

The Texas Commission on Environmental Quality (commission) adopts new §§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, and 37.9155. Sections 37.9095, 37.9100, 37.9105, 37.9110, and 37.9130 are adopted *with changes* to the proposed text as published in the April 8, 2005, issue of the *Texas Register* (30 TexReg 2024). Sections 37.9090, 37.9115, 37.9120, 37.9125, 37.9135, 37.9140, 37.9145, 37.9150, and 37.9155 are adopted *without changes* to the proposed text and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

This rulemaking implements the requirements of House Bill 2546, 78th Legislature, 2003, which provides additional restrictions and requirements for persons who land apply Class B sewage sludge to help ensure more protection for citizens, land, and water. A corresponding rulemaking is published in this issue of the *Texas Register* that includes changes to 30 TAC Chapter 312, Sludge Use, Disposal, and Transportation.

SECTION BY SECTION DISCUSSION

New Subchapter V of Chapter 37 is adopted to provide financial assurance requirements relating to commercial liability insurance and environmental impairment insurance for Class B sewage sludge.

The new subchapter also outlines the administrative procedures and requirements relating to these types of financial assurance for Class B sewage sludge.

New §37.9090, concerning Applicability, identifies who is subject to this subchapter and those entities that are exempt.

New §37.9095, concerning Definitions, defines the terms that are used throughout this chapter. Section 37.9095 is adopted with a minor change for improved readability.

New §37.9100, concerning Commercial Liability Insurance, requires a responsible person subject to this subchapter to obtain commercial liability insurance to ensure funds are available to third-party claimants in the event bodily injury or property damage results from Class B sewage sludge land application at the facilities covered. This coverage must be evidenced by either a Certificate of Insurance for Commercial Liability or an Endorsement for Commercial Liability. Minimum requirements of the insurance policy are set out to ensure the agency's financial assurance position is protected. This section also explains that \$3 million in coverage will be required to demonstrate financial assurance for all subject facilities and further requires a responsible person to notify the commission whenever a claim results. Section 37.9100 is adopted with changes to the proposed text based on a comment received during the comment period to include the same remedy provisions for failure to pay a premium as required under §37.9105(d).

New §37.9105, concerning Environmental Impairment Insurance, requires a responsible person subject to this subchapter to obtain environmental impairment insurance to ensure funds are available to the executive director in the event corrective action is required related to the facilities covered. This coverage must be evidenced by a Certificate of Insurance for Environmental Impairment. Minimum requirements of the insurance policy are set out to ensure the agency's financial assurance position is protected. This section also explains that \$3 million in coverage will be required to demonstrate financial assurance for all subject facilities. It further requires the responsible person to maintain the

policy in full force and effect until the executive director consents to termination of the insurance policy. The policy may not contain an exclusion for intentional, willful, knowing, or deliberate noncompliance. Section 37.9105 is adopted with changes to the proposed text for improved readability and to add a reference in §37.9105(d) to an applicable section.

New §37.9110, concerning Submission of Documents, requires that evidence of financial assurance be submitted by the responsible person in conjunction with a Class B sewage sludge land application permit and when requested by the executive director. This section requires that insurance coverage must be in effect on or before the date that a permit application is received by the agency. Section 37.9110(a) is adopted with changes to the proposed text to add the word “application.”

New §37.9115, concerning Approval of Mechanisms, explains that the executive director shall determine the acceptability of the financial assurance mechanisms submitted.

New §37.9120, concerning Incapacity of Responsible Person or Insurance Company, requires a responsible person to notify the commission in the event the responsible person is named as part of a bankruptcy proceeding. This section also requires a responsible person to obtain alternative insurance coverage in the event the insurance company that issued the current policy declares bankruptcy or experiences an insurance rating downgrade below that of A-.

New §37.9125, concerning Transfer of Ownership or Operational Control, requires a responsible person transferring ownership or operational control to comply with this subchapter until the

responsible person assuming the ownership or operational control has demonstrated compliance with this subchapter as determined by the executive director.

New §37.9130, concerning Drawing on the Financial Assurance Mechanisms, allows the executive director to call on the environmental impairment insurance policy when a responsible person fails to perform corrective action when required under this subchapter. Section 37.9100 is adopted with changes to the proposed text to change the word “shall” to “may.”

New §37.9135, concerning Continuous Financial Assurance Required, requires the responsible person to maintain continuous financial assurance through the duration of the permit or completion of corrective action, whichever is later.

New §37.9140, concerning Termination of Mechanisms, describes the criteria that must be met before the executive director will release the financial assurance mechanism.

New §37.9145, concerning Certificate of Insurance for Commercial Liability, establishes an acceptable form of providing evidence of commercial liability insurance coverage on behalf of the responsible person. The form must be executed by an authorized representative of the issuing insurance company.

New §37.9150, concerning Endorsement for Commercial Liability, establishes an acceptable form of providing evidence of commercial liability insurance coverage on behalf of the responsible person. The

form amends the policy to conform with the criteria set out in §37.9100 and must be executed by an authorized representative of the issuing insurance company.

