



## CLOSURE/POST-CLOSURE INSURANCE PROVISIONS

*Required by Section 11523(1), Part 115, Solid Waste Management, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), being Section 324.11523 of the Michigan Compiled Laws Annotated. An operating license shall not be issued unless financial assurance has been filed as a part of an application for a license.*

Those solid waste facilities which are subject to Part 115 of NREPA, may obtain insurance to satisfy the financial assurance provisions for closure and post-closure care.

The closure or post-closure insurance must conform to the requirements of 40 Code of Federal Regulations (CFR) 258.74(d), and Part 115 of NREPA. In so doing, the facility must submit both of the following to the Director of the Michigan Department of Environmental Quality (Department):

1. A certificate of insurance which uses wording approved by the Department.
2. A certified true and complete copy of the insurance policy.

### INSURER'S QUALIFICATIONS

At a minimum, the insurer shall be licensed to transact the business of insurance in Michigan and have both of the following:

1. A certificate of authority from the Michigan Commissioner of Insurance to sell this line of coverage or be a domestic insurer.
2. A minimum of \$5,000,000.00 of unimpaired surplus funds.

### INSURANCE POLICY REQUIREMENTS

1. The policy shall be issued for a face amount at least equal to the current closure or post-closure cost estimate.
2. The policy shall:
  - a. Guarantee that funds will be available to close the facility when final closure occurs.
  - b. Guarantee that funds will be available to provide post-closure care of the facility when the post-closure period begins.
  - c. Guarantee that, once closure or post-closure begins, the insurer will be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the Director, to such party or parties as the Director specifies.
3. The policy must also include specific terms for increasing the face amount of the policy during **post-closure care**. Subtitle D federal regulations [40 CFR 258.74(d)(7)], require that insurers increase the face amount of **post-closure** policies annually beginning on the day that post-closure care begins. The amount of the annual increase must be equivalent to the current face amount of the policy (less any payments already made) multiplied by 85 percent of:
  - a. The most recent investment rate; or
  - b. The equivalent coupon issue yield announced by the United States Treasury for 26 week treasury securities.
4. Each policy must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon the consent of the insured provided such consent is not unreasonably refused.

## **CANCELLATION, TERMINATION, OR FAILURE TO RENEW INSURANCE**

Part 115 of NREPA contains various conditions regarding the cancellation, termination, or failure to renew closure or post-closure insurance policies, including the following:

1. Insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium.\* The insurer must provide 120 days advance notice of the failure to renew, cancel, or terminate the policy.
2. If the owner or operator fails to renew the policy or provide alternate financial assurance approved by the Director, not less than 90 days before the expiration date of the policy, the insurer shall immediately pay, to the Director, the full face value of the policy.

## **OTHER CONDITIONS REGARDING CANCELLATION, TERMINATION, OR FAILURE TO RENEW INSURANCE**

Insurer may not cancel, terminate, or fail to renew the policy if, on or before the date of expiration, any of the following occurs:

1. The Director deems the facility to be abandoned.
2. The permit/license is revoked or terminated or a new permit/license is denied.
3. Closure is ordered by the Director or a court of competent jurisdiction.
4. The owner or operator is named as debtor in a voluntary or involuntary proceeding under the bankruptcy provisions of Public Law 95-958 11 U.S.C. §§1 to 151302.
5. The premium is paid.

\*Failure to pay the premium without substitution of alternate financial assurance shall constitute a significant violation of Part 115 of NREPA and shall warrant such other remedy as the Director deems necessary. Such violations will be deemed to begin upon receipt, by the Director, of a notice of future cancellation, termination, or failure to renew due to nonpayment of the premium, rather than upon the date of expiration.



**INSURANCE CERTIFICATE FOR CLOSURE OR POST-CLOSURE CARE**

Required by Section 11523(1), Part 115, Solid Waste Management, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), being Section 324.11523 of the Michigan Compiled Laws Annotated. An operating license shall not be issued unless financial assurance has been filed as a part of an application for a license.

**Attach to Insurance Policy**

The insurance certificate for closure and post-closure care must be worded as follows and information inserted as requested:

Insurer's Name (herein called the "Insurer"): \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip Code: \_\_\_\_\_

Insured's Name (herein called the "Insured"): \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip Code: \_\_\_\_\_

Facilities Covered: [List for each facility on a separate attachment: the facility name, identification number, address, and the amount of insurance for closure and/or the amount for post-closure care (these amounts for all facilities covered must total the face amount shown below)].

Face Amount: \_\_\_\_\_

Policy Number: \_\_\_\_\_

Effective Date: \_\_\_\_\_

**Check Appropriate Box**

The Insurer hereby certifies that it has issued to the Insured, the policy of insurance identified above, to provide financial assurance for:  "Closure" or  "Post-Closure Care" or  "Closure and Post-Closure Care" for the facilities identified on the Attachment.

The Insurer further warrants that such policy conforms in all respects with the requirements of Part 115 of NREPA and 40 CFR 258.74(d). It is agreed that any provision of the policy inconsistent with Part 115 of NREPA and/or 40 CFR 258.74(d), is hereby amended to eliminate such inconsistency.

**THE FOLLOWING STIPULATION FOR POST CLOSURE CARE ONLY**

As per the requirements of Subtitle D federal regulations 40 CFR 258.74(d)(7), the Insurer will increase the face amount of the policy annually beginning on the day that post-closure care begins. The insurer agrees that the amount of the annual increase will be equivalent to the current face amount of the policy (less any payments already made) multiplied by 85 percent of:

**Check Appropriate Box**

- The most recent investment rate.
- The equivalent coupon issue yield announced by the U. S. Department of Treasury for 26-week treasury securities.

The Insurer also commits to the following:

**Guarantee of Funds:**

Funds necessary to meet the costs of closure and/or post-closure care will be available whenever they are needed. Funds will be available to close the solid waste facility whenever final closure occurs or to provide post-closure care for the solid waste facility whenever the post-closure care period begins, whichever is applicable.

**Payout:**

Once closure begins, the Insurer will be responsible for paying out funds to the owner or operator or other person(s) authorized to conduct closure or post-closure care up to an amount equal to the face amount of the policy.

**Assignment of Policy:**

The Insurer will allow assignment to a successor owner or operator. Assignment may be conditional upon consent of the Insurer provided such consent is not unreasonably refused.

**Automatic Renewal:**

The insurer will provide the owner or operator with the option of renewal at the face amount of the policy.

**Non-Cancellation:**

The insurer may not cancel, terminate or fail to renew the policy except for failure of the owner or operator to pay the premium.

The Insurer further certifies that it is licensed to transact the business of insurance, or is eligible to provide insurance, as an excess or surplus lines insurer in one or more states and has both of the following:

1. A certificate of authority from the Michigan Commissioner of Insurance to sell this line of coverage or be a domestic insurer.
2. A minimum of \$5,000,000.00 of unimpaired surplus funds.

A duplicate original of the insurance policy, including all endorsements thereon, is being submitted along with a certificate of insurance to the Director of the Department of Environmental Quality.

Authorized signature for Insurer: \_\_\_\_\_

Name of person signing: \_\_\_\_\_

Title of person signing: \_\_\_\_\_

Signature of Witness or Notary: \_\_\_\_\_

Date \_\_\_\_\_

**When completed send this document to:**

WASTE AND HAZARDOUS MATERIALS DIVISION  
MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY  
PO BOX 30241  
LANSING MI 48909-7741