

The commission adopts new §§37.1, 37.11, 37.21, 37.31, 37.41, 37.51, 37.61, 37.71, 37.81, 37.100, 37.101, 37.111, 37.121, 37.131, 37.141, 37.151, 37.161, 37.201, 37.211, 37.221, 37.231, 37.241, 37.251, 37.261, 37.301, 37.311, 37.321, 37.331, 37.341, 37.351, 37.361, 37.400, 37.401, 37.411, 37.501, 37.511, 37.521, 37.531, 37.541, 37.551, 37.601, 37.611, 37.621, 37.631, 37.641, 37.651, 37.661, 37.901, 37.911, 37.921, 37.931, 37.1001, 37.1011, and 37.1021, concerning financial assurance requirements.

Sections 37.201, 37.221, and 37.241 are adopted with changes to the proposed text as published in the July 26, 1996, issue of the *Texas Register* (21 TexReg 6945). Sections 37.1, 37.11, 37.21, 37.31, 37.41, 37.51, 37.61, 37.71, 37.81, 37.100, 37.101, 37.111, 37.121, 37.131, 37.141, 37.151, 37.161, 37.211, 37.231, 37.251, 37.261, 37.301, 37.311, 37.321, 37.331, 37.341, 37.351, 37.361, 37.400, 37.401, 37.411, 37.501, 37.511, 37.521, 37.531, 37.541, 37.551, 37.601, 37.611, 37.621, 37.631, 37.641, 37.651, 37.661, 37.901, 37.911, 37.921, 37.931, 37.1001, 37.1011, and 37.1021 are adopted without changes and will not be republished.

EXPLANATION OF ADOPTED RULES

New Chapter 37 provides standard financial assurance wording of the mechanisms and requirements for financial responsibility and places them in one rule chapter. Initially, this chapter provides financial assurance requirements for permitted composting facilities and registered Class A or B petroleum-substance contaminated soil storage, treatment, and reuse facilities.

Owners or operators seeking permits for compost facilities must provide evidence of financial responsibility for closure. This requirement is authorized by Texas Health and Safety Code, §361.085 and promulgated as 30 TAC §332.47(9).

Owners and operators seeking registrations for Class A or B petroleum-substance contaminated soil storage, treatment, and reuse facilities must provide evidence of financial responsibility for closure and sudden liability coverage per 30 TAC Chapter 334, Subchapter K.

Chapter 37, Subchapter A, concerning General Financial Assurance Requirements, sets forth the applicability of the rules, definitions, and basic requirements for demonstrating financial assurance. This subchapter requires all mechanisms relied upon to show evidence of financial responsibility to be worded as set forth in Subchapter D or G, requires approval of all mechanisms by the executive director, requires substitution of financial assurance mechanisms in the event of failure or cancellation, and allows the use of multiple financial assurance mechanisms for a single facility, or use of a single mechanism for multiple facilities of the same type. Mechanisms used to show financial responsibility for closure must be at least equal in amount to the most recent closure cost estimates. Mechanisms used to show evidence of sudden liability coverage must be at least equal to the annual aggregate limit as specified. To receive approval for financial responsibility, mechanisms for permitted facilities must be submitted at least 60 days prior to the acceptance of waste for processing or at least 60 days prior to operations, while registrants must submit mechanisms prior to issuance of a registration.

Chapter 37, Subchapter B, concerning Financial Assurance Requirements for Closure, sets forth the general criteria for approval of financial assurance for closure. This subchapter allows the executive director to draw on the mechanism when required to do so, requires continuous coverage until terminated, requires annual adjustments for inflation, requires necessary adjustments in the closure cost estimate, and requires establishment of a standby trust for surety bonds or letters of credit.

Chapter 37, Subchapter C, concerning Financial Assurance Mechanisms for Closure, sets forth the criteria for approval of financial assurance mechanisms for closure, including trust funds, surety bonds guaranteeing payment, surety bonds guaranteeing performance, irrevocable standby letters of credit, insurances, financial tests, and corporate guarantees. Revisions to proposed sections were made in order to provide additional clarification. Proposed §37.201, concerning Trust Fund for Closure, was amended to specify that an owner or operator may submit a written request for release of excess monies held in a trust fund. Proposed §37.221, concerning Surety Bond Guaranteeing Performance for Closure, was modified to state that a surety bond must guarantee that the owner or operator is to provide alternate financial assurance after receipt of a notice of cancellation. Proposed §37.241, concerning Insurance for Closure, was modified to allow an insurance policy to be assigned to a successor owner or operator.

Chapter 37, Subchapter D, concerning Wording of the Mechanisms for Closure, sets forth the required wording of financial assurance mechanisms for closure referenced as figures in the *Texas Register*.

Chapter 37, Subchapter E, concerning Financial Assurance Requirements for Liability Coverage, sets forth the criteria for approval of financial assurance for liability. This subchapter addresses the liability requirements for sudden accidental occurrences.

Chapter 37, Subchapter F, concerning Financial Assurance Mechanisms for Liability, sets forth the criteria for approval of financial assurance mechanisms for liability, including trust funds, surety bonds guaranteeing payment, irrevocable standby letters of credit, insurances, financial tests, and corporate guarantees.

Chapter 37, Subchapter G, concerning Wording of Mechanisms for Liability, sets forth the required wording of financial assurance mechanisms for liability referenced as figures in the *Texas Register*.

Chapter 37, Subchapter J, concerning Financial Assurance for Permitted Compost Facilities, makes the requirements of Chapter 37 applicable to owners and operators seeking permits for compost facilities under §332.47.

Chapter 37, Subchapter K, concerning Financial Assurance Requirements for Class A or B Petroleum-Substance Contaminated Soil Storage, Treatment, and Reuse Facilities, makes the requirements of Chapter 37 applicable to owners and operators seeking registrations for Class A or B petroleum-substance contaminated soil storage, treatment, and reuse facilities under Chapter 334, Subchapter K.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for new Chapter 37 pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the new rules is to begin the consolidation of financial assurance requirements into one rule chapter. The new rules substantially advance this purpose by setting up a new Chapter 37 and making it initially applicable to financial assurance for permitted composting facilities and registered Class A or B petroleum-substance contaminated soil storage, treatment, and reuse facilities. Promulgation and enforcement of these rules will not affect private real property because they add no new financial assurance requirements and they do not adversely affect property values. Also, the following exceptions to the application of Texas Government Code, §2007.003(b) apply to these rules: the action significantly advances the health and safety purpose and imposes no greater burden than is necessary to achieve the health and safety purpose.

HEARINGS AND COMMENTERS

A public hearing was held to receive oral and written comment on the proposed rules at commission offices in Austin on August 29, 1996. No one submitted comment at the public hearing. The public comment period closed August 29, 1996.

Written comments were received from the following during the public comment period: Browning-Ferris Industries (BFI) and Texas Utilities Services, Inc. (TU).

BFI generally supported the creation of a new chapter that would incorporate and contain all pertinent financial assurance requirements administered by the commission. However, except for comments noted as follows, BFI's comments were intended to ensure that the regulations provide appropriate and cost-effective standards for municipal solid waste landfills (MSWLFs), because they may eventually be proposed to be included in Chapter 37.

The commission responds that comments relating to MSWLFs are beyond the scope of this rulemaking because the proposed rule was only applicable to permitted compost operations and Class A or B petroleum-substance contaminated soil storage, treatment, and reuse facilities. Currently, financial assurance requirements for MSWLFs are found in 30 TAC Chapter 330, Subchapter K, and there are currently no proposals affecting those requirements.

TU commented that a separate financial assurance mechanism currently under development for used oil creates a piecemeal approach. TU noted that creating different financial assurance requirements for different waste streams at their facilities is not a cost-effective approach to financial assurance.

The commission responds that comments relating to used oil financial assurance are beyond the scope of this rulemaking. Currently, rules for financial responsibility for used oil are being developed, and the rules, when proposed, will probably refer persons to Chapter 37 for the specific requirements of financial assurance.

TU further commented that the proposed rules would allow use of a single financial assurance mechanism for multiple facilities of the same type; however, "same type" is not defined. TU was concerned that its facilities will be covered by many overlapping financial assurance requirements because they handle many waste streams. It recommended that the commission utilize some cost-effective type of financial assurance mechanism which recognizes companies with multiple facilities with more than one waste stream.

The commission has made no changes to the proposal at this time. However, the commission recognizes the merit of the commenter's concern and believes that it is appropriate and desirable to provide maximum flexibility and choices wherever possible with regard to this issue. Thus, the commission will examine the consolidation of financial instruments for separate waste streams during the development of the rules concerning financial assurance requirements for used oil collection facilities, as well as during future revisions to Chapter 37.

With respect to the proposed §37.31(b), concerning when the financial assurance instrument should be submitted, BFI asked the commission to postpone the adoption of this subsection pending an evaluation of the impact on the regulated community and preparation of a supplemental takings impact assessment. BFI was concerned that the current practice of review and approval of registration applications is not consistent with the proposed approach and this represents new financial assurance requirements. BFI contended that under the current practice, a signed financial assurance mechanism is not submitted until after the registration is approved. The proposed rule would require the signed financial assurance mechanism prior to issuance of a registration. BFI claims this could be an added financial and

administrative burden to the applicant. BFI further argued that the preamble to the proposed rule did not adequately address the potential fiscal impact upon the regulated community and any associated affect on private real property in the takings impact assessment (TIA).

The commission disagrees with BFI's comments relating to §37.31(b), because “new financial assurance requirements” were not imposed; instead, existing requirements were modified. As BFI noted, proposed §37.31(b) was modified to require that financial assurance mechanisms be submitted prior to issuance of the registration. However, the existing requirement specifies that a financial assurance document is to be submitted with the application rather than after issuance of the registration as BFI claimed. The commission retains the proposed language, contending that it is a more cost-effective approach. With regard to the TIA and the fiscal impact analysis, the commission considers those analyses to be accurate assessments of the impact of the new rules and has not postponed adoption of the section.

With regard to §37.131, which requires adjustment for inflation 60 days before the anniversary date, BFI also requested that the commission postpone adoption of that section. As with §37.31(b), BFI contends that the preamble does not indicate whether this is a modification of or departure from existing regulations or procedures. Additionally, BFI commented that the TIA and fiscal impact analysis did not properly assess the impact of the proposed change.

The commission acknowledges that proposed §37.131 is a modification to an existing requirement to ensure consistency as to when inflation adjustments must occur. In addition, the commission

considers the TIA and fiscal impact analysis to the proposed rule to be adequate assessments and has not postponed adoption of the section.

Changes were made to the following sections to provide additional clarification. A requirement to proposed §37.201 was added to specify that an owner or operator may submit a written request for release of excess monies held in a trust fund. The new language is found in §37.201(k). In addition, language stating that a surety bond must guarantee that the owner or operator is to provide alternate financial assurance after receipt of a notice of cancellation has been added to proposed §37.221(d).

Also added was a provision to proposed §37.241 which allows an insurance policy to be assigned to a successor owner or operator. The new language is found in §37.241(k).

STATUTORY AUTHORITY

The new sections are adopted under Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 26.341-26.363, 27.019, 32.009, 33.007, and 34.006 and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

SUBCHAPTER A : GENERAL FINANCIAL ASSURANCE REQUIREMENTS

§§37.1, 37.11, 37.21, 37.31, 37.41, 37.51, 37.61, 37.71, 37.81

§37.1. Applicability.

This chapter applies to an owner or operator required by this chapter to provide evidence of financial responsibility. However, this chapter does not apply to owners and operators which are state or federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States.

§37.11. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Assets - All existing and all probable future economic benefits obtained or controlled by a particular entity.

Current assets - Cash or other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.

Current closure cost estimate - The most recent of the estimates prepared for closure and approved by the executive director.

Current liabilities - Obligations whose liquidation is reasonably expected to require the use of existing resources properly classifiable as current assets or the creation of other current liabilities.

Current plugging and abandonment cost estimate - The most recent of the estimates prepared in accordance with Chapter 331 of this title (relating to Underground Injection Control).

Face amount - The total amount the insurer is obligated to pay under an insurance policy.

Financial responsibility - This term shall mean the same as financial assurance.

Independent audit - An audit performed by an independent certified public accountant in accordance with generally accepted auditing standards.

Liabilities - Probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

Net working capital - Current assets minus current liabilities.

Net worth - Total assets minus total liabilities and equivalent to owner's equity.

Standby trust - An unfunded trust established to meet the requirements of this chapter.

Tangible net worth - The tangible assets that remain after deducting liabilities; such assets would not include intangibles such as goodwill and rights to patents or royalties.

§37.21. Wording and Approval of Mechanisms.

The mechanisms submitted for compliance with this chapter must be worded as they appear in Subchapter D or G of this chapter (relating to Wording of the Mechanisms for Closure or Wording of the Mechanisms for Liability). The executive director shall determine the acceptability of the mechanisms submitted.

§37.31. Submission of Documents.

(a) To receive approval as a permitted facility, an owner or operator required by this chapter to provide evidence of financial responsibility must submit an originally signed financial assurance mechanism 60 days prior to acceptance of waste or 60 days prior to beginning operations, whichever occurs first.

(b) To receive approval as a registered facility, an owner or operator required by this chapter to provide evidence of financial responsibility must submit originally signed financial assurance mechanisms prior to issuance of registration.

§37.41. Use of Multiple Financial Assurance Mechanisms.

An owner or operator may satisfy the requirements of this chapter by establishing more than one financial assurance mechanism per facility. The executive director may use any or all of the mechanisms to satisfy the requirements for which financial assurance was provided. These mechanisms are limited to those specified in Subchapter C of this chapter (relating to Financial Assurance Mechanisms for Closure) or Subchapter F of this chapter (relating to Financial Assurance Mechanisms for Liability), except that the financial test or corporate guarantee may not be combined with other mechanisms, provided the mechanisms are for the same facility.

(1) It shall be the combination of mechanisms, rather than the single mechanism, which shall provide financial assurance for an amount that must be at least equal to the minimum financial assurance requirements of this chapter.

(2) If an owner or operator uses a trust fund in combination with a surety bond or irrevocable standby letter of credit, the owner or operator may use that trust fund as the standby trust fund for the other mechanisms.

(3) A single standby trust may be established for two or more mechanisms.

(4) If an owner or operator demonstrates the required liability coverage through the use of a combination of financial assurance mechanisms, the owner or operator shall specify at least one such assurance as “primary” coverage and shall specify other assurance as “excess.”

§37.51. Use of a Financial Assurance Mechanism for Multiple Facilities.

An owner or operator may use a financial assurance mechanism as specified in this chapter to meet the requirements of this chapter for more than one facility, provided that the facilities are of the same type. Evidence of financial assurance submitted to the executive director shall include a list showing, for each facility, the commission registration or permit number, name, address, and the amount of funds assured by the mechanism. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. In directing funds available through the mechanism for closure of any of the facilities covered by the mechanism, the executive director may direct only the amount of funds designated for that facility.

