**Section 811.714 Closure Insurance**

a) An owner or operator may satisfy the requirements of this Subpart by obtaining closure and post-closure care insurance which conforms to the requirements of this Section and submitting to the Agency an executed duplicate original of the insurance policy and the certificate of insurance for closure and/or post-closure care specified in Appendix A, Illustration F.

b) The insurer shall be *licensed to transact the business of insurance by the Department of Insurance,* pursuant to the Illinois Insurance Code [215 ILCS 5]*, or at a minimum the insurer must be licensed to transact the business of insurance or approved to provide insurance as an excess or surplus lines insurer by the insurance department in one or more states*. [415 ILCS 5/21.1(a.5)]

c) The policy must be on forms filed with the Illinois Department of Insurance, pursuant to 50 Ill. Adm. Code 753 and Section 143(2) of the Illinois Insurance Code [215 ILCS 5/143(2)] or on forms approved by the insurance department of one or more states.

d) Face amount:

1) The closure and post-closure care insurance policy must be issued for a face amount at least equal to the current cost estimate. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

2) Whenever the current cost estimate decreases, the face amount may be reduced to the amount of the current cost estimate, following written approval by the Agency.

3) Whenever the current cost estimate increases to an amount greater than the face amount, the owner or operator, within 90 days after the increase, must either cause the face amount to be increased to an amount at least equal to the current cost estimate and submit evidence of that increase to the Agency or obtain other financial assurance, as specified in this Subpart, to cover the increase and submit evidence of the alternative financial assurance to the Agency.

e) The closure and post-closure care insurance policy must guarantee that funds will be available to close the site and to provide post-closure care thereafter. The policy must also guarantee that, once 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 Agency to such party or parties as the Agency specifies. The insurer will be liable when:

1) The owner or operator abandons the site;

2) The owner or operator is adjudicated bankrupt;

3) The Board, pursuant to Title VIII of the Act, or a court of competent jurisdiction orders the site closed;

4) The owner or operator notifies the Agency that it is initiating closure; or

5) Any person initiates closure with approval of the Agency.

f) Reimbursement for closure and post-closure care expenses:

1) After initiating closure, an owner or operator or any other person authorized to perform closure or post-closure care may request reimbursement for closure and post-closure care expenditures by submitting itemized bills to the Agency.

2) Within 60 days after receiving bills for closure or post-closure care activities, the Agency shall determine whether the expenditures are in accordance with the closure or post-closure care plan. The Agency shall direct the insurer to make reimbursement in such amounts as the Agency specifies in writing as expenditures in accordance with the closure and post-closure care plans.

3) If the Agency determines based on such information as is available to it that the cost of closure and post-closure care will be greater than the face amount of the policy, it shall withhold reimbursement of such amounts as it deems prudent until it determines that the owner or operator is no longer required to maintain financial assurance. In the event the face amount of the policy is inadequate to pay all claims, the Agency shall pay claims according to the following priorities:

A) Persons with whom the Agency has contracted to perform closure or post-closure care activities (first priority);

B) Persons who have completed closure or post-closure care authorized by the Agency (second priority);

C) Persons who have completed work which furthered the closure or post-closure care (third priority);

D) The owner or operator and related business entities (last priority).

g) Cancellation:

1) The owner or operator shall maintain the policy in full force and effect until the Agency releases the insurer pursuant to Section 811.702.

2) 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 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. If there is a failure to pay the premium, the insurer may elect to cancel, terminate or fail to renew the policy by sending notice by certified mail to the owner or operator and the Agency. Cancellation, termination or failure to renew may not occur, however, during the 120 days beginning with the date of receipt of the notice by both the Agency and the owner or operator, as evidenced by the return receipts. 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 the premium due is paid.

h) Each policy must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided such consent is not unreasonably refused.

(Source: Amended at 35 Ill. Reg. 10842, effective June 22, 2011)