

NEW YORK STATE  
INSURANCE DEPARTMENT

REGULATION NO. 181  
11 NYCRR 75  
STANDARDS FOR INSURANCE THAT QUALIFIES FOR THE  
ENVIRONMENTAL REMEDIATION INSURANCE TAX CREDIT

I, Howard Mills, Superintendent of Insurance of the State of New York, pursuant to the authority granted by Sections 201, 301, 2105, 2118 and 3447 of the Insurance Law, do hereby promulgate Part 75 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Regulation No. 181) to take effect upon publication in the State Register, to read as follows:

(ALL MATERIAL IS NEW)

Section 75.0 Introduction.

Section 3447 of the Insurance Law provides that the superintendent is authorized to promulgate regulations relating to the certification of policies of insurance that qualify for the environmental remediation insurance tax credit provided for under section 23 of the Tax Law. This Part provides guidance for insurers as to the minimum standards for environmental remediation insurance coverages that will enable an insurer to certify that the coverages qualify for the environmental remediation insurance tax credit provided for under section 23 of the Tax Law. This Part also provides the requirements for disclosure of the premiums paid for the coverages under section 3447(b) of the Insurance Law to enable the insured to obtain the appropriate tax credit.

Section 75.1 Required coverages.

In accordance with the provisions of section 3447(b) of the Insurance Law, in order to qualify for the environmental remediation insurance tax credit provided for under section 23 of the Tax Law, the insurance must be written pursuant to the provisions of paragraph (13) or (14) of subsection (a) of section 1113 of the Insurance Law and must contain any of the following coverages or substantially similar coverages or combination of coverages:

- (a) coverage for the costs of on-site clean-up of pre-existing pollution conditions from the insured property that are outside the scope of the remedial work plan pursuant to section 27-1411 of the Environmental Conservation Law for such insured property, hereinafter called coverage 1;
- (b) coverage for third-party claims for on-site bodily injury and property damage resulting from pre-existing pollution conditions outside the scope of the remedial work plan for the insured property, hereinafter called coverage 2;
- (c) coverage that caps clean-up costs relating to the remedial work plan, hereinafter called coverage 3; and

(d) coverage for the costs of state re-openers pursuant to section 27-1421 of the Environmental Conservation Law or modifications to the remedial work plan to fill any gap in any liability limitation provided pursuant to section 27-1421 of the Environmental Conservation Law for environmental conditions, hereinafter called coverage 4.

Section 75.2 Disclosure of the portion of the premium paid for the coverage under Section 3447(b) of the Insurance Law.

Section 3447(a) of the Insurance Law provides that the tax credit shall only apply against a portion of the premium paid for coverage provided under section 3447(b). The insurer shall disclose the portion of the premium charged for the coverages provided under subsections (a) through (d) of section 75.1 of this Part, as separately enumerated items on the policy declarations page. Premiums charged on the policy for other coverages provided shall be shown separately on the declarations page.

Section 75.3 Insurer certification form.

(a) An insurer shall complete the Brownfield Tax Credit Certification Form. All fields must be completed and provided to the developer/insured upon request for use in submitting the information to the Department of Taxation and Finance in order to qualify for the tax credit for the insurance coverages provided pursuant to section 3447 of the Insurance Law. Such Brownfield Tax Credit Certification Form must be in the format contained in subsection (c) of this section.

(b) Where a policy is issued on an excess line basis, the insurer shall cause the delivery of the completed form to the insured with a copy to the excess line broker.

(c) The format for the Brownfield Tax Credit Certification Form is as follows:

## Brownfield Tax Credit Certification Form

### CERTIFICATION FORM FOR THE ENVIRONMENTAL REMEDIATION INSURANCE TAX CREDIT

#### Coverages required for the environmental remediation insurance tax credit

In accordance with the provisions of section 3447(b) of the Insurance Law, in order to qualify for the environmental remediation insurance tax credit provided for under section 23 of the Tax Law, the insurance must be written pursuant to the provisions of paragraph (13) or (14) of subsection (a) of section 1113 of the Insurance Law and must contain any of the following coverages or substantially similar coverages or combination of coverages:

- Coverage 1** - coverage for the costs of on-site clean-up of pre-existing pollution conditions from the insured property that are outside the scope of the remedial work plan pursuant to section 27-1411 of the Environmental Conservation Law for such insured property.
- Coverage 2** - coverage for third-party claims for on-site bodily injury and property damage resulting from pre-existing pollution conditions outside the scope of the remedial work plan for the insured property.
- Coverage 3** - coverage that caps clean-up costs relating to the remedial work plan.
- Coverage 4** - coverage for the costs of state re-openers pursuant to section 27-1421 of the Environmental Conservation Law or modifications to the remedial work plan to fill any gap in any liability limitation provided pursuant to section 27-1421 of the Environmental Conservation Law for environmental conditions.

The Brownfield Property Information required on Certification Part 1 of the Brownfield Tax Credit Certification Form should be the same as the information on the Certificate of Completion for the site.

**Certification Part I- Information about the insurance policy which contains coverages required for the tax credit**

<b>Brownfield Property Information</b>			
Site Name	Department of Environmental Conservation (DEC) Site No.		
Site Street Address	City	State	Zip Code
Municipality	County		
<b>Insured Information</b>			
Company Name			
Last Name	First Name	MI	
<b>Policy Information</b>			
Name of Insurer	Policy Number		
Effective Date of Policy	Expiration Date of Policy		
Total Policy Premium	Amount Paid From Policy Inception to Date		

**Certification Part II- Information about the coverages required for the tax credit**

	Place an X if the coverage is provided	Indicate the Coverage Part, section number or other reference to the relevant provision(s) of the policy that contain the required coverage	Indicate the Premium for each coverage. Note: if a separate premium cannot be provided for each of the coverages then the premium for the specified coverages combined should be provided on the Total line.
Coverage 1			
Coverage 2			
Coverage 3			
Coverage 4			
Total			



I, Howard Mills, Superintendent of Insurance of the State of New York, do hereby certify that the foregoing is Part 75 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Regulation 181), entitled "Standards For Insurance That Qualifies For The Environmental Remediation Insurance Tax Credit", promulgated by me on December 22, 2006, pursuant to the authority granted by Sections 201, 301, 2105, 2118 and 3447 of the Insurance Law, to take effect upon publication in the State Register.

Pursuant to the provisions of the State Administrative Procedure Act, prior notice of the proposed amendment was published in the State Register on November 1, 2006. No other publication or prior notice is required by statute.

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Howard Mills  
Superintendent of Insurance

December 22, 2006