

**SUBCHAPTER V: FINANCIAL ASSURANCE FOR CLASS B SEWAGE SLUDGE
FOR LAND APPLICATION UNITS**
**§§37.9090, 37.9095, 37.9100, 37.9105, 37.9110, 37.9115, 37.9120, 37.9125, 37.9130,
37.9135, 37.9140, 37.9145, 37.9150, 37.9155**
Effective December 13, 2010

§37.9090. Applicability.

(a) This subchapter applies to a responsible person, as defined in Texas Health and Safety Code, §361.121(a)(3), holding or applying for a Class B sewage sludge permit under §312.11 of this title (relating to Permits).

(b) 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.

(c) This subchapter does not apply to political subdivisions.

(d) This subchapter establishes requirements and mechanisms for demonstrating financial assurance for environmental impairment and commercial liability insurance coverages.

Adopted September 28, 2005

Effective October 20, 2005

§37.9095. Definitions.

(a) Definitions for terms that appear throughout this subchapter are defined in Subchapter A of this chapter (relating to General Financial Assurance Requirements), §312.8 of this title (relating to General Definitions), and Solid Waste Disposal Act, §361.121 (relating to Land Application of Certain Sludge; Permit Required).

(b) In the liability insurance requirements of this subchapter, the terms “bodily injury” and “property damage” have the meanings given these terms by applicable state law. However, these terms do not include those liabilities which, consistent with standard industry practices, are excluded from coverage in liability policies for bodily injury and property damage. The commission intends the meanings of other terms used in the liability insurance requirements to be consistent with their common meanings within the insurance industry.

(c) For the purposes of this subchapter, the term “corrective action” includes the activities to remediate events resulting from a permitted sewage sludge land application facility in accordance with Chapter 350 of this title (relating to Texas Risk Reduction Program) or otherwise directed by the executive director.

Adopted September 28, 2005

Effective October 20, 2005

§37.9100. Commercial Liability Insurance.

(a) A responsible person subject to this subchapter shall obtain and maintain a commercial liability insurance policy that must:

- (1) reflect the responsible person as the insured;
 - (2) reflect total coverage of not less than \$3 million per occurrence with an annual aggregate of not less than \$3 million, exclusive of legal defense costs;
 - (3) be issued by an insurance company licensed to transact the business of insurance in Texas or eligible to provide insurance as an excess or surplus lines insurer in Texas that has a rating of A- or better by A.M. Best Company;
 - (4) designate the Texas Commission on Environmental Quality as an additional insured; and
 - (5) be evidenced by either a certificate of insurance worded identically to the wording specified in §37.9145 of this title (relating to Certificate of Insurance for Commercial Liability) or an endorsement worded identically to the wording specified in §37.9150 of this title (relating to Endorsement for Commercial Liability).
- (b) The insurance afforded under the policy must provide that:
- (1) it guarantees bodily injury and property damage protection by allowing compensation to all persons injured or property damaged as a result of Class B sewage sludge land application and entitled to compensation under the applicable provisions of state law;
 - (2) bankruptcy or insolvency of the insured shall not relieve the insurer of its obligations under the policy to which the required certificate of insurance or endorsement is attached;
 - (3) the insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement from the insured for any such payment made by the insurer;
 - (4) cancellation of the insurance, whether by the insurer, the insured, or a parent corporation providing insurance coverage for its subsidiary, or by a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of the facility, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the executive director;
 - (5) any other termination of this insurance will be effective only upon written notice and only after the expiration of 30 days after a copy of such written notice is received by the executive director;
 - (6) whenever requested by the executive director, the insurer agrees to furnish to the executive director a signed duplicate original of the policy and all endorsements; and

(7) the insurer shall notify the executive director within 30 days by certified mail in the event the insurance policy expires or is not renewed unless prior notice has been given in accordance with this subsection.

(c) A single \$3 million annual aggregate coverage and per occurrence limit may be obtained for all facilities for which the responsible person is required to provide commercial liability insurance.

(d) The responsible person shall notify the executive director in writing within 30 days whenever a claim results in a reduction in the amount of liability coverage required by this subchapter.

(e) The responsible person must maintain the policy in full force and effect until the executive director consents to termination of the policy as provided in §37.9140 of this title (relating to Termination of Mechanisms). Failure to pay the premium, without substitution of alternate commercial liability insurance coverage as specified in this subchapter, shall constitute a violation of these regulations, warranting such remedy as the executive director deems necessary including revocation of the permit.