§37.61. Termination of Mechanisms.

The executive director shall provide written consent to termination of a financial assurance mechanism when:

(1) an owner or operator substitutes and receives approval from the executive director for alternate financial assurance as specified in this chapter; or

(2) the executive director releases the owner or operator from the requirements of this chapter.

§37.71. Incapacity of Owners or Operators, Guarantors, or Financial Institutions.

(a) An owner or operator 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 owner or operator as debtor, within ten business days after the commencement of the proceeding. As required under the terms of the guarantee, a guarantor of a corporate guarantee as specified in §37.261 of this title (relating to Corporate Guarantee for Closure) and a corporate guarantee as specified in §37.551 of this title (relating to Corporate Guarantee for Liability) shall make such a notification if he is named as debtor.

(b) An owner or operator who fulfills the requirements of this chapter shall be deemed to be without the required financial assurance coverage in the event of bankruptcy of the trustee or issuing institution, or a suspension or revocation of the authority of the trustee institution to act as trustee or of the institution issuing the surety bond, irrevocable standby letter of credit, or insurance policy to issue such mechanisms. The owner or operator must establish other acceptable financial assurance within 60 days after such an event.

§37.81. Transfer of Ownership or Operational Control.

When a transfer of ownership or operational control occurs, the old owner or operator shall comply with the requirements of this chapter, until the executive director determines that the new owner or operator has demonstrated compliance with the requirements of this chapter. Upon determination by the executive director that the new owner or operator is in compliance with this chapter, the executive director shall provide written consent to termination of the financial assurance mechanism to the old owner or operator in accordance with §37.61 of this title (relating to Termination of Mechanisms)

This agency hereby certifies that the sections as adopted have been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on

SUBCHAPTER B : FINANCIAL ASSURANCE REQUIREMENTS FOR CLOSURE

§§37.100, 37.101, 37.111, 37.121, 37.131, 37.141, 37.151, 37.161

The new sections are proposed under Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 26.341-26.363, 27.019, 32.009, 33.007, and 34.006 and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

§37.100. Applicability.

An owner or operator required by this chapter to establish financial assurance for the closure of a facility must, at a minimum, meet the requirements of this subchapter.

§37.101. Drawing on the Financial Assurance Mechanisms.

The executive director may draw on the financial assurance mechanism(s) when an owner or operator who is required to comply with this chapter has:

- (1) failed to perform closure when required to do so; or
- (2) failed to provide an alternate financial assurance mechanism; or

(3) failed to provide continuous financial assurance coverage.

§37.111. Continuous Coverage Required.

The owner or operator of a facility required by this chapter to provide evidence of financial responsibility for closure shall provide continuous financial assurance coverage until the executive director provides written consent to termination in accordance with §37.61 of this title (relating to Termination of Mechanisms).

§37.121. Closure Cost Estimate.

The owner or operator of each facility required by this chapter to provide evidence of financial responsibility for closure must establish financial assurance in an amount no less than the approved closure cost estimate.

§37.131. Annual Inflation Adjustments to Closure Cost Estimates.

The owner or operator must adjust the current closure cost estimate for inflation within 60 days prior to the anniversary date of the first establishment of the financial assurance mechanism. For owners or operators using the financial test or corporate guarantee, the current closure cost estimate must be updated for inflation within 30 days after the close of the firm's fiscal year and before submission of updated information to the executive director as specified in this chapter. The adjustment

must be made as specified in paragraphs (1) and (2) of this section, using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the United States Department of Commerce in its Survey of Current Business. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

(1) The first adjustment is made by multiplying the current closure cost estimate by the inflation factor. The result is the adjusted closure cost estimate.

(2) Subsequent adjustments are made by multiplying the latest adjusted cost estimate by the latest inflation factor.

§37.141. Increase in Closure Cost Estimate.

Whenever the closure cost estimate increases to an amount greater than the amount being provided in the financial assurance mechanism(s) as a result of changes in closure activities, the owner or operator, within 30 days after the increase, must either cause the amount of the mechanism to be increased and submit evidence of such increase to the executive director, or obtain additional financial assurance in accordance with Subchapter C of this chapter (relating to Financial Assurance Mechanisms for Closure) to cover the increase and receive approval by the executive director.

§37.151. Decrease in Closure Cost Estimate.

Whenever the closure cost estimate decreases to an amount less than the amount being provided in the financial assurance mechanism(s) as a result of changes in closure activities, the owner or operator may request a reduction in the amount of the financial assurance mechanism in writing to the executive director. Following written approval by the executive director, the amount of the mechanism may be reduced to the amount of the current closure cost estimate.

§37.161. Establishment of a Standby Trust.

An owner or operator who uses a surety bond or an irrevocable standby letter of credit to satisfy the requirements of this chapter must establish a standby trust fund. Under the terms of the bond or letter of credit, all payments made under the bond or all amounts paid pursuant to a draft by the executive director shall be deposited by the surety or issuing institution directly into the standby trust fund in accordance with instructions from the executive director. This standby trust fund must meet the requirements of the trust fund specified in §37.201 of this title (relating Trust Fund for Closure), except that:

(1) an originally signed duplicate of the trust agreement must be submitted to the executive director with the surety bond or irrevocable standby letter of credit; and

(2) until the standby trust fund is funded pursuant to the requirements of this chapter, the following are not required by this section:

(A) payments into the trust fund as specified in §37.201 of this title;

(B) updating of Schedule A of the trust agreement to show current closure cost estimates;

(C) annual valuations as required by the trust agreement; and

(D) notices of nonpayment as required by the trust agreement.

This agency hereby certifies that the sections as adopted have been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on

SUBCHAPTER C: FINANCIAL ASSURANCE MECHANISMS FOR CLOSURE

§§37.201, 37.211, 37.221, 37.231, 37.241, 37.251, 37.261

The new sections are proposed under Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 26.341-26.363, 27.019, 32.009, 33.007, and 34.006 and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

§37.201. Trust Fund for Closure.

(a) An owner or operator may satisfy the requirements of financial assurance for closure by establishing either a fully funded trust or a pay-in trust 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), and submitting an originally signed duplicate of the executed trust agreement to the executive director.

(b) The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

(c) The wording of the trust agreement must be identical to the wording specified in §37.301(a) of this title (relating to Trust Agreement for Closure) including a formal certification of acknowledgment as specified in §37.301(b) of this title.

(d) Schedule A of the trust agreement as specified in §37.301(a) of this title must be updated within 30 days after an approved change in the amount of the current closure cost estimate covered by the agreement, or annual inflation adjustments.

(e) A fully funded trust requires that the initial payment into the trust fund be at least equal to the current closure cost estimate, or when a combination of mechanisms are used in accordance with §37.41 of this title (relating to Use of Multiple Financial Assurance Mechanisms), the initial payment plus the amount of the combined mechanism(s) must be at least equal to the current closure cost estimate. A receipt from the trustee for the initial payment must be submitted by the owner or operator to the executive director with the originally signed duplicate of the trust agreement.

(f) A pay-in trust requires annual payments by the owner or operator over the term of the initial registration or permit, the remaining term of the initial registration or permit, or over the remaining operating life of the facility as estimated in the closure plan, whichever period is shorter; this period is hereafter referred to as the “pay-in period.” The payments into the closure trust fund must be made in accordance with this subsection.

(1) For a new facility, a receipt from the trustee for the first payment must be submitted by the owner or operator to the executive director in accordance with §37.31 of this title (relating to Submission of Documents). The first payment must be at least equal to the current closure cost estimate divided by the number of years in the pay-in period; or when a combination of mechanisms are used in accordance with §37.41 of this title, the first payment must be at least equal to the current closure cost estimate less the amount of the combined mechanism(s) divided by the number of years in the pay-in period. Subsequent payments must be made no later than 30 days after each anniversary date of the first payment. The amount of each subsequent payment must be determined by this formula.

$$\text{Next payment} = \frac{\text{CE} - \text{CV}}{\text{Y}}$$

Where CE is the current closure cost estimate, CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

(2) The owner or operator may accelerate payments into the trust fund or he may deposit the full amount of the current closure cost estimate at the time the fund is established. However, he must maintain the value of the fund at no less than the value that the fund would have if annual payments were made as specified in paragraph (1) of this subsection.

(3) If the owner or operator establishes a trust fund after having used another financial assurance mechanism, the first payment must be at least equal to the amount that the fund would

contain if the trust fund was established when the registration or permit was initially issued, and subsequent payments must be made as specified in paragraph (1) of this subsection.

(g) After the initial payment for a fully-funded trust or after the pay-in period is completed for a pay-in trust, whenever the current closure cost estimate changes, the owner or operator must compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator, within 60 days after the change in the cost estimate, must either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current closure cost estimate, or obtain an additional financial assurance mechanism as specified in this subchapter to cover the difference.

(h) If the value of the trust fund is greater than the total amount of the current closure cost estimate, the owner or operator may submit a written request to the executive director for release of the amount in excess of the current closure cost estimate.

(i) Within 60 days after receiving a request from the owner or operator for release of funds as specified in subsection (h) of this section, the executive director, if he approves the request, shall instruct the trustee to release to the owner or operator such funds in writing.

(j) After beginning closure, an owner or operator or any other person authorized by the executive director to perform closure may request reimbursement for closure expenditures by submitting itemized bills to the executive director. The owner or operator may request reimbursements

for partial closure only if sufficient funds are remaining in the trust fund to cover the maximum costs of closing the facility over its remaining operating life. After receiving bills for closure activities, the executive director shall instruct the trustee to make reimbursement in such amounts as the executive director specifies in writing, if the executive director determines that the partial or final closure expenditures are in accordance with the approved closure plan, or otherwise justified. If the executive director has reason to believe that the cost of closure over the remaining life of the facility will be significantly greater than the value of the trust fund, the executive director may withhold reimbursement of such amounts as deemed prudent until it is determined, in accordance with Subchapters A and B of this chapter (relating to General Financial Assurance Requirements and Financial Assurance Requirements for Closure) that the owner or operator is no longer required to maintain financial assurance for final closure of the facility.

(k) If an owner or operator substitutes other financial assurance as specified in this section for all or part of the trust fund, he may submit a written request to the executive director for release of the amount in excess of the current closure cost estimate covered by the trust fund.

§37.211. Surety Bond Guaranteeing Payment for Closure.

(a) An owner or operator may satisfy the requirements of financial assurance for closure by obtaining a surety bond 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), and submitting an originally signed surety bond to the executive director.

(b) The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the United States Department of the Treasury.

(c) The wording of the surety bond must be identical to the wording specified in §37.311 of this title (relating to Payment Bond).

(d) The bond must guarantee that the owner or operator shall:

(1) fund the standby trust fund as specified in §37.161 of this title (relating to Establishment of a Standby Trust) in an amount equal to the penal sum of the bond before the beginning of final closure of the facility; or

(2) fund the standby trust fund as specified in §37.161 of this title in an amount equal to the penal sum within 15 days after an administrative order to begin final closure issued by the executive director becomes final, or within 15 days after an order to begin final closure is issued by the United States district court or other court of competent jurisdiction; or

(3) provide alternate financial assurance as specified in this subchapter, and obtain the executive director's written approval of the assurance provided, within 90 days after receipt by both the owner or operator and the executive director of a notice of cancellation of the bond from the surety.

(e) Under the terms of the bond, the surety shall become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

(f) The penal sum of the bond must be in an amount sufficient to satisfy the requirements for which financial assurance for closure is required, or when a combination of mechanisms are used in accordance with §37.41 of this title (relating to Use of Multiple Financial Assurance Mechanisms), the penal sum of the bond plus the amount of the combined mechanism(s) must be at least equal to the current closure cost estimate.

(g) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the executive director. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the executive director, as evidenced by the return receipts.

§37.221. Surety Bond Guaranteeing Performance for Closure.

(a) An owner or operator may satisfy the requirements of financial assurance for closure by obtaining a surety bond 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), and submitting an originally signed surety bond to the executive director.

(b) The bond must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the United States Department of Treasury.

(c) The wording of the surety bond must be identical to the wording specified in §37.321 of this title (relating to Performance Bond).

(d) A surety bond guaranteeing performance of closure must guarantee that the owner or operator shall:

(1) perform closure in accordance with the closure plan or the closure requirements of the registration or permit for the facility whenever required to do so; and

(2) provide alternate financial assurance as specified in this section, and obtain the executive director's written approval of the assurance provided within 90 days after receipt by both the owner or operator and the executive director of a notice of cancellation of the bond from the surety.

(e) Under the terms of the bond, the surety shall become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. Following a determination by the

executive director that the owner or operator has failed to perform closure in accordance with registration or permit requirements when required to do so, under terms of the bond the surety shall perform closure as guaranteed by the bond or shall deposit the amount of the penal sum of the bond into a standby trust, as specified in §37.161 of this title (relating to Establishment of a Standby Trust), as directed by the executive director to satisfy the financial assurance requirements.

(f) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the executive director. Cancellation of the bond may not occur, however, during the 120 days beginning on the date of the receipt of the notice of cancellation by both the owner or operator and the executive director, as evidenced by the return receipts. If the owner or operator fails to provide an alternate financial assurance mechanism as specified in this subchapter within 90 days of the receipt of notice of cancellation from the surety to the executive director and to the owner or operator, and obtain written approval of the alternate assurance from the executive director, the surety shall be required to perform under the terms of the bond.

(g) The penal sum of the bond must be in an amount sufficient to satisfy the requirements for which financial assurance was required, or when a combination of mechanisms are used in accordance with §37.41 of this title (relating to Use of Multiple Financial Assurance Mechanisms), the penal sum of the bond plus the amount of the combined mechanism(s) must be at least equal to the current closure cost estimate.

(h) The surety shall not be liable for deficiencies in the performance of closure by the owner or operator after the executive director releases the owner or operator from the requirements of this section, in accordance with Subchapter A of this chapter.

§37.231. Irrevocable Standby Letter of Credit for Closure.

(a) An owner or operator may satisfy the requirements of financial assurance for closure by obtaining an irrevocable standby letter of credit 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), and submit an originally signed irrevocable standby letter of credit to the executive director.

(b) The financial institution issuing the irrevocable standby letter of credit shall be an entity that has the authority to issue irrevocable standby letters of credit and whose operations are regulated and examined by a federal or state agency.

(c) The wording of the irrevocable standby letter of credit must be identical to the wording specified in §37.331 of this title (relating to Irrevocable Standby Letter of Credit).

(d) The originally signed irrevocable standby letter of credit must be accompanied by a letter from the owner or operator referring to the irrevocable standby letter of credit by number, issuing institution, and date, and providing the following information: the commission registration or permit

number, name and address of the facility, and the amount of funds assured by the irrevocable standby letter of credit by facility.

