

The Texas Natural Resource Conservation Commission (commission) proposes new §37.271, relating to Local Government Financial Test for Closure; §37.281, relating to Local Government Guarantee for Closure; §37.371, relating to Local Government Financial Test for Closure; §37.381, relating to Local Government Guarantee for Closure; §37.3001, relating to Applicability; and §37.3011, relating to Financial Assurance Requirements for Scrap Tire Storage Facilities.

#### EXPLANATION OF PROPOSED RULES

The purpose of the proposed new sections is to provide the options of satisfying financial assurance requirements for closure through the use of local government financial tests and local government guarantees, and to provide financial assurance requirements for owners and operators of certain scrap tire sites.

Proposed new §37.271 contains provisions relating to the local government financial test which consists of financial, public notice, recordkeeping, and reporting components. This proposed section states that, in order to continue using the local government financial test, the test must be passed on an annual basis.

The financial component, as proposed under §37.271(1), would require a local government to meet one of two main options, plus certain other conditions. The first option is that the local government must have a ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05; a ratio of annual debt service to total expenditures less than or equal to 0.20; and a ratio of the current cost estimates for closure and any other environmental obligations assured by a financial test, to total annual

revenue less than or equal to 0.43, with any costs exceeding the 43% limit being covered by an alternate financial assurance mechanism. The second of the two main options is that the local government must have outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee which have a current bond rating of Aaa, Aa, A, or Baa, issued by Moody's, or AAA, AA, A, or BBB, as issued by Standard and Poor's on all such general obligation bonds; and a ratio of the current cost estimates for closure and any other environmental obligations assured by a financial test, to total revenue less than or equal to 0.43. In addition to meeting one of the two main options, the following general conditions are proposed to be required: that the local government's financial statements shall be prepared in accordance with Generally Accepted Accounting Principals for local governments and have its financial statements audited by an independent certified public accountant (or appropriate state agency); that a local government must not have operated at a deficit equal to 5.0% or more of total annual revenue in each of the past two fiscal years; that it must not currently be in default on any outstanding general obligation bonds; that it must not have any outstanding general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard and Poor's; and that it must not have received an adverse opinion, disclaimer of opinion, or other qualified opinion from the independent certified public accountant (or appropriate state agency) auditing its financial statements as required under paragraph (1)(C)(i). The following definitions are proposed: "deficit," "total revenues," "total expenditures," "cash plus marketable securities," and "debt service." Other terms not defined are proposed to be interpreted consistently with generally accepted accounting principles for local governments.

The public notice component, as proposed under §37.271(2), would require a local government to place a reference to the closure costs assured through the financial test into its next comprehensive annual financial report (CAFR) after the effective date of this section or prior to the initial receipt of waste at the facility, whichever is later. The disclosure would have to include the nature and source of closure requirements; the reported liability at the balance sheet date; the estimated total closure care cost remaining to be recognized, if applicable, the percentage of any landfill capacity used to date; and the estimated landfill life in years. For the first year the financial test is used to assure costs at a particular facility, the proposal allows the disclosure to be placed in the operating record until issuance of the next available CAFR if timing does not permit the disclosure to be incorporated into the most recently issued CAFR or budget. Finally, §37.271(2) states that for closure costs, conformance with Government Accounting Standards Board Statement 18 assures compliance with this public notice component.

The recordkeeping and reporting component, as proposed under §37.271(3) would require the following four items to be submitted to the executive director: a letter signed by the local government's chief financial officer (CFO) that is worded as specified in §37.371 and that lists all the current cost estimates covered by a financial test and provides evidence and certain certification statements; a copy of the local government's independently audited year-end financial statements for the latest fiscal year, including the "unqualified opinion" of the auditor; a special report from the independent certified public accountant (CPA) or the appropriate state agency to the local government; and a copy of the comprehensive annual financial report used to comply with paragraph (2) or certification that the requirements of General Accounting Standards Board Statement 18 have been met.

Section 37.271(4) proposes annual updates of the financial test documentation, to be submitted to the executive director within 180 days after the close of each succeeding fiscal year.

Section 37.271(5) contains proposed requirements for a local government to satisfy the requirements of the financial test at the close of each fiscal year, and if the local government no longer meets the requirements of the financial test, it would be required to send notice to the executive director of intent to establish alternate financial assurance, and to provide alternate financial assurance within 120 days after the end of such fiscal year.