Adopted September 28, 2005

Effective October 20, 2005

§37.9105. Environmental Impairment Insurance.

(a) A responsible person subject to this subchapter shall obtain and maintain an environmental impairment insurance policy that must:

(1) reflect the responsible person as the insured;

(2) reflect total coverage of not less than \$3 million per occurrence with a policy limit of not less than \$3 million, exclusive of legal defense costs;

(3) be issued by an insurance company licensed to transact the business of insurance in Texas or eligible to provide insurance as an excess or surplus lines insurer in Texas that has a rating of A- or better by A.M. Best Company;

(4) designate the Texas Commission on Environmental Quality as an additional insured; and

(5) be evidenced by a certificate of insurance worded identically to the wording specified in §37.9155 of this title (relating to Certificate of Insurance for Environmental Impairment).

(b) The insurance afforded under the policy must provide the following.

(1) The insurance policy must guarantee that funds be available to provide for corrective action related to the facility. The policy must also guarantee that once corrective action begins, the insurer shall be responsible for paying out funds, up to an amount equal to the policy

limit, upon the direction of the executive director, to such party or parties as the executive director specifies.

(2) The insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the responsible person and the executive director. Cancellation, termination, or failure to renew may not occur, however, during 120 days beginning with the date of receipt of the notice of cancellation, termination, or failure to renew by both the executive director and the responsible person, as evidenced by the return receipts.

(3) Cancellation, termination, or failure to renew may not occur and the policy must remain in full force and effect in the event that on or before the date of expiration:

(A) corrective action is ordered by the executive director or by a United States district court or other court of competent jurisdiction;

(B) the responsible person is named as debtor in a voluntary or involuntary proceeding under Title 11(Bankruptcy), United States Code; or

(C) the premium due is paid.

(4) Each policy must contain a provision allowing assignment of the policy to a successor responsible person. Such assignment may be conditional upon consent of the insurer, provided such consent is not unreasonably refused.

(5) Whenever requested by the executive director, the insurer agrees to furnish to the executive director a signed duplicate original of the policy and all endorsements.

(c) A single \$3 million policy limit and per occurrence limit may be obtained for all facilities for which the responsible person is required to provide environmental impairment insurance.

(d) The responsible person must maintain the policy in full force and effect until the executive director consents to termination of the policy as provided in §37.9140 of this title (relating to Termination of Mechanisms). Failure to pay the premium, without substitution of alternate environmental impairment insurance coverage as specified in this subchapter, shall constitute a violation of these regulations, warranting such remedy as the executive director deems necessary including revocation of the permit.

(e) The policy may not contain an exclusion for intentional, willful, knowing, or deliberate noncompliance with a statute, regulation, order, notice, or government instruction.

Adopted November 18, 2010

Effective December 13, 2010

§37.9110. Submission of Documents.

(a) As part of a Class B sewage sludge land application permit application, a responsible person subject to this subchapter must submit:

(1) either a Certificate of Insurance for Commercial Liability or Endorsement for Commercial Liability as evidence of commercial liability insurance coverage; and

(2) a Certificate of Insurance for Environmental Impairment as evidence of environmental impairment insurance coverage.

(b) The mechanisms must reflect that insurance coverage is in effect on or before the date that the permit application is received.

(c) When requested by the executive director, a responsible person subject to this subchapter must submit proof of Environmental Impairment and/or Commercial Liability insurance.

Adopted September 28, 2005

Effective October 20, 2005

§37.9115. Approval of Mechanisms.

The executive director shall determine the acceptability of the mechanisms submitted.

Adopted September 28, 2005

Effective October 20, 2005

§37.9120. Incapacity of Responsible Person or Insurance Company.

(a) A responsible person must notify the executive director by certified mail of the commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), United States Code, naming the responsible person, within ten business days after the commencement of the proceeding.

(b) A responsible person shall be deemed to be without the required financial assurance coverage in the event the insurance company(ies) providing either the commercial liability or environmental impairment policies:

(1) declares bankruptcy; or

(2) experiences an insurance rating reduction resulting in a rating below A- as published by the A.M. Best Company.

(c) The responsible person must provide evidence of insurance coverage as described in this subchapter within 60 days after any events as described in subsection (b) of this section.

Adopted September 28, 2005

Effective October 20, 2005

§37.9125. Transfer of Ownership or Operational Control.

When a transfer of ownership or operational control occurs, the responsible person transferring ownership or operational control shall comply with the requirements of this subchapter, until the executive director determines that the responsible person assuming the ownership or operational control of the facility has demonstrated compliance with the requirements of this subchapter.

