

The Texas Natural Resource Conservation Commission (commission) adopts amendments to §§336.502, 336.514, 336.517, 336.607, 336.736, and 336.737, concerning Radioactive Substances Rules. The amendments are adopted without changes to the proposed text as published in the October 22, 1999 issue of the *Texas Register* (24 TexReg 9246) and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

Changes have been adopted in Chapter 336 as the result of ongoing efforts by the commission for regulatory reform. The adopted changes focus on financial assurance and are based upon a two-step process. The first step involved identification of all commission programs which contain a financial assurance component and transfer of those requirements into 30 TAC Chapter 37. The second step involved processing of the rules to eliminate redundant requirements, to remove duplicative mechanisms, and to consolidate provisions whenever possible. Modifications are simultaneously adopted in coordination with 30 TAC Chapters 37, 305, 324, 330, 331, 334, and 335. Entities who are required to provide financial assurance are specifically instructed to do so in each relevant, technical chapter. Those requirements that are overseen by the commission's technical program staff, such as the calculation of closure, post closure, and corrective action costs, will remain in the technical rule chapters. Each technical chapter refers the reader to Chapter 37 for the rules pertaining to financial assurance and to the financial assurance mechanisms.

The financial assurance rules being adopted are consolidated in accordance with the commission's ongoing regulatory reform initiative. For example, previously, several programs had rules with a

separate subchapter concerning financial assurance and the allowed mechanisms. Frequently, the requirements were repetitive and identical. These rules consolidate financial requirements to reduce duplicative language while retaining the integrity of the previous requirements. The owner or operator must comply with the requirements of closure, the requirements of post closure, and the requirements of corrective action, or any combination of the three, as is appropriate for the particular activity conducted at the type of facility or site being considered. The mere consolidation, or inclusion, of all three types of activities in a single rule section does not alter the scope of the applicability of the rule, nor does it impose a more or less stringent regulation.

The financial assurance rules are also being adopted for clarification in accordance with the commission's ongoing regulatory reform initiative. For example, the adopted rules clarify and use cross-references to indicate that the owner or operator is subject to the provisions of the relative technical chapters, the general subchapters of Chapter 37, the mechanism requirements, the mechanism wordings, and the specific program subchapters of Chapter 37.

The rules adoption is for simplification and clarification and involves few substantive changes in the procedures and criteria to be used by the commission and the regulated community for providing financial assurance and other associated activities that are regulated under this chapter. Substantive changes are minimal and occur, when necessary, for the purposes of consolidation, clarification, compatibility and consistency with commission and federal requirements, and protection of human health and the environment. Substantive changes in the regulations were specifically articulated in the

proposal preamble published in the October 22, 1999 issue of the *Texas Register* to make those instances easily identifiable. In general, the adoption of these rules involve organization, editorial modifications, reordering requirements into a more logical sequence, and correcting cross-reference citations.

Texas law requires the commission to adopt rules requiring financial assurance for various program areas including Texas Health and Safety Code (HSC), §361.085 for solid waste, hazardous waste, and permitted facilities and HSC, §401.108 for licensed facilities.

The purpose of the financial assurance requirements is to assure that adequate funds will be readily available to cover the costs of closure, post closure, and corrective action associated with certain types of facilities. Financial assurance is important for two primary reasons. First, to prevent delays in addressing environmental needs at facilities, owners and operators need to have funds that are readily available. Moreover, if the owner or operator lacks sufficient funds, environmental needs may have to be addressed through state or federal cleanup funds rather than by the entity responsible for the facility. Additionally, some programs require liability coverage to protect third parties from bodily injury and property damage that may result from a permittee's waste management activities.

The adopted amendments are necessary to maintain consistency of commission rules and to fulfill the statutory mandates requiring financial assurance.

SECTION BY SECTION DISCUSSION

Corrections to the proposed rules for Chapter 336 were published in the *Texas Register* on November 26, 1999 (24 TexReg 10606). The changes were primarily to include a statutory authority reference. The corrections are included in the adopted rule text. There were no other additional modifications made during this rulemaking between the proposed rule text and the adopted rule language of Chapter 336.

