

**SUBCHAPTER R: FINANCIAL ASSURANCE FOR
MUNICIPAL SOLID WASTE FACILITIES**
§§37.8001, 37.8011, 37.8021, 37.8031, 37.8041, 37.8051, 37.8061, 37.8071
Effective September 14, 2006

§37.8001. Applicability.

This subchapter applies to an owner or operator required to provide financial assurance under Chapter 330 of this title (relating to Municipal Solid Waste). This subchapter does not apply to state or federal governmental entities whose debts and liabilities are the debts and liabilities of a state or the United States. This subchapter establishes requirements and mechanisms for demonstrating financial assurance for closure, post closure, and corrective action.

Adopted February 24, 2000

Effective March 21, 2000

§37.8011. Definitions.

Definitions for terms that appear throughout this subchapter may be found in this section, in Subchapter A of this chapter (relating to General Financial Assurance Requirements), as well as Chapter 330 of this title (relating to Municipal Solid Waste).

(1) **Local government**--A city, town, county, district, association, or other public body (including an intermunicipal agency of two or more of these listed entities) created by or under state law; an Indian tribe or an authorized Indian tribal organization having jurisdiction over solid waste management; a local government corporation created under Texas Transportation Code, Chapter 431, to act on behalf of a local government; or a conservation and reclamation district created under Texas Constitution, Article XVI, §59. This definition includes a special district created under state law.

(2) **Bonds**--Financial obligations issued by a local government, including general obligation bonds, revenue bonds, and certificates of obligation.

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§37.8021. Financial Assurance Requirements.

In addition to the requirements of this subchapter, owners or operators required to demonstrate for closure, post closure, or corrective action must comply with Subchapters A, B, C, and D of this chapter (relating to General Financial Assurance Requirements; Financial Assurance Requirements for Closure, Post Closure, and Corrective Action; Financial Assurance Mechanisms for Closure, Post Closure, and Corrective Action; and Wording of the Mechanisms for Closure, Post Closure, and

Corrective Action), except that §37.131 of this title (relating to Annual Inflation Adjustments to Current Cost Estimates) shall be modified to mean annual inflation adjustments are required during the active life of the facility and during the post closure care period.

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§37.8031. Financial Assurance Mechanisms.

(a) An owner or operator subject to this subchapter may use any of the financial assurance mechanisms in Subchapter C of this chapter (relating to Financial Assurance Mechanisms for Closure, Post Closure, and Corrective Action), to provide financial assurance, except as specified in this section. The mechanisms must ensure that the funds necessary to meet the costs of closure, post closure, or corrective action shall be available when requested by the executive director.

(b) An owner or operator may use a fully funded trust, pay-in trust, or standby trust as provided in §37.201 of this title (relating to Trust Fund), except the pay-in period is ten years or over the remaining life of the municipal solid waste facility, whichever is shorter, unless the owner or operator satisfies the requirements of paragraph (1) of this subsection.

(1) If a pay-in period in excess of ten years is used, the owner or operator shall submit, on an annual basis, certification from an independent registered professional engineer that there is adequate financial assurance for closure or post closure. The owner or operator must:

(A) submit the completed certification on the form provided by the executive director; and

(B) submit the initial certification with the initial trust payment with subsequent annual certifications to be submitted with the subsequent payments which are due no later than 30 days after the anniversary date of the initial payment.

(2) The pay-in trust will revert to a fully funded trust and the entire current closure or post closure cost estimate shall be paid into the trust upon direction of the executive director if:

(A) the owner or operator fails to submit the annual certification by the required time frame in paragraph (1) of this subsection;

(B) the certification is incomplete; or

(C) the certification is not submitted on the form provided by the executive director.

(c) An owner or operator may use a surety bond guaranteeing payment as provided in §37.211 of this title (relating to Surety Bond Guaranteeing Payment), or a surety bond guaranteeing performance

as provided in §37.221 of this title (relating to Surety Bond Guaranteeing Performance), except a payment bond may not be used to provide financial assurance for corrective action.

(d) An owner or operator may use insurance as provided in §37.241 of this title (relating to Insurance), except:

- (1) insurance may not be used to provide financial assurance for corrective action;
- (2) the insurer must be licensed in Texas; and

(3) the following provision found in §37.241(g) of this title does not apply: within 60 days after receiving bills for closure, post closure, or corrective action activities, the executive director shall determine whether the closure, post closure, or corrective action expenditures are in accordance with the approved closure, post closure, or corrective action activities or otherwise justified, and if so, shall instruct the insurer to make reimbursement in such amounts as the executive director specifies in writing.