(e) The letter of credit must be irrevocable and issued for a period of at least one year. The irrevocable standby letter of credit must provide that the expiration date shall be automatically extended for a period of at least one year unless, at least 120 days before the current expiration date, the issuing institution notifies both the owner or operator and the executive director by certified mail of a decision not to extend the expiration date. Under the terms of the irrevocable standby letter of credit, the 120 days shall begin on the date when both the owner or operator and the executive director have received the notice, as evidenced by the return receipts.

(f) The irrevocable standby letter of credit must be issued in an amount sufficient to satisfy the requirements for which financial assurance is required, or when a combination of mechanisms are used in accordance with §37.41 of this title (relating to Use of Multiple Financial Assurance Mechanisms), the amount of the letter of credit plus the amount of the combined mechanism(s) must be at least equal to the current closure cost estimate.

(g) Following a determination that the owner or operator has failed to satisfy the requirements for which financial assurance is required or with the registration or permit requirements when required to do so, the executive director may draw on the irrevocable standby letter of credit and deposit such funds into a standby trust for the closure of the facility.

(h) If the owner or operator does not establish alternate financial assurance as specified in this subchapter and obtain written approval of such alternate assurance from the executive director within 90 days after receipt by both the owner or operator and the executive director of a notice from the issuing institution that it has decided not to extend the irrevocable standby letter of credit beyond the current expiration date, the executive director shall draw on the irrevocable standby letter of credit. The executive director may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last 30 days of any such extension, the executive director shall draw on the irrevocable standby letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in this chapter and obtain written approval of such assurance from the executive director.

§37.241. Insurance for Closure.

(a) An owner or operator may satisfy the requirements of financial assurance for closure by obtaining insurance 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), and submitting an originally signed certificate to the executive director.

(b) At a minimum, the insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states.

(c) The wording of the certificate of insurance must be identical to the wording specified in §37.341 of this title (relating to Certificate of Insurance).

(d) The insurance policy must be issued for a face amount at least sufficient to satisfy the requirements for which financial assurance for closure is required, or when a combination of mechanisms are used in accordance with §37.41 of this title (relating to Use of Multiple Financial Assurance Mechanisms), the face amount plus the amount of the combined mechanism(s) must be at least equal to the current closure cost estimate. Actual payments by the insurer shall not change the face amount, although the insurer's future liability shall be lowered by the amount of the payments.

(e) For a claims-made insurance policy, the owner or operator shall place in escrow, as instructed by the executive director, an amount sufficient to pay an additional year of premiums for renewal of the policy. When the owner or operator fails to provide an alternate financial assurance mechanism, the executive director may use these funds to renew the policy.

(f) The insurance policy must guarantee that funds shall be available whenever needed to fulfill obligations of the insured under this chapter. The policy shall also guarantee that once closure of a facility for which closure insurance was provided begins, the issuer shall be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the executive director, to such party or parties as the executive director specifies.

(g) After beginning closure of a facility, an owner or operator or any other person authorized to perform closure may request reimbursement for closure expenditures by submitting itemized bills to the executive director. Within 60 days after receiving bills for closure activities, the executive director shall determine whether the closure expenditures are in accordance with the closure plan or the closure requirements, and if so, he shall instruct the insurer to make reimbursement in such amounts as the executive director specifies in writing. If the executive director has reason to believe that the cost of closure will be significantly greater than the face amount of the policy, he may withhold reimbursement of such amounts as he deems prudent until he determines, in accordance with Subchapters A and B of this chapter, that the owner or operator is no longer required to maintain general financial assurance requirements for the facility. If the executive director does not instruct the insurer to make such reimbursements, he shall provide the owner or operator with a detailed written statement of reasons.

(h) The owner or operator must maintain the policy in full force and effect until the executive director consents to termination of the policy by the owner or operator as specified in Subchapter A of this chapter. Failure to pay the premium, without substitution of alternate financial assurance as specified in this subchapter, shall constitute a violation of these regulations, warranting such remedy as the executive director deems necessary. Such violation shall be deemed to begin upon receipt by the executive director of a notice of cancellation, termination, or failure to renew due to nonpayment of the premium, rather than upon the date of expiration of the policy.

(i) 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 shall, at a minimum,

provide the insured with the mechanism of renewal at the face amount 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 owner or operator 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 owner or operator, as evidenced by the return receipts.

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

(1) the executive director deems the facility abandoned; or

(2) the registration or permit expires, is terminated, or revoked, or a new or renewal registration or permit is denied; or

(3) closure is ordered by the executive director of the commission or by a United States district court or other court of competent jurisdiction; or

(4) the owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), United States Code; or

(5) the premium due is paid.

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

§37.251. Financial Test for Closure.

(a) An owner or operator may satisfy the requirements of financial assurance for closure by obtaining a financial test or a financial test and corporate guarantee which conforms to the requirements of this section, in addition to the requirements specified in Subchapters A and B of this chapter (relating to General Financial Assurance Requirements and Financial Assurance Requirements for Closure).

(b) To pass this test, the owner or operator must meet the criteria of either paragraph (1) or (2) of this subsection:

(1) the owner or operator must have:

(A) two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and

(B) net working capital and tangible net worth each at least six times the sum of the current closure cost estimate, liability coverage requirements, and any other financial assurance

obligations under the Texas Natural Resource Conservation Commission (TNRCC) or other federal or state environmental regulations assured by a financial test; and

(C) tangible net worth of at least \$10 million; and

(D) assets located in the United States amounting to at least 90% of the owner's or operator's total assets or at least six times the sum of the current closure cost estimate, liability coverage requirements, and any other financial assurance obligations under the TNRCC or other federal or state environmental regulations assured by a financial test;

(2) the owner or operator must have:

(A) a current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; and

(B) tangible net worth at least six times the sum of the current closure cost estimate and liability coverage requirements and any other financial assurance obligations under TNRCC or other federal or state environmental regulations assured by a financial test; and

(C) tangible net worth of at least \$10 million; and

(D) assets located in the United States amounting to at least 90% of the owner's or operator's total assets or at least six times the sum of the current closure cost estimates, liability coverage requirements, and any other financial assurance obligations under TNRCC or other federal or state environmental regulations assured by a financial test.

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

(1) a letter signed by the owner's or operator's chief financial officer worded identical to the wording specified in §37.351 of this title (relating to Financial Test). If an owner or operator is using the financial test to demonstrate both assurance for closure, as specified in Subchapter B of this chapter (relating to Financial Assurance Requirements for Closure) and liability coverage, he must submit the letter specified the Financial Test for Liability, Part B in §37.651 of this title (relating to Financial Test for Liability) to cover both forms of financial responsibility. A separate letter as specified in §37.351 of this title is not required; and

(2) a copy of the owner's or operator's independently audited year-end financial statements for the latest fiscal year including the "unqualified opinion" of the auditor; and

(3) a special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:

(A) he has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

(B) in connection with that procedure, he found such amounts to be in agreement.

(d) After the initial submission of items specified in subsection (c) of this section, the owner or operator must send updated information to the executive director within 90 days after the close of each succeeding fiscal year. This information shall consist of all three items specified in subsection (c) of this section.

(e) If the owner or operator no longer meets the requirements of subsection (b) of this section, he shall send notice to the executive director of intent to establish alternate financial assurance as specified in this subchapter. The notice must be sent by certified mail within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements. The owner or operator shall provide the alternate financial assurance within 120 days after the end of such fiscal year.

(f) The executive director may, based on a reasonable belief that the owner or operator may no longer meet the requirements of subsection (b) of this section, require reports of financial condition at any time from the owner or operator in addition to those specified in subsection (c) of this section. If

the executive director finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of subsection (b) of this section, the owner or operator must provide alternate financial assurance as specified in this subchapter within 30 days after notification of such a finding.

(g) The executive director may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the owner's or operator's financial statements. An adverse opinion or disclaimer of opinion shall be cause for disallowance. The executive director shall evaluate other qualifications on an individual basis. The owner or operator shall provide alternate financial assurance as specified in this subchapter within 30 days after notification of the disallowance.

§37.261. Corporate Guarantee for Closure.

(a) An owner or operator may satisfy the requirements of financial assurance for closure by obtaining a written guarantee, hereafter referred to as "corporate guarantee," which conforms to the requirements of this section, in addition to the requirements as specified in Subchapters A and B of this chapter (relating to General Financial Assurance Requirements and Financial Assurance Requirements for Closure).

(b) The guarantor shall be the direct or higher-tier parent corporation of the owner or operator. The guarantor must meet the requirements for owners or operators as specified in §37.251 of this title

(relating to Financial Test for Closure). The guarantor must comply with the terms of the corporate guarantee.

(c) The wording of the corporate guarantee must be identical to the wording specified in §37.361 of this title (relating to Corporate Guarantee for Closure). The corporate guarantee shall accompany the items sent to the executive director as specified in §37.251(c) of this title.

(d) The terms of the corporate guarantee shall provide that:

(1) if the owner or operator fails to perform closure of the facility covered by the corporate guarantee in accordance with the closure plan or the closure requirements whenever required to do so, the guarantor shall do so or establish a trust fund as specified in §37.201 of this title (relating to Trust Fund for Closure) in the name of the owner or operator;

(2) the corporate guarantee shall remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and the executive director. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the executive director, as evidenced by the return receipts;

(3) if the owner or operator fails to provide alternate financial assurance as specified in this subchapter and obtain the written approval of such alternate assurance from the executive director within 90 days after receipt by both the owner or operator and the executive director of a notice of

cancellation of the corporate guarantee from the guarantor, the guarantor shall provide such alternative financial assurance in the name of the owner or operator.

This agency hereby certifies that the sections as adopted have been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on

SUBCHAPTER D: WORDING OF THE MECHANISMS FOR CLOSURE

§§37.301, 37.311, 37. 321, 37.331, 37.341, 37.351, 37.361

The new sections are proposed under Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 26.341-26.363, 27.019, 32.009, 33.007, and 34.006 and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

§37.301. Trust Agreement for Closure.

(a) A trust agreement for a closure trust fund, as specified in §37.201 of this title (relating to Trust Fund for Closure), must be worded as specified in Figure 1: Trust Agreement, except that the instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted.

Figure 1: 30 TAC §37.301(a)

(b) Figure 2: Certification of Acknowledgment is the certification of acknowledgment which must accompany the trust agreement for a trust fund as specified in §37.201 of this title. Figure 2: 30

TAC §37.301(b)

§37.311. Payment Bond.

A surety bond guaranteeing payment for closure, as specified in §37.211 of this title (relating to Surety Bond Guaranteeing Payment for Closure), must be worded as in the Payment Bond for Closure, except that the instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted. Figure: 30 TAC §37.311

§37.321. Performance Bond.

A surety bond guaranteeing performance for closure, as specified in §37.221 of this title (relating to Surety Bond Guaranteeing Performance for Closure), must be worded as in the Performance Bond for Closure, except that the instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted. Figure: 30 TAC §37.321

§37.331. Irrevocable Standby Letter of Credit.

An irrevocable standby letter of credit for closure, as specified in §37.231 of this title (relating to Irrevocable Standby Letter of Credit for Closure), must be worded as in the Irrevocable Standby Letter of Credit for Closure, except that the instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted. Figure: 30 TAC §37.331

§37.341. Certificate of Insurance.

A certificate of insurance for closure, as specified in §37.241 of this title (relating to Insurance for Closure), must be worded as in the Certificate of Insurance for Closure, except that the instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted. Figure: 30 TAC §37.341

§37.351. Financial Test.

A letter from the chief financial officer for closure, as specified in §37.251 of this title (relating to Financial Test for Closure) must be worded as in the Financial Test for Closure, except that the instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted. Figure: 30 TAC §37.351

§37.361. Corporate Guarantee for Closure.

A corporate guarantee for closure as specified in §37.261 of this title (relating to Corporate Guarantee for Closure) must be worded as in the Corporate Guarantee for Closure, except that the instructions in parenthesis are to be replaced with the relevant information and the parenthesis material deleted. Figure: 30 TAC §37.361

This agency hereby certifies that the sections as adopted have been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on

**SUBCHAPTER E : FINANCIAL ASSURANCE REQUIREMENTS
FOR LIABILITY COVERAGE**

§§37.400, 37.401, 37.411

The new sections are proposed under Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 26.341-26.363, 27.019, 32.009, 33.007, and 34.006 and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

§37.400. Applicability.

An owner or operator required by this chapter to establish financial assurance for sudden liability coverage for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility must, at a minimum, meet the requirements of this subchapter.

§37.401. Liability Requirements for Sudden Accidental Occurrences.

(a) An owner or operator shall establish liability coverage for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator shall have and maintain liability coverage for sudden

accidental occurrences in the amount specified in this chapter, exclusive of legal defense costs. The owner or operator shall choose from one or more mechanisms as specified in Subchapter F of this chapter (relating to Financial Assurance Mechanisms for Liability) to meet the liability requirements for sudden accidental occurrences.

(b) An owner or operator shall notify the executive director in writing within 30 days:

(1) whenever a claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial assurance mechanism authorized in Subchapter F of this chapter; or

(2) whenever a Certification of Valid Claim for bodily injury or property damages caused by a sudden accidental occurrence arising from the operation of a facility is entered between the owner or operator and third-party claimant for liability coverage under Subchapter F of this chapter; or

(3) whenever a final court order establishing a judgment for bodily injury or property damage caused by a sudden accidental occurrence arising from the operation of a facility is issued against the owner, operator, or a financial assurance mechanism that is providing financial assurance for liability coverage under Subchapter F of this chapter.

§37.411. Adjustments to the Level of Liability Coverage.

If the executive director determines that the level of financial responsibility required by §37.401 of this title (relating to Liability Requirements for Sudden Accidental Occurrences) are not consistent with the degree and duration of risk associated with the facility or group of facilities, the executive director may adjust the level of financial responsibility required under §37.401 of this title as may be necessary to protect human health and the environment. An owner or operator must furnish to the executive director, within 30 days, any information which the executive director requests to determine whether cause exists for such adjustments of level of coverage. Any adjustment to financial assurance of the level for a facility that has a permit or registration will be treated as a permit or registration modification, unless the rule changes the amount required.

This agency hereby certifies that the sections as adopted have been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on

SUBCHAPTER F : FINANCIAL ASSURANCE MECHANISMS FOR LIABILITY

§§37.501, 37.511, 37.521, 37.531, 37.541, 37.551

The new sections are proposed under Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 26.341-26.363, 27.019, 32.009, 33.007, and 34.006 and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

§37.501. Trust Fund for Liability.