FINAL REGULATORY IMPACT ANALYSIS

This rulemaking is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a “major environmental rule” as defined in the Administrative Procedure Act. Although the rules are adopted to protect the environment and reduce risk to human health, this rulemaking is not a major environmental rule because it does not adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The rules do not adversely affect in a material way the aforementioned aspects of the state because, generally, the adopted changes are made to the financial assurance rules for the purposes of consolidation and organization. In the few instances where substantive changes are being adopted there are no such changes which modify the procedures and criteria used by the commission and the regulated entities in such a manner that the adopted rules are a “major environmental rule.” The adopted rules provide better-written, better-organized, and easier to use financial assurance rules, which in turn provides an overall benefit to the affected economy, sectors of the economy, productivity, competition, jobs, the environment, and the public health and safety of

the state and affected sectors of the state. The economy, a sector of the economy, productivity, competition, or jobs, are not adversely affected in a material way by the few adopted substantive changes. In fact, the adoption should benefit the economy, a sector of the economy, and productivity by clarifying existing requirements and by making the rules easier to understand. As the previously existing rules were protective of human health and the environment, this adoption does not decrease the protection of the environment or human health. More simply stated, the adoption revises the commission's rules in a manner which could provide a benefit to the economy while enhancing the protection of the environment and public health and safety.

Furthermore, these rules do not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). The rules do not exceed a standard set by federal law because one of the purposes of this rulemaking is to adopt state rules which are accordant with the corresponding federal regulations. Any requirements in the rules are in accord with the corresponding federal regulations, and they do not exceed an express requirement of state law because they implement state law provisions to require financial assurance. This adoption does not exceed the requirements of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state or federal program because there is no federal financial assurance program. There are, however, federal financial assurance requirements for many of the delegated programs and these rules are consistent with the corresponding federal financial assurance requirements. The adoption is not made solely under the general powers of the commission, but is also made under the requirements of specific state law that allows the commission to provide these

programs. Finally, these rules are not adopted on an emergency basis to protect the environment or to reduce risks to human health.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these rules under Texas Government Code, §2007.043. The following is a summary of that assessment. The purpose of this rulemaking is to delete obsolete language, to make the rules consistent with commission and federal rules, and to implement the commission's guidelines on regulatory reform as well as to provide clarifications to existing rule language. Promulgation and enforcement of the rules does not create a burden on private real property. There are few significant, new requirements being added. In the few instances where substantive changes are being adopted, there are no such changes which modify the financial assurance rules, procedures, or criteria in such a manner that a burden on private real property is modified or created. A landowner's rights in private real property will not be affected by the adoption of these rules.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed the rulemaking for consistency with the Texas Coastal Management Program's (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Council and found that the rules are subject to the CMP and must be consistent with applicable CMP goals and policies which are found in 31 TAC §501.12 and §501.14. The CMP goal applicable to the rules is the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions,

and values of Coastal Natural Resource Areas (CNRAs). CMP policies applicable to the rules include the administrative policies and the policies for specific activities related to construction and operation of solid waste treatment, storage, and disposal facilities. In particular, the CMP policy most applicable to these rules is to ensure that new solid waste facilities and areal expansions of existing solid waste facilities are sited, designed, constructed, and operated to prevent releases of pollutants that may adversely affect CNRAs and comply with standards established under the Solid Waste Disposal Act, 42 United States Code, §§6901 et seq.

This rulemaking is related to financial assurance, which in turn impacts the issuance of permits, including those permits relating to solid waste facilities. Thus, this rulemaking is subject to the CMP. The commission has prepared a consistency determination for the rules pursuant to 31 TAC §505.22 and has found that this rulemaking is consistent with the applicable CMP goals and policies. The commission determined that the adoption is consistent with the applicable CMP goals and policies because the modification implemented by these adopted rules is insignificant in relationship to the CMP and has no impact upon CNRAs.

The adoption does contain minor, substantive changes. In the few instances where a substantive change is made, it is for the purpose of achieving consistency with state and federal law and to achieve consistency with commission rules. However, the commission has determined that these adopted rules do not have a direct or significant, adverse effect on CNRAs. This adoption does not change the technical permitting requirements of waste facilities nor change the amount of financial assurance that

must be demonstrated. Instead, this financial assurance rule adoption addresses the means by which demonstrations of financial assurance can be made.