(e) An owner or operator may use a corporate financial test as provided in §37.8061 of this title (relating to Corporate Financial Test for Municipal Solid Waste Facilities), except the owner or operator may not use the financial test under §37.251 of this title (relating to Financial Test).

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§37.8041. State Assumption of Responsibility.

If the executive director either assumes legal responsibility for an owner's or operator's compliance with the closure, post closure, or corrective action requirements of this chapter, or assures that the funds shall be available from state sources to cover the requirements, the owner or operator shall be in compliance with the requirements of this section. The language of the mechanisms for any state assumption of responsibility shall ensure:

(1) the amount of funds assured is sufficient to cover the costs of closure, post closure, and corrective action for known releases when needed;

(2) the funds shall be available immediately;

(3) the financial assurance mechanisms shall be obtained by the owner or operator at least 60 days prior to the initial receipt of solid waste in the case of closure and post closure, and no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of the corrective action plan, until the owner or operator is released from the financial assurance requirements under §§330.281, 330.282, 330.283, or 330.284 of this title (relating to Closure for Landfills; Closure for Process Facilities; Post Closure Care for Landfills; or Corrective Action for Landfills); and

(4) the financial assurance mechanisms shall be legally valid, binding, and enforceable under state and federal law.

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§37.8051. Submission of Documents.

An owner or operator may satisfy the requirements as provided in §37.31 of this title (relating to Submission of Documents), except the owner or operator required by this chapter to provide financial assurance for corrective action must submit an originally signed financial assurance mechanism no later than 120 days after the corrective action remedy has been selected. The signed financial assurance mechanism must be in effect when submitted.

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Effective March 21, 2000

§37.8061. Corporate Financial Test for Municipal Solid Waste Facilities.

An owner or operator may satisfy the requirements of financial assurance for closure, post closure, or corrective action by obtaining a corporate financial test or a corporate financial test and corporate guarantee, which conforms to the requirements of this section, 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, Post Closure, and Corrective Action).

(1) To pass this test, the owner or operator must satisfy one of the following three conditions:

(A) the owner or operator must have a current bond rating for its senior unsecured debt of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's;

(B) a ratio of total liabilities to net worth less than 1.5; or

(C) a ratio of the sum of net income plus depreciation, depletion, and amortization, minus \$10 million, to total liabilities greater than 0.10.

(2) The tangible net worth of the owner or operator must be greater than:

(A) the sum of the current cost estimates, and any other environmental obligations under the Texas Commission on Environmental Quality (TCEQ) or other federal or state environmental regulations, including guarantees, covered by a financial test, plus \$10 million, except as provided in subparagraph (B) of this paragraph; or

(B) \$10 million in tangible net worth plus the amount of any guarantees that have not been recognized as liabilities on the financial statements provided all of the current cost

estimates and any other environmental obligations covered by a financial test are recognized as liabilities on the owner's or operator's audited financial statements and subject to the approval of the executive director.

(3) The owner or operator must have assets located in the United States amounting to at least the sum of the current cost estimates, and any other environmental obligations covered by a financial test as described in paragraph (8) of this section.

(4) To demonstrate that the requirements of the test are being met, the owner or operator shall submit the following items to the executive director:

(A) a letter signed by the owner's or operator's chief financial officer worded identically to the wording specified in §37.8071 of this title (relating to Wording of Financial Assurance Mechanisms) that:

(i) lists all the current cost estimates covered by a financial test, including, but not limited to, cost estimates required for municipal solid waste management facilities under Chapter 330 of this title (relating to Municipal Solid Waste) and 40 Code of Federal Regulations (CFR) Part 258; cost estimates required for underground injection control (UIC) facilities under Chapter 331 of this title (relating to Underground Injection Control) and 40 CFR Part 144; cost estimates required for petroleum underground storage tank facilities under Chapter 334 of this title (relating to Underground and Aboveground Storage Tanks) and 40 CFR Part 280; cost estimates required for polychlorinated biphenyl (PCB) storage facilities under 40 CFR Part 761; and cost estimates required for hazardous waste treatment, storage, and disposal facilities under Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste) and 40 CFR Parts 264 and 265; and