(a) An owner or operator may satisfy the requirements of financial assurance for liability as specified in Subchapter E of this chapter (relating to Financial Assurance Requirements for Liability Coverage) by establishing a fully-funded trust which conforms to the requirements of this section, in addition to the requirements specified in Subchapter A of this chapter (relating to General Financial Assurance Requirements), and submitting an originally signed duplicate of the trust agreement to the executive director.

(b) The trustee shall be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

(c) The wording of the trust agreement must be identical to the wording specified in §37.601(a) of this title (relating to Trust Agreement for Liability), including a formal certification of acknowledgment as specified in §37.601(b) of this title.

(d) The trust fund for liability shall be funded for the full amount of the liability coverage to be provided by the trust before it may be relied upon to satisfy the requirements of financial assurance for liability. If at any time after the trust is created the amount of funds in the trust is reduced below the full amount of the liability coverage to be provided, the owner or operator, by the anniversary date of the establishment of the trust, shall either add sufficient funds to the trust to cause its value to equal the full amount of liability coverage to be provided, or obtain other financial assurance mechanism as specified in this subchapter to cover the difference. For purposes of this section, "the full amount of liability coverage to be provided" means the amount of coverage for sudden accidental occurrences required to be provided less the amount of liability coverage being provided by other financial assurance mechanisms being used to demonstrate financial assurance by the owner or operator.

(e) If the value of the trust fund is greater than the total amount of the required liability coverage, the owner or operator may submit a written request to the executive director for release of the amount in excess of the required liability coverage.

(f) If an owner or operator substitutes other financial assurance as specified in this subchapter for all or part of the trust fund, he may submit a written request to the executive director for release of the amount in excess of the required liability coverage as covered by the trust fund.

(g) Within 60 days after receiving a request from the owner or operator for release of funds as specified in subsection (e) or (f) of this section, the executive director, if he approves the request, shall instruct the trustee in writing to release to the owner or operator such funds.

§37.511. Surety Bond Guaranteeing Payment for Liability.

(a) An owner or operator may satisfy the requirements of financial assurance for liability as specified in Subchapter E of this chapter (relating to Financial Assurance Requirements for Liability Coverage) by establishing a surety bond which conforms to the requirements of this section, in addition to the requirements specified in Subchapter A of this chapter (relating to General Financial Assurance Requirements), and submitting a signed duplicate original of the bond to the executive director.

(b) The surety company issuing the bond shall be among those listed as acceptable sureties on Federal bonds in the most recent Circular 570 of the United States Department of the Treasury.

(c) The wording of the surety bond must be identical to the wording specified in §37.611 of this title (relating to Payment Bond for Liability).

(d) Under the terms of the bond, the surety shall become liable on the bond obligation when the owner or operator fails to satisfy a third party liability claim as guaranteed by the bond.

(e) The penal sum of the bond must be in an amount, sufficient to satisfy the requirements for which financial assurance for liability is required, or when a combination of mechanisms are used in accordance with §37.41 of this title (relating to Use of Multiple Financial Assurance Mechanisms), the penal sum of the bond plus the amount of the combined mechanism(s) must be at least equal to the required liability coverage.

(f) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the executive director. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the executive director, as evidence by the return receipts.

§37.521. Irrevocable Standby Letter of Credit for Liability.

(a) An owner or operator may satisfy the requirements of financial assurance for liability as specified in Subchapter E of this chapter (relating to Financial Assurance Requirements for Liability Coverage) by establishing an irrevocable standby letter of credit which conforms to the requirements of this section, in addition to the requirements specified in Subchapter A of this chapter (relating to General Financial Assurance Requirements), and submitting an originally signed irrevocable standby letter of credit to the executive director.

(b) The financial institution issuing the irrevocable standby letter of credit shall be an entity that has the authority to issue irrevocable standby letters of credit and whose letter of credit operations are regulated and examined by a federal or state agency.

(c) The wording of the irrevocable standby letter of credit must be identical to the wording specified in §37.621 of this title (relating to Irrevocable Letter of Credit for Liability).

(d) The letter of credit must be irrevocable and issued for a period of at least one year. The irrevocable standby letter of credit must provide that the expiration date shall be automatically extended for a period of at least one year unless, at least 120 days before the current expiration date, the issuing institution notifies both the owner or operator and the executive director by certified mail of a decision not to extend the expiration date. Under the terms of the irrevocable standby letter of credit, the 120 days shall begin on the date when both the owner or operator and the executive director have received the notice, as evidenced by the return receipts.

(e) The irrevocable standby letter of credit must be issued in an amount sufficient to satisfy the requirements for which financial assurance is required, or when a combination of mechanisms are used in accordance with §37.41 of this title (relating to Use of Multiple Financial Assurance Mechanisms), the amount of the letter of credit plus the amount of the combined mechanism(s) must be at least equal to the required liability coverage.

(f) If the owner or operator does not establish alternate financial assurance as specified in this subchapter and obtain written approval of such alternate assurance from the executive director within 90 days after receipt by both the owner or operator and the executive director of a notice from the issuing institution that it has decided not to extend the irrevocable standby letter of credit beyond the current expiration date, the executive director shall draw on the irrevocable standby letter of credit. The executive director may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last 30 days of any such extension, the executive director shall draw on the irrevocable standby letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in this subchapter and obtain written approval of such assurance from the executive director.

§37.531. Insurance for Liability.

(a) An owner or operator may satisfy the requirements of financial assurance for liability as specified in Subchapter E of this chapter (relating to Financial Assurance Requirements for Liability Coverage) by obtaining insurance which conforms to the requirements of this section, in addition to the requirements specified in Subchapter A of this chapter (relating to General Financial Assurance Requirements), and submitting a signed duplicate original of the endorsement or certificate of insurance to the executive director.

(b) At a minimum, the insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states.

(c) The wording of the certificate of insurance must be identical to the wording specified in §37.631 of this title (relating to Certificate of Insurance for Liability); or the wording of the endorsement must be identical to the wording specified in §37.641 of this title (relating to Endorsement for Liability).

(d) The insurance policy shall be amended by attachment of the Liability Endorsement or evidenced by a Certificate of Liability Insurance. If requested by the executive director, the owner or operator shall provide a signed duplicate original of the insurance policy.

(e) The insurance policy must be issued for a face amount at least sufficient to satisfy the requirements for which financial assurance for liability is required, or when a combination of mechanisms are used in accordance with §37.41 of this title (relating to Use of Multiple Financial Assurance Mechanisms), the face amount plus the amount of the combined mechanism(s) must be at least equal to the required liability coverage.

(f) The insurance policy must guarantee that funds shall be available whenever needed to fulfill obligations of the insured under this chapter. Under the terms of the policy, the insurer shall become liable on the insurance obligation when the owner or operator fails to satisfy a third party liability claim as guaranteed by the policy. The policy shall also guarantee that when the third party claimant provides a valid certificate of claim for payment, the insurer shall be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the executive director, to such party or parties as the executive director specifies.

(g) The owner or operator must maintain the policy in full force and effect until the executive director consents to termination of the policy by the owner or operator as specified in Subchapter A of this chapter. Failure to pay the premium, without substitution of alternate financial assurance as specified in this subchapter, shall constitute a violation of these regulations, warranting such remedy as the executive director deems necessary. Such violation shall be deemed to begin upon receipt by the executive director of a notice of cancellation, termination, or failure to renew due to nonpayment of the premium, rather than upon the date of expiration of the policy.

(h) 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 shall, at a minimum, provide the insured with the mechanism of renewal at the face amount 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 owner or operator and the executive director. Cancellation, termination, or failure to renew may not occur, however, during 120 days beginning with date of receipt of the notice by both the executive director and the owner or operator, as evidenced by the return of receipts.

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

- (1) the executive director deems the facility abandoned; or

(2) the registration or permit expires, is terminated, or revoked or a new or renewal registration or permit is denied; or

(3) closure is ordered by the executive director of the commission or by a United States district court or other court of competent jurisdiction; or

(4) the owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), United States Code; or

(5) the premium due is paid.

§37.541. Financial Test for Liability.

(a) An owner or operator may satisfy the requirements of financial assurance for liability as specified in Subchapter E of this chapter (relating to Financial Assurance Requirements for Liability Coverage) by demonstrating that he passes a financial test which conforms to the requirements of this section, in addition to the requirements specified in Subchapter A of this chapter (relating to General Financial Assurance Requirements).

(b) To pass this test, the owner or operator must meet the criteria of either paragraph (1) or (2) of this subsection:

(1) the owner or operator must have:

(A) net working capital and tangible net worth each at least six times the amount of liability coverage to be demonstrated by this test; and

(B) tangible net worth of at least \$10 million; and

(C) assets in the United States amounting to either:

(i) at least 90% of his total assets; or

(ii) at least six times the amount of liability coverage to be demonstrated by this test.

(2) the owner or operator must have:

(A) a current rating for the owner's or operator's most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; and

(B) tangible net worth of at least \$10 million; and

(C) assets in the United States amounting to either:

(i) at least 90% of his total assets; or

(ii) at least six times the amount of liability coverage to be

demonstrated by this test.

(c) To demonstrate that the owner or operator meets this test, the owner or operator shall submit the following items to the executive director:

(1) a letter signed by the owner's or operator's chief financial officer and worded as specified in the Financial Test for Liability, Part A, §37.651 of this title (relating to Financial Test for Liability). If an owner or operator is using the financial test to demonstrate both assurance for closure, as specified in Subchapter B of this chapter (relating to Financial Assurance Requirements for Closure), and liability coverage, he must submit the letter specified in the Financial Test for Liability, Part B, §37.651 of this title to cover both forms of financial responsibility. A separate letter as specified in §37.351 of this title (relating to Financial Test) is not required; and

(2) a copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and

(3) a special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:

(A) he has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

(B) in connection with that procedure, he found such amounts to be in agreement.

(d) After the initial submission of items specified in subsection (c) of this section, the owner or operator shall send updated information to the executive director within 90 days after the close of each succeeding fiscal year. This information shall consist of all three items specified in subsection (c) of this section.

(e) If the owner or operator no longer meets the requirements of subsection (b) of this section, he shall send notice to the executive director of intent to establish alternate financial assurance as specified in this subchapter. The notice shall be sent by certified mail within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements. The owner or operator shall provide the alternate financial assurance within 120 days after the end of such fiscal year.

(f) The executive director may, based on a reasonable belief that the owner or operator may no longer meet the requirements of subsection (b) of this section, require reports of financial condition at any time from the owner or operator in addition to those specified in subsection (c) of this section. If the executive director finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of subsection (b) of this section, the owner or operator shall provide alternate financial assurance as specified in this subchapter within 30 days after notification of such a finding.

(g) The executive director may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the owner's or operator's financial statements. An adverse opinion or disclaimer of opinion shall be cause for disallowance. The executive director shall evaluate other qualifications on an individual basis. The owner or operator shall provide alternate financial assurance as specified in this section within 30 days after notification of the disallowance.

§37.551. Corporate Guarantee for Liability.

(a) An owner or operator may meet the requirements of financial assurance for liability as specified in Subchapter E of this chapter (relating to Financial Assurance Requirements for Liability Coverage) by obtaining a written guarantee for liability coverage, hereinafter referred to as "corporate guarantee," which conforms to the requirements of this section, in addition to the requirements as specified in Subchapter A of this chapter (relating to General Financial Assurance Requirements).

(b) The guarantor must be the direct or higher-tier parent corporation of the owner or operator.

The guarantor must meet the requirements for owners or operators as specified in §37.541 of this title (relating to Financial Test for Liability). The guarantor must comply with the terms of the corporate guarantee.

(c) The wording of the corporate guarantee must be identical to the wording specified in §37.661 of this title (relating to Corporate Guarantee). The corporate guarantee shall accompany the items sent to the executive director as specified in §37.541(c) of this title.

(d) The terms of the corporate guarantee shall provide that:

(1) if the owner or operator fails to satisfy a judgement based on a determination of liability for bodily injury or property damage to third parties caused by sudden accidental occurrences, arising from the operation of facilities covered by this corporate guarantee, or fails to pay an amount agreed to in settlement of claims arising from or alleged to arise from such injury or damage, the guarantor shall do so up to the limits of coverage;

(2) if the owner or operator fails to provide alternate financial assurance as specified in this subchapter and obtain the written approval of such alternate assurance from the executive director within 90 days after receipt by both the owner or operator and the executive director of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor shall provide such alternative financial assurance in the name of the owner or operator.

(e) In the case of corporation incorporated in the United States, a guarantee may be used to satisfy the requirements of this section only if the Attorneys General or Insurance Commissioners of:

(1) the state in which the guarantor is incorporated; and

(2) each state in which a facility covered by the guarantee is located have submitted a written statement to the United States Environmental Protection Agency (EPA) that a guarantee executed as described in this section and §37.661 of this title (relating to Corporate Guarantee) is a legally valid and enforceable obligation in that state.

This agency hereby certifies that the sections as adopted have been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on

SUBCHAPTER G : WORDING OF THE MECHANISMS FOR LIABILITY

§§37.601, 37.611, 37.621, 37.631, 37.641, 37.651, 37.661

The new sections are proposed under Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 26.341-26.363, 27.019, 32.009, 33.007, and 34.006 and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

§37.601. Trust Agreement for Liability.

(a) A trust agreement for a liability trust fund, as specified in §37.501 of this title (relating to Trust Fund for Liability), must be worded as specified in Figure 1: Trust Agreement, except that the instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted and wherever closure information appears within braces that information shall be deleted. Figure 1: 30 TAC §37.601(a)

(b) Figure 2: Certification of Acknowledgment is the certification of acknowledgment which must accompany the trust agreement for a trust fund as specified in this section. Figure 2: 30 TAC §37.601(b)

§37.611. Payment Bond for Liability.

A surety bond guaranteeing payment for liability, as specified in §37.511 of this title (relating to Surety Bond Guaranteeing Payment for Liability), must be worded as in the Payment Bond for Liability, except that the instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted. Figure: 30 TAC §37.611

§37.621. Irrevocable Letter of Credit for Liability.

An irrevocable standby letter of credit for liability, as specified in §37.521 of this title (relating to Irrevocable Standby Letter of Credit for Liability), must be worded as in the Irrevocable Standby Letter of Credit for Liability, except that the instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted. Figure: 30 TAC §37.621

§37.631. Certificate of Insurance for Liability

A certificate of liability insurance, as specified in §37.531 of this title (relating to Insurance for Liability), must be worded as in the Certificate of Insurance for Liability, except that instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted. Figure: 30 TAC §37.631

§37.641. Endorsement for Liability.

A liability endorsement as specified in §37.531 of this title (relating to Insurance for Liability), must be worded as in the Endorsement for Liability, except that instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted. Figure: 30 TAC §37.641

§37.651. Financial Test for Liability.

