



DEPT. OF ENVIRONMENT AND ENERGY

This guidance document is advisory in nature but is binding on an agency until amended by such agency. A guidance document does not include internal procedural documents that only affect the internal operations of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules and regulations made in accordance with the Administrative Procedure Act. If you believe that this guidance document imposes additional requirements or penalties on regulated parties, you may request a review of the document.

05-1750

Revised September, 2021

Guidance for Insurance Policies

An insurance policy is a contractual arrangement under which the insurer agrees to compensate the policyholder for losses. An insurance company must either be licensed to transact business in Nebraska or be eligible to provide insurance as an excess or surplus lines insurer in one or more states. A duplicate original of the policy, including all endorsements, must be submitted to the Nebraska Department of Environment and Energy (NDEE) for approval. Also, a certificate of insurance verifying coverage must be submitted annually to NDEE. Attached is a guidance document for a certificate of insurance.

The owner of a solid waste management facility must disclose to NDEE if the insurance company is a subsidiary or has a corporate, legal, or financial affiliates with the owner. An insurance company that is an affiliate or parent company of a solid waste management facility must meet the following criteria to be eligible to provide policies for financial assurance in Nebraska.

- The most recent rating from the A.M. Best Company rating service must be at least A-;
- the insurer must be domiciled in the United States;
- the most recent Report on Examination from the State Insurance Department of domicile must be satisfactory;
- the insurer must have capital and surplus of at least \$100,000,000; and
- the insurer must receive an unqualified opinion from an independent certified public accountant on their most recent annual financial statements.

If an owner proposes to use insurance issued by a subsidiary or financial affiliate for financial assurance the owner must demonstrate that the financial test criteria can be satisfied.

Since there is not a standard for insurance policies they may vary in form and content, however there are several provisions that should be included in the policy. Insurance policies for closure and post-closure care:

- should have a face value at least equal to the closure and post-closure cost estimates;
- should include an automatic renewal feature;
- should not be able to be cancelled except for failure to pay the premium;
- should be able to be assigned to a successor owner or operator;
- should state that any legal defense fees are not covered with proceeds from the policy;
- should define the regulatory body as the Nebraska Department of Environment and Energy;
- should identify the applicable law for the adjunction of the policy, if necessary, as that of the State of Nebraska;

- should verify that any deductible clause in the policy be based on a reimbursement from the insured and the insurer will pay “first dollar coverage” on any claim; and,
- the language found in 264.151 (e) Certificate of Insurance should be added as an endorsement to the policy.

If there is a failure to pay the premium, the insurer must provide NDEE a 120-day notice in advance of cancellation. Cancellation, termination, or failure to renew may not occur and the policy will remain in full force and effect if:

1. NDEE deems the facility abandoned; or
2. The permit is terminated or revoked or a new permit is denied by NDEE; or
3. Closure is ordered by NDEE or a U.S. district court or other court of competent jurisdiction; or
4. The owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; or
5. The owner or operator pays the premium due.

Any exclusions that are included in the policy must not reduce the coverage required by the regulations. For example, NDEE will not allow an exclusion from coverage for the insured’s intentional, knowing, willful, deliberate noncompliance with any statute, regulation, ordinance, administrative complaint, notice of violation, notice letter, executive order, or instruction of any governmental agency or body.

Produced by: Nebraska Department of Environment and Energy, P.O. Box 98922, Lincoln, NE 68509-8922; phone (402) 471-2186. To view this, and other information related to our agency, visit our web site at <http://dee.ne.gov>.