Because this rule adoption does not modify the amount of financial assurance to be demonstrated for permits for owners and operators of hazardous waste storage, processing, or disposal facilities, promulgation and enforcement of these rules has no new effect on the CNRAs. The rules continue having their original effect, which is to require demonstrations of financial assurance in order to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of CNRAs, and also the rules continue to ensure that new solid waste facilities and areal expansions of existing solid waste facilities are sited, designed, constructed, and operated to prevent releases of pollutants that may adversely affect CNRAs and comply with standards established under the Solid Waste Disposal Act, 42 United States Code, §§6901 et seq.

The CMP goal applicable to the rules is the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of CNRAs. Because these rules do not change the amount of financial assurance required by the previously existing rules, the rules are consistent with the applicable CMP goal. CMP policies applicable to the rules include the administrative policies and the policies for specific activities related to construction and operation of solid waste treatment, storage, and disposal facilities.

Promulgation and enforcement of these rules is consistent with the applicable CMP goals and policies because adoption does not change the amount of financial assurance required in the previously existing rules. The rule modifications do not relax the existing requirements which encourage safe and appropriate storage, management, and treatment of hazardous waste, and thereby the rule modifications result in no substantive effect on the management of coastal areas of the state. In addition, these rules do not violate any applicable provisions of the CMP's stated goals and policies. Therefore, in compliance with 31 TAC §505.22(e), the commission affirms that these rules are consistent with CMP goals and policies, and the rules have no new impact upon the coastal area.

HEARING AND COMMENTERS

A public hearing was not requested or held concerning these rules. The public comment period closed November 22, 1999 at 5:00 p.m. central standard time. Written comments were not received regarding this chapter. However, comments were received regarding other rule chapters associated with this rulemaking. Those comments as well as the changes that are being made throughout the associated promulgation are described and discussed in the adoption preambles for Chapters 37, 305, 324, and 331 being simultaneously published in this issue of the *Texas Register*.

STATUTORY AUTHORITY

The amendments are adopted under Texas Water Code (TWC), §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the laws of this state. These rules are also adopted under the Solid Waste Disposal Act in HSC, §361.015

and §361.018, which provide the commission with the authority to regulate the disposal of radioactive waste; HSC, §361.085, which provides the commission with the authority to require financial assurance demonstrations for solid waste, hazardous waste, and permitted facilities; HSC, §401.108, which provides the authority for the commission to require financial assurance from licensed facilities; and HSC, §401.051 and §401.412, which provide authority for the commission to adopt rules relating to radioactive substances.

Together, these statutes authorize the commission to adopt any rules necessary to carry out its powers and duties under TWC and other laws of Texas and to establish and approve all general policy of the commission.

**SUBCHAPTER F : LICENSING OF ALTERNATIVE METHODS OF DISPOSAL OF
RADIOACTIVE MATERIAL**

§§336.502, 336.514, 336.517

§336.502. Definitions.

Terms used in this subchapter are defined in §336.2 of this title (relating to Definitions).

Additional terms used in this subchapter have the following definitions.

(1) **Inactive disposal site** - A site or facility that:

(A) contains radioactive material or waste disposed of below the surface, or soils or structures contaminated with radioactive material or waste; and

(B) no longer disposes or will dispose of, or accepts or will accept for the purpose of disposal, additional radioactive material or waste.

(2) **Funding plan** - A plan, equivalent to the decommissioning funding plan of 10 Code of Federal Regulations §30.35 (relating to Financial assurance and recordkeeping for decommissioning) and §40.36 (relating to Financial assurance and recordkeeping for decommissioning), submitted by the

holder of an existing license before the development of a detailed decommissioning plan. The funding plan includes:

(A) an initial cost estimate for decommissioning;

(B) a description of the financial assurance mechanism(s) as specified in Chapter 37, Subchapter S of this title (relating to Financial Assurance for Alternative Methods of Disposal of Radioactive Material) utilized; and

(C) a certification by the licensee that a signed original of the financial assurance mechanism as specified in Chapter 37, Subchapter S of this title, for decommissioning was submitted to and approved by the executive director.

(3) **On-site** - The same or geographically contiguous property that may be divided by public or private rights-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing, as opposed to going along, the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way that the property owner controls and to which the public does not have access, is also considered on-site property.

§336.514. Financial Assurance for Decommissioning.