Section 37.271(6) proposes that the local government would no longer be required to comply with the requirements of this section when the conditions as specified in §37.61 are met.

Proposed §37.271(7) states that the executive director, based on a reasonable belief that the local government may no longer meet the requirements of the local government financial test, may require additional reports of financial condition from the local government at any time. If the executive director then finds that the local government no longer meets the requirements of the financial test, the proposal would require the local government to provide alternate financial assurance as specified in Subchapter C within 30 days after notification of such a finding.

Proposed new §37.281 contains the allowance for an owner or operator to satisfy the requirements of financial assurance for closure by obtaining a local government guarantee provided by a local government. Under this proposal, the local government guarantee would have to meet the requirements

of this section, in addition to the requirements of Subchapters A and B. It is also proposed that the local government guarantor would have to meet the requirements of the local government financial test as specified in §37.271 and must comply with certain terms to the local government guarantee proposed under §37.281(1)-(6).

Proposed §37.281(1) states that, if the owner or operator fails to perform closure of a facility covered by the guarantee, the local government guarantor will perform, or pay a third party to perform closure as required, or establish a fully funded trust fund as specified in §37.201 in the name of the owner or operator. Proposed §37.281(2) states that the guarantee will remain in force unless the local government guarantor sends notice of cancellation by certified mail to the owner or operator and to the executive director, provided, however, that cancellation may not occur for at least 120 days after the notice of cancellation. Proposed §37.281(3) states that if a guarantee is canceled, the owner or operator must, within 90 days following receipt of the cancellation notice, obtain alternate financial assurance and submit evidence of that alternate financial assurance to the executive director. The proposal would require the local government guarantor to provide alternate financial assurance within 120 days following its notice of cancellation, if the owner or operator fails to provide it. Under proposed §37.281(4), the owner or operator must submit to the executive director the original local government guarantee worded as specified in §37.381. The proposal states that the guarantee must accompany the items sent to the executive director as specified in §37.271(3) and that it must be updated annually in accordance with the requirements of the local government financial test. Proposed §37.281(5) contains an allowance that the owner or operator is no longer required to comply with the requirements of this section when the conditions as specified in §37.61 are met. Under proposed §37.281(6), if a local

government guarantor no longer meets the requirements of §37.271, the owner or operator must, within 90 days, obtain alternate financial assurance, and submit such evidence of the alternate assurance to the executive director. If the owner or operator fails to obtain alternate financial assurance within that 90-day period, the guarantor must provide that alternative assurance within the next 30 days.

Proposed new §37.371 contains the format for the letter from the CFO which, among other things, requires a listing of the current cost estimates covered by a financial test, along with certain evidence and certification statements.

Proposed new §37.381 contains the format for the local government guarantee for closure.

Proposed new §37.3001 is the applicability statement for proposed new Subchapter M, relating to Financial Assurance requirements for Scrap Tire Sites, and states that Subchapter M applies to owners and operators of scrap tire sites required to provide evidence of financial assurance under Chapter 330, Subchapter R, relating to Management of Used or Scrap Tires. In concurrent rulemaking, proposed new §330.810(b), relating to Scrap Tire Storage Site Registration, requires applicants seeking registration or amended registration for a scrap tire storage site to submit evidence of financial responsibility.

Proposed new §37.3011 contains the financial assurance requirements and options for scrap tire storage sites, and states that an owner or operator of a scrap tire site subject to this subchapter shall establish

financial assurance for the closure of the facility that meets the requirements of this section, in addition to the requirements specified under Subchapters A, B, C and D.

Proposed §37.3011(1) specifies that the financial assurance for scrap tire sites shall be in the amount required under §330.821, relating to Closure Cost Estimate for Financial Assurance. Options for financial assurance mechanisms are proposed under §37.3011(2) as a fully-funded trust, surety bond guaranteeing payment, surety bond guaranteeing performance, irrevocable letter of credit, insurance, financial test, corporate guarantee, local government financial test, or local government guarantee. Under proposed §37.3011(2), the original mechanism would be required to be submitted to the executive director. Proposed §37.3011(3) states that quarterly valuation statements are required for a fully-funded trust, and delineates certain wording revisions needed for Section 10 of the Trust Agreement specified in §37.301(a), relating to Trust Agreement for Closure. Proposed §37.3011(4) states that §37.161, relating to Establishment of a Standby Trust, does not apply to an owner or operator who utilize either a surety bond or irrevocable standby letter of credit under Subchapter M. Finally, proposed §37.3011(5) requires an owner or operator who utilizes the insurance mechanism as specified in §37.241, relating to Insurance for Closure, to replace the wording specified in §37.241(b) to read as follows: At a minimum, the insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in Texas.