(ii) provides evidence demonstrating that the firm meets the conditions of either paragraph (1)(A) or (B) or (C) of this section and paragraphs (2) and (3) of this section;

(B) a copy of the independent certified public accountant's unqualified opinion of the owner's or operator's financial statements for the latest completed fiscal year. To be eligible to use the financial test, the owner's or operator's financial statements must receive an unqualified opinion from the independent certified public accountant. An adverse opinion, disclaimer of opinion, or other qualified opinion will be cause for disallowance by the executive director. The executive director may evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the executive director deems that the matters which form the basis for the qualification are insufficient to warrant disallowance of the test. If the executive director does not allow use of the test, the owner or operator must provide alternate financial assurance that meets the requirements of this section; and

(C) a special report which is based upon an agreed procedures engagement in accordance with professional auditing standards which:

(i) describes the procedures performed in comparing the data in the chief financial officer's letter derived from the independently audited year-end financial statements for the latest fiscal year with the amounts in such financial statements;

(ii) states the findings of that comparison and the reasons for any differences; and

(iii) includes a report from the independent certified public accountant verifying that all of the environmental obligations covered by a financial test have been recognized as liabilities on the audited financial statements, verifying how these obligations have been measured and reported, and verifying that the tangible net worth of the firm is at least \$10 million plus the amount of any guarantees provided. This report is required if the chief financial officer's letter has assured for environmental obligations as provided in paragraph (2)(B) of this section.

(5) After the initial submission of items specified in paragraph (4) of this section, the owner or operator must annually send updated information to the executive director within 90 days following the close of the owner's or operator's fiscal year. This information shall consist of all items specified in paragraph (4) of this section. An additional 45 days may be provided to an owner or operator who can demonstrate that 90 days is insufficient time to acquire audited financial statements.

(6) If the owner or operator no longer meets the requirements of paragraphs (1) - (3) of this section, the owner or operator shall send notice to the executive director of intent to establish alternate financial assurance as specified in this subchapter and provide the alternate financial assurance mechanism within 120 days following the close of the owner's or operator's fiscal year.

(7) The executive director may, based on a reasonable belief that the owner or operator may no longer meet the requirements of paragraphs (1) - (3) of this section, require at any time the owner or operator to provide reports of its financial condition in addition to or including current financial test documentation as specified in paragraph (4) of this section. If the executive director finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of paragraphs (1) - (3) of this section, the owner or operator must provide alternate financial assurance as specified in this subchapter within 30 days after notification of such a finding.

(8) When calculating the current cost estimates for closure, post closure, or corrective action, or the sum of the combination of such costs to be covered, and any other environmental obligations assured by a financial test referred to in this section, the owner or operator must include cost estimates required for municipal solid waste management facilities under Chapter 330 of this title and 40 CFR Part 258. The owner or operator must also include current cost estimates required for the following environmental obligations, if the owner or operator assures them through a financial test: obligations including, but not limited to, UIC facilities under Chapter 331 of this title and 40 CFR Part 144; petroleum underground storage tank facilities under Chapter 334 of this title and 40 CFR Part 280;

PCB storage facilities under 40 CFR Part 761; and hazardous waste treatment, storage, and disposal facilities under Chapter 335 of this title and 40 CFR Parts 264 and 265.

Adopted January 23, 2003

Effective February 12, 2003

§37.8071. Wording of Financial Assurance Mechanisms.

A letter from the chief financial officer for closure, post closure, or corrective action, as specified in §37.8061 of this title (relating to Corporate Financial Test for Municipal Solid Waste Facilities) must be worded as specified in the Corporate Financial Test in this section, except that the instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted.

**CORPORATE FINANCIAL TEST
LETTER FROM CHIEF FINANCIAL OFFICER**

(Address to TCEQ executive director)

I am the Chief Financial Officer of (name and address of firm.) This letter is in support of this firm's use of the financial test to demonstrate financial assurance for closure, post closure, or corrective action as specified in 30 Texas Administrative Code (TAC) Chapter 37 (relating to Financial Assurance).

(Fill out the following paragraphs regarding facilities and associated cost estimates. If your firm has no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its permit number, name, physical and mailing addresses, and current cost estimates. Identify for each current cost estimate the amount designated for closure, post closure, or corrective action.)

