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CPC 80 01 (Ed. 04 08)

GREAT AMERICAN E & S INSURANCE COMPANY

CLOSURE AND POST-CLOSURE FINANCIAL ASSURANCE POLICY HAZARDOUS WASTE FACILITY(IES)

THIS IS A CLAIMS MADE AND REPORTED POLICY. READ IT CAREFULLY.

THIS POLICY REQUIRES THAT A CLAIM BE MADE AGAINST THE INSURED DURING THE POLICY PERIOD AND REPORTED TO THE COMPANY DURING THE POLICY PERIOD.

SOME OF THE PROVISIONS CONTAINED IN THIS POLICY RESTRICT COVERAGE, SPECIFY WHAT IS AND IS NOT COVERED AND DESIGNATE RIGHTS AND DUTIES.

In this Policy, "the Company" refers to the company providing this insurance. Some other words and phrases that appear in capital letters have special meaning. Refer to Section II – DEFINITIONS.

In consideration of the payment of the Policy Premium and in reliance upon the statements contained in the Application and any other supplemental materials and information submitted in connection with the Application, and subject to Section V. LIMIT OF LIABILITY and all the terms, conditions, exclusions and limitations of this Policy, the Company agrees to provide insurance coverage to the INSURED as described herein.

The purpose of this Policy and any subsequent renewals thereof is to guarantee that funds shall be available to close the HAZARDOUS WASTE FACILITY(IES) whenever final closure occurs.

SECTION I. INSURING AGREEMENT

The Company agrees to pay the REGULATORY BODY, subject to the Limits of Liability of this Policy, for CLOSURE COSTS or POST-CLOSURE COSTS that the REGULATORY BODY instructs, in writing, the Company to pay on behalf of the INSURED for such amounts as the REGULATORY BODY specifies in writing, but only if:

1. a CLAIM is first made by the REGULATORY BODY, ordering closure or post-closure pursuant to a written directive issued to the Company in accordance with the Code of Federal Regulations contained in 40 CFR, Part 264, §264.143(e)(4), §264.143(e)(5), §264.145(e)(4) or §264.145(e)(5), or other applicable federal, state or local regulations during the POLICY PERIOD; and
2. the CLOSURE COSTS or POST-CLOSURE COSTS arise from the PARTIAL OR FINAL CLOSURE that first takes place on or after the Inception Date of the first Policy issued by the Company to the INSURED, provided that such Policy is consecutively renewed; and
3. the INSURED has not already paid such CLOSURE COSTS or POST-CLOSURE COSTS for which reimbursement is sought, pursuant to the CLOSURE PLAN or POST-CLOSURE PLAN as contained in applicable regulations.

The INSURED agrees to reimburse the Company for any payment that the Company makes for CLOSURE COSTS or POST-CLOSURE COSTS, where such costs are not first paid by the INSURED. However, the failure of the INSURED to reimburse the Company for such costs shall not affect the obligations of the Company to pay the REGULATORY BODY as set forth above.

SECTION II. DEFINITIONS

A. CLAIM means a request first made in writing to the Company by the INSURED or REGULATORY BODY, pursuant to a written directive issued by the REGULATORY BODY in accordance with 40 CFR, Part 264, §264.143(e)(4), §264.143(e)(5), §264.145(e)(4) or §264.145(e)(5), or other applicable federal, state or local regulations for payment of an itemized bill of expenditures made for CLOSURE COSTS or POST-CLOSURE COSTS, by reason of a PARTIAL OR FINAL CLOSURE.

