

The Texas Commission on Environmental Quality (commission) proposes 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.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED 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 is proposed to be added to Chapter 37 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.

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.

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 and 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, and that the policy may not contain an exclusion for intentional, willful, knowing, or deliberate noncompliance.

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.

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 they are 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.

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.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Jeffrey Horvath, Analyst, Strategic Planning and Grants Management Section, determined that, for the first five-year period that the proposed rules are in effect, costs are anticipated for the commission and for other units of local government to implement the proposed new rules, though these costs are not anticipated to be significant. However, for persons who land apply Class B sewage sludge, costs to comply with the proposed requirements for commercial liability and environmental impairment insurance may be significant, depending upon their financial ability to pay.

The proposed new sections would implement requirements of House Bill 2546, which provided new requirements for Class B sludge permit applications, Class B sludge permit holders, and the commission.

Some of the more significant aspects of the rulemaking include the following: any applicant filing for a permit, permit amendment, or permit renewal would be required to send notice of intent to obtain a permit by registered or certified mail to all land owners living within 1/4 mile of the proposed sludge land application unit; land owners living within 1/4 mile of the proposed sludge land application unit would be "affected persons" and as such, may request a contested case hearing without having to demonstrate how they are affected by the proposed permit; applicants would be required to submit proof of commercial liability insurance and environmental impairment insurance, unless they are political subdivisions; all permit applicants would be required to submit a certified nutrient management plan with the permit application, and on an annual basis, demonstrate compliance with the plan; permit holders would be required to submit a computer-generated quarterly report to the commission

containing information regarding the source, quality, and quantity of sludge applied to the land; House Bill 2546 requires the commission to create and operate a tracking system that would allow the permit holder to submit quarterly reports; permit holders would be required to post a sign on the property indicating that an active sludge application site is located on the premises; permit holders would be prohibited from accepting Class B sewage sludge that is not transported in covered containers with the covering firmly secured at the front and back; and any sites in counties bordering the Gulf of Mexico that are located within 500 feet of any water well or surface water are prohibited from land application of Class B sludge.

There are 82 sites currently permitted to apply Class B sludge that would be subject to the proposed rules. Twenty four of these sites are owned or operated by units of local government. In addition, approximately 26 domestic wastewater treatment plants that apply Class B sludge would also be subject to the new requirements when they renew their municipal wastewater treatment plant permits. One of the wastewater treatment plants is privately owned and the rest are owned by municipalities.

Units of local government with Class B sewage sludge permits or municipal wastewater treatment plant permits may realize an increase in expenditures for: preparing quarterly reports instead of annual reports; additional recordkeeping and notification requirements; posting signs at the site; and nutrient management plans developed by certified nutrient management specialists. In accordance with House Bill 2546, units of political subdivisions are exempt from the commercial liability and environmental insurance requirements. The proposed new rules also reduce fees for minor permit amendments and permit transfers, but this change is expected to have minimal impact because the change merely

conforms the rules to current agency practice. One-time costs for nutrient management plans are estimated to be \$5,000 for each plan, but could be more or less depending upon site characteristics and circumstances. Agency staff are not able to estimate additional costs for the new recordkeeping, reporting, and notification requirements though, in general, these costs are not expected to be significant. Facilities will have to report on a quarterly basis instead of annually and they will have to provide computer-generated reports. A sign posted at the disposal site may cost up to \$1,000.

If local governments own or operate sites in a major sole-source impairment zone, there could be additional costs to comply with the proposed phosphorus limits and for creating and maintaining a 200-foot vegetative buffer from surface waters. Additional expenses associated with the creation and maintenance of a vegetative buffer zone are not expected to be significant as the buffer zone may be as simple as using existing or newly established grassy areas. If soil phosphorus levels are above 200 parts per million, a nutrient utilization plan prepared by a certified nutrient management specialist must be implemented. Nutrient utilization plans are estimated to cost approximately the same amount as nutrient management plans, about \$5,000 depending upon the site characteristics and circumstances.

House Bill 2546 requires the commission to develop and operate a sludge tracking system that will allow permit holders to electronically report a variety of data including delivery dates, dates of application, as well as the source, quality, and quantity of sludge delivered to the site. The commission will have to enter this data into a new Web-based database, ensure the data is complete and correct, and update its Web site capabilities in order to post the statutorily required information. The commission will also need to update the permit application, instructions, and permit language to include necessary

changes resulting from the proposed rule changes. These new requirements may result in additional estimated costs of between \$80,000 to \$90,000 per year for the commission, though in general these costs are not expected to be significant.