#### FISCAL NOTE

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period these sections as proposed are in effect, there will be fiscal implications as a result of

enforcement and administration of the sections. The fiscal implications are related to the implementation of the financial assurance requirements for scrap tire storage sites. No significant costs to state government are anticipated as a specific result of adoption of the rules as proposed. The proposed rules will retain certain elements of the existing financial assurance requirements for used or scrap tires under more general authority for regulation of used or scrap tires and management of solid waste. However, the costs to the state of these activities as they are proposed will not vary significantly from the costs currently being incurred under existing regulations and statutory authority.

Costs to local governments are not anticipated to increase as a direct result of the proposed rules and may, in fact, be mitigated by the proposed provisions for the local government financial test. In addition, financial assurance provisions for certain used or scrap tire sites will reduce many of the potential costs to local governments of waste management and illegal dumping.

#### PUBLIC BENEFIT

Mr. Minick has also determined that for each year of the first five years these sections as proposed are in effect the public benefit anticipated as a result of enforcement of and compliance with the sections will be improved regulation and management of solid waste and used or scrap tires, enhanced protection of human health and safety, and reductions in the liabilities potentially imposed on the state and public funds for the control, management and remediation of scrap tire facilities for which operators lack the financial resources necessary for proper operation and closure. The economic costs related to these rules are those associated with the provisions for financial assurance for those facilities subject to the rules, primarily storage sites. The actual costs of compliance with proposed rules are not anticipated to

be materially different for most affected operators from the costs associated with compliance with existing regulations. Some compliance costs could decrease, primarily due to the proposals for allowing local government financial tests and local government guarantees. Some compliance costs could increase for energy recovery and recycling facilities storing more than a 30-day supply of used or scrap tires due to the required demonstration of financial assurance. However, financial assurance costs for certain facilities may actually be reduced as a result of the use of proposed cost estimate procedures, rather than existing cost formulas. Although actual cost impacts to affected persons and facilities may be positive or negative, no substantial economic costs of these proposed rules are anticipated to occur. Some of the persons subject to these proposed rules are small businesses. The effects on small businesses will be directly related to the size and type of facility, the number of used or scrap tires (or equivalents) generated, stored, processed or disposed, and other site-specific conditions. There are no other economic costs anticipated for persons required to comply with the sections as proposed.

#### DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the act, and it does not meet any of the four applicability requirements listed in §2001.0225(a).

#### TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code Annotated §2007.043. The following is a summary of that assessment. The specific

purpose of the rules is to adopt a set of regulations for the provision of financial assurance for closure of solid waste and used or scrap tire facilities. The rules will substantially advance this specific purpose by adopting by a set of standards establishing the financial assurance. Promulgation and enforcement of these rules will not burden private real property which is the subject of the rules because the proposed changes do not limit or restrict a person's rights in private real property.

Also, the following exceptions to the application of Chapter 2007 of the Texas Government Code listed in Texas Government Code Annotated §2007.003(b) apply to these rules: an action taken to prohibit or restrict a condition or use of private real property if the governmental entity proves that the condition or use constitutes a public or private nuisance as defined by background principles of nuisance and property law of this state; and an action taken out of a reasonable good faith belief that the action is necessary to prevent a grave and immediate threat to life or property.

#### COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The staff has reviewed the proposed rulemaking and found that the proposal is a rulemaking identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Coastal Management Program, or will affect an action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, and will, therefore, require that applicable goals and policies of the CMP be considered during the rulemaking process.

The commission has prepared a consistency determination for the proposed rules pursuant to 31 TAC §505.22 and has found the proposed rulemaking is consistent with the applicable CMP goals and

policies. The following is a summary of that determination. The CMP goal applicable to the proposed rules is the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas. CMP policies applicable to the proposed rules include the administrative policies and the policies for specific activities related to construction and operation of solid waste treatment, storage, and disposal facilities. Promulgation and enforcement of these rules is consistent with the applicable CMP goals and policies because the proposed rules will encourage safe and appropriate storage, transportation, treatment, and disposal of solid waste and used tires, scrap tires, and tire pieces that are classified as municipal solid wastes, which will result in an overall environmental benefit across the state, including in coastal areas. In addition, the proposed rules do not violate any applicable provisions of the CMP's stated goals and policies. The commission seeks public comment on the consistency of the proposed rules.

