

The Texas Commission on Environmental Quality (commission) adopts amendments to §§37.271, 37.371, and 37.8011 *without changes* to the proposed text as published in the March 24, 2006, issue of the *Texas Register* (31 TexReg 2391). These sections will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

House Bill (HB) 2131, 79th Legislature, 2005, amended Texas Health and Safety Code (THSC), Chapter 361, Subchapter C, by adding §361.0855 to allow political subdivisions or quasi-governmental entities to rely on their own financial strength to demonstrate financial assurance. Under prior law, a municipality that owned a municipal solid waste (MSW) landfill could satisfy the requirements to demonstrate financial assurance by using a local government financial test; however, other political subdivisions, such as local government corporations and conservation and reclamation districts, could not.

SECTION BY SECTION DISCUSSION

Administrative changes have been made throughout the rules to be consistent with Texas Register requirements and agency guidelines.

Adopted §37.271, Local Government Financial Test, expands the types of bonds that can be used by MSW landfills to pass the local government financial test. Bonds that can be used to pass the local government financial test now include revenue bonds and certificates of obligation as well as general obligation bonds.

Adopted §37.371, Local Government Financial Test, adds revenue bonds and certificates of obligation to the letter signed by the local government's chief financial officer required as part of the local government financial test.

Adopted §37.8011, Definitions, expands the definition of "Local government" by adding a phrase that clarifies that local government includes both a local government corporation created under Texas Transportation Code, Chapter 431, to act on behalf of local government and a conservation and reclamation district created under Texas Constitution, Article XVI, §59. The adopted rule also adds the definition of "Bonds." To make the definition section easier to read, the section was divided into paragraph (1) for "Local government" and paragraph (2) for "Bonds."

The commission is not recommending any change to Chapter 37 to incorporate THSC, §361.0855 statutory requirements that a local government pass a financial test, demonstrate that its outstanding bonds be unsecured, and meet a minimum rating because these requirements already exist under §37.271.

The commission made no change to the rules related to the language about the submission of a local government's demonstration of financial assurance. The requirement under THSC, §361.0855, that a local government must demonstrate financial assurance under this section before the initial receipt of waste is covered under §37.31, which requires that a financial assurance mechanism must be in effect before the initial receipt of waste. The requirement under THSC, §361.0855, that a local government must demonstrate financial assurance under this section as soon as practicable for operating facilities

does not need to be included in the adopted rules because all facilities operating on the effective date of THSC, §361.0855, are required to provide financial assurance under existing state and federal requirements.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rules do not meet the definition for a "major environmental rule" as defined in that statute. A "major environmental rule" means a rule that is specifically intended to protect the environment or to 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 adopted rules are intended to implement new legislation to allow certain governmental entities other methods to meet financial assurance requirements. In fact, the adopted rulemaking revises the commission's rules in a manner that could provide a benefit to the economy while maintaining the same level of protection of the environment and public health and safety. Because the existing rules require financial assurance for protection of human health and the environment, this adopted rulemaking does not decrease the protection of the environment or human health.

The 79th Legislature passed HB 2131, which amended THSC, Chapter 361, Subchapter C, by adding §361.0855. The law expands the definitions of "Bonds" and "Local governments" in relation to MSW landfills owned and operated by local governments using a financial test for financial assurance. Under

prior law, a municipality that owned an MSW landfill could satisfy the requirements to demonstrate financial assurance by using a local government financial test; however, it did not state whether other political subdivisions, such as local government corporations and conservation and reclamation districts, could demonstrate financial assurance in this same manner. In order to implement HB 2131, the adopted rulemaking expands the definition of “Local government” to include these political subdivisions, making them eligible to use a local government financial test to demonstrate financial assurance and defining the types of bonds that may be used as part of the local government financial test. Therefore, it is not anticipated that the adopted rulemaking 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. In fact, the adopted rules should benefit the economy and productivity by producing annual savings for fees currently paid to provide financial assurance instruments. The commission concludes that the adopted rulemaking does not meet the definition of a major environmental rule.