A letter from the chief financial officer for liability, as specified in §37.541 of this title (relating to Financial Test for Liability) must be worded as in the Financial Test for Liability, except that instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted. Figure: 30 TAC §37.651

§37.661. Corporate Guarantee.

A corporate guarantee for liability as specified in §37.551 of this title (relating to Corporate Guarantee for Liability) must be worded as in the Corporate Guarantee for Liability, except that instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted. Figure: 30 TAC §37.661

This agency hereby certifies that the sections as adopted have been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on

SUBCHAPTER J : FINANCIAL ASSURANCE FOR PERMITTED

COMPOST FACILITIES

§§37.901, 37.911, 37.931

The new sections are proposed under Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 26.341-26.363, 27.019, 32.009, 33.007, and 34.006 and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

§37.901. Applicability.

This subchapter applies to permitted compost facilities required to provide evidence of financial assurance under §332.47 of this title (relating to Permit Application Preparation).

§37.911. Definitions.

For definitions of compost facilities and other definitions not found in Subchapter A of this chapter (relating to General Financial Assurance Requirements), see Chapter 332, Subchapters A and D of this title (relating to General Information and Operations Requiring a Permit), §332.2 of this title (relating to Definitions), and §332.41 of this title (relating to Definition, Requirements, and Application Processing for a Permit Facility).

§37.921. Financial Assurance Requirements for Closure of a Compost Facility.

An owner or operator of a permitted compost facility subject to this subchapter shall establish financial assurance for the closure of the facility that meets the requirements of this section, in addition to Subchapters A, B, C, and D of this chapter (relating to General Financial Assurance Requirements; Financial Assurance Requirements for Closure; Financial Assurance Mechanisms for Closure; and Wording of the Mechanisms for Closure).

§37.931. Financial Assurance Mechanisms Available for Permitted Compost Facility.

An owner or operator subject to this subchapter may utilize a(n):

- (1) trust fund (fully-funded or pay-in trust);
- (2) surety bond guaranteeing payment;
- (3) surety bond guaranteeing performance;
- (4) irrevocable letter of credit;
- (5) insurance;

(6) financial test; or

(7) corporate guarantee, as specified in Subchapter C of this chapter (relating to Financial Assurance Mechanisms for Closure) to demonstrate financial assurance for closure.

This agency hereby certifies that the sections as adopted have been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on

SUBCHAPTER K : FINANCIAL ASSURANCE REQUIREMENTS
FOR CLASS A OR B PETROLEUM-SUBSTANCE CONTAMINATED SOIL
STORAGE, TREATMENT, AND REUSE FACILITIES

§§37.1001, 37.1011, 37.1021

The new sections are proposed under Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 26.341-26.363, 27.019, 32.009, 33.007, and 34.006 and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

§37.1001. Applicability.

This subchapter applies to Class A or B petroleum-substance contaminated soil storage, treatment, or reuse facilities required to provide evidence of financial assurance under Chapter 334, Subchapter K of this title (relating to Storage, Treatment, and Reuse Procedures for Petroleum-Substance Contaminated Soil).

§37.1011. Financial Assurance Requirements for Closure of Class A and B Facilities.

An owner or operator of a Class A or B petroleum-substance contaminated soil storage, treatment, or reuse facility subject to this subchapter shall establish financial assurance for the closure

the facility that meets the requirements of this section, in addition to the requirements specified under Subchapters A, B, C, and D of this chapter (relating to General Financial Assurance Requirements; Financial Assurance Requirements for Closure; Financial Assurance Mechanisms for Closure; and Wording of the Mechanisms for Closure).

(1) The financial assurance shall be in the amount specified in the cost estimate for closure pursuant to §334.508 of this title (relating to Closure Requirements Applicable to Class A and Class B Facilities).

(2) An owner or operator subject to this subchapter may utilize a(n):

- (A) fully-funded trust;
- (B) surety bond guaranteeing payment;
- (C) surety bond guaranteeing performance;
- (D) irrevocable standby letter of credit;
- (E) insurance;
- (F) financial test; or

(G) corporate guarantee, as specified in Subchapter C of this chapter (relating to Financial Assurance Mechanisms for Closure) to demonstrate financial assurance for closure.

(3) Within 60 days after receiving certifications from the owner or operator and an independent qualified hydro geologist, geologist, or independent registered professional engineer that closure has been completed in accordance with the approved closure plan, the executive director shall notify the owner or operator in writing that he is no longer required by this section to maintain financial assurance for closure, as specified in Subchapter B of this chapter (relating to Financial Assurance Requirements for Closure) for that facility, unless the executive director has reason to believe that closure has not been in accordance with the approved closure plan.

§37.1021. Liability requirements for Class A and B Facilities.

An owner or operator of a Class A or B petroleum-substance contaminated soil storage, treatment, or reuse facility subject to this subchapter shall establish financial assurance for sudden liability coverage for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility that meets the requirements of this section, in addition to the requirements specified under Subchapters A, E, F, and G of this chapter (relating to General Financial Assurance Requirements; Financial Assurance Requirements for Liability Coverage; Financial Assurance Mechanisms for Liability; and Wording of the Mechanisms for Liability).

(1) An owner or operator must have and maintain liability coverage for sudden accidental occurrences in the amount of at least \$1 million per occurrence with an annual aggregate of at least \$2 million, exclusive of legal defense costs.

(2) An owner or operator subject to this subchapter may utilize a(n):

(A) fully-funded trust;

(B) surety bond guaranteeing payment;

(C) irrevocable standby letter of credit;

(D) insurance;

(E) financial test; or

(F) corporate guarantee, as specified in Subchapter F of this chapter (relating to Financial Assurance Mechanisms for Liability) to demonstrate financial assurance for sudden liability.

(3) Within 60 days after receiving certifications from the owner or operator and an independent qualified hydro geologist, geologist, or independent registered professional engineer, that closure has been accomplished in accordance with the approved closure plan, the executive director

shall notify the owner or operator in writing that he is no longer required by this section to maintain financial assurance for sudden liability coverage, as specified in §37.401 of this title (relating to Liability Requirements for Sudden Accidental Occurrences), and by this section for that facility, unless the executive director has reason to believe that closure has not been in accordance with the approved closure plan.

This agency hereby certifies that the sections as adopted have been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on

Figure 1: 30 TAC §37.301(a)

TRUST AGREEMENT

TRUST AGREEMENT, the "Agreement," entered into as of (date) by and between (name of the owner or operator), a (name of State) (insert "corporation," "partnership," "association," or "proprietorship"), the "Grantor," and (name of corporate trustee), (insert "incorporated in the State of _____" or "a national bank"), the "Trustee."

Whereas, the Texas Natural Resource Conservation Commission, "TNRCC," an agency of the State of Texas, has established certain regulations applicable to the Grantor, requiring that an owner or operator of a facility(ies) shall provide assurance that funds will be available when needed for closure of the facility.

Whereas, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the facility(ies) identified herein,

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee,

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

(c) Facility or activity means any "facility" or any other facility or activity that is subject to regulation under 30 TAC Chapter 37.

Section 2. Identification of Facilities and Cost Estimates. This Agreement pertains to the facilities and cost estimates identified on attached Schedule A (on Schedule A, for each facility list the TNRCC registration or permit number, name, address, and the current closure cost estimate, or portions thereof, for which financial assurance is demonstrated by this Agreement.

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of TNRCC. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by TNRCC.

Section 4. Payment for Closure. The Trustee shall make payments from the Fund as the TNRCC executive director shall direct, in writing, to provide for the payment of the costs of closure of the facilities covered by this Agreement. The Trustee shall reimburse the Grantor or other persons as specified by the TNRCC executive director from the Fund for closure expenditures in such amounts as the TNRCC executive director shall direct in writing. In addition, the Trustee shall refund to the

Grantor such amounts as the TNRCC executive director specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like use, in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held unless they are securities or other obligations of the Federal or a State government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered or permitted under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretion conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such

depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuations. The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the TNRCC executive director a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the TNRCC executive director shall constitute a conclusively binding assent by the Grantor barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement of any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the TNRCC executive director, and the present Trustee by certified mail ten days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and

instructions. All orders, requests, and instructions by the TNRCC executive director to the Trustee shall be in writing, signed by his designee, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or TNRCC hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or TNRCC, except as provided for herein.

Section 15. Notice of Nonpayment. The Trustee shall notify the Grantor and the TNRCC executive director, by certified mail within ten days following the expiration of the 30-day period after the anniversary of the establishment of the Trust, if no payment is received from the Grantor during that period. After the pay-in period is completed, the Trustee shall not be required to send a notice of nonpayment.

Section 16. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the TNRCC executive director, or by the Trustee and the TNRCC executive director if the Grantor ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the TNRCC executive director, or by the Trustee and the TNRCC executive director if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 18. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the TNRCC executive director issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of Texas.

Section 20. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in 30 Texas Administrative Code §37.301(a) as such regulations were constituted on the date first above written.

(Signature of Grantor)

By

(Title)

Attest:

(Title)

(Seal)

(Signature of Trustee)

By

Attest:

(Title)

(Seal)

Figure 2: 30 TAC §37.301(b)

CERTIFICATION OF ACKNOWLEDGMENT

State of _____
County of _____

On this (date), before me personally came (owner or operator) to me known, who, being by me duly sworn, did depose and say that she/he resides at (address), that she/he is (title) of (corporation), the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order to the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

(signature of Notary Public)

Figure: 30 TAC §37.311

PAYMENT BOND FOR CLOSURE

Know All Persons By These Presents, That we, the Principal and Surety(ies) hereto are firmly bound to the Texas Natural Resource Conservation Commission (hereinafter called TNRCC), in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said Principal is required, under the appropriate program, to comply with registration or permit requirements in order to own or operate each facility identified above, and

Whereas said Principal is required to provide financial assurance for closure as a condition of the registration or permit, and

Now, Therefore, the conditions of the obligation are such that if the Principal shall faithfully, before the beginning of final closure of each facility identified above, fund into the standby trust fund as directed by the TNRCC executive director the amount(s) identified above for the facility,

Or if the Principal shall fund into the standby trust fund as directed by the TNRCC executive director in such amount(s) within 15 days after a final order to begin closure is issued by the TNRCC executive director or a U.S. district court or other court of competent jurisdiction,

Or if the Principal shall provide alternate financial assurance and obtain the TNRCC executive director's written approval of such assurance, within 30 days after the date notice of cancellation is received by both the Principal and the TNRCC executive director from the Surety(ies), then the obligation shall be null and void; otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the TNRCC executive director that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by the TNRCC executive director.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the TNRCC executive director provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and the TNRCC executive director, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the TNRCC executive director.

(The following paragraph is an optional rider that may be included but is not required.)

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new closure amount, provided that the penal sum does not increase by more than 20 percent in any one year, and no decrease in the penal sum takes place without the written permission of the TNRCC executive director.

In Witness Whereof, the Principal and Surety(ies) have executed this Payment Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute the surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in 30 Texas Administrative Code §37.311 as such regulations were constituted on the date this bond was executed.

Principal

(Signature(s)) _____
(Name(s)) _____
(Title(s)) _____
(Corporate seal) _____

Corporate Surety(ies)

(Name and address and
State of Incorporation:) _____
Liability limit:\$ _____
(Signature(s)) _____
(Name(s) and title(s)) _____
(Corporate Seal)

(For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.)

Bond premium: \$ _____
Date bond executed: _____
Effective Date: _____

Principal: (legal name and business address of owner and operator).

Type of Organization: (insert "individual," "joint venture," "partnership," or "corporation,")

State of Incorporation: _____

Surety(ies): (name(s) and business address(es))

TNRCC registration or permit number, name, address, and closure amount(s) for each facility guaranteed by this bond (indicate closure amounts for each facility):

Total penal sum of bond: \$ _____

Surety's bond number: _____

Figure: 30 TAC §37.321

PERFORMANCE BOND FOR CLOSURE

Date bond executed: _____.
Effective date: _____.
Principal: (legal name and business address of owner or operator).
Type of organization: (insert "individual," "joint venture," "partnership," or "corporation").
State of incorporation: _____.
Surety(ies): (name(s) and business address(es))

TNRCC registration or permit number, name, address, and closure amounts(s) for each facility guaranteed by this bond (indicate closure amounts for each facility):

Total penal sum of bond: \$ _____.
Surety's bond number: _____.

Know All Persons By These Presents. That We, the Principal and Surety(ies) hereto are firmly bound to the Texas Natural Resource Conservation Commission (hereinafter called TNRCC), in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said Principal is required, under the appropriate program, to comply with registration or permit requirements in order to own or operate each facility identified above, and

Whereas said Principal is required to provide financial assurance for closure as a condition of the registration or permit to operate under authorization, and

Now, therefore, the conditions of this obligation are such that if the Principal shall faithfully perform closure, whenever required to do so, of each facility for which this bond guarantees closure, in accordance with the closure requirements of the registration or permit for operating under authorization as may be amended, pursuant to all applicable laws, statutes, rules and regulations, as such laws, statutes, rules, and regulations may be amended,

Or, if the Principal shall provide alternate financial assurance and obtain the TNRCC executive director's written approval of such assurance, within 90 days after the date of notice of cancellation is received by both the Principal and the TNRCC executive director from the Surety(ies), then this obligation shall be null and void, otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by an TNRCC executive director that the Principal has been found in violation of the closure requirements for a facility which this bond guarantees performances of closure, the Surety(ies) shall either perform closure in accordance with the closure requirements for operating under authorization or place the amount guaranteed for the facility in the standby trust fund as directed by the TNRCC executive director.

Upon notification by an TNRCC executive director that the Principal has failed to provide alternate financial assurance and obtain written approval of such assurance from the TNRCC executive director during the 90 days following receipt by both the Principal and the TNRCC executive director of a notice of cancellation of the bond, the Surety(ies) shall place funds in the amount guaranteed for the facility(ies) into an account as directed by the TNRCC executive director.

The surety(ies) hereby waive(s) notification of amendments to closure requirements, registration or permits, applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the owner and operator and to the TNRCC executive director provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and the TNRCC executive director, as evidenced by the return receipts.

The principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the TNRCC executive director.

(The following paragraph is an optional rider that may be included but is not required.)

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new closure amount, provided that the penal sum does not increase by more than 20 percent in any one year, and no decrease in the penal sum takes place without the written permission of the TNRCC executive director.

In Witness Whereof, The Principal and Surety(ies) have executed this Performance Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording on this surety bond is identical to the wording specified in 30 Texas Administrative Code §37.321 as such regulation was constituted on the date this bond was executed.

Principal.
(Signature(s))
(Name(s))
(Title(s))
(Corporate seal)
(Corporate Surety(ies))
(Name and address)
State of incorporation:

Liability limit: \$ _____.
(Signature(s))
(name(s) and title(s))
Corporate seal:
(For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.)
Bond premium: \$ _____.