#### PUBLIC HEARING

A public hearing on the proposal will be held in Austin on January 27, 1998 at 10:00 a.m. in Room 2210 of Building F of the commission's Park 35 Office Complex located at 12100, Part 35 Circle, North IH-35, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion with the audience will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Written comments on the proposal should reference Rule Log Number 97140-330-WS and may be submitted to Heather Evans, Texas Natural Resource Conservation Commission, Office of Policy and Regulatory Development, MC 205, 12100 North IH-35, Park 35 Circle, Building F, Room 4101 or P.O. Box 13087, Austin, Texas 78711-3087. Written comments must be received by 5:00 p.m., February 2, 1998. For further information or questions concerning this proposal, please contact Debbie Bohl, Municipal Solid Waste Division, at (512) 239-0044.

#### STATUTORY AUTHORITY

The new sections are proposed under the Texas Water Code, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the Code and other laws of the State of Texas, and to establish and approve all general policy of the commission; under Texas Solid Waste Disposal Act (the Act), Texas Health and Safety Code, Chapter 361, §361.112, relating to the Storage, Transportation, and Disposal of Used or Scrap Tires, and under the Texas Solid Waste Disposal Act (the Act), Texas Health and Safety Code, Chapter 361, §361.011 and §361.024 which provide the commission with the authority to regulate municipal solid waste and adopt rules consistent with the general intent and purposes of the Act.

The proposed new sections implement the Health and Safety Code, Chapter 361.

### **SUBCHAPTER C. FINANCIAL ASSURANCE MECHANISMS FOR CLOSURE**

#### **§37.271. Local Government Financial Test for Closure.**

An owner or operator may satisfy the requirements of financial assurance for closure by obtaining a local government financial test or a local government financial test and local government guarantee which conforms to the requirements of this subchapter, in addition to the requirements specified in Subchapters A and B of this chapter (relating to General Financial Assurance Requirements and Financial Assurance Requirements for Closure). In order to continue using the local government financial test, the test must be passed on an annual basis. This test consists of a financial component, a public notice component, and a record-keeping and reporting component. A local government must satisfy each of the three components to pass the test. The criteria for each component is as follows.

(1) In order to satisfy the financial component of the test, a local government must meet the criteria of either subparagraph (A) or (B) of this paragraph and in addition must meet certain general conditions outlined in subparagraph (C) of this paragraph.

(A) The local government must have:

(i) a ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05;

(ii) a ratio of annual debt service to total expenditures less than or equal to 0.20; and

(iii) a ratio of the current cost estimates for closure and any other environmental obligations assured by a financial test, to total annual revenue less than or equal to 0.43.

The local government must obtain an alternate financial assurance mechanism for those costs that exceed the 43% limit.

(B) The local government must have:

(i) outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee which have a current bond rating of Aaa, Aa, A, or Baa, issued by Moody's, or AAA, AA, A, or BBB, as issued by Standard and Poor's on all such general obligation bonds; and

(ii) a ratio of the current cost estimates for closure and any other environmental obligations assured by a financial test, to total revenue less than or equal to 0.43.

(C) In addition to meeting the criteria listed under subparagraph (A) or (B) of this paragraph, the following general conditions must be met:

(i) the local government's financial statements shall be prepared in accordance with Generally Accepted Accounting Principles for local governments and have its financial statements audited by an independent certified public accountant (CPA) (or appropriate state agency);

(ii) a local government must not have operated at a deficit equal to 5.0% or more of total annual revenue in each of the past two fiscal years;

(iii) it must not currently be in default on any outstanding general obligation bonds;

(iv) it must not have any outstanding general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard and Poor's; and

(v) it must not have received an adverse opinion, disclaimer of opinion, or other qualified opinion from the independent CPA (or appropriate state agency) auditing its financial statements as required under clause (i) of this subparagraph.