Furthermore, the adopted rules do not meet any of the four applicability requirements specified in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225(a) applies only to a major environmental rule, 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 criteria. First, federal authority (40 Code of Federal Regulations (CFR) Part 258, Subpart G) on the issue of financial assurance has been delegated to the state, and the Texas Legislature has enacted statutes that are consistent with the federal requirements. Both state and federal statutes require financial assurance for MSW facilities (THSC, §361.085(e) and §361.0855, and 40 CFR Part 258). The adopted rules are intended to implement new legislation to allow certain governmental entities other methods to meet financial assurance requirements. Therefore, the adopted rulemaking does not exceed a standard set by federal regulations because the rules implement new state statutes that are consistent with the federal regulations. Second, the adopted rulemaking carries out the general state statutes that require financial assurance, and does not exceed an express requirement of state law. Third, adopted rules do not exceed the requirements of a delegation agreement between the state and an agency of the federal government to implement a state or federal program. The adopted rules are consistent with the corresponding federal financial assurance requirements. Fourth, the commission adopts these rules under new specific state law, in THSC, §361.0855. Therefore, the commission does not adopt the amendments solely under the commission's general powers.

The commission solicited public comment on the draft regulatory impact analysis in the March 24, 2006, issue of the *Texas Register* (31 TexReg 2392). No comments were received concerning the draft regulatory impact analysis.

TAKINGS IMPACT ASSESSMENT

The commission conducted a takings impact assessment for these adopted rules in accordance with Texas Government Code, Chapter 2007. The principal intent of this adopted rulemaking is to amend Chapter 37 to meet new statutory requirements by revising and clarifying sections relating to financial assurance requirements.

This adopted rulemaking implements THSC, §361.0855, which was created by HB 2131. The commission's final assessment indicates that Texas Government Code, Chapter 2007 does not apply to the adopted rulemaking because it is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code, §2007.003(b)(4). Chapter 37 implements the state requirements found in THSC, §361.085 and §361.0855.

Nevertheless, the commission further evaluated the adopted rulemaking and performed a final assessment of whether the adopted rulemaking constitutes a takings under Texas Government Code, Chapter 2007. Promulgation and enforcement of the adopted rules would be neither a statutory nor a constitutional taking because they do not affect private real property. Specifically, the adopted rules will not burden private real property, restrict or limit the owner's right to property, or reduce its value by 25% or more beyond what will otherwise exist in the absence of these regulations. Rather, the adopted rules only revise and clarify financial assurance requirements. Therefore, the adopted rulemaking will not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rules are not subject to the CMP.

PUBLIC COMMENT

The commission solicited public comment in the March 24, 2006, issue of the *Texas Register*. A written comment was received from Russell & Rodriguez, L.L.P., a law firm representing North Texas Municipal Water District and Texoma Area Solid Waste Authority, Inc.

RESPONSE TO COMMENTS

Russell & Rodriguez L.L.P., a law firm representing North Texas Municipal Water District and Texoma Area Solid Waste Authority, commented that the new definition of “Local government,” which now includes local government corporations, should be revised to specifically recognize local government corporations created to “act on behalf of one or more local governments” rather than “a local government,” as proposed.

The commission declines to make the proposed change. The commission notes that the enabling statute references Texas Transportation Code, Chapter 431, and that code includes the words “one or more local governments.” Therefore, the commission interprets the phrase “a local government” to be inclusive of one or more local governments. The commission chooses to follow

the language of the enabling statute. Accordingly, no change was made to the proposed text in response to these comments.

**SUBCHAPTER C: FINANCIAL ASSURANCE MECHANISMS FOR
CLOSURE, POST CLOSURE, AND CORRECTIVE ACTION**

§37.271

STATUTORY AUTHORITY

The amended section is adopted under Texas Water Code (TWC), §5.103 and 5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the laws of the state. The rule is also adopted under THSC, Texas Solid Waste Disposal Act, §361.011, which provides the commission with the authority to manage municipal solid waste; §361.024, which provides the commission with the authority to adopt rules necessary to carry out its power and duties, and to establish standards of operation for the management of solid waste; and §361.085, which provides the commission with the authority to require financial assurance demonstrations for solid waste and permitted facilities. Together, these statutes authorize the commission to adopt any rules necessary to carry out its powers and duties under the laws of Texas and to establish and approve all general policy of the commission.

The amended rule is also adopted in accordance with THSC, §361.0855, implementing HB 2131, 79th Legislature, 2005.

§37.271. Local Government Financial Test.