1. This firm is the owner or operator of the following facilities in Texas for which financial assurance for closure, post closure, or corrective action is being demonstrated through the financial test specified in 30 TAC §37.8061 (relating to Corporate Financial Test for Municipal Solid Waste Facilities). The current cost estimates covered by the test are shown for each facility: _____.

2. This firm guarantees, through the corporate guarantee specified in 30 TAC §37.261 (relating to Corporate Guarantee), the current closure, post closure, or corrective action cost of the following facilities owned or operated by the guaranteed party. The current cost estimates so guaranteed are shown for each facility: _____. The firm identified above is: (complete the sentence with the applicable relationship: the direct or higher-tier parent corporation of the owner or operator or a firm with a substantial business relationship with the owner or operator).

3. In States where TCEQ is not administering the financial requirements of 30 TAC Chapter 37, this firm, as owner, operator, or guarantor, is demonstrating financial assurance for the current cost estimates of the following facilities through the use of a test equivalent to the financial test specified in 30 TAC §37.8061. The current cost estimates covered by such a test are shown for each facility: _____.

4. The firm identified above owns or operates the following facilities for which financial assurance for current cost estimates has not been demonstrated to the TCEQ, to a federal agency, or to another state, by a financial test, by an equivalent mechanism, or by any other financial assurance mechanism specified in 30 TAC Chapter 37. The current cost estimates not covered by such financial assurance are shown for each facility:_____.

This firm (is required or is not required) to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year. The fiscal year of this firm ends on (month, day). The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended (date).

1. (a) Sum of current cost estimates (total of all cost estimates shown in the paragraphs above)

\$ _____

(b) Environmental obligations assured by a financial test to demonstrate regulations and the Code of Federal Regulations (CFR) or state equivalent rules not disclosed in line 1(a):

- | | | |
|-----|--|----------|
| (1) | Municipal Solid Waste under 30 TAC Chapter 330 and 40 CFR Part 258 | \$ _____ |
| (2) | Hazardous waste treatment, storage and disposal facilities under 30 TAC Chapter 335 and 40 CFR Parts 264 and 265 | \$ _____ |
| (3) | Petroleum underground storage tanks under 30 TAC Chapter 334 and 40 CFR Part 280 | \$ _____ |
| (4) | Underground Injection Control System facilities under 30 TAC Chapter 331 and 40 CFR Part 144 | \$ _____ |
| (5) | PCB commercial storage facilities under 40 CFR Part 761 | \$ _____ |
| (6) | Additional environmental obligations not shown above | \$ _____ |
| | Total (1) - (6) | \$ _____ |
| (c) | Total of lines (a) and (b) | \$ _____ |

2. Current bond rating of most recent issuance of this firm and name of rating service _____

- 3. Date of issuance of bond _____
- 4. Date of maturity of bond _____
- *5. Total liabilities \$ _____
- *6. Tangible net worth \$ _____
- *7. Net Worth \$ _____
- *8. The sum of net income plus depreciation, depletion and amortization
 minus \$10 million \$ _____
- *9. Total assets in U. S. \$ _____

Indicate either "yes" or "no" to the following questions. If lines 2, 3, and 4 apply, then answer lines 12a, 12b, and 13. If lines 2, 3, and 4 do not apply, then answer lines 10, 11, 12a, 12b, and 13.

- 10. Is line 5 divided by line 7 less than 1.5? (yes/no)
- 11. Is line 8 divided by line 5 greater than 0.1? (yes/no)
- *12a. Is line 6 greater than the sum of: line 1(c), total of any guarantees,
 plus \$10 million or (yes/no)
- *12b. Are all cost estimates reported in line 1(c) recognized as liabilities
 in the firm's year-end audited financial statements? (yes/no)

If yes, then is line 6 greater than \$10 million including any
 guarantees not recognized as liabilities on the financial statements? (yes/no)

- *13. Are assets located in the U.S. equal to or greater than line 1(c)?
 (yes/no)

I hereby certify that the wording of this letter is identical to the wording specified in 30 Texas Administrative Code §37.8071 as such regulations were constituted on the date shown immediately below.

(Signature) _____

(Name) _____

(Title) _____

(Date) _____

Adopted January 23, 2003

Effective February 12, 2003