(D) Unless otherwise defined in this section, financial terms used in this section are to be interpreted consistently with generally accepted accounting principles for local governments. The following terms used in this section are defined as follows:

(i) *Deficit* equals total annual revenues minus total annual expenditures;

(ii) *Total revenues* include revenues from all taxes and fees but does not include the proceeds from borrowing or asset sales, excluding revenue from funds managed by local government on behalf of a specific third party;

(iii) *Total expenditures* include all expenditures excluding capital outlays and debt repayment;

(iv) *Cash plus marketable securities* is all the cash plus marketable securities held by the local government on the last day of a fiscal year, excluding cash and marketable securities designated to satisfy past obligations such as pensions; and

(v) *Debt service* is the amount of principal and interest due on a loan in a given time period, typically the current year.

(2) In order to satisfy the public notice component of the test, a local government must comply with this paragraph. The local government must place a reference to the closure costs assured through the financial test into its next comprehensive annual financial report (CAFR) after the effective date of this section or prior to the initial receipt of waste at the facility, whichever is later. Disclosure must include the nature and source of closure requirements; the reported liability at the balance sheet date; the estimated total closure care cost remaining to be recognized; if applicable, the percentage of any landfill capacity used to date; and the estimated landfill life in years. For the first year the financial test is used to assure costs at a particular facility, the disclosure may instead be placed

in the operating record until issuance of the next available CAFR if timing does not permit the disclosure to be incorporated into the most recently issued CAFR or budget. For closure costs, conformance with Government Accounting Standards Board Statement 18 assures compliance with this public notice component.

(3) In order to satisfy the recordkeeping and reporting component of the test, a local government must comply with this paragraph. To demonstrate that the local government meets the requirements of this test, the following four items must be submitted to the executive director:

(A) a letter signed by the local government's chief financial officer (CFO) and worded as specified in §37.371 of this title (relating to Local Government Financial Test for Closure) that:

- (i) lists all the current cost estimates covered by a financial test;
- (ii) provides evidence and certifies that the local government meets the conditions of either paragraph (1)(A) or (1)(B) of this section; and
- (iii) certifies that the local government meets the conditions of paragraph (1)(A)(iii) or (1)(B)(ii) of this section, and paragraphs (1)(C) and (2) of this section;

(B) a copy of the local government's independently audited year-end financial statements for the latest fiscal year, including the "unqualified opinion" of the auditor. The auditor must be an independent CPA or an appropriate state agency that conducts equivalent comprehensive audits;

(C) a special report from the independent CPA or the appropriate state agency to the local government which:

(i) is based on performing an agreed upon procedures engagement relative to the financial ratios required by paragraph (1)(A) of this section, if applicable, and the requirements of paragraphs (1)(C)(i), (1)(C)(ii) and (1)(C)(v) of this section; and

(ii) states the procedures performed and the CPA's or state agency's findings; and

(D) a copy of the CAFR used to comply with paragraph (1)(B) of this section or certification that the requirements of General Accounting Standards Board Statement 18 have been met.

(4) Annual updates of the financial test documentation must be submitted to the executive director within 180 days after the close of each succeeding fiscal year. This information must consist of all the items as specified previously.

(5) A local government must satisfy the requirements of the financial test at the close of each fiscal year. If the local government no longer meets the requirements of paragraphs (1), (2), and (3) of this section, the local government must send notice to the executive director of intent to establish alternate financial assurance. This notice must be sent within 90 days after the end of the fiscal year for which the year-end financial data show that the local government no longer meets the requirements. The local government must provide alternate financial assurance within 120 days after the end of such fiscal year.

(6) The local government is no longer required to comply with the requirements of this section when the conditions as specified in §37.61 of this chapter (relating to Termination of Mechanisms) are met.

(7) The executive director, based on a reasonable belief that the local government may no longer meet the requirements of the local government financial test, may require additional reports of financial condition from the local government at any time. If the executive director finds on the basis of such reports or other information, that the local government no longer meets the requirements of the financial test, the local government must provide alternate financial assurance as specified in this subchapter within 30 days after notification of such a finding.