An owner or operator may satisfy the requirements of financial assurance for closure, post closure, or corrective action by establishing a local government financial test or a local government financial test and local government guarantee, which conforms to the requirements of this section, in addition to the requirements specified in Subchapters A and B of this chapter (relating to General Financial Assurance Requirements; and Financial Assurance Requirements for Closure, Post Closure, and Corrective Action). An owner or operator who satisfies the requirements of paragraphs (1) - (3) of this section may demonstrate financial assurance up to the amount specified in paragraph (4) of this section.

(1) In order to satisfy the financial component of the test, the owner or operator must meet the criteria of either subparagraph (A) or (B) of this paragraph and in addition must meet certain general conditions outlined in subparagraph (C) of this paragraph.

(A) The owner or operator must satisfy each of the following financial ratios based on its most recent audited annual financial statement:

(i) a ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05; and

(ii) a ratio of annual debt service to total expenditures less than or equal to 0.20.

(B) If the owner or operator:

(i) of a facility other than a municipal solid waste landfill has outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, those bonds must have a current rating of Aaa, Aa, A, or Baa, as issued by Moody's, or AAA, AA, A, or BBB, as issued by Standard and Poor's on all such general obligation bonds; or

(ii) of a municipal solid waste landfill subject to Chapter 330 of this title (relating to Municipal Solid Waste) has bonds as defined in Subchapter R of this chapter (relating to Financial Assurance for Municipal Solid Waste Facilities) and those bonds are not secured by insurance, a letter of credit, or other collateral or guarantee, those bonds must have a current rating of Aaa, Aa, A, or Baa, as issued by Moody's, or AAA, AA, A, or BBB, as issued by Standard and Poor's on all such financial obligations.

(C) In addition to meeting the criteria listed under subparagraph (A) or (B) of this paragraph, the following general conditions must be met.

(i) The owner or operator shall prepare its financial statements in conformity with Generally Accepted Accounting Principles for governments and have its financial statements audited by an independent certified public accountant (or appropriate state agency).

(ii) The owner or operator must not have operated at a deficit equal to 5.0% or more of total annual revenue in each of the past two fiscal years.

(iii) The owner or operator must not currently be in default on any outstanding general obligation bonds.

(iv) The owner or operator must not have any outstanding general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard and Poor's.

(v) The owner or operator must not have received an adverse opinion, disclaimer of opinion, or other qualified opinion from the independent certified public accountant (or appropriate state agency) auditing its financial statements as required under clause (i) of this subparagraph. However, the executive director may evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the executive director deems the qualification insufficient to warrant disallowance of use of the test.

(D) The following terms used in this section are defined as follows.

(i) Deficit equals total annual revenues minus total annual expenditures.

(ii) Total revenues is the sum of the following seven items:

(I) "Total Revenues" of the General Fund;

(II) "Total Revenues" of Special Revenue Funds;

(III) "Total Revenues" of the Debt Service Fund;

(IV) "Total Revenues" of Capital Project Funds;

(V) "Total Operating Revenues" of Enterprise Funds;

(VI) if positive, "Total Non-Operating Revenues (Net)" of

Enterprise Funds; and

(VII) if positive, "Total Non-Operating Revenues (Net)" of

Internal Service Funds.

(iii) Total expenditures is the sum of the following six items:

(I) "Total Expenditures" of the General Fund;

(II) "Total Expenditures" of Special Revenue Funds;

(III) “Total Expenditures” of the Debt Service Fund;

(IV) “Total Operating Expenses Before Depreciation” of
Enterprise Funds;

(V) if negative, “Total Non-Operating Revenues (Net)” of
Enterprise Funds; and

(VI) if negative, “Total Non-Operating Revenues (Net)” of
Internal Service Funds; except if the local government is not using accrual accounting and is not
including depreciation in its expenditures, include routine capital outlays and debt repayment as a
substitute for depreciation.

(iv) Cash and current investments is the sum of “Cash,” “Cash
Equivalents” (e.g., bank deposits, very short-term debt securities, money market funds), and “Current
Investments” (e.g., interest or dividend bearing securities that are expected to be held for less than one
year), in the General Fund, Special Revenue Funds, Debt Service Fund, Enterprise Funds, and Internal
Service Funds, as reported on the Comprehensive Annual Financial Report’s (CAFR) Combined
Balance Sheet. Note that cash, cash equivalents, and current investments are included in this term
even if they are: pooled; with a fiscal agent; or restricted, provided that the assets belong to the
General Fund, Special Revenue Funds, Debt Service Fund, Enterprise Funds, and Internal Service
Funds. Specifically excluded from this definition are accounts receivable, retirement assets, real

property, fixed assets, and other non-current assets, as well as any assets (including cash) in Capital Project Funds.