Adopted September 28, 2005

Effective October 20, 2005

§37.9130. Drawing on the Financial Assurance Mechanisms.

The executive director may make a written demand for performance under the environmental impairment policy when a responsible person who is required to comply with this subchapter has failed to perform corrective action when required.

Adopted September 28, 2005

Effective October 20, 2005

§37.9135. Continuous Financial Assurance Required.

The responsible person required by this subchapter to provide financial assurance for environmental impairment and commercial liability insurance coverage shall maintain continuous financial assurance coverage for the duration of the permit or, if corrective action is required, after corrective action has been completed and until such time as the executive director has provided written consent to termination in accordance with §37.9140 of this title (relating to Termination of Mechanisms).

Adopted September 28, 2005

Effective October 20, 2005

§37.9140. Termination of Mechanisms.

Upon written request of the responsible person, the executive director shall provide written consent to termination of the insurance coverages described in this subchapter when:

(1) a responsible person substitutes and receives approval from the executive director for alternate insurance coverages as specified in this subchapter; or

(2) the permit is revoked, cancelled, expired, or, if corrective action is required, after such corrective action has been completed and approved by the executive director.

Adopted September 28, 2005

Effective October 20, 2005

§37.9145. Certificate of Insurance for Commercial Liability.

A certificate of insurance for commercial liability, as specified in §37.9100 of this title (relating to Commercial Liability Insurance), must be worded as specified in the Certificate of

Insurance for Commercial Liability in this section, except that the instructions in parentheses are to be replaced with the relevant information and the parentheses deleted.

CERTIFICATE OF INSURANCE FOR COMMERCIAL LIABILITY

Name and Address of Insurer (herein called the "Insurer"):

Name and Physical and Mailing Addresses of Insured (herein called the "Insured"):

Additional Insured: Texas Commission on Environmental Quality
Physical Address: 12100 Park 35 Circle, MC 184, Austin, TX 78753
Mailing Address: MC 184, P. O. Box 13087, Austin, TX 78711-3087

Facilities covered: *(list for each facility: permit number, name, and physical and mailing addresses)*

Per Occurrence Limit: _____

Annual Aggregate Limit: _____

Policy Number: _____

Effective Date: _____

The Insurer hereby certifies that it has issued to the Insured a commercial liability policy of insurance identified above to provide coverage for bodily injury and property damage to compensate persons injured or property damaged as a result of Class B sewage sludge land application at the facilities identified above.

The Insurer further warrants that such policy conforms in all respects with the requirements of 30 Texas Administrative Code (TAC) §37.9100 (relating to Commercial Liability Insurance), as applicable and as such regulations were constituted on the date shown immediately below. It is agreed that any provision of the policy inconsistent with such regulations is hereby amended to eliminate such inconsistency.

Whenever requested by the executive director of the Texas Commission on Environmental Quality, the Insurer agrees to furnish to the executive director a duplicate original of the policy listed above, including all endorsements thereon.

I hereby certify that the wording of this certificate is identical to the wording specified in 30 TAC §37.9145 (relating to Certificate of Insurance for Commercial Liability) as such regulations were constituted on the date shown immediately below. The undersigned Insurer certifies that it is authorized to transact or be a surplus lines insurer eligible to engage in the business of insurance in Texas and it has a minimum financial strength rating of A- as assigned by the A.M. Best Company.

Authorized signature of Insurer: _____

Name of person signing: _____

Title of person signing: _____

Signature of witness or notary: _____

Date: _____

Adopted September 28, 2005

Effective October 20, 2005

§37.9150. Endorsement for Commercial Liability.

A liability endorsement as specified in §37.9100 of this title (relating to Commercial Liability Insurance) must be worded as specified in the Endorsement for Commercial Liability in this section, except that instructions in parentheses are to be replaced with the relevant information and the parentheses deleted.

ENDORSEMENT FOR COMMERCIAL LIABILITY

1. This endorsement certifies that the policy to which the endorsement is attached provides commercial liability insurance coverage in connection with the Insured's obligation to demonstrate financial responsibility under 30 Texas Administrative Code (TAC) §37.9100 (relating to Commercial Liability Insurance). The coverage applies at (*list permit number if known, name, and physical and mailing addresses for each facility*) for bodily injury and property damage as a result of Class B sewage sludge land application at the above described locations. The limits of liability are \$3,000,000 (Three Million U.S. dollars) per occurrence and \$3,000,000 (Three Million U.S. dollars) annual aggregate of the Insurer's liability, exclusive of legal defense costs.