**§37.281 Local Government Guarantee for Closure.**

An owner or operator may satisfy the requirements of financial assurance for closure by obtaining a local government guarantee provided by a local government. The local government guarantee must meet the requirements of this section, in addition to the requirements as specified in Subchapters A and B of this chapter (relating to General Financial Assurance Requirements and Financial Assurance Requirements for Closure). The local government guarantor must meet the requirements of the local government financial test as specified in §37.271 of this title (relating to Local Government Financial Test for Closure) and must comply with the following terms to the local government guarantee:

(1) If the owner or operator fails to perform closure of a facility covered by the guarantee, the guarantor will:

(A) perform, or pay a third party to perform closure as required; or

(B) establish a fully funded trust fund as specified in §37.201 of this title (relating to Trust Fund for Closure) in the name of the owner or operator.

(2) The guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the executive director. Cancellation may not occur, however, during the 120 days beginning on the date of the receipt of the notice of cancellation by both the owner or operator and the executive director, as evidenced by the return receipts.

(3) If a guarantee is canceled, the owner or operator must, within 90 days following receipt of the cancellation notice, obtain alternate financial assurance and submit evidence of that alternate financial assurance to the executive director. If the owner or operator fails to provide alternate financial assurance within the 90-day period, the guarantor must provide that alternate assurance within 120 days following the guarantor's notice of cancellation.

(4) The owner or operator must submit to the executive director the original local government guarantee worded as specified in §37.381 of this title (relating to Local Government Guarantee for Closure). The guarantee must accompany the items sent to the executive director as specified in §37.271(3) of this title and must be updated annually in accordance with the requirements of the local government financial test.

(5) The owner or operator is no longer required to comply with the requirements of this section when the conditions as specified in §37.61 of this title (relating to Termination of Mechanisms) are met.

(6) If a local government guarantor no longer meets the requirements of §37.271 of this title, the owner or operator must, within 90 days, obtain alternate financial assurance, and submit such evidence of the alternative assurance to the executive director. If the owner or operator fails to obtain alternate financial assurance within that 90-day period, the guarantor must provide that alternative assurance within the next 30 days.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be a valid exercise of the agency's authority to adopt.

Issued in Austin, Texas, on December 18, 1997.

## SUBCHAPTER D : WORDING OF THE MECHANISMS FOR CLOSURE

### §37.371. Local Government Financial Test for Closure.

A letter signed by the local government's chief financial officer, as specified in §37.271(3)(A) of this title (relating to Local Government Financial Test for Closure) must be worded as in the Local Government Financial Test for Closure, except that the instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted. Figure: 30 TAC §37.371

#### Local Government Financial Test for Closure Letter from Chief Financial Officer

(Address to TNRCC Executive Director)

I am the chief financial officer of (name and address of local government). This letter is in support of this local government's use of the financial test to demonstrate financial assurance, as specified in 30 Texas Administrative Code (TAC) Chapter 37.

*Fill out the following paragraphs regarding facilities and associated cost estimates. If your local government has no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its commission registration or permit number, name, address and current closure cost estimates.*

1. This local government is the owner or operator of the following facilities for which financial assurance for closure is demonstrated through the financial test specified in 30 TAC §37.271 of this title. The current closure cost estimates covered by the test are shown for each facility: \_\_\_\_\_.
2. This local government guarantees, through the guarantee specified in 30 TAC §37.281 of this title (relating to Local Government Guarantee for Closure) the closure costs of the following facilities owned or operated by (insert owner's name or operator's name).

The current cost estimates for the closure so guaranteed are shown for each facility: \_\_\_\_\_.

The fiscal year of this local government ends on (month, day, year). The figures for the following items marked with an asterisk are derived from this local government's independently audited, year-end financial statements for the latest completed fiscal year, ended (date).

*Fill in the Ratio Indicators of Financial Strength section if the criteria of subparagraph §37.271(1)(A) are used. Fill in Bond Rating Indicator of Financial Strength section if the criteria of subparagraph §37.271(1)(B) are used.*

#### RATIO INDICATORS OF FINANCIAL STRENGTH

1. Sum of current closure cost estimates (total of all cost estimates shown in the paragraphs above) \$.....
- \*2. Sum of cash and marketable securities \$.....
- \*3. Total expenditures \$.....
- \*4. Annual debt service \$.....
5. Assured environmental costs to demonstrate financial responsibility in the following amounts under the Code of Federal Regulations (CFR) and commission regulations:
  - Municipal Solid Waste (MSW) under 30 TAC Chapter 330 and 40 CFR Part 258 \$.....
  - Hazardous waste treatment, storage and disposal facilities under 30 TAC Chapter 335 and 40 CFR Parts 264 and 265 \$.....
  - Petroleum underground storage tanks under 30 TAC Chapter 334 and 40 CFR Part 280 \$.....
  - Underground Injection Control System facilities under 30 TAC Chapter 331 and 40 CFR Part 144 \$.....
  - PCB commercial storage facilities under 40 CFR Part 761 \$.....
  - Total assured environmental costs \$.....