- B. CLOSURE COSTS** means expenses incurred to implement PARTIAL OR FINAL CLOSURE, as set forth in an itemized bill of expenditures, that are specifically identified in the CLOSURE PLAN and approved by the REGULATORY BODY, or are otherwise justified pursuant to applicable law.
- C. CLOSURE PLAN** means the written Closure Plan which is approved and on file with the REGULATORY BODY.
- D. HAZARDOUS WASTE FACILITY(IES)** means the entire facility designated by the location description in the Declarations which has received authorization from the REGULATORY BODY to engage in the treatment, storage or disposal of hazardous waste and which includes one or more HAZARDOUS WASTE MANAGEMENT UNIT(s) on, within or under such facility.
- E. HAZARDOUS WASTE MANAGEMENT UNIT** means a surface impoundment, waste pile, land treatment area, landfill cell, incinerator, tank and its associated piping and underlying containment system, or a container storage area, or other contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area. Such unit must be located on, within or under a HAZARDOUS WASTE FACILITY(IES). A container alone does not constitute a unit; a unit includes containers and the land or pad upon which they are placed.
- F. INSURED** means the Named Insured set forth in the Declarations page and any Additional Insured endorsed onto this Policy by the Company.
- G. PARTIAL OR FINAL CLOSURE** means the closure of one or more HAZARDOUS WASTE MANAGEMENT UNITS at a HAZARDOUS WASTE FACILITY(IES) pursuant to the CLOSURE PLAN or POST-CLOSURE PLAN upon written determination by the REGULATORY BODY that the INSURED has defaulted in its obligation to carry out such requirements.
- H. POLICY PERIOD** means the period set forth in the Declarations, or any shorter period arising as a result of:
1. cancellation of this Policy (the Company shall provide notice to the REGULATORY BODY by registered or certified mail not less than 120 days prior to the proposed cancellation date); or
 2. with respect to particular HAZARDOUS WASTE FACILITY(IES) designated in the Declarations:
 - a. the deletion of such HAZARDOUS WASTE FACILITY(IES) from this Policy by the Company at the request of the INSURED or Company and with approval from the REGULATORY BODY; or
 - b. the sale, leasing, giving away, abandonment or relinquishing of operational control of such HAZARDOUS WASTE FACILITY(IES) without the written consent of the Company.
- I. POST-CLOSURE COSTS** means expenses incurred to implement post-closure requirements, as set forth in an itemized bill of expenditures, that are specifically identified in the POST-CLOSURE PLAN and approved by the REGULATORY BODY, or are otherwise justified pursuant to applicable law.
- J. POST-CLOSURE PLAN** means the written Post-Closure Plan which is approved and on file with the REGULATORY BODY.
- K. REGULATORY BODY** means the Regional Administrator of the United States Environmental Protection Agency for the EPA region in which the HAZARDOUS WASTE FACILITY(IES) is located or any person or State Agency designated, in writing, by the Regional Administrator.

SECTION III. TERRITORY

This Policy applies only to CLAIMS first made or brought in the United States, its territories or possessions or Puerto Rico, but only if the INSURED'S responsibility to pay for CLOSURE COSTS or POST-CLOSURE COSTS is determined by the REGULATORY BODY.

SECTION IV. EXCLUSIONS

Except as may be set forth in the CLOSURE PLAN or POST-CLOSURE PLAN, this Policy does not apply to any expenses, losses, liabilities of, or damages of any kind incurred by, accruing to, or alleged to be liabilities of the INSURED, by reason of:

1. (a) Any criminal or civil penalties imposed by reason of the violation of any law or regulation; or
- (b) Any CLOSURE COSTS or POST-CLOSURE COSTS based upon or attributable to the INSURED's intentional, knowing, willful or deliberate noncompliance with any statute, regulation, ordinance, administrative complaint, notice of violation, notice letter, executive order or instruction of any governmental agency or body.

However, the acts of the INSURED do not affect the obligation of the Company to the REGULATORY BODY. The INSURED agrees to reimburse the Company for any payment that the Company would not have been obligated to make under the provisions of the Policy but for acts of non-compliance of the INSURED specified above, including all costs and expenses, including attorneys' fees, the Company incurs in seeking such reimbursement.

2. Any attorneys' fees and other charges and expenses incurred in the investigation, adjustment or defense of any CLAIM.

SECTION V. LIMIT OF LIABILITY

- A. The Limits of Liability shown in the Declarations and the rules below fix the most the Company will pay regardless of the number of INSUREDS, HAZARDOUS WASTE FACILITIES, CLAIMS made, or persons or organizations making CLAIMS.
- B. Subject to C. below, this Policy is to pay 100% of any CLAIM, and is subject to a Guaranty Agreement between the Company and the INSURED, which in no event shall affect the obligations of the Company to the REGULATORY BODY.
- C. The Company's total liability for the sum of all CLOSURE COSTS and POST-CLOSURE COSTS as respects any and all CLAIMS reported to the Company for which coverage is requested under this Policy shall not exceed the "Total for all CLAIMS" Limit of Liability shown in the Declarations.

SECTION VI. REPORTING AND COOPERATION

1. In the event that the INSURED receives, formally or informally, information to the effect that CLOSURE COSTS or POST-CLOSURE COSTS or PARTIAL OR FINAL CLOSURE of a HAZARDOUS WASTE FACILITY(IES) is under consideration by the REGULATORY BODY, the INSURED shall immediately forward to the Company any demand or notice from the REGULATORY BODY regarding the CLOSURE COSTS or POST-CLOSURE COSTS or PARTIAL OR FINAL CLOSURE received by the INSURED or his or her representative.
2. The INSURED shall cooperate with the Company and, upon the Company's request, assist in obtaining information relative to any CLAIM made. The INSURED shall not, except at its own cost, voluntarily make or approve any payments, assume any obligations or incur any expense relating to CLOSURE COSTS or POST-CLOSURE COSTS which are not in accordance with the CLOSURE PLAN or POST-CLOSURE PLAN without the written consent of the Company and the REGULATORY BODY.