(a) A financial assurance mechanism or combination of mechanisms in accordance with Chapter 37, Subchapter S of this title (relating to Financial Assurance for Alternative Methods of Disposal of Radioactive Material) is required for all entities currently licensed or proposed to be licensed.

(b) Applicants for a new license to decommission an inactive disposal site shall submit with the application a signed statement regarding how the applicant will provide financial assurance for decommissioning using one or more of the mechanisms specified in Chapter 37, Subchapter S of this title. The amount of financial assurance shall be based upon the detailed cost estimate included in the decommissioning plan submitted with the application. The financial assurance for decommissioning shall be provided at least 30 days prior to license issuance and be effective upon license issuance.

(c) Holders of licenses issued before January 1, 1998 shall submit a funding plan before January 1, 1998. Each funding plan must contain:

(1) a cost estimate for decommissioning;

(A) Each holder of a license authorizing the disposal of unsealed radioactive material with a half-life greater than 120 days and in quantities exceeding 10^5 times the applicable

quantities set forth in §336.521, Appendix A, of this title (relating to Radionuclide Quantities for Use in Determining Financial Assurance for Decommissioning) or when a combination of isotopes is involved if R divided by 10^5 is greater than 1 (unity rule), where R is defined as the sum of the ratios of the quantity of each isotope to the applicable value in §336.521, Appendix A of this title, shall submit a certification of financial assurance for decommissioning in an amount at least equal to \$750,000, in accordance with the criteria set forth in this subchapter and Chapter 37, Subchapter S of this title; or

(B) Each holder of a license authorizing disposal of radioactive material with a half-life greater than 120 days shall provide certification of financial assurance for decommissioning based on the quantity of material as follows:

(i) \$750,000--greater than 10^4 but less than or equal to 10^5 times the applicable quantities in §336.521, Appendix A, of this title, in unsealed form. (For a combination of isotopes, if R , as defined in subparagraph (A) of this paragraph, divided by 10^4 is greater than 1 but R divided by 10^5 is less than or equal to 1.); or

(ii) \$150,000--greater than 10^3 but less than or equal to 10^4 times the applicable quantities in §336.521, Appendix A of this title in unsealed form. (For a combination of isotopes, if R , as defined in subparagraph (A) of this paragraph, divided by 10^3 is greater than 1 but R divided by 10^4 is less than or equal to 1.).

(C) Notwithstanding the requirements of subparagraph (A) and (B) of this paragraph:

(i) each holder for a license authorizing the disposal of more than 100 millicuries of source material in a readily dispersible form shall submit certification that financial assurance has been provided in the amount of \$750,000.

(ii) each holder for a license authorizing the disposal of quantities of source material greater than 10 millicuries but less than or equal to 100 millicuries in a readily dispersible form shall submit certification that financial assurance has been provided in the amount of \$150,000;

(2) a description of the financial assurance mechanism of assuring funds for decommissioning as specified in Chapter 37, Subchapter S of this title, including means for adjusting cost estimates and associated funding levels annually over the life of the facility; and

(3) a certification by the licensee that a signed original of the financial assurance mechanism for decommissioning, in accordance with criteria set forth in this section and Chapter 37, Subchapter S of this title, has been submitted to and approved by the executive director in the amount specified in paragraph (1) of this subsection.

(d) Holders of existing licenses for inactive disposal sites shall, as part of the license renewal process, submit a signed statement adjusting the amount of financial assurance based upon the detailed cost estimate included in the decommissioning plan submitted with the renewal application. The adjusted amount of financial assurance for decommissioning shall be effective upon license renewal.

(e) Holders of licenses for active disposal sites shall submit a signed statement adjusting the amount of financial assurance based upon the detailed cost estimate included in the decommissioning plan submitted no later than the date specified in §336.519(e) of this title (relating to Expiration and Termination of Licenses).

§336.517. Financial Assurance for Control and Maintenance.

(a) An applicant or licensee required to demonstrate financial assurance for control and maintenance of a site shall maintain financial assurance for control and maintenance upon license issuance and during the decommissioning period. The applicant or licensee shall provide sufficient financial assurance to enable an independent third party, including a governmental custodian of a site, to assume and carry out responsibilities for any necessary control and maintenance of the site. The financial assurance mechanism(s) for control and maintenance shall comply with Chapter 37, Subchapter S of this title (relating to Financial Assurance for Alternative Methods of Disposal of Radioactive Material) including increasing annually the financial assurance amount for inflation or

whenever modifications to the control and maintenance activities or changes to the amount being demonstrated causes the amounts for control and maintenance to increase.