Figure: 30 TAC §37.331

IRREVOCABLE STANDBY LETTER OF CREDIT FOR CLOSURE

Executive Director
Texas Natural Resource Conservation Commission

Dear Sir or Madam:

We hereby establish our Irrevocable Standby Letter of Credit No. _____ in your favor, at the request and for the account of (owner's or operator's name and address) up to the aggregate amount of (in words) U.S. dollars \$ _____, available upon presentation of

(1) Your sight draft, bearing reference to this letter of credit No. _____, and
(2) Your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of the 30 Texas Administrative Code Chapter 37."

This letter of credit is effective as of (date) and shall expire on (date at least 1 year later), but such expiration date shall be automatically extended for a period of (at least 1 year) on (date) and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify both you and (owner's or operator's name) by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event you are so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by both you and (owner's or operator's name), as shown on the signed return receipts.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us.

We certify that the wording of this letter of credit is identical to the wording specified in 30 Texas Administrative Code §37.331 as such regulations were constituted on the date shown immediately below.

(Signature(s) and title(s) of official(s) of issuing institution)
(Date)

This credit is subject to (insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce," or "the Uniform Commercial Code").

Figure: 30 TAC §37.341

CERTIFICATE OF INSURANCE FOR CLOSURE

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

Name and Address of Insured (herein called the "insured"):

Facilities covered: (list for each facility: The TNRCC registration or permit number, name, address, and the amount of insurance for closure (these amounts for all facilities covered must total the face amount shown below).)

Face Amount: _____

Policy Number: _____

Effective Date: _____

The insurer hereby certifies that it has issued to the Insured the policy of insurance identified above to provide financial assurance for closure for the facilities identified above. The Insurer further warrants that such policy conforms in all respects with the requirements of 30 TAC Chapter §37.241 of this title (relating to Insurance for Closure), 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 Natural Resource Conservation Commission ("TNRCC"), 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 Texas Administrative Code §37.341 as such regulations were constituted on the date shown immediately below.

(Authorized signature of Insurer)

(Name of person signing)

(Title of person signing)

(Signature of witness or notary:)

(Date)

Figure: 30 TAC §37.351

FINANCIAL TEST FOR CLOSURE

LETTER FROM CHIEF FINANCIAL OFFICER

(Address to TNRCC executive director)

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

(Fill out the following paragraphs regarding facilities and associated cost estimates. If your firm has no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its TNRCC registration or permit number, name, address, and closure cost estimate.)

1. This firm is the owner or operator of the following facilities for which financial assurance for closure is being demonstrated through the financial test specified in 30 TAC §37.251 of this title (relating to Financial Test for Closure). The closure cost estimate covered by the test is shown for each facility: _____.
2. This firm guarantees, through the corporate guarantee specified in 30 TAC §37.261 of this title (relating to Corporate Guarantee for Closure), the closure cost of the following facilities owned or operated by the guaranteed party. The current cost estimates for the closure so guaranteed are shown for each facility: _____. The firm identified above is the direct or higher-tier parent corporation of the owner or operator.
3. In States where TNRCC is not administering the financial requirements of 30 TAC Chapter 37, this firm, as owner, operator, or guarantor, is demonstrating financial assurance for the closure of the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in 30 TAC §37.251 of this title (relating to Financial Test for Closure). The current closure cost estimates covered by such a test are shown for each facility: _____.
4. The firm identified above owns or operates the following facilities for which financial assurance for closure or, if a disposal facility, post-closure cost, is not demonstrated either to TNRCC, a federal agency or a State through the financial test or any other financial assurance mechanisms specified in 30 TAC Chapter 37 or equivalent or substantially equivalent State mechanisms. The current closure and/or post-closure cost estimates not covered by such financial assurance are shown for each facility: _____.
5. This firm is the owner or operator or guarantor of the following UIC facilities for which financial assurance for plugging and abandonment is required under 40 CFR 144 and 30 TAC 331 and is assured through a financial test. The current closure cost estimates as required by 40 CFR 144.62 and 30 TAC 331.142 are shown for each facility: _____.

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

independently audited, year-end financial statements for the latest completed (12 months) fiscal year, ended (date).

(Fill in Alternative I if the criteria of 30 TAC §37.251(b)(1) are used. Fill in Alternative II if the criteria of 30 TAC §37.251(b)(2) are used.)

ALTERNATIVE I

- | | | | |
|-----|-----|--|----------|
| 1. | (a) | Current closure cost for subjected facility(ies) | \$ _____ |
| | (b) | Sum of corrective action, closure and post-closure costs, liability coverage, and plugging and abandonment costs covered by a financial test and/or guarantee | \$ _____ |
| | (c) | Total of lines (a) and (b) | \$ _____ |
| *2. | | Total liabilities (if any portion of the closure cost or liability coverage is included in total liabilities, you may deduct the amount of that portion from this line and add that amount to lines 3 and 4) | \$ _____ |
| *3. | | Tangible net worth | \$ _____ |
| *4. | | Net Worth | \$ _____ |
| *5. | | Current assets | \$ _____ |
| *6. | | Current liabilities | \$ _____ |
| *7. | | Net working capital (line 5 minus line 6) | \$ _____ |
| *8. | | The sum of net income plus depreciation, depletion and amortization | \$ _____ |
| *9. | | Total assets in U. S. (required only if less than 90% of firm's assets are located in U.S.) | \$ _____ |

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

- | | | |
|------|--|--------|
| 10. | Is line 3 at least \$10 million? | yes/no |
| 11. | Is line 3 at least 6 times line 1(c)? | yes/no |
| 12. | Is line 7 at least 6 times line 1(c)? | yes/no |
| *13. | Are at least 90% of firm's assets located in the U.S.?
If not, complete line 14 | yes/no |
| 14. | Is line 9 at least 6 times line 1(c)? | yes/no |
| 15. | Is line 2 divided by line 4 less than 2.0? | yes/no |
| 16. | Is line 8 divided by line 2 greater than 0.1? | yes/no |
| 17. | Is line 5 divided by line 6 greater than 1.5? | yes/no |

ALTERNATIVE II

- | | | | |
|----|-----|--|----------|
| 1. | (a) | Current closure cost for subjected facility(ies) | \$ _____ |
| | (b) | Sum of corrective action, closure and post-closure costs, liability coverage, and plugging and abandonment costs covered by a financial test, and/or guarantee | \$ _____ |
| | (c) | Total of lines (a) and (b) | \$ _____ |
| 2. | | Current bond rating of most recent issuance of this firm and name of rating service | _____ |
| | | | _____ |

3. Date of issuance of bond _____
4. Date of maturity of bond _____
- *5. Tangible net worth (if any portion of the closure cost estimate(s) or liability coverage requirements is included in "total liabilities" on your firm's financial statements, you may add the amount of that portion to this line) \$ _____
- *6. Total assets in U.S. (required only if less than 90% of firm's assets are located in U.S.) \$ _____

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

7. Is line 5 at least \$10 million? yes/no
8. Is line 5 at least 6 times line 1(c)? yes/no
- *9. Are at least 90% of the firm's assets located in the U.S.? yes/no
If not, complete line 10
10. Is line 6 at least 6 times line 1(c)? yes/no

I hereby certify that the wording of this letter is identical to the wording specified in 30 Texas Administrative Code §37.351 as such regulations were constituted on the date shown immediately below.

(Signature)
(Name)
(Title)
(Date)

Figure: 30 TAC §37.361

CORPORATE GUARANTEE FOR CLOSURE

Guarantee made this ____ day of _____, 19____, by (name of guaranteeing entity), a business corporation organized under the laws of the State of _____, herein referred to as guarantor to the Texas Natural Resource Conservation Commission (TNRCC), obligee, on behalf of (owner or operator) of (business address).

RECITALS

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in 30 Texas Administrative Code (TAC) §37.251 of this title (relating to Financial Test for Closure) and §37.261 of this title (relating to Corporate Guarantee for Closure).
2. (Owner or operator) owns or operates the following facility(ies) covered by this guarantee: (List for each facility: TNRCC registration or permit number, name, and address.)
3. "Closure requirements" as used below refers to the closure cost estimate maintained as required for the closure of facilities as identified above.
4. For value received from (owner or operator), guarantor guarantees to TNRCC that in the event that (owner or operator) fails to perform closure of the above facility(ies) in accordance with the closure requirements when required to do so, the guarantor will do so as specified in 30 Texas Administrative Code §37.251 of this title (relating to Financial Test for Closure) in the name of (owner or operator) in the amount of the adjusted closure cost estimates prepared.
5. Guarantor agrees that, if at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor will send within 30 days, by certified mail, notice to the TNRCC executive director and to (owner or operator) that he intends to provide alternate financial assurance by selecting one of the mechanisms as specified in Subchapter C of 30 TAC Chapter 37. Within 30 days after sending such notice, the guarantor will establish such financial assurance if (owner or operator) has not done so.
6. The guarantor agrees to notify the TNRCC executive director, by certified mail, of a voluntary or involuntary case under Title 11, U.S. Code, naming guarantor as debtor, within 10 days after its commencement.
7. Guarantor agrees that within 30 days after being notified by the TNRCC executive director of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor of closure, he will establish alternate financial assurance by selecting one of the mechanisms as specified in Subchapter C of 30 TAC Chapter 37, in the name of (owner or operator) if (owner or operator) has not done so.
8. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or modification of the closure cost estimates, the extension or reduction of the time of performance of closure or any other modification or alteration of an obligation of the owner or operator.
9. Guarantor agrees to remain bound under this guarantee for so long as (owner or operator) must comply with the applicable financial assurance requirements for the above-listed facilities,

except that guarantor may cancel this guarantee by sending notice by certified mail, to the TNRCC executive director and to (owner or operator), such cancellation to become effective no earlier than 120 days after actual receipt of such notice by both TNRCC and (owner or operator) as evidenced by the return receipts.

10. Guarantor agrees that if (owner or operator) fails to provide alternate financial assurance and obtain written approval of such assurance from the TNRCC executive director within 90 days after a notice of cancellation by the guarantor is received by both the TNRCC executive director and (owner or operator), guarantor will provide alternate financial assurance by selecting one of the mechanisms as specified in Subchapter C of 30 TAC Chapter 37, in the name of the (owner or operator).
11. Guarantor expressly waives notice of acceptance of this guarantee by the Texas Natural Resource Conservation Commission or by (owner or operator). Guarantor also expressly waives notice of amendments or modifications of the closure cost estimates.

I hereby certify that the wording of this guarantee is identical to the wording specified in 30 Texas Administrative Code §37.361.

Effective date: _____.

(Name of guarantor)

(Authorized signature for guarantor)

(Type name of person signing)

(Title of person signing)

Signature of witness or notary: _____

Figure 1: 30 TAC §37.601(a)

TRUST AGREEMENT

TRUST AGREEMENT, the "Agreement," entered into as of (date) by and between (name of the owner or operator), a (name of State) (insert "corporation," "partnership," "association," or "proprietorship"), the "Grantor," and (name of corporate trustee), (insert "incorporated in the State of _____" or "a national bank"), the "Trustee."

Whereas, the Texas Natural Resource Conservation Commission, "TNRCC," an agency of the State of Texas, has established certain regulations applicable to the Grantor, requiring that an owner or operator of a facility(ies) must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities.

Whereas, the Grantor has elected to establish a trust to assure all or part of such financial responsibility for the facility(ies) identified herein,

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee,

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

(c) Facility or activity means any "facility" or any other facility or activity that is subject to regulation under 30 TAC Chapter 37.

Section 2. Identification of Facilities and Cost Estimates. This Agreement pertains to the facilities and cost estimates identified on attached Schedule A (on Schedule A, for each facility list the TNRCC registration or permit number, name, address, and the amount of liability coverage, or portions thereof, if more than one instrument affords combined coverage as demonstrated by this Agreement).

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, hereinafter the "Fund," for the benefit of any and all third parties injured or damaged by sudden accidental occurrences arising from operation of the facility(ies) covered by this guarantee, in the amounts of up to (in words) U.S. dollars \$ _____ per occurrence and up to (in words) U.S. dollars \$ _____ annual aggregate for sudden accidental occurrences, except that the Fund is not established for the benefit of third parties for the following:

(a) Bodily injury or property damage for which (insert Grantor) is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that (insert Grantor) would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of (insert Grantor) under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of (insert Grantor) arising from, and in the course of, employment by (insert Grantor); or

(2) The spouse, child, parent, brother, or sister of that employee as a consequence of, or arising from, and the course of employment by (insert Grantor).

This exclusion applies:

(A) Whether (insert Grantor) may be liable as an employer or in any other capacity;
and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by (insert Grantor);

(2) Premises that are sold, given away or abandoned by (insert Grantor) if the property damage arises out of any part of those premises;

(3) Property loaned to (insert Grantor);

(4) Personal property in the care, custody or control of (insert Grantor);

(5) That particular part of real property on which (insert Grantor) or any contractors or subcontractors working directly or indirectly on behalf of (insert Grantor) are performing operations, if the property damage arises out of these operations.

In the event of combination with another mechanism for liability coverage, the fund shall be considered (insert "primary" or "excess") coverage.

The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by TNRCC.

Section 4. Payment for Bodily Injury or Property Damage. The Trustee shall satisfy a third party liability claim by making payments from the Fund only upon receipt of one of the following documents:

(a) Certification from the Grantor and the third party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in parentheses are to be replaced with the relevant information and the parentheses deleted:

CERTIFICATION OF VALID CLAIM

The undersigned, as parties (insert Grantor) and (insert name and address of third party claimant(s)), hereby certify that the claim of bodily injury and/or property damage caused by a sudden accidental occurrence arising from operating (Grantor's) facility(ies) should be paid in the amount of \$().

(Signatures)

Grantor

(Signatures)

Claimant(s)

(b) A valid final court order establishing a judgment against the Grantor for bodily injury or property damage caused by sudden accidental occurrences arising from the operation of the Grantor's facility(ies).

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like use, in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held unless they are securities or other obligations of the Federal or a State government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered or permitted under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretion conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when

so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuations. The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the TNRCC executive director a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the TNRCC executive director shall constitute a conclusively binding assent by the Grantor barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement of any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the TNRCC executive director, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee shall be

fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the TNRCC executive director to the Trustee shall be in writing, signed by his designee, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or TNRCC hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or TNRCC, except as provided for herein.

Section 15. Notice of Nonpayment. If a payment for bodily injury or property damage is made under Section 4 of this trust, the Trustee shall notify the Grantor of such payment and the amount(s) thereof within five (5) working days. The Grantor shall, on or before the anniversary date of the establishment of the Fund following such notice, either make payments to the Trustee in amounts sufficient to cause the trust to return to its value immediately prior to the payment of claims under Section 4, or shall provide written proof to the Trustee that other financial assurance for liability coverage has been obtained equaling the amount necessary to return the trust to its value prior to the payment of claims. If the Grantor does not either make payments to the Trustee or provide the Trustee with such proof, the Trustee shall within 10 working days after the anniversary date of the establishment of the Fund provide a written notice of nonpayment to the TNRCC executive director.