Notice of Default - In the event that the INSURED receives a notice from the REGULATORY BODY that the INSURED is in default of its obligations to carry out the CLOSURE PLAN or POST-CLOSURE PLAN requirements, the INSURED shall immediately forward such notice to the Company at the address shown in this policy.

3. Any notices required by these conditions shall be sent to:

Great American Insurance Company
Attention: Claims
397 Eagleview Blvd., Suite 100
Exton, Pennsylvania 19341

or other address(es) as substituted by the Company in writing.

4. Non-compliance by the INSURED with the above provisions shall not affect any rights of the REGULATORY BODY. The INSURED agrees to reimburse the Company for any payment that the Company would not have been obligated to make under the provisions of the Policy but for the failure of the INSURED to comply with the above provisions, including all costs and expenses, including attorneys fees, the Company incurs in seeking such reimbursement.

SECTION VII. CONDITIONS

- A. **ACTION AGAINST COMPANY** - No action brought by an organization or entity, other than a REGULATORY BODY, shall lie against the Company unless, as a condition precedent thereto, the INSURED has fully complied with all of the terms of this Policy and, the amount of the INSURED's obligation to pay shall have been finally determined either by judgment against the INSURED after actual trial or by written agreement of the INSURED, the claimant and the Company.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this Policy to the extent of the insurance afforded by this Policy. Except for the REGULATORY BODY, no person or organization shall have any right under this Policy to join the Company as a party to any action against the INSURED to determine the INSURED's liability, nor shall the Company be impleaded by the INSURED or his legal representative.

- B. **ASSIGNMENT** - This Policy shall be void as to the assignee or transferee, if assigned or transferred without written consent of the Company.
- C. **BANKRUPTCY** - Bankruptcy or insolvency of the INSURED or of the INSURED's estate shall not relieve the Company of any of its obligations hereunder.
- D. **CANCELLATION** - The Company shall not cancel, terminate or fail to renew the coverages provided herein except for failure to pay the full premium shown in the Declarations. The Company shall notify the INSURED and the REGULATORY BODY of its intent to cancel, terminate or not to renew by sending, by certified mail, to the INSURED at the address shown in this Policy and to the REGULATORY BODY, written notice stating the date not less than 120 days thereafter beginning with the date of receipt of the notice by both the REGULATORY BODY and the INSURED, as evidenced by the return receipt, provided, however, that no cancellation shall become effective, and all the INSURED's obligations under the Policy shall continue, including its obligations to pay premium, maintain collateral, and under the Guaranty Agreement, until the REGULATORY BODY approves of the cancellation and authorizes the INSURED and the Company to release coverage on the HAZARDOUS WASTE FACILITY(IES) specified in the Declarations.

This Policy may be canceled by the Named Insured pursuant to applicable statute by surrender thereof to the Company or any of its authorized agents or by mailing to the Company written notice stating the date thereafter the cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice. The time of surrender or the effective date and hour of cancellation stated in the notice shall become the end of the POLICY PERIOD.

In the event of (i) cancellation or nonrenewal by the INSURED or (ii) cancellation by the Company for nonpayment of premium, the full Insurance Premium shown in the Declarations and any reimbursement obligations on the part of the INSURED to the Company, shall be deemed earned and the unpaid portion thereof shall be immediately due and payable. Upon the effective date of cancellation by the INSURED, all indemnity obligations on the part of the Company hereunder shall automatically cease and the INSURED shall have no further recourse against the Company with respect to unpaid CLAIMS.

Notwithstanding any of the above stated provisions, cancellation is subject to 40 CFR §264.143(e)(8) or §264.145(e)(8) or other applicable federal, state or local regulations.

- E. **CHANGES** - Notice to any agent or knowledge possessed by any agent or by any other person shall not affect a waiver or a change in any part of this Policy or estop the Company from asserting any right under the terms of this Policy; nor shall the terms of this Policy be waived or changed, except by an endorsement issued by the Company to form a part of this Policy.