New §37.9155, concerning Certificate of Insurance for Environmental Impairment, establishes the form that must be executed by an authorized representative of the issuing insurance company to provide evidence of environmental impairment insurance coverage on behalf of the responsible person.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rules in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rules are not subject to §2001.0225 because they do not meet the criteria for a “major environmental rule” as defined in that statute.

A “major environmental rule” means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The specific intent of the adopted rules is to provide additional protection with regard to water quality and the health and safety of the citizens who live near land application sites. Therefore, it is not anticipated that the adopted rules will adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state

or a sector of the state. The commission concludes that these adopted rules do not meet the definition of a major environmental rule.

Furthermore, even if the adopted rules did meet the definition of a major environmental rule, the rules are not subject to Texas Government Code, §2001.0225, because they do not meet any of the four applicable requirements specified in §2001.0225(a). Section 2001.0225(a) applies to a rule adopted by an agency, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

In this case, the adopted rules do not meet any of these requirements. First, there are no applicable federal standards that these rules would address. Second, the adopted rules do not exceed an express requirement of state law but instead implement the statutory requirements for requiring financial assurance requirements relating to commercial liability insurance and environmental impairment insurance for Class B sewage sludge. Third, there is no delegation agreement that would be exceeded by these adopted rules because none relates to this subject matter area. Fourth, the commission adopts these rules under Texas Health and Safety Code, §361.121, as amended by House Bill 2546, and not solely under the commission's general powers.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these rules and performed an assessment of whether the rules constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of the adopted rules is to provide additional protection with regard to water quality and the health and safety of the citizens who live near land application sites. The adopted rules would substantially advance this stated purpose by adding several requirements intended to improve tracking and reporting of regulated sites and the quality of sludge; adding several additional requirements for applicants, such as nutrient management plans and proof of insurance coverage; and restricting permittees from accepting sludge transported in open containers.

Promulgation and enforcement of these rules would be neither a statutory nor a constitutional taking of private real property because the rules do not affect real property.

In particular, there are no burdens imposed on private real property, and the adopted rules would improve the commission's ability to ensure proper management of the land application of Class B sewage sludge. Because the regulation does not affect real property, it does not burden, restrict, or limit an owner's right to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. Therefore, these adopted rules will not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and found that the adoption is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the rules are consistent with CMP goals and policies because the rulemaking is an administrative rule that includes financial assurance, notice, and other procedural requirements for permit holders of Class B sewage sludge; will not have a direct or significant adverse effect on any coastal natural resource areas; will not have a substantive effect on commission actions subject to the CMP; and promulgation and enforcement of the rules will not violate (exceed) any standards identified in the applicable CMP goals and policies.

PUBLIC COMMENT

A public hearing for this rulemaking was held on May 3, 2005, in Austin. The comment period closed on May 9, 2005. Written comments were received from the commission's Office of Public Interest Counsel (OPIC).

RESPONSE TO COMMENTS

OPIC commented that the rules do not expressly provide for a remedy for failure to pay a premium for the required commercial liability insurance as provided for in the proposed environmental impairment insurance requirements. OPIC recommended having the same remedy provisions for the nonpayment of the premium for both types of insurance and recommended adding language identical to §37.9105(d) under the commercial liability insurance provisions.

The commission agrees with this comment and added language in §37.9100(e) as follows: “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.”

**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**

STATUTORY AUTHORITY

The new sections are adopted under Texas Water Code, §5.012, which provides that the commission is the agency responsible for implementing the constitution and laws of the state relating to conservation of natural resources and protection of the environment; Texas Water Code, §5.103 and §5.105, which establish the commission's general authority to adopt rules; Texas Water Code, §26.121, which provides that no person may discharge sewage, municipal waste, recreational waste, agricultural waste, industrial waste, or other waste into or adjacent to any water in the state except as authorized by the commission; Texas Health and Safety Code, §361.011, which provides the commission with the authority to manage municipal waste; Texas Health and Safety Code, §361.013, which provides the commission the authority to adopt rules and establish fees for the transportation and disposal of solid waste; Texas Health and Safety Code, §361.022, which provides the state's public policy for preferred methods for generating, treating, storing, and disposing of municipal sludge as reuse; Texas Health and Safety Code, §361.024, which provides the commission with authority to adopt rules consistent with the chapter and establish minimum standards of operation for the management and control of solid waste; Texas Health and Safety Code, §361.061, which provides the commission the authority to issue permits for the construction, operation, and maintenance of solid waste facilities that store, process, or dispose of solid waste; and Texas Health and Safety Code, §361.121, as amended by House Bill 2546, which

provides that a permit is required for the land application of Class B sewage sludge, that a fee shall be charged for the issuance of a permit, and that the commission adopt rules to require an applicant to submit certain information with a permit application, including information relating to commercial liability insurance and environmental impairment insurance.

The adopted new sections implement House Bill 2546.

§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.

§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.

§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.

§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 policy must provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the policy limit of the expiring policy. If there is a failure to pay the premium, 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.

§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.

§37.9115. Approval of Mechanisms.

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

§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.

§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.

§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.

§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).

§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.

§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.

Figure: 30 TAC §37.9145

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: _____

§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.

Figure: 30 TAC §37.9150

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: _____

§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.

Figure: 30 TAC §37.9155

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: _____