\*6. Total Annual Revenue \$.....

Circle either "yes" or "no" to the following questions.

- 7. Is line 2 divided by line 3 greater than or equal to 0.05? yes/no
- 8. Is line 4 divided by line 3 less than or equal to 0.20? yes/no
- 9. Is line 7 divided by line 8 less than or equal to 0.43? yes/no

**BOND RATING INDICATOR OF FINANCIAL STRENGTH**

- 1. Sum of current closure cost estimates (total of all cost estimates shown in the paragraphs above) \$.....
- 2. List the following information on all the outstanding unsecured general obligation bonds issued to the local government:
  - Name of Rating Service.....
  - Date of issuance bond.....
  - Date of maturity of bond.....
- 3. Assured environmental costs to demonstrate financial responsibility in the following amounts under CFR and commission regulations:
  - MSW under 30 TAC Chapter 330 and 40 CFR Part 258 \$.....
  - Hazardous waste treatment, storage and disposal facilities under 30 TAC Chapter 335 and 40 CFR Parts 264 and 265 \$.....
  - Petroleum underground storage tanks under 30 TAC Chapter 334 and 40 CFR Part 280 \$.....
  - Underground Injection Control System facilities under 30 TAC Chapter 331 and 40 CFR Part 144 \$.....
  - PCB commercial storage facilities under 40 CFR Part 761 \$.....
  - Total assured environmental costs \$.....

\*4. Total Annual Revenue \$.....

Circle either "yes" or "no" to the following question.

5. Is line 3 divided by line 4 less than or equal to 0.43? yes/no

I hereby certify that the wording of this letter is identical to the wording specified in 30 TAC §37.371 as such regulations were constituted on the date shown immediately below. I further certify the following: that the local government's financial statements are prepared in conformity with Generally Accepted Accounting Principles for governments and its financial statements have been audited by an independent Certified Public Accountant (CPA); that the local government has not operated at a deficit equal to 5.0% or more of total annual revenue in each of the past two fiscal years; that the local government is not in default on any outstanding general obligations bonds; that the local government does not have outstanding general obligations rated lower than Baa as issued by Moody's or BBB as issued by Standard Poor's; and that the local government has not received an adverse opinion, disclaimer of opinion, or other qualified opinion from the independent CPA.

(Signature) \_\_\_\_\_

(Name) \_\_\_\_\_

(Title) \_\_\_\_\_

(Date) \_\_\_\_\_

**§37.381. Local Government Guarantee for Closure.**

The original local government guarantee, as specified in §37.281 of this title (relating to Local Government Guarantee for Closure) must be submitted worded as in the Local Government Guarantee for Closure, except that the instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted. Figure: 30 TAC §37.381

Local Government Guarantee for Closure

Guarantee made this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by (name of the local government), herein referred to as guarantor, to the Texas Natural Resource Conservation Commission (commission), obligee, on behalf of the following (owner or operator) of (business address).

Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in 30 Texas Administrative Code (TAC) §37.281(4)-(6).
2. (Owner or operator) owns or operates the following facility(ies) covered by this guarantee: (List for each facility: commission registration or permit number, name, address, and amount.)
3. “Closure Requirements” as used below refers to the closure cost estimate maintained as required for the closure of facilities as identified above.
4. For value received from (owner or operator), guarantor guarantees to the commission that in the event that (owner or operator) fails to perform closure of the above facility(ies) in accordance with the closure requirements whenever required to do so, the guarantor will either perform closure, or pay a third party to perform closure or establish a fully funded trust fund as specified in 30 TAC §37.201 in the name of (owner or operator) in the amount of the current closure cost estimates.
5. Guarantor agrees that, if the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the executive director and to (owner or operator) that he intends to provide alternate financial assurance. Within 120 days after sending such notice, the guarantor will establish such financial assurance if owner or operator has not done so.
6. The guarantor agrees to notify the executive director, by certified mail, of a voluntary or involuntary proceeding under Title 11, U.S. Code, naming guarantor as debtor, within 10 days after its commencement of the proceeding.