PUBLIC BENEFITS AND COSTS

Mr. Horvath also determined that for each year of the first five years that the proposed rules are in effect, the public benefit anticipated will be greater protection for the water resources of the state and compliance with state law.

Fiscal implications are anticipated for owners and operators that land apply Class B sewage sludge. Of the 82 current sites with Class B permits, 58 (approximately 71%) of the sites are privately owned or operated.

Businesses or individuals with Class B sewage sludge permits or municipal wastewater treatment plant permits may realize an increase in expenditures for: preparing quarterly reports; additional recordkeeping and notification requirements; posting signs at the site; and for nutrient management plans. The most significant costs are expected to result from requirements in House Bill 2546 to have two distinct insurance policies, one for commercial liability and the other for environmental impairment. Each of the insurance policies must be in amounts of not less than \$3 million. It is estimated that annual premiums for both policies may range between \$17,000 and \$25,000. Additional recordkeeping, reporting, and notification requirements are not expected to result in significant costs.

Costs for nutrient management plans are estimated to cost \$5,000 each, but could be more or less depending upon site characteristics and circumstances.

For permit holders located in a major sole-source impairment zone, there may be additional expenses associated with the creation and maintenance of a vegetative buffer zone and for the development and implementation of a nutrient utilization plan. Nutrient utilization plans are estimated to cost approximately the same amount as a nutrient management plans, about \$5,000 depending upon the site characteristics and circumstances. Costs to construct a 200-foot vegetative buffer are not expected to be significant.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

Adverse fiscal implications are anticipated for small or micro-businesses involved in the land application of Class B sewage sludge. It is not known how many of the 58 currently permitted privately owned Class B sludge sites are small or micro-businesses, but for those that are, additional costs may be expected for preparing quarterly reports, additional recordkeeping requirements, notification requirements, insurance requirements, and paying for nutrient management plans. The largest cost, the annual premiums for the required commercial liability and environmental impairment insurance policies, may range between \$17,000 and \$25,000.

The following is an analysis of the cost per employee for any small or micro-businesses affected by the proposed insurance requirements and who must pay estimated annual premiums of between \$17,000 and \$25,000. Small and micro-businesses are defined as having fewer than 100 or 20 employees,

respectively. Owners or operators of businesses that apply Class B sludge to land sites with 100 or fewer employees could incur additional costs of between at least \$170 to \$250 per employee each year. A micro-business with 20 or fewer employees would incur estimated additional costs of between at least \$850 and \$1,250 per employee. The projected costs are the same for small businesses as for larger businesses.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rules in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed 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 proposed 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 proposed 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 proposed rules do not meet the definition of a major environmental rule.

Furthermore, even if the proposed rules did meet the definition of a major environmental rule, the proposed 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 proposed rules do not meet any of these requirements. First, there are no applicable federal standards that these rules would address. Second, the proposed rules do not exceed an express requirement of state law but instead implement the statutory requirements 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

proposed rules because none relates to this subject matter area. Fourth, the commission proposes these rules under the rulemaking direction of House Bill 2546, and not solely under the commission's general powers.

Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these proposed rules and performed an assessment of whether the proposed rules constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of the proposed 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 proposed 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 proposed rules would be neither a statutory nor a constitutional taking of private real property because the proposed rules do not affect real property.

In particular, there are no burdens imposed on private real property, and the proposed 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 proposed rules will not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to 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 proposed 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.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on May 3, 2005 at 10:00 a.m. in Building F, Room 2210, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes before the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact Joyce Spencer, Office of Legal Services, at (512) 239-5017. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Joyce Spencer, Texas Register Team, Office of Legal Services, Texas Commission on Environmental Quality, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Project Number 2003-055-312-WT.

Comments must be received by 5:00 p.m., May 9, 2005. For further information or questions concerning this proposal, please contact Beth Fraser, Water Quality Division, at (512) 239-2526.

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 proposed 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; §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 HB 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 shall 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 proposed 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, 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.

§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 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. 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, 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 shall 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: _____