

The Texas Natural Resource Conservation Commission (commission) proposes an amendment to §37.11 and new §37.52, concerning Use of a Universal Financial Assurance Mechanism for Multiple Facilities and Program Areas.

#### EXPLANATION OF PROPOSED RULE

The proposed new rule in §37.52 will allow the adoption of a financial assurance option that will cross commission program lines by allowing a permittee, licensee or registrant to demonstrate financial assurance obligations through one mechanism. The proposed rule will give the regulated community another option when complying with financial responsibility. A universal mechanism reduces the number of financial assurance mechanisms required to comply with financial responsibility. However, it is not intended to reduce the total dollar amount of financial assurance required to be demonstrated for any commission program area that requires a permitted, licensed or registered facility to demonstrate financial assurance. A definition of program area is added to §37.11. For the purpose of the new section, program area means the specific commission area under which the facility is permitted, licensed or registered to operate. Program areas include, but are not limited to, Industrial and Hazardous Waste, Underground Injection Control, Municipal Solid Waste, or Petroleum Storage Tanks.

Proposed new §37.52 concerning Use of a Universal Financial Assurance Mechanism for Multiple Facilities and Program Areas, adds the option of a universal financial assurance mechanism for owners or operators of facilities which are authorized by rules from more than one program area of the

commission. The anniversary date of the universal mechanism as specified in new §37.52 is the date on which owners or operators shall adjust the financial assurance for inflation for all facilities demonstrating through the universal mechanism.

#### FISCAL NOTE

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for each year of the first five-year period the proposed sections are in effect, there will be no significant costs to state government or units of local government as a result of administration or enforcement of these sections.

#### PUBLIC BENEFIT

Mr. Minick has also determined that for each year of the first five years the proposed sections are in effect, the public benefit anticipated as a result of enforcement of and compliance with the sections will not change. The effect on owners or operators of facilities subject to these sections will be a potential reduction in cost as a result of the option to have a universal financial assurance mechanism. These cost savings may represent a savings for any person affected by the proposed rules or a part of the costs of any project. The potential cost savings will affect small businesses on the same basis as any larger business. There are no economic costs anticipated for any owners or operators required to comply with these sections as proposed.

#### REGULATORY IMPACT ANALYSIS

The commission has reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a “major environmental rule” as defined in the act inasmuch as the rule will merely offer an additional option for financial assurance, and it does not meet any of the four applicability requirements listed in §2001.0225(a).

#### TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for this rule proposal pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The purpose of this rulemaking is to modify Chapter 37 to reflect the addition of a universal financial assurance option to cross multiple program areas and facilities allowing a permittee, licensee, or registrant to demonstrate financial assurance obligations through one mechanism. The promulgation and enforcement of these rules will not burden private real property nor adversely affect property values because the proposed rule will not reduce the amount of financial assurance required to be demonstrated by any one facility or in any one program area.

#### COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has determined that this rulemaking action is not subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et. seq.), the rules of the Coastal Coordination Council (31

TAC Chapters 501-506), and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program.

#### PUBLIC HEARING

A public hearing on this proposal will be not be held unless one is requested.

#### SUBMITTAL OF COMMENTS

Written comments regarding this proposal and request for alternatives may be mailed to Bettie Bell, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808, but must be followed up with the submission and receipt of the written comments within three working days of when they were faxed. All comments should reference Rule Log Number 97167-037-WS. Comments must be received by 5:00 p.m., July 6, 1998. For further information or questions concerning this proposal, contact Linda Shirck of the Financial Administration Division, Office of Administrative Services, (512) 239-6260.

#### STATUTORY AUTHORITY

The new and amended sections are proposed under Texas Water Code, §5.103 and §5.105, and Texas Health and Safety Code, §§361.011, 361.017, and 361.024, 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.

The proposed new and amended sections implement Texas Health and Safety Code, §361.085 and Texas Water Code, §26.352.

**SUBCHAPTER A : GENERAL FINANCIAL ASSURANCE REQUIREMENTS**

**§37.11, §37.52**

**§37.11. Definitions.**

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

(1) - (11) (No change.)

(12) **Program area** - TNRCC areas under which the facility is permitted, licensed or registered to operate, including but not limited to Industrial and Hazardous Waste, Underground Injection Control, Municipal Solid Waste, or Petroleum Storage Tanks.

(13) [(12)] **Standby trust** - An unfunded trust established to meet the requirements of this chapter.

(14) [(13)] **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.

**§37.52. Use of An Universal Financial Assurance Mechanism for Multiple Facilities and Program Areas.**

An owner or operator may use a universal mechanism to meet the requirements of this chapter for multiple facilities permitted, licensed or registered in multiple program areas, provided the mechanism is allowed to be used in the program areas represented. The amount of funds demonstrated by the universal mechanism must be no less than the sum of funds that would be available if separate mechanisms were established and maintained. The wording of the mechanisms must be in a form satisfactory to the executive director. The available mechanisms are those specified in Subchapter C of this chapter (relating to Financial Assurance Mechanisms for Closure) and 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 specified mechanisms and a standby trust fund shall be required in certain circumstances. A universal mechanism submitted to the executive director shall include a list showing for each facility covered by the mechanism: the name, physical and mailing address of the facility, each program area and commission registration, license or permit number, the rules regulating the program under which the facility is permitted, licensed or registered, and the amount of funds demonstrated for each permit, license or registration for closure, post closure, corrective action, liability, and decommissioning. The anniversary date of the universal mechanism is the date on which owners or operators shall make an annual inflation adjustment for all facilities demonstrating through the universal mechanism. In directing funds available through the universal

mechanism for any of the facilities covered by the mechanism, the executive director may direct only the amount of funds designated for each permit or registration for that facility.