7. Guarantor agrees that within 30 days after being notified by the executive director of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor of closure, he shall establish alternate financial assurance by selecting one of the mechanisms as specified in Subchapter C of this chapter, in the name of (owner or operator) unless (owner or operator) has done so.
8. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or modification of the closure cost estimates, the extension or reduction of the time of performance of closure, any other modification or alteration of an obligation of the owner or operator.
9. Guarantor agrees to remain bound under this guarantee for so long as (owner or operator) shall comply with the applicable financial assurance requirements for the above-listed facilities, except that guarantor may cancel this guarantee by sending notice by certified mail, to the commission executive director and to (owner or operator), such cancellation to become effective no earlier than 120 days after actual receipt of such notice by both the commission and (owner or operator) as evidenced by the return receipts.
10. Guarantor agrees that if (owner or operator) fails to provide alternate financial assurance and obtain written approval of such assurance from the commission executive director within 90 days after a notice of cancellation by the guarantor is received by both the commission executive director and owner or operator, guarantor shall provide such alternate financial assurance in the name of the (owner or operator) within 120 days following the guarantor's notice of cancellation.
11. Guarantor expressly waives notice of acceptance of this guarantee by the Texas Natural Resource Conservation Commission or by (owner or operator). Guarantor also expressly waives notice of amendments or modifications of the closure cost estimates. I hereby certify that the wording of this guarantee is identical to the wording specified in 30 Texas Administrative Code §37.381.

Effective date: \_\_\_\_\_.

(Name of guarantor)

(Authorized signature for guarantor)

(Name of person signing)

(Title of person signing)

Signature of witness or

Notary: \_\_\_\_\_

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be a valid exercise of the agency's authority to adopt.

Issued in Austin, Texas, on December 18, 1997.

**SUBCHAPTER M: FINANCIAL ASSURANCE REQUIREMENTS FOR SCRAP TIRE SITES**

**§37.3001. Applicability.**

This subchapter applies to owners and operators of scrap tire sites required to provide evidence of financial assurance under Chapter 330, Subchapter R of this title (relating to Management of Used or Scrap Tires).

**§37.3011. Financial Assurance Requirements for Scrap Tire Sites.**

An owner or operator of a scrap tire site subject to this subchapter shall establish financial assurance for the closure of the facility that meets the requirements of this section, in addition to the requirements specified under Subchapters A, B, C and D of this chapter (relating to General Financial Assurance Requirements; Financial Assurance Requirements for Closure; Financial Assurance Mechanisms for Closure; Wording of the Mechanisms for Closure).

(1) The financial assurance for a scrap tire site shall be in the amount required under §330.821 of this title (relating to Closure Cost Estimate for Financial Assurance).

(2) An owner or operator subject to this subchapter may utilize any of the mechanisms specified in subparagraphs (A)-(I) of this paragraph. The original mechanism is required to be submitted to the executive director.

- (A) Fully-funded trust;
- (B) Surety bond guaranteeing payment;
- (C) Surety bond guaranteeing performance;
- (D) Irrevocable letter of credit;
- (E) Insurance;
- (F) Financial test;
- (G) Corporate guarantee;
- (H) Local government financial test; or
- (I) Local government guarantee.

(3) Quarterly valuation statements are required for a fully-funded trust. The wording to Section 10 of the Trust Agreement specified in §37.301(a) of this title (relating to Trust Agreement for Closure) will need to be revised as follows: Section 10. Quarterly Valuation. The trustee shall quarterly, within 15 days of quarter-end, furnish to the Grantor and the commission executive director a

statement confirming the value of the Trust. Quarter-ends are designated as March 31, June 30, September 30, and December 31. Any securities in the Fund shall be valued at market value as of quarter-end. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the commission executive director shall constitute a conclusively binding assent by the Grantor barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

(4) Section 37.161 of this title (relating to Establishment of a Standby Trust) does not apply to an owner or operator who utilizes either a surety bond or irrevocable standby letter of credit under this subchapter.

(5) An owner or operator who utilizes the insurance mechanism as specified in §37.241 of this title (relating to Insurance for Closure) shall replace the wording specified in §37.241(b) of this title to read as follows: At a minimum, the insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in Texas.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be a valid exercise of the agency's authority to adopt.

Issued in Austin, Texas, on December 18, 1997.