(b) Prior to license termination, the licensee shall deposit a sum of cash acceptable to the executive director into the Texas Treasury Safekeeping Control and Maintenance account to assume and carry out responsibilities for any necessary surveillance, monitoring, control, maintenance and other care of the decommissioned disposal site on a continual basis during the institutional control period. Upon receipt of the deposit, the executive director shall release the existing financial assurance mechanism(s) for control and maintenance. If a deposit is not made into the Control and Maintenance account, the executive director shall draw on the existing financial assurance mechanism(s) and deposit the cash into the Texas Safekeeping Treasury Control and Maintenance account.

SUBCHAPTER G : DECOMMISSIONING STANDARDS

§336.607

STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the laws of this state.

The amendment is also adopted under HSC, §361.015 and §361.018, which provide the commission with the authority to regulate the disposal of radioactive waste; HSC, §361.085, which provides the commission with the authority to require financial assurance demonstrations for solid waste, hazardous waste, and permitted facilities; HSC, §401.108, which provides the authority for the commission to require financial assurance from licensed facilities; and HSC, §401.051 and §401.412, which provide authority for the commission to adopt rules relating to radioactive substances.

Together, these statutes authorize the commission to adopt any rules necessary to carry out its powers and duties under TWC and other laws of Texas and to establish and approve all general policy of the commission.

§336.607. Criteria for License Termination under Restricted Conditions.

A site will be considered acceptable for license termination under restricted conditions if all of the following conditions are met:

(1) The licensee can demonstrate that further reductions in residual radioactivity would result in net public or environmental harm or were not being made because the residual levels associated with restricted conditions are as low as reasonably achievable (ALARA). Determination of the levels which are ALARA must take into account consideration of any detriments expected to potentially result from decontamination and waste disposal (e.g. traffic accidents);

(2) The licensee has made provisions for legally enforceable institutional controls that provide reasonable assurance that the total effective dose equivalent (TEDE) from residual radioactivity distinguishable from background to the average member of the critical group will not exceed 25 mrem (0.25mSv) per year;

(3) The licensee has provided sufficient financial assurance to enable an independent third party, including a governmental custodian of a site, to assume and carry out responsibilities for any necessary control and maintenance of the site. Acceptable financial assurance mechanisms are those in Chapter 37, Subchapter S of this title (relating to Financial Assurance for Alternative Methods of Disposal of Radioactive Material), or Chapter 37, Subchapter T of this title (relating to Financial Assurance for Near-Surface Land Disposal of Radioactive Waste);

(4) The licensee has submitted a decommissioning plan to the commission indicating the licensee's intent to decommission and specifying that the licensee intends to decommission by restricting use of the site. The licensee shall document in the decommissioning plan how the advice of

individuals and institutions in the community who may be affected by the decommissioning has been sought and incorporated, as appropriate, following analysis of that advice.

(A) Licensees proposing to decommission by restricting use of the site shall seek advice from affected parties regarding the following matters concerning the proposed decommissioning.

(i) Whether provisions for institutional controls proposed by the licensee:

(I) will provide reasonable assurance that the TEDE from residual radioactivity distinguishable from background to the average member of the critical group will not exceed 25 mrem (0.25 mSv) TEDE per year;

(II) will be enforceable; and

(III) will not impose undue burdens on the local community or other affected parties.

(ii) Whether the licensee has provided sufficient financial assurance to enable an independent third party, including a governmental custodian of a site, to assume control and maintenance of the site.

