices, summonses or legal papers received in connection with any **claim**;
  - b. Authorize the Insurer to obtain records and other information;
  - c. Cooperate with the Insurer in the investigation, settlement or defense of the **claim**;
  - d. 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 a **claim**, **loss**, **cleanup costs**, **emergency response expense** or **defense and claims expense** to which this Policy may also apply;
  - e. Provide the Insurer with such information and cooperation as the Insurer may reasonably require.
- 3) The **insured** shall not make or authorize an admission of liability or attempt to settle or otherwise dispose of any **claim** without the prior written consent of the Insurer.
- 4) The **insured** shall not incur any **cleanup costs** without the prior written consent of the Insurer, except in the event of an **emergency response expense** or first aid.
- 5) If in the sole judgment of the Insurer, the **insured** fails to take reasonable steps to mitigate a **pollution condition** to the extent required by **environmental laws**, the Insurer shall have the right, but not the duty, to mitigate the **pollution condition**.

For the purposes of fulfilling the notice requirements contained in the Coverage Parts to this Policy, notice supplied pursuant to one or more of the verbal or electronic notice mechanisms specifically contemplated on the Declarations shall constitute written notice to the Insurer.

#### VIII. EXTENDED REPORTING PERIOD

In the event that this Policy is cancelled or non-renewed by the **insured** or the Insurer, for any reason, except for non-payment of premium or deductible amounts, or as a result of fraud or material misrepresentation, the following shall apply:

##### 1) Automatic Extended Reporting Period

- a. The Insurer shall provide the **insured** at no additional premium an Automatic Extended Reporting Period of ninety (90) days for any **claim** first made against the **insured** during this Automatic Extended Reporting Period, provided that:
  1. The **claim** arises out of a **pollution condition** to which this insurance applies; and
  2. The **pollution condition** commences before the expiration or cancellation date of the Policy; and
  3. The **claim** is reported in writing to the Insurer within ninety (90) days immediately following the expiration or cancellation date of the Policy.
- b. The Automatic Extended Reporting Period shall become effective on the expiration or cancellation date of the Policy.

- c. The Automatic Extended Reporting Period shall not reinstate or increase the Limits of Insurance, nor shall it extend the **policy period** or change the scope of the coverage provided.
- d. The Automatic Extended Reporting Period shall not be provided if the **insured** has purchased other insurance to replace the coverage provided under this Policy.

## 2) Optional Extended Reporting Period

- a. The **named insured**, upon payment of an additional premium of up to 200% of the Policy premium, shall be entitled to purchase an Optional Extended Reporting Period of thirty-three (33) months for any **claim** first made against the **insured** during this Optional Extended Reporting Period, provided that:
  - 1. The **claim** arises out of a **pollution condition** to which this insurance applies; and
  - 2. The **pollution condition** commences before the expiration or cancellation date of the Policy; and
  - 3. The **claim** is reported in writing to the Insurer during the Optional Extended Reporting Period purchased by the **insured**.
- b. A written request to purchase the Optional Extended Reporting Period must be received by the Insurer within thirty (30) days immediately following the expiration or cancellation date of the Policy.
- c. It is a condition precedent to the purchase of the Optional Extended Reporting Period that the **named insured** shall pay the additional premium when due.
- d. Upon payment of the additional premium when due, the Optional Extended Reporting Period may not be cancelled and no return premiums will be provided.
- e. The Optional Extended Reporting Period shall become effective on the expiration date of the Automatic Extended Reporting Period.
- f. The Optional Extended Reporting Period shall not reinstate or increase the Limits of Insurance, nor shall it extend the **policy period** or change the scope of the coverage provided.
- g. The Optional Extended Reporting Period shall not be provided if the **insured** has purchased other insurance to replace the coverage provided under this Policy.