(v) Debt service is the sum of all amounts in any Debt Service category (including bond principal, other debt principal, interest on bonds, interest on other debt) in the General Fund, Special Revenue Funds, Debt Service Fund, and Capital Projects Funds as reported on the CAFR's Combined Statement of Revenues, Expenditures and Changes in Fund Balances/Equity; plus all principal and interest expense in Enterprise Funds and Internal Service Funds, as reported on the CAFR's Combined Statement of Revenues, Expenses and Changes in Retained Earnings/Fund Balances.

(2) In order to satisfy the public notice component of the test, the local government owner or operator must place a reference to the closure, post closure, or corrective action costs assured through the financial test into its next CAFR after the effective date of this section or prior to the initial receipt of waste at the facility, whichever is later. Disclosure must include the nature and source of closure, post closure, or corrective action requirements; the reported liability at the balance sheet date; the estimated total closure or post closure cost remaining to be recognized; the percentage of landfill capacity used to date; and the estimated landfill life in years. A reference to corrective action costs must be placed in the CAFR not later than 120 days after the corrective action remedy has been selected in accordance with the requirements of §330.415 of this title (relating to Implementation of the Corrective Action Program). For the first year the financial test is used to assure costs at a particular facility, the reference may instead be placed in the operating record until issuance of the next available

CAFR if timing does not permit the reference to be incorporated into the most recently issued CAFR or budget. For closure and post closure costs, conformance with Government Accounting Standards Board Statement 18 assures compliance with the public notice component.

(3) In order to satisfy the recordkeeping and reporting component of the test, the local government owner or operator must submit the following four items to the executive director:

(A) a letter signed by the local government's chief financial officer worded as specified in §37.371 of this title (relating to Local Government Financial Test) that:

(i) lists all the current cost estimates covered by a financial test as described in paragraph (4) of this section;

(ii) provides evidence and certifies that the local government meets the conditions of either paragraph (1)(A) or (B), and (1)(C) of this section; and

(iii) certifies that the local government meets the conditions of paragraphs (2) and (4) of this section;

(B) the local government's independently audited year-end financial statements for the latest fiscal year, including the unqualified opinion of the auditor. The auditor must be an

independent certified public accountant (CPA) or an appropriate state agency that conducts equivalent comprehensive audits;

(C) a report to the local government from the local government's independent CPA or the appropriate state agency which:

(i) is based on performing an agreed upon procedures engagement relative to the financial ratios required by paragraph (1)(A) of this section, if applicable, and the requirements of paragraph (1)(C)(i), (ii), and (v) of this section; and

(ii) the CPA or state agency's report states the procedures performed and the CPA or state agency's findings; and

(D) a copy of the CAFR used to comply with paragraph (2) of this section and certification that the requirements of General Accounting Standards Board Statement 18 have been met.

(4) The portion of the closure, post closure, or corrective action costs for which an owner or operator can assure under this paragraph is determined as follows.

(A) If the local government owner or operator does not assure other environmental obligations through a financial test, it may assure closure, post closure, or corrective action costs that equal up to 43% of the local government's total annual revenue.

(B) If the local government owner or operator assures other environmental obligations through a financial test, including, but not limited to, those associated with hazardous waste treatment, storage, and disposal facilities under Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste) and 40 Code of Federal Regulations (CFR) Parts 264 and 265, petroleum underground storage tank facilities under Chapter 334 of this title (relating to Underground and Aboveground Storage Tanks) and 40 CFR Part 280, underground injection control facilities under Chapter 331 of this title (relating to Underground Injection Control) and 40 CFR §144.62, polychlorinated biphenyl storage facilities under 40 CFR Part 761, it must add those costs to the closure, post closure, or corrective action costs it seeks to assure under this paragraph. The total that may be assured must not exceed 43% of the local government's total annual revenue.

