



Guidance Document

Insurance Policies for Closure/Post-Closure for the State of Tennessee's Hazardous Waste Program

Insurance certificates and policies submitted in fulfillment of the requirements of Tennessee Rule 0400-12-01-.06(8) must meet the requirements in the checklist below.

NOTE: In order to remain in compliance with the Unfair Trade Practices and Unfair Claims Settlement Act of 2009, any terms specified in an insurance certificate must also be present in the policy itself. One simple way to ensure that this is the case – and to address many of the points below – is to attach a hazardous waste facility closure/post-closure endorsement to the policy using language identical to that of the certificate. The language for the endorsement can be found in the hazardous waste regulations 0400-12-1-.06 (see pp. 118 and 119):

<http://www.tn.gov/sos/rules/0400/0400-12/0400-12-01/0400-12-01-.06.20150210.pdf>

or on the Division of Financial Responsibility's website:

<http://www.tn.gov/environment/financial-responsibility/hazardous-waste.shtml>

Checklist

- The department must receive a signed original of the insurance certificate. However, a PDF version of the signed original can initially be accepted as evidence of coverage.
- The department must receive a copy of the full policy. A PDF version of the policy is sufficient, as long as the policy is signed appropriately.
- The insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in the State of Tennessee and have an

A.M. best rating of at least A or A- or have special approval from the Commissioner of the Department of Environment and Conservation.

- The insurer must not be a “captive insurance” company, as defined in T.C.A. sections 56-13-106 through 56-13-133, without special approval from the Commissioner.
- The limit of liability must be at least equal to the amount of financial assurance required.
- The insurance policy must guarantee that funds will be available to close the facility whenever final closure occurs and to provide post-closure care requirements.
- The policy must provide that the insurer may not cancel, terminate, or fail to renew the policy, except for failure to pay the premium.
- The policy must provide that if the insurer elects to cancel/terminate/not renew the policy, it must give 120-days’ notice of its intention via certified mail.
- The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy.
- The policy must contain a provision allowing assignment of the policy to a successor owner or operator.
- Cancellation, termination, or failure to renew may not occur and the policy will remain in full force and effect in the event that on or before the date of expiration.
 - (I) The Division Director deems the facility abandoned; or
 - (II) The permit is terminated or revoked or a new permit is denied; or
 - (III) Closure is ordered by the Commissioner of the Department of Environment and Conservation, the Regulatory Board, or a court of competent jurisdiction; or
 - (IV) The owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; or
 - (V) The premium due is paid.
- The policy must be free of endorsements that could compromise the coverage of the policy.

Note: This checklist is provided only as a convenience in order to address some of the more common issues that we encounter when reviewing financial instruments. It is not intended as a complete representation of all applicable regulatory requirements. Please consult with your legal counsel and the TDEC Division of Financial Responsibility before submitting a financial instrument.