

The Texas Natural Resource Conservation Commission (commission) adopts new §§37.2001, 37.2011, and 37.2021, concerning Financial Assurance. Section 37.2021 was adopted with changes to the proposed text as published in the October 17, 1997, issue of the *Texas Register* (22 TexReg 10238). Sections 37.2001 and 37.2011 are adopted without change and will not be republished.

EXPLANATION OF ADOPTED RULE

The adopted new sections are a new Subchapter L (relating to Financial Responsibility for Used Oil Recycling). The newly adopted sections address the statutory requirements of Texas Health and Safety Code Section 371.026(a)(1)(C). This statutory section requires the commission to adopt rules that require used oil handlers other than generators to “provide proof of liability insurance or other evidence of financial responsibility for any liability that may be incurred in handling used oil.” The section further states that it does not apply to a used oil handler which is owned or otherwise effectively controlled by the owners or operators where the used oil is generated.

Adopted new §37.2021 requires used oil transporters to show proof of insurance to the commission in the forms and levels prescribed by the Texas Department of Transportation or the U.S. Department of Transportation. In response to a comment, a change has been made to this section to add a second sentence stating: “The document issued by the Texas Department of Transportation or the U.S. Department of Transportation which shows the used oil transporter is currently satisfying department requirements for transporting used oil will be an acceptable form of demonstrating proof of insurance and should be submitted to the commission.”

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these rules pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the adopted new sections is to bring 30 TAC Chapter 324 on Used Oil into compliance with Health and Safety Code Chapter 371, Section 371.026(a)(1)(C), Registration and Reporting Requirements of Used Oil Handlers Other Than Generators. The rule new sections substantially advance the stated purpose by implementing in rule the state statutory requirement for financial responsibility.

Promulgation and enforcement of these rules will not create a new burden on private real property which is the subject of the rule amendments because financial responsibility was already required by state statute but not federal rule, and the new state rule financial assurance requirements do not affect property values; they just provide funds for cleanup of contamination, if any, at site closure.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The executive director has reviewed the adopted rulemaking and found that the rule is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11.

Therefore, the adopted rule is not subject to the Coastal Management Program.

HEARINGS AND COMMENTERS

A public hearing was not held for this rulemaking. The comment period closed November 17, 1997. Safety-Kleen Corporation was the only commenter. Some of the comments were in support of the proposed changes and others recommended revisions.

ANALYSIS OF COMMENTS

Concerning §37.2011(b) and (c), Safety-Kleen stated that they believe the methods and due dates for annually updating financial assurance and the inflation factor basis to use are not clearly defined, and they requested clarification. They also proposed that due dates and the inflation factor basis be based on requirements in 40 CFR §264.12.

The commission disagrees with this comment. Section 37.2011(b) already refers to Chapter 37, Subchapters A, B, C, and D (relating to Financial Assurance), except that wherever the term “Closure” is cited it will need to be replaced with the term “Soil Remediation”. Section 37.2011(c) then references §37.131 (relating to Annual Inflation Adjustments to Closure Cost Estimates) for annual inflation adjustments. This section fully addresses the issues raised by the commenter. Therefore, no rule change is required.

Concerning §37.2021, Safety-Kleen commented that they feel the proposed rules are unclear on how the Transporters of Used Oil must show proof of insurance within 90 days after the effective date of this rule and they requested clarification of the procedures.

The commission agrees with the comment. A clarifying second sentence has been added to §37.2021, stating: “The document issued by the Texas Department of Transportation or the U.S. Department of Transportation which shows the used oil transporter is currently satisfying department requirements for transporting used oil will be an acceptable form of demonstrating proof of insurance and should be submitted to the commission.”

STATUTORY AUTHORITY

The new sections are adopted under Texas Health and Safety Code, Chapter 371, §371.026, which provides the commission with the authority to establish rules on Registration and Reporting Requirements of Used Oil Handlers Other Than Generators. The new sections are also proposed under Texas Water Code, §§5.103, 5.105, and 26.011, which provide the commission the authority to adopt rules necessary to carry out its powers, duties, and policies and to protect water quality in the state.

SUBCHAPTER L : FINANCIAL RESPONSIBILITY FOR USED OIL RECYCLING

§§37.2001, 37.2011, 37.2021

§37.2001. Applicability.

This subchapter applies to used oil transporters required to provide evidence of financial responsibility under §324.22(a) of this title (relating to Financial Responsibility Technical Requirements). This subchapter also applies to owners and operators of used oil transfer, processing, rerefining, and off-specification used oil burning facilities, hereinafter referred to as “used oil handlers,” which are required to provide evidence of financial responsibility under §324.22(c) or (d) of this title.

§37.2011. Financial Responsibility Requirements for Used Oil Handlers.

(a) Processors or rerefiners who store or process used oil in aboveground tanks must, at closure of a tank system, demonstrate financial responsibility if necessary to comply with the closure requirements of 40 CFR §279.54(h)(1)(i). If the used oil handler cannot demonstrate that all contaminated soils are removed or decontaminated as required in 40 CFR §279.54(h)(1)(ii), then the used oil handler must further demonstrate financial responsibility by covering the soil and performing post-closure care in accordance with the closure and post-closure care requirements that apply to hazardous waste landfills under 40 CFR §§265.310, 265.117-265.120 and 265.145.

(b) Used oil handlers who must demonstrate financial assurance for soil remediation must do so in an amount as specified in §324.22(c) or (d) of this title (relating to Financial Responsibility Technical Requirements). These used oil handlers shall meet the financial responsibility requirements of this section, in addition to the requirements specified under Subchapters A, B, C, and D of this chapter, except that wherever the term “Closure” is cited it will need to be replaced with the term “Soil Remediation”.

(c) An owner or operator subject to this subchapter may utilize any of the mechanisms specified paragraphs (1)-(7) of this subsection. The original mechanism is required to be submitted to the Financial Assurance Section of the commission; and the amount specified for financial assurance will need to be adjusted annually for inflation as specified under §37.131 of the title (related to Annual Inflation Adjustments to Closure Cost Estimates).

- (1) fully-funded trust;
- (2) surety bond guaranteeing payment;
- (3) surety bond guaranteeing performance;
- (4) irrevocable standby letter of credit;
- (5) insurance;

(6) financial test; or

(7) corporate guarantee.

§37.2021. Financial Responsibility Requirements for Transporters of Used Oil.

A used oil transporter must show proof of insurance to the commission in the forms and levels as prescribed by the Texas Department of Transportation (Texas Civil Statutes, Articles 6675c, 6675c-1, 911m, and 6687-9a) or the U.S. Department of Transportation (49 U.S.C. §11506). The document issued by the Texas Department of Transportation or the U.S. Department of Transportation which shows the used oil transporter is currently satisfying department requirements for transporting used oil will be an acceptable form of demonstrating proof of insurance and should be submitted to the commission. If a used oil transporter is not required to be registered as a motor carrier with either of these agencies, then proof of insurance in the form of an original signed certificate of insurance and in levels sufficient to pay for bodily injury and property damage liability caused by the used oil must be submitted to the commission directly by an insurance agent. In all cases, the name of the used oil transporter must be identical to the party named on the applicable insurance form.

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

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