Section 16. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the TNRCC executive director, or by the Trustee and the TNRCC executive director if the Grantor ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the TNRCC executive director, or by the Trustee and the TNRCC executive director if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 18. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the TNRCC executive director issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of Texas.

Section 20. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in 30 Texas Administrative Code §37.601(a) as such regulations were constituted on the date first above written.

(Signature of Grantor)

By (Title)

Attest:

(Title)

(Seal)

(Signature of Trustee)

By

Attest:

(Title)

(Seal)

Figure 2: 30 TAC §37.601(b)

CERTIFICATION OF ACKNOWLEDGMENT

State of _____

County of _____

On this (date), before me personally came (owner or operator) to me known, who, being by me duly sworn, did depose and say that she/he resides at (address), that she/he is (title) of (corporation), the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order to the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

(signature of Notary Public)

Figure: 30 TAC §37.611

PAYMENT BOND FOR LIABILITY

Surety Bond No. (Insert Number)

Parties (Insert name and address of owner or operator), Principal, incorporated in (insert State of incorporation) of (Insert city and State of principal place of business) and (Insert name and address of surety company(ies), Surety Company(ies), of (Insert surety(ies) place of business).

TNRCC Permit or Registration Number, name, and address for each facility guaranteed by this bond: _____

	Sudden accidental Occurrences
Penal Sum Per Occurrence.	<u>(Insert amount)</u>
Annual Aggregate	<u>(Insert amount)</u>

Purpose: This is an agreement between the Surety(ies) and the Principal under which the Surety(ies), its(their) successors and assignees, agree to be responsible for the payment of claims against the Principal for bodily injury and/or property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities in the sums prescribed herein; subject to the governing provisions and the following conditions.

Governing Provisions: Rules and regulations of 30 Texas Administrative Code Chapter 37.
Conditions:

(a) The Principal is subject to the applicable governing provisions that require the Principal to have and maintain liability coverage for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. Such obligation does not apply to any of the following:

(1) Bodily injury or property damage for which (insert principal) is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that (insert principal) would be obligated to pay in the absence of the contract or agreement.

(2) Any obligation of (insert principal) under a worker's compensation, disability benefits, or unemployment compensation law or similar law.

(3) Bodily injury to:

(A) An employee of (insert principal) arising from, and in the course of, employment by (insert principal); or

(B) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by (insert principal). This exclusion applies:

(i) Whether (insert principal) may be liable as an employer or in any other capacity; and
(ii) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(4) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(5) Property damage for:

(A) Any property owned, rented, or occupied by (insert principal);

(B) Premises that are sold, given away or abandoned by (insert principal) if the property damage arises out of any part of those premises;

(C) Property loaned to (insert principal);

(D) Personal property in the care, custody or control of (insert principal);

(E) That particular part of real property on which (insert principal) or any contractors or subcontractors working directly or indirectly on behalf of (insert principal) are performing operations, if the property damage arises out of those operations.

(b) This bond assures that the Principal will satisfy valid third party liability claims, as described in condition 1.

(c) If the Principal fails to satisfy a valid third party liability claim, as described above, the Surety(ies) becomes liable on this bond obligation.

(d) The Surety(ies) shall satisfy a third party liability claim only upon the receipt of one of the following documents:

(1) Certification from the Principal and the third party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in parentheses are to be replaced with the relevant information and the parentheses deleted:

Certification of Valid Claim

The undersigned, as parties (insert name of Principal) and (insert name and address of third party claimant(s)), hereby certify that the claim of bodily injury and/or property damage caused by a sudden accidental occurrence arising from operating (Principal's) facility(ies) should be paid in the amount of \$(_____).

(Signature)

Principal

(Notary) Date

(Signature(s))

Claimant(s)

(Notary) Date

or (b) A valid final court order establishing a judgment against the Principal for bodily injury or property damage caused by sudden accidental occurrences arising from the operations of the Principal's facility or group of facilities.

(5) In the event of combination of this bond with another mechanism for liability coverage, this bond will be considered (insert "primary" or "excess") coverage.

(6) The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond. In no event shall the obligation of the Surety(ies) hereunder exceed the amount of said annual aggregate penal sum, provided that the Surety(ies) furnish(es) notice to the TNRCC executive director forthwith of all claims filed and payments made by the Surety(ies) under this bond.

(7) The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and the TNRCC executive director, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the Principal and the TNRCC executive director, as evidenced by the return receipt.

(8) The Principal may terminate this bond by sending notice of cancellation by certified mail to the Surety(ies) and the TNRCC executive director, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the Surety(ies) and the TNRCC executive director, as evidenced by the return receipt.

(9) The Surety(ies) hereby waive(s) notification of amendments to applicable laws, statutes, rules and regulations and agree(s) that no such amendment shall in any way alleviate its (their) obligation on this bond.

(10) This bond is effective from (insert date) (12:01 a.m., standard time, at the address of the Principal as stated herein) and shall continue in force until terminated as described above.

In Witness Whereof, the Principal and Surety(ies) have executed this Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in 30 Texas Administrative Code §37.611, as such regulations were constituted on the date this bond was executed.

Principal

(Signature(s))
(Name(s))
(Title(s))
(Corporate Seal)

Corporate Surety(ies)

(Name and address)
State of incorporation: _____
Liability Limit: \$ _____

(Signature(s))
(Name(s) and title(s))
(Corporate seal)

(For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.)

Bond premium: \$ _____

Figure: 30 TAC §37.621

IRREVOCABLE STANDBY LETTER OF CREDIT FOR LIABILITY

Name and Address of Issuing Institution

Executive Director
Texas Natural Resource Conservation Commission

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No. _____ in the favor of any and all third-party liability claimants, at the request and for the account of (owner's or operator's name and address) for third-party liability awards or settlements up to (in words) U.S. dollars \$ _____ per occurrence and the annual aggregate amount of (in words) U.S. dollars \$ _____, for sudden accidental occurrences available upon presentation of a sight draft bearing reference to this letter of credit No. _____, and (insert the following:

(1) a signed certificate reading as follows:

CERTIFICATE OF VALID CLAIM

The undersigned, as parties (insert principal) and (insert name and address of third party claimant(s)), hereby certify that the claim of bodily injury and/or property damage caused by a sudden accidental occurrence arising from operations of (principal's) facility(ies) should be paid in the amount of \$ _____. We hereby certify that the claim does not apply to any of the following:

- (a) Bodily injury or property damage for which (insert principal) is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that (insert principal) would be obligated to pay in the absence of the contract or agreement.
- (b) Any obligation of (insert principal) under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.
- (c) Bodily injury to:
 - (1) An employee of (insert principal) arising from, and in the course of, employment by (insert principal); or
 - (2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by (insert principal).This exclusion applies:
 - (A) Whether (insert principal) may be liable as an employer or in any other capacity; and
 - (B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).
- (d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.
- (e) Property damage to:
 - (1) Any property owned, rented, or occupied by (insert principal);

- (2) Premises that are sold, given away or abandoned by (insert principal) if the property damage arises out of any part of those premises;
- (3) Property loaned to (insert principal);
- (4) Personal property in the care, custody or control of (insert principal);
- (5) That particular part of real property on which (insert principal) or any contractors or subcontractors working directly or indirectly on behalf of (insert principal) are performing operations, if the property damage arises out of these operations.

(Signatures) _____

Principal _____

(Signatures) _____

Claimant(s) _____

or

- (2) a valid final court order establishing a judgment against the Principal for bodily injury or property damage caused by a sudden accidental occurrence arising from operation of the Principal's facility or group of facilities.

This letter of credit is effective as of (date) and shall expire on (date at least one year later), but such expiration date shall be automatically extended for a period of (at least one year) on (date) and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify you, the TNRCC executive director, and (owner's or operator's name) by certified mail that we have decided not to extend this letter of credit beyond the current expiration date.

Whenever this letter or credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us.

In the event that this letter of credit is used in combination with another mechanism for liability coverage, this letter of credit shall be considered (insert "primary coverage" or "excess coverage").

We certified that the wording of this letter of credit is identical to the wording specified in 30 Texas Administrative Code §37.621 as such regulations were constituted on the date shown immediately below. (Signature(s) and title(s) of official(s) of issuing institution) (Date).

This credit is subject to (insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce," or "the Uniform Commercial Code").

Figure: 30 TAC §37.631

CERTIFICATE OF INSURANCE FOR LIABILITY

1. (Name of Insurer), the “Insurer”, of (address of Insurer) hereby certifies that is has issued liability insurance covering bodily injury and property damage to (name of insured), the “Insured”, of (address of Insured) in connection with the insured’s obligation to demonstrate financial responsibility under 30 TAC §37.401 of this title (relating to Liability Requirements for Sudden Accidental Occurrences). The coverage applies at (list facility identification or registration number, name, and address for each facility) for sudden accidental occurrences; if coverage is for multiple facilities and the coverage is different for different facilities, indicate which facilities are insured for sudden accidental occurrences. The limits of liability are (insert the dollar amount of the “each occurrence” and “annual aggregate” limits of the Insurer’s liability), exclusive of legal defense costs. The coverage is provided under policy number _____, issued on (date). The effective date of said policy is (date).

2. The Insurer further certifies the following with respect to the insurance described in Paragraph 1:

- (a) Bankruptcy or insolvency of the Insured shall not relieve the Insurer of its obligations under the policy.
- (b) The Insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the Insured for any such payment made by the Insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated as specified in 30 TAC §37.541 of this title (relating to Financial Test for Liability).
- (c) Whenever required by the TNRCC executive director, the Insurer agrees to furnish to the executive director a signed duplicate original of the policy and all endorsements.
- (d) Cancellation of the insurance, whether by the Insurer, the Insured, or a parent corporation providing insurance coverage for its subsidiary, 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 TNRCC executive director.
- (e) Any other termination of the 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 TNRCC executive director.

I hereby certify that the wording of this instrument is identical to the wording specified in 30 TAC §37.631 as such regulation was constituted on the date first above written, and that the Insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

(Signature of authorized representative of Insurer)
(Type name)
(Title), Authorized Representative of (Name of Insurer)
(Address of Representative)

Figure: 30 TAC §37.641

ENDORSEMENT FOR LIABILITY

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering bodily injury and property damage in connection with the insured's obligation to demonstrate financial responsibility under 30 TAC §37.401 of this title (relating to Liability Requirements for Sudden Accidental Occurrences). The coverage applies at (list facility identification or registration number, name, and address for each facility) for sudden accidental occurrences; if coverage is for multiple facilities and the coverage is different for different facilities, indicate which facilities are insured for sudden accidental occurrences. The limits of liability are (insert the dollar amount of the "each occurrence" and "annual aggregate" limits 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 subsections (a) through (e) of this Paragraph 2 are hereby amended to conform with subsection (a) through (e):

- (a) Bankruptcy or insolvency of the insured shall not relieve the Insurer of its obligations under the policy to which this endorsement is attached.
- (b) The Insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the Insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated as specified in 30 TAC §37.541 of this title (relating to Financial Test for Liability).
- (c) Whenever requested by the TNRCC executive director, the Insurer agrees to furnish to the executive director a signed duplicate original of the policy and all endorsements.
- (d) Cancellation of this endorsement, whether by the Insurer, the Insured, or a parent corporation providing insurance coverage for its subsidiary, 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 TNRCC executive director.
- (e) Any other termination of this endorsement 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 TNRCC executive director.

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 _____, 19__.

The effective date of said policy is ____ day of _____, 19__.

I hereby certify that the wording of this endorsement is identical to the wording specified in 30 TAC §37.641 as such regulation was constituted on the date first above written, and that the Insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

(Signature of Authorized Representative of Insurer)
(Type Name)
(Title), Authorized Representative of (name of Insurer)
(Address of Representative)

Figure: 30 TAC §37.651

FINANCIAL TEST FOR LIABILITY

LETTER FROM CHIEF FINANCIAL OFFICER

(Address to TNRCC Executive Director)

I am the chief financial officer of (firms's name and address). This letter is in support of the use of the financial test to demonstrate financial responsibility for liability coverage (if applicable, insert "and closure") as specified in 30 Texas Administrative Code (TAC) Chapter 37.

(Fill out the following paragraphs regarding facilities and liability coverage. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its TNRCC registration or permit number, name, and address).

The firm identified above is the owner or operator of the following facilities for which liability coverage for sudden accidental occurrences is being demonstrated through the financial test specified in 30 TAC §37.541 of this title (relating to Financial Test for Liability): _____.

The firm identified above guarantees, through the guarantee specified in 30 TAC §37.551 of this title (relating Financial Test for Liability), liability coverage for sudden accidental occurrences at the following facilities owned or operated by the following: _____. The firm identified above is the direct or higher-tier parent corporation of the owner or operator.

(If you are using the financial test to demonstrate coverage of both liability and closure, fill in the following five paragraphs regarding facilities and associated closure cost estimates. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its TNRCC registration or permit number, name, address, and current closure estimates.)

1. The firm identified above owns or operates the following facilities for which financial assurance for closure or liability coverage is demonstrated through the financial test specified in 30 TAC §37.541 of this title (relating to Financial Test for Liability). The current closure cost estimate covered by the test are show for each facility:_____.
2. The firm identified above guarantees, through the guarantees specified in 30 TAC §37.551 of this title (relating to Corporate Guarantee for Liability), the closure and/or liability coverage of the following facilities owned or operated by the guaranteed party. The current cost estimates for closure so guaranteed are shown for each facility:_____.
3. In States where TNRCC is not administering the financial requirements of 30 TAC §37.541 of this title (relating to Financial Test for Liability), this firm is demonstrating financial assurance for the closure of the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in 30 TAC Chapter 37. The current closure cost estimates covered by such a test are shown for each facility:_____.

4. The firm identified above owns or operates the following facilities for which financial assurance for closure or, if a disposal facility, post-closure cost, is not demonstrated either to TNRCC, a federal agency or a State through the financial test or any other financial assurance mechanisms specified in 30 TAC Chapter 37 or equivalent or substantially equivalent State mechanisms. The current closure and/or post-closure cost estimates not covered by such financial assurance are shown for each facility:_____.
5. This firm is the owner or operator or guarantor of the following UIC facilities for which financial assurance for plugging and abandonment is required under 40 CFR 144 and 30 TAC 331 and is assured through a financial test. The current closure cost estimates as required by 40 CFR 144.62 and 30 TAC 331.142 are shown for each facility:_____.