2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy provided, however, that any provisions of the policy inconsistent with subparagraphs (A) - (H) of this paragraph are hereby amended to conform with subparagraphs (A) - (H).

(A) It guarantees bodily injury and property damage protection by allowing compensation to persons injured or property damaged as a result of Class B sewage sludge land application and entitled to compensation under the applicable provisions of state law.

(B) Bankruptcy or insolvency of the Insured shall not relieve the Insurer of its obligations under the policy to which this certificate of insurance is attached.

(C) The Insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement from the Insured for any such payment made by the Insurer.

(D) Cancellation of the insurance, whether by the Insurer, the Insured, or a parent corporation providing insurance coverage for its subsidiary or by a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of the facility, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the executive director.

(E) Any other termination of this certificate of insurance will be effective only upon written notice and only after the expiration of 30 days after a copy of such written notice is received by the executive director.

(F) Whenever requested by the executive director, the Insurer agrees to furnish to the executive director a signed duplicate original of the policy and all endorsements.

(G) The Insurer shall notify the executive director within 30 days by certified mail in the event the insurance policy expires or is not renewed unless prior notice has been given in accordance with 30 TAC §37.9100 (relating to Commercial Liability Insurance).

(H) The Texas Commission on Environmental Quality is designated as an additional insured.

Attached to and forming part of policy No. _____ issued by (*name of Insurer*), herein called the Insurer, of (*address of Insurer*) to (*name of Insured*) of (*address of Insured*) this ____ day of (*month, year*). The effective date of said policy is (*date*).

I hereby certify that the wording of this endorsement is identical to the wording specified in 30 TAC §37.9150 (relating to Endorsement for Commercial Liability) as such regulation was constituted on the date shown immediately below. The undersigned Insurer certifies that it is authorized to transact or be a surplus lines insurer eligible to engage in the business of insurance in Texas and it has a minimum financial strength rating of A- as assigned by the A.M. Best Company.

Signature of Authorized Representative of Insurer:

Date: _____

Type Name: _____

Title: _____, Authorized Representative of (*name of Insurer*)

Address of Representative:

Adopted September 28, 2005

Effective October 20, 2005

§37.9155. Certificate of Insurance for Environmental Impairment.

A certificate of insurance for environmental impairment, as specified in §37.9105 of this title (relating to Environmental Impairment Insurance), must be worded as specified in the Certificate of Insurance for Environmental Impairment in this section, except that the instructions in parentheses are to be replaced with the relevant information and the parentheses deleted.

CERTIFICATE OF INSURANCE FOR ENVIRONMENTAL IMPAIRMENT

Name and Address of Insurer (herein called the "Insurer"):

Name and Physical and Mailing Addresses of Insured (herein called the "Insured"):

Additional Insured: Texas Commission on Environmental Quality
Physical Address: 12100 Park 35 Circle, MC 184, Austin, TX 78753
Mailing Address: MC 184, P. O. Box 13087, Austin, TX 78711-3087

Facilities covered: *(list for each facility: permit number, name, and physical and mailing addresses)*

Per Occurrence Limit: _____

Policy Limit: _____

Policy Number: _____

Effective Date: _____

The Insurer hereby certifies that it has issued to the Insured an environmental impairment policy of insurance identified above to provide financial assurance for corrective action related to the facilities identified above. The Insurer further warrants that such policy conforms in all respects with the requirements of 30 Texas Administrative Code (TAC) §37.9105

(relating to Environmental Impairment Insurance), as applicable and as such regulations were constituted on the date shown immediately below.

It is agreed that any provision of the policy inconsistent with such regulations is hereby amended to eliminate such inconsistency.

Whenever requested by the executive director of the Texas Commission on Environmental Quality, the Insurer agrees to furnish to the executive director a duplicate original of the policy listed above, including all endorsements thereon.

I hereby certify that the wording of this certificate is identical to the wording specified in 30 TAC §37.9155 (relating to Certificate of Insurance for Environmental Impairment) as such regulations were constituted on the date shown immediately below. The undersigned Insurer certifies that it is authorized to transact or be a surplus lines insurer eligible to engage in the business of insurance in Texas and it has a minimum financial strength rating of A- as assigned by the A.M. Best Company.

Authorized signature of Insurer: _____

Name of person signing: _____

Title of person signing: _____

Signature of witness or notary: _____

Date: _____

Adopted September 28, 2005

Effective October 20, 2005