(B) In seeking advice on the issues identified in subparagraph (A) of this paragraph, the licensee shall provide for:

(i) participation by representatives of a broad cross section of community interests who may be affected by the decommissioning;

(ii) an opportunity for a comprehensive, collective discussion on the issues by the participants represented; and

(iii) a publicly available summary of the results of all discussions, including a description of the individual viewpoints of the participants on the issues and the extent of agreement and disagreement among the participants on the issues; and

(5) Residual radioactivity at the site has been reduced so that if the institution controls were no longer in effect, there is reasonable assurance that the TEDE from residual radioactivity distinguishable from background to the average member of the critical group is ALARA and would not exceed either:

(A) 100 mrem (1mSv) per year; or

(B) 500 mrem (5 mSv) per year provided the licensee:

(i) demonstrates that further reductions in residual radioactivity necessary to comply with the 100 mrem/y (1 mSv/y) value of subparagraph (A) of this paragraph are not technically achievable, would be prohibitively expensive, or would result in net public or environmental harm;

(ii) makes provisions for durable institutional controls; and

(iii) provides sufficient financial assurance to enable a responsible government entity or independent third party, including a governmental custodian of a site, both to carry out periodic rechecks of the site no less frequently than every five years to assure that the criteria of §336.603(a) of this title (relating to Radiological Criteria for Unrestricted Use) are met and to assume and carry out responsibilities for any necessary control and maintenance of those controls. Acceptable financial assurance mechanisms are those in Chapter 37, Subchapter S of this title, or Chapter 37, Subchapter T of this title.

**SUBCHAPTER H : LICENSING REQUIREMENTS FOR NEAR-SURFACE
LAND DISPOSAL OF RADIOACTIVE WASTE**

§336.736, §336.737

STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the laws of this state.

The amendments are also adopted under the Solid Waste Disposal Act in HSC, §361.015 and §361.018, which provide the commission with the authority to regulate the disposal of radioactive waste; HSC, §361.085, which provides the commission with the authority to require financial assurance demonstrations for solid waste, hazardous waste, and permitted facilities; HSC, §401.108, which provides the authority for the commission to require financial assurance from licensed facilities; and HSC, §401.051 and §401.412, which provide authority for the commission to adopt rules relating to radioactive substances.

Together, these statutes authorize the commission to adopt any rules necessary to carry out its powers and duties under TWC and other laws of Texas and to establish and approve all general policy of the commission.

§336.736. Funding for Disposal Site Closure and Stabilization.

(a) The applicant shall provide assurance before the commencement of operations that sufficient funds will be available to carry out disposal site closure and stabilization, including:

(1) decontamination or dismantlement of land disposal facility structures; and

(2) closure and stabilization of the disposal site so that, following transfer of the disposal site to the custodial agency, the need for ongoing active maintenance is eliminated to the extent practicable and only minor custodial care, surveillance, and monitoring are required.

(b) The assurance shall be based on cost estimates approved by the executive director which reflect the commission-approved plan for disposal site closure and stabilization. The applicant's cost estimates shall take into account total costs that would be incurred if an independent contractor were hired to perform the closure and stabilization work.

(c) The licensee's financial assurance mechanism shall be reviewed annually by the executive director to assure that sufficient funds are available for completion of the closure plan, assuming that the work has to be performed by an independent contractor.

(d) The amount of financial assurance should change in accordance with the predicted cost of future closure and stabilization. Factors affecting cost estimates for closure and stabilization include inflation, increases in the amount of disturbed land, changes in engineering plans, closure and stabilization that have already been accomplished, and any other conditions affecting costs. This shall yield a closure amount that is at least sufficient at all times to cover the costs of closure of the disposal units that are expected to be used before the next annual review.

(e) Financial assurance mechanisms submitted to comply with this section shall meet the requirements specified in Chapter 37, Subchapter T of this title (relating to Financial Assurance for Near-Surface Land Disposal of Radioactive Waste).

§336.737. Funding for Institutional Control.

(a) The licensee shall pay into the Radiation and Perpetual Care Fund an amount determined by the executive director to be adequate to provide surveillance, monitoring, any required maintenance, and other care of the disposal site on a continuing basis during the institutional control period.

(b) During the term of the license before the institutional control period, the licensee shall provide the total amount of required funding by means approved by the executive director, such as a combination of periodic payments into the fund and financial assurance covering the remainder of the

total amount. Financial assurance mechanisms shall meet the requirements of Chapter 37, Subchapter T of this title (relating to Financial Assurance for Near-Surface Land Disposal of Radioactive Waste).

(c) The executive director shall review annually the amount paid into the fund and shall adjust the amount, if necessary, to ensure the payment schedule is adequate to cover the costs of surveillance, monitoring, any required maintenance, and other care of the disposal site during the institutional control period. The amount may be adjusted to reflect inflation, changes in activities performed, and any other conditions affecting costs.