(5) Annual updates of the financial test documentation must be submitted to the executive director within 180 days after the close of each succeeding fiscal year. This information must consist of all the items required under paragraph (3) of this section.

(6) A local government must satisfy the requirements of the financial test at the close of each fiscal year. If the local government owner or operator no longer meets the requirements of paragraphs (1) - (4) of this section, the local government must send notice to the executive director of intent to establish alternate financial assurance. This notice must be sent within 90 days after the end of the fiscal year for which the year-end financial data shows that the local government no longer meets the requirements. The local government must provide alternate financial assurance within 120 days after the end of such fiscal year.

(7) The local government is no longer required to comply with the requirements of this section when the conditions as specified in §37.61 of this title (relating to Termination of Mechanisms) are met.

(8) The executive director, based on a reasonable belief that the local government owner or operator may no longer meet the requirements of the local government financial test, may require additional reports of financial condition from the local government at any time. If the executive director finds on the basis of such reports or other information, that the local government owner or operator no longer meets the requirements of the financial test, the local government must provide alternate financial assurance as specified in this subchapter within 30 days after notification of such a finding.

**SUBCHAPTER D: WORDING OF THE MECHANISMS
FOR CLOSURE, POST CLOSURE, AND CORRECTIVE ACTION**

§37.371

STATUTORY AUTHORITY

The amended section is adopted under TWC, §5.103 and 5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the laws of the state. The rule is also adopted under THSC, Texas Solid Waste Disposal Act, §361.011, which provides the commission with the authority to manage municipal solid waste; §361.024, which provides the commission with the authority to adopt rules necessary to carry out its power and duties, and to establish standards of operation for the management of solid waste; and §361.085, which provides the commission with the authority to require financial assurance demonstrations for solid waste and permitted facilities. Together, these statutes authorize the commission to adopt any rules necessary to carry out its powers and duties under the laws of Texas and to establish and approve all general policy of the commission.

The amended rule is also adopted in accordance with THSC, §361.0855, implementing HB 2131, 79th Legislature, 2005.

§37.371. Local Government Financial Test.

A letter signed by the local government's chief financial officer, as specified in §37.271 of this title (relating to Local Government Financial Test) must be worded as specified in the Local Government Financial Test in this section, except that the instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted.

Figure: 30 TAC §37.371

LOCAL GOVERNMENT FINANCIAL TEST
LETTER FROM CHIEF FINANCIAL OFFICER

(Address to TCEQ Executive Director)

I am the chief financial officer of (name and address of local government). This letter is in support of this local government's use of the financial test to demonstrate financial assurance, as specified in 30 Texas Administrative Code (TAC) Chapter 37 (relating to Financial Assurance).

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

1. This local government is the owner or operator of the following facilities for which financial assurance for closure, post closure, or corrective action is demonstrated through the financial test specified in 30 TAC §37.271 (relating to Local Government Financial Test). The current cost estimates covered by the test are shown for each facility: _____.
2. This local government guarantees, through the guarantee specified in 30 TAC §37.281 (relating to Local Government Guarantee), the current closure, post closure, or corrective action cost estimates of the following facilities owned or operated by (insert owner's name or operator's name). The current cost estimates so guaranteed are shown for each facility: _____.

The fiscal year of this local government ends on (month, day, year). The figures for the following items marked with an asterisk are derived from this local government's independently audited, year-end financial statements for the latest completed fiscal year, ended (date).

(Fill in the Ratio Indicators of Financial Strength if the criteria of 30 TAC §37.271(1)(A) are used.
Fill in Bond Rating Indicator of Financial Strength if the criteria of 30 TAC §37.271(1)(B) are used.)