- F. DECLARATIONS AND REPRESENTATIONS** - By acceptance of this Policy, the INSURED agrees that the statements contained in the Declarations, the application and any other supplemental materials and information submitted in connection with the application or any amendments to the Policy during the POLICY PERIOD are the INSURED's declarations and representations, that they shall be deemed material, that this Policy is issued in reliance upon the truth of such declarations and representations and that this Policy embodies all agreements existing between the INSURED and the Company or any of its agents relating to this insurance.
- G. HEADINGS** - The descriptions in the headings of this Policy are solely for convenience and form no part of the Policy terms and conditions.
- H. INSPECTION AND AUDIT** - The Company shall be permitted but not obligated to inspect and monitor on a continuing basis the INSURED's property or operations, at any time. Neither the Company's right to make inspections and monitor nor the actual undertaking thereof nor any report thereon shall constitute an undertaking, on behalf of the INSURED or others, to determine or warrant that property or operations are safe, healthful or conform to acceptable engineering practice or are in compliance with any law, rule or regulation. Access for the inspection and audit will be coordinated through the broker or agent of the Named Insured.
- I. OTHER INSURANCE** - The Company's obligations are as follows:
- a. For purposes of compliance with the 40 CFR §264.143 and §264.145 or other applicable federal, state or local regulations, with respect to the REGULATORY BODY, this insurance is primary over any other valid and collectable insurance unless this insurance has been replaced by another financial assurance mechanism approved by the REGULATORY BODY. If another financial assurance mechanism has been approved by the REGULATORY BODY to replace this Policy, this Policy shall no longer be in force.
 - b. If this Policy and another financial assurance mechanism have been approved by the REGULATORY BODY pursuant to 40 CFR §264.143 and §264.145 or other applicable federal, state or local regulations this Policy will apply as follows: If the other financial assurance mechanism does not specify whether it is primary or excess or specifies that it is primary, this Policy will apply as excess over the other financial assurance mechanism. If the other financial assurance mechanism specifies that it is also excess, then this Policy will share equally with the other financial assurance mechanism as primary.
 - c. Solely with respect to the INSURED, in the event other valid and collectable insurance issued to the INSURED and not intended to meet the INSURED's regulatory obligations under 40 CFR §264.143 and §264.145 or other applicable federal, state or local regulations, is available to the INSURED, the Company's obligation is as follows:
 - (i) This Policy shall apply as excess insurance over any other valid and collectable insurance be it primary or excess. This excess insurance shall in no way be increased or expanded as a result of the receivership, insolvency, or inability to pay of any insurer with respect to both the duty to indemnify and the duty to defend. This also applies to the INSURED while acting as a self-insured for any coverage;
 - (ii) Where this Policy is excess over other valid and collectable insurance, the Company will pay only its share of the amount of CLOSURE COSTS and/or POST-CLOSURE COSTS; if any, that exceeds the total amount that all such other insurance will pay for the CLOSURE COSTS and/or POST-CLOSURE COSTS in the absence of this insurance.
- This Section c. will not affect the Company's obligations with respect to the REGULATORY BODY.
- J. PREMIUM** -The full Policy premium for coverage hereunder shall be payable in accordance with the amount shown in the Declarations. It is an absolute condition that the full amount of each premium installment be actually received by the Company in accordance with said schedule to be or continue to be effective.
- K. REGULATORY PROVISIONS** - As between the INSURED and the Company, any term or condition of this Policy to which any federal or state administrative or regulatory provisions apply shall be governed only by those regulations or provisions in effect at the inception date of this Policy. However, the preceding sentence shall not affect the obligation of the Company to pay claims arising under any federal or state administrative or regulatory provision that becomes

effective subsequent to the inception date of this policy, except that no such provision of law shall act to increase the limit of liability stated herein. The INSURED agrees to reimburse the Company for any payment that the Company would not have been obligated to make under the first sentence of this paragraph.

- L. SOLE AGENT** - The Named Insured stated in the Declarations shall act on behalf of all INSURED(s) for the payment or return of premium, receipt and acceptance of any endorsement issued to form a part of this Policy, and giving and receiving notice of cancellation or non-renewal.
- M. SUBROGATION** – If the INSURED has rights to recover, from another person or organization, all or any part of a payment the Company makes under this Policy, those rights are transferred to the Company. The INSURED shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The INSURED shall do nothing to prejudice such rights. Any monies recovered as a result of subrogation proceedings shall accrue first to the INSURED to the extent of any payments it made in excess of the limits of liability, then to the Company to the extent of its payment under the Policy, and then to the INSURED to the extent of its payment of the self-insured retention. Expenses incurred in such subrogation proceedings shall be apportioned amongst the INSURED and Company in the proportion that each interested party's share in the recovery bears to the total recovery.