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

(Fill in Part A if you are using the financial test to demonstrate assurance for only liability coverage. Or, fill in part B if you are using the financial test to demonstrate assurance for both closure and liability coverage.)

Part A. Liability Coverage for Accidental Occurrences

(Fill in Alternative I if the criteria of 30 TAC §37.541(b)(1) are used. Fill in Alternative II if the criteria of 30 TAC §37.541(b)(2) are used.)

ALTERNATIVE I

- | | | |
|------|---|----------|
| 1. | Amount of annual aggregate liability coverage to be demonstrated | \$ _____ |
| *2. | Current assets | \$ _____ |
| *3. | Current liabilities | \$ _____ |
| 4. | Net working capital (line 2 minus line 3) | \$ _____ |
| *5. | Tangible net worth | \$ _____ |
| *6. | If less than 90% of assets are located in the U. S., give total U.S. assets | \$ _____ |
| 7. | Is line 5 at least \$10 million? | Yes/No |
| 8. | Is line 4 at least 6 times line 1? | Yes/No |
| 9. | Is line 5 at least 6 times line 1? | Yes/No |
| *10. | Are at least 90% of assets located in the U.S.? (If not, complete line 11) | Yes/No |
| 11. | Is line 6 at least 6 times line 1? | Yes/No |

ALTERNATIVE II

- | | | |
|----|--|----------|
| 1. | Amount of annual aggregate liability coverage to be demonstrated | \$ _____ |
| 2. | Current bond rating of most recent issuance and name of rating service | _____ |

- | | | | |
|-----|---|----------|--------|
| 3. | Date of issuance of bond | _____ | |
| 4. | Date of maturity of bond | _____ | |
| *5. | Tangible net worth | \$ _____ | |
| *6. | Total assets in U.S. (Required only if less than 90% of assets are located in the U.S.) | \$ _____ | |
| 7. | Is line 5 at least \$10 million? | | Yes/No |
| 8. | Is line 5 at least 6 times line 1? | | Yes/No |
| 9. | Are at least 90% of assets located in the U.S.? (If not, complete line 10) | | Yes/No |
| 10. | Is line 6 at least 6 times line 1? | | Yes/No |

Part B. Closure and Liability Coverage

(Fill in Alternative I if the criteria of 30 TAC §37.251(b)(1) and 30 TAC §37.541(b)(1) are used. Fill in Alternative II if the criteria of 30 TAC §37.251(b)(2) and 30 TAC §37.541(b)(2) are used.)

ALTERNATIVE I

- | | | | |
|------|--|----------|--------|
| 1. | Sum of current closure and post-closure cost estimates (total of all cost estimates listed above) | \$ _____ | |
| 2. | Amount of annual aggregate liability coverage to be demonstrated | \$ _____ | |
| 3. | Sum of lines 1 and 2 | \$ _____ | |
| * 4. | Total liabilities (if any portion of your closure or post-closure cost estimates is included in your total liabilities, you may deduct that portion from this line and add that amount to lines 5 and 6) | \$ _____ | |
| * 5. | Tangible net worth | \$ _____ | |
| * 6. | Net worth | \$ _____ | |
| * 7. | Current assets | \$ _____ | |
| * 8. | Current liabilities | \$ _____ | |
| 9. | Net working capital (line 7 minus line 8) | \$ _____ | |
| 10. | The sum of net income plus depreciation, depletion, and amortization | \$ _____ | |
| *11. | Total assets in the United States (required only if less than 90% of assets located in the United States) | \$ _____ | |
| 12. | Is line 5 at least \$10 million? | | Yes/No |
| 13. | Is line 5 at least 6 times line 3? | | Yes/No |
| 14. | Is line 9 at least 6 times line 3? | | Yes/No |
| *15. | Are at least 90% of assets located in the U.S.? (If not, complete line 16) | | Yes/No |
| 16. | Is line 11 at least 6 times line 3? | | Yes/No |
| 17. | Is line 4 divided by line 6 less than 2.0? | | Yes/No |
| 18. | Is line 10 divided by line 4 greater than 0.1? | | Yes/No |
| 19. | Is line 7 divided by line 8 great than 1.5? | | Yes/No |

ALTERNATIVE II

- | | | | |
|----|---|----------|--|
| 1. | Sum of current closure and post-closure cost estimates (total of all cost estimates listed above) | \$ _____ | |
| 2. | Amount of annual aggregate liability coverage to be demonstrated | \$ _____ | |

- | | | | |
|------|---|----------|--------|
| 3. | Sum of lines 1 and 2 | \$ _____ | |
| 4. | Current bond rating of most recent issuance and name of rating service | _____ | |
| | | _____ | |
| 5. | Date of issuance of bond | _____ | |
| 6. | Date of maturity of bond | _____ | |
| *7. | Tangible net worth (if any portion of the closure of post-closure cost estimate is included "total liabilities" on your financial statements you may add that portion to this line) | \$ _____ | |
| * 8. | Total assets in the U.S. (Required only if less than 90% of assets are located in the U.S.) | \$ _____ | |
| 9. | Is line 7 at least \$10 million? | | Yes/No |
| 10. | Is line 7 at least 6 times line 3? | | Yes/No |
| *11. | Are at least 90% of assets located in the U.S.? (If not, complete line 12) | | Yes/No |
| 12. | Is line 8 at least 6 times line 3? | | Yes/No |

I hereby certify that the wording of this letter is identical to the wording specified in 30 TAC §37.651 As such regulations were constituted on the date shown immediately below.

(Signature)
(Name)
(Title)
(Date)

Figure: 30 TAC §37.661

CORPORATE GUARANTEE FOR LIABILITY

Guarantee made this (date) by (name of guaranteeing entity), a business corporation organized under the laws of (if incorporated within the United States insert “the State of _____” and insert name of State; in incorporated outside the United States insert the name of the country in which incorporated, the principal place of business within the United States, and the name and address of the registered agent in the State of the principal place of business), herein referred to as guarantor. This guarantee is made on behalf of (owner or operator) of (business address), which is our subsidiary, to any and all third parties who have sustained or may sustain bodily injury or property damage caused by sudden accidental occurrences arising from operation of the facility(ies) covered by this guarantee.

RECITALS

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in 30 Texas Administrative Code (TAC) §37.551 of this title (relating to Corporate Guarantee for Liability).
2. (Owner or operator) owns or operates the following facility(ies) covered by this guarantee: (List for each facility: TNRCC permit or registration number, name, and address; and if guarantor is incorporated outside the United States list the name and address of the guarantor’s registered agent in each State.) This corporate guarantee satisfies third-party liability requirements for sudden accidental occurrences in above-named owner or operator facilities for coverage in the amount of (insert dollar amount) for each occurrence and (insert dollar amount) annual aggregate.
3. For value received from (owner or operator), guarantor guarantees to any and all third parties who have sustained or may sustain bodily injury or property damage caused by sudden accidental occurrences arising from operations of the facility(ies) covered by this guarantee that in the event that (owner or operator) fails to satisfy a judgment or award based on determination of liability for bodily injury or property damage to third parties caused by sudden accidental occurrences, arising from the operation of the above-named facilities, or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor will satisfy such judgment(s), award(s) or settlement agreement(s) up to the limits of coverage identified above.
4. Such obligation does not apply to any of the following:
 - (a) Bodily injury or property damage for which (insert owner or operator) is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that (insert owner or operator) would be obligated to pay in the absence of the contract or agreement.
 - (b) Any obligation of (insert owner or operator) under a workers’ compensation, disability benefits, or unemployment compensation law or any similar law.
 - (c) Bodily injury to:
 - (1) An employee of (insert owner or operator) arising from, and in the course of, employment by (insert owner or operator); or

- (2) The spouse, child, parent, brother, or sister of that employee as a consequence of, or arising from, and in the course of employment by (insert owner or operator). This exclusion applies:
 - (A) Whether (insert owner or operator) may be liable as an employer or in any other capacity; and
 - (B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).
- (d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.
- (e) Property damage to:
 - (1) Any property owned, rented, or occupied by (insert owner or operator) ;
 - (2) Premises that are sold, given away or abandoned by (insert owner or operator) if the property damage arises out of any part of those premises;
 - (3) Property loaned to (insert owner or operator) ;
 - (4) Personal property in the care, custody or control of (insert owner or operator) ;
 - (5) That particular part of real property on which (insert owner or operator) or any contractors or subcontractors working directly or indirectly on behalf of (insert owner or operator) are performing operations, if the property damage arises out of these operations.
5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the TNRCC executive director and to (owner or operator) that he intends to provide alternate financial assurance for liability coverage as specified in Subchapter F of 30 TAC Chapter 37, in the name of (owner or operator). Within 120 days after the end of such fiscal year, the guarantor shall establish such liability coverage unless (owner or operator) has done so.
6. The guarantor agrees to notify the TNRCC executive director by certified mail of a voluntary or involuntary proceeding under title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.
7. Guarantor agrees that within 30 days after being notified by the TNRCC executive director of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor, he shall establish alternate financial assurance for liability coverage as specified in Subchapter F of 30 TAC Chapter 37 in the name of (owner or operator), unless (owner or operator) has done so.
8. Guarantor reserves the right to modify this agreement to take into account amendment or modification of the liability requirements set by 30 TAC §37.401 of this title (relating to Liability Requirements for Sudden Accidental Occurrences), provided that such modification shall become effective only if the TNRCC executive director does not disapprove the modification within 30 days of receipt of notification of the modification.
9. Guarantor agrees to remain bound under this guarantee for so long as (owner or operator) must comply with the applicable requirements of 30 TAC §37.401 of this title (relating to Liability Requirements for Sudden Accidental Occurrences) for the above-listed facility(ies), except as provided in paragraph 10 of this agreement.
10. Guarantor may terminate this guarantee by sending notice by certified mail to the TNRCC executive director and to (owner or operator) provided that this guarantee may not be terminated unless and until

(the owner or operator) obtains, and the TNRCC executive director approves, alternate financial assurance for liability coverage complying with Subchapter F of 30 TAC Chapter 37.

11. Guarantor hereby expressly waives notice of acceptance of this guarantee by any party.
12. Guarantor agrees that this guarantee is in addition to and does not affect any other responsibility or liability of the guarantor with respect to the covered facilities.
13. The Guarantor shall satisfy a third-party liability claim only on receipt of one of the following documents:
 - (a) Certification from the Principal and the third-party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in parentheses are to be replaced with the relevant information and the parentheses deleted:

CERTIFICATION OF VALID CLAIM

The undersigned, as parties (insert Principal) and (insert name and address of third-party claimant(s)), hereby certify that the claim of bodily injury and/or property damage caused by a sudden accidental occurrence arising from operating (Principal's) facility should be paid in the amount of \$ ().

(Signature) _____
Principal _____
(Notary) Date _____
(Signature(s)) _____
Claimant(s) _____
(Notary) Date _____

- (b) A valid final court order establishing a judgment against the Principal for bodily injury or property damage caused by sudden accidental occurrences arising from the operation of the Principal's facility or group of facilities.

14. In the event of combination of this guarantee with another mechanism to meet liability requirements, this guarantee will be considered (insert "primary" or "excess") coverage.

I hereby certify that the wording of the guarantee is identical to the wording specified in 30 TAC §37.661 as such regulations were constituted on the date shown immediately below.

Effective date: _____
(Name of guarantor) _____
(Authorized signature for guarantor) _____
(Name of person signing) _____
(Title of person signing) _____
Signature of witness of notary: _____

The commission adopts an amendment to §332.47, concerning financial assurance requirements, without changes to the proposed text as published in the July 26, 1996, issue of the *Texas Register* (21 TexReg 6972) and will not be republished. Owners or operators seeking permits for compost facilities must provide evidence of financial responsibility for closure. This requirement is authorized by Texas Health and Safety Code, §361.085 and promulgated as §332.47(9).

EXPLANATION OF ADOPTED RULE

This change to Chapter 332 is adopted concurrently as a companion rule with a new 30 TAC Chapter 37, concerning Financial Assurance. New Chapter 37 contains standard financial assurance wording of the mechanisms and requirements for financial responsibility and places them in one rule chapter. Initially, this chapter provides financial assurance requirements for permitted composting facilities and registered Class A or B petroleum-substance contaminated soil storage, treatment, and reuse facilities.

The amendment to §332.47, concerning Permit Application Preparation, reflects the requirement upon owners and operators of compost facilities to use the documents and language from Chapter 37. These facilities are already required to provide evidence of financial assurance to the commission. This will merely formalize the requirements already in place for financial assurance mechanisms.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for the amendment to this section pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The purpose of the amendment is to begin the consolidation of financial assurance requirements. The amendment

substantially advances this purpose by making financial assurance for permitted composting facilities subject to the financial assurance requirements of Chapter 37. Promulgation and enforcement of this rule will not affect private real property because it adds no new financial assurance requirements and it does not adversely affect property values. Also, the following exceptions to the application of Texas Government Code, §2007.003(b) apply to these rules: the action significantly advances the health and safety purpose and imposes no greater burden than is necessary to achieve the health and safety purpose.

HEARING AND COMMENTERS

A public hearing was held to receive oral and written comment on the proposed rule at commission offices in Austin on August 29, 1996. The public comment period closed August 29, 1996. No oral or written comments were received on this proposal at the public hearing or during the public comment period.

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 26.341-26.363, 27.019, 32.009, 33.007, and 34.006 and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

SUBCHAPTER D : OPERATIONS REQUIRING A PERMIT

§332.47. Permit Application Preparation.

To assist the commission in evaluating the technical merits of a compost facility, a site development plan shall be prepared and submitted to the commission along with Compost Form Number 3. The site development plan shall be sealed by a registered professional engineer in accordance with the provisions of 22 TAC §131.138 relating to (Engineers' Seals). If the site development plan is submitted in a three ring binder or in a format that allows the removal or insertion of individual pages, it shall not be considered a bound document. The site development plan shall contain all of the following information.

(1) - (8) (No change.)

(9) Financial assurance. The applicant shall prepare a closure plan acceptable to the executive director and provide evidence of financial assurance to the commission for the cost of closure. The closure plan at a minimum shall include evacuation of all material on-site (feedstock, in process and processed) to an authorized facility and disinfection of all leachate handling facilities, tipping area, processing area and post-processing area and shall be based on the worst case closure scenario for the facility, including the assumption that all storage and processing areas are filled to capacity. The financial assurance may be demonstrated by using one or more of the following mechanisms: trust funds, surety bonds, letters of credit, insurance, financial test and corporate guarantee. These

mechanisms shall be prepared on forms approved by the executive director and shall be submitted to the commission 60 days prior to the receiving of any materials for processing. Financial assurance mechanisms prepared are subject to the requirements of Chapter 37 of this title (relating to Financial Assurance).

(10) - (11) (No change.)

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on