RATIO INDICATORS OF FINANCIAL STRENGTH

- 1. Sum of current cost estimates
(total of all cost estimates shown in the paragraphs above) \$ _____
- *2. Sum of cash and marketable securities \$ _____
- *3. Total expenditures \$ _____
- *4. Annual debt service \$ _____
- 5. Environmental obligations assured by a financial test to demonstrate financial assurance in the following amounts under commission regulations and the Code of Federal Regulations (CFR) or state equivalent rules:
 - (a) Municipal solid waste under 30 TAC Chapter 330 (relating to Municipal Solid Waste) and 40 CFR Part 258 \$ _____
 - (b) Hazardous waste treatment, storage and disposal facilities under 30 TAC Chapter 335 (relating to Industrial Solid Waste and Municipal Hazardous Waste) and 40 CFR Parts 264 and 265 \$ _____
 - (c) Petroleum underground storage tanks under 30 TAC Chapter 334 (relating to Underground and Aboveground Storage Tanks) and 40 CFR Part 280 \$ _____
 - (d) Underground Injection Control System facilities under 30 TAC Chapter 331 (relating to Underground Injection Control) and 40 CFR Part 144 \$ _____
 - (e) Polychlorinated biphenyl (PCB) commercial storage facilities under 40 CFR Part 761 \$ _____
 - (f) Additional environmental obligations not shown above \$ _____
- Total (a) - (f) \$ _____
- *6. Total Annual Revenue \$ _____

Indicate either "yes" or "no" to the following questions.

- 7. Is line 2 divided by line 3 greater than or equal to 0.05? (yes/no)
- 8. Is line 4 divided by line 3 less than or equal to 0.20? (yes/no)
- 9. Is line 5 divided by line 6 less than or equal to 0.43? (yes/no)

BOND RATING INDICATOR OF FINANCIAL STRENGTH

1. Sum of current cost estimates (total of all cost estimates shown in the paragraphs above) \$ _____
2. List the following information on all the outstanding, rated, unsecured general obligation bonds, revenue bonds, or certificates of obligation issued to the local government: Current bond rating of most recent issuance and name of rating service _____
Date of issuance of bond _____
Date of maturity of bond _____
3. Environmental obligations assured by a financial test to demonstrate financial assurance in the following amounts under commission regulations and the CFR or state equivalent rules:
 - (a) Municipal solid waste under 30 TAC Chapter 330 and 40 CFR Part 258 \$ _____
 - (b) Hazardous waste treatment, storage and disposal facilities under 30 TAC Chapter 335 and 40 CFR Parts 264 and 265 \$ _____
 - (c) Petroleum underground storage tanks under 30 TAC Chapter 334 and 40 CFR Part 280 \$ _____
 - (d) Underground Injection Control System facilities under 30 TAC Chapter 331 and 40 CFR Part 144 \$ _____
 - (e) PCB commercial storage facilities under 40 CFR Part 761 \$ _____
 - (f) Additional environmental obligations not shown above \$ _____
- Total (a) - (f) \$ _____
- *4. Total Annual Revenue \$ _____

Indicate either "yes" or "no" to the following question.

5. Is line 3 divided by line 4 less than or equal to 0.43? (yes/no)

I hereby certify that the wording of this letter is identical to the wording specified in 30 TAC §37.371 as such regulations were constituted on the date shown immediately below. I further certify the following: that the local government's financial statements are prepared in conformity with Generally Accepted Accounting Principles for governments, including conformance with General Accounting Standards Board Statement 18, and its financial statements have been audited by an independent Certified Public Accountant (CPA); that the local government has not operated at a deficit equal to

5.0% or more of total annual revenue in each of the past two fiscal years; that the local government is not in default on any outstanding general obligations bonds; that the local government does not have outstanding general obligations rated lower than Baa as issued by Moody's or BBB as issued by Standard and Poor's; and that the local government has not received an adverse opinion, disclaimer of opinion, or other qualified opinion from the independent CPA.

(Signature) _____

(Name) _____

(Title) _____

(Date) _____

**SUBCHAPTER R: FINANCIAL ASSURANCE FOR
MUNICIPAL SOLID WASTE FACILITIES**

§37.8011

STATUTORY AUTHORITY

The amended section is adopted under TWC, §5.103 and 5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the laws of the state. The rule is also adopted under THSC, Texas Solid Waste Disposal Act, §361.011, which provides the commission with the authority to manage municipal solid waste; §361.024, which provides the commission with the authority to adopt rules necessary to carry out its power and duties, and to establish standards of operation for the management of solid waste; and §361.085, which provides the commission with the authority to require financial assurance demonstrations for solid waste and permitted facilities. Together, these statutes authorize the commission to adopt any rules necessary to carry out its powers and duties under the laws of Texas and to establish and approve all general policy of the commission.

The amended rule is also adopted in accordance with THSC, §361.0855, implementing HB 2131, 79th Legislature, 2005.

§37.8011. Definitions.

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

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

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