



GUIDANCE DOCUMENT

Insurance Policies for Third-Party Liability 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)(n) 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 add the Hazardous Waste Facility Liability Endorsement to the policy, as the language of the endorsement is nearly identical to that of the certificate. The language for the endorsement can be found in the hazardous waste regulations Rule 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 policy must be accompanied by a certificate of liability insurance or hazardous waste facility liability endorsement that uses language identical to the language required in the regulations.
- The policy must be issued by an insurer which, at a minimum, is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in Tennessee.

- 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 of the Department of Environment and Conservation.
- The insurance company or permitted entity must submit a copy of the full policy.
- The division 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. A PDF version of the policy itself is sufficient, as long as the policy is signed appropriately.
- For facilities that require coverage for sudden accidental occurrence only, the coverage should be for \$1 million per occurrence with an annual aggregate of at least \$2 million. For facilities that require insurance for sudden AND non-sudden accidental occurrences, the coverage should be for \$4 million per occurrence with an annual aggregate of at least \$8 million.
- The policy should provide that coverage is “exclusive of legal defense costs” or that defense costs are covered in addition to the per occurrence/aggregate limits.
- The policy must specify that bankruptcy or insolvency of the insured shall not relieve the Insurer of its obligations under the policy.
- The policy must provide that cancelation of the policy will not be effective until 60 days after TDEC’s and the permitted company’s receipt of the insurer’s written notice.
- The policy must provide that any other termination of the policy will be effective only upon written notice and only after the expiration of thirty (30) days after a copy of such written notice is received by the Division Director.

NOTE: This provision of the regulations can be somewhat confusing to many people. The 30-day “other termination” provision is required in addition to the 60-day cancelation provision in the ninth item in the checklist above. The intent of this provision is to serve as an additional safety mechanism for the state by requiring the insurance company to send written notice of **any** termination of the policy – not just cancelation – such as the policy simply expiring when it reaches the stated end of the policy period.

- The amount of any deductible or self-insured retention (SIR) must be covered by the insurer. (Note that the term “self-insured retention” usually means, by definition, that the insurer will NOT cover the first dollar of any claim.)
- The policy must be free of endorsements that could compromise the intent 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.*