

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §37.11, concerning Definitions, §37.261, concerning Corporate Guarantee for Closure, and §37.551, concerning Corporate Guarantee for Liability.

EXPLANATION OF PROPOSED RULES

The commission is proposing the adoption of a definition for “substantial business relationship,” which would allow corporations to provide financial test guarantees for entities including Limited Liability Companies (LLCs), Limited Liability Partnerships (LLPs), and Limited Partnerships (LPs).

In September 1988, the United States Environmental Protection Agency (EPA) modified 40 Code of Federal Regulations (CFR) Parts 264 and 265, Subpart H, to expand the mechanisms available to owners and operators to demonstrate financial responsibility for third-party liability. The modifications included a new option which allowed corporate guarantors to demonstrate financial responsibility for liability using the financial test on behalf of entities with which the guarantor had a “substantial business relationship.” In September 1992, EPA modified 40 CFR Parts 264 and 265, Subpart H again and expanded the use of substantial business relationship to financial test guarantees for closure and post-closure care. In 40 CFR 254.141(h), EPA defines the “substantial business relationship” as “the extent of a business relationship necessary under applicable state law to make a guarantee contract issued incident to that relationship valid and enforceable. A ‘substantial business relationship’ must arise from a pattern of recent or ongoing business transactions, in addition to the guarantee itself, such that a currently existing business relationship between the guarantor and the owner or operator is

demonstrated to the satisfaction of the applicable EPA Regional Administrator.” This broad federal definition requires each state to determine under its own laws what constitutes “a business relationship necessary . . . to make a guarantee contract issued incident to that relationship valid and enforceable.”

Current federal regulations allow corporations to use the financial test to provide guarantees on behalf of: (1) their subsidiaries; and (2) entities with which the guarantor has a substantial business relationship. Federal regulations define a “subsidiary” in 40 CFR 261.141(d) as a corporation in which a “parent corporation” directly owns at least 50% of the voting stock of the corporation which is the facility owner or operator. For the purpose of providing corporate guarantees using the financial test, guarantors cannot treat LLCs, LLPs, LPs or other noncorporate entities as “subsidiaries.”

The commission’s proposed rules will adopt a definition for “substantial business relationship” and allow corporate guarantors to use the financial test to demonstrate financial responsibility for liability, closure, and post-closure on behalf of noncorporate (non-subsidiary) entities such as LLCs, LLPs, and LPs. The proposed definition would recognize a substantial business relationship between a guarantor corporation and entities such as LPs, LLPs, and LLCs in which the guarantor corporation has at least a 50% ownership interest. Such a definition for substantial business relationship will provide an additional option to corporations which choose to provide guarantees on behalf of noncorporate entities in which the corporation has an ownership interest, similar to a corporate parent’s interest in a subsidiary. This definition will narrowly define the relationship and preserve the state’s ability to enforce the guarantee for financial responsibility. In addition, the proposed rules require the guarantor

to provide documentation to the commission which demonstrates that the guarantee contract is valid and enforceable under state law and that a substantial business relationship exists between guarantor corporation and the entity guaranteed.

Definitions of substantial business relationship and entity are added to §37.11. Substantial business relationship means a relationship where the guarantor is a corporation and owns at least 50% of the entity guaranteed. The term “entity,” for the purposes of Chapter 37, means a legal organization engaged in lawful business or purpose, such as a corporation, partnership, sole proprietorship, LLC, LLP, or LP. The commission seeks comments on the definition of substantial business relationship and the definition of entity.

Amended §37.261, concerning Corporate Guarantee for Closure, adds a description of the supplemental information that the guarantor must include with the demonstration of financial responsibility for closure and post-closure in order to provide the commission with adequate assurances that a substantial relationship exists and that the guarantee issued incident to that relationship is valid and enforceable. The guarantor will be required to submit certain information such as a description of the “substantial business relationship” and the value received in consideration of the guarantee; an original or certified original copy of the Resolution by the Board of Directors authorizing the corporate guarantee on behalf of the entity; the Resolution by the Board of Directors authorizing the formation of the guaranteed entity; an organizational chart which shows the relationship between the two entities; the partnership

agreement or other agreements, articles, or bylaws which set out the formation, structure, and operation of the guaranteed entity.

Amended §37.551, concerning Corporate Guarantee for Liability, adds a description of the supplemental information that the guarantor must include with the demonstration of financial responsibility for liability in order to provide the commission with adequate assurances that a substantial relationship exists and that the guarantee issued incident to that relationship is valid and enforceable.

Again, the guarantor will be required to submit certain information such as a description of the “substantial business relationship” and the value received in consideration of the guarantee; an original or certified original copy of the Resolution by the Board of Directors authorizing the corporate guarantee on behalf of the entity; the Resolution by the Board of Directors authorizing the formation of the guaranteed entity; an organizational chart which shows the relationship between the two entities; the partnership agreement or other agreements, articles, or bylaws which set out the formation, structure, and operation of the guaranteed entity.

FISCAL NOTE

Matthew Johnson, Financial Administration Division, has determined that for 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. There are no new economic costs anticipated for any owners or operators required to comply with the sections as proposed. The rules will not reduce the amount of financial assurance required to be demonstrated.

However, corporate guarantors who demonstrate financial assurance for an LLC, LLP, or LP in which it has at least a 50% interest will experience lower costs by using the financial test. The financial test is a less expensive mechanism than a letter of credit, bond, trust, etc. Savings realized by corporate guarantors will vary with the amount of financial assurance demonstrated and the guarantor's cost of previously available mechanisms. For a demonstration of \$64 million, a corporate guarantor could realize an estimated savings of \$160,000 annually, assuming the guarantor's cost for a bank letter of credit is 0.25%. For a demonstration of \$1.7 million, a corporate guarantor could realize an estimated savings of \$4,250 annually, assuming a similar letter of credit cost. A corporate guarantor's savings would be greater if its cost for bank letters of credit or other similar mechanisms exceeded 0.25%.

PUBLIC BENEFIT

Mr. Johnson 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 this new section will be a potential reduction in cost of demonstrating financial assurance.

SMALL BUSINESS ANALYSIS

The proposed rules provide a new option for corporations to use the financial test to provide a financial guarantee on behalf of entities with which the corporation has a substantial business relationship. As a financial assurance mechanism, the financial test is a less expensive mechanism than other mechanisms, such as letters of credit, bonds, or trusts. 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 to the extent that a small business is either a guarantor corporation or a noncorporate entity for which a guarantee is provided. There are no new 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 Texas Government Code inasmuch as the rules will merely offer an additional option for financial assurance, and they do not meet any of the four applicability requirements listed in §2001.0225(a). The rules will merely offer greater flexibility in instances where corporations guarantee financial responsibility for entities with which the corporation has a substantial business relationship.

The economy, a sector of the economy, productivity, competition, or jobs, will not be adversely affected in a material way because no additional costs are caused by the rules.

The rules do not adversely affect in a material way the environment, or the public health and safety of the state or a sector of the state, because the rules will not reduce the amount of financial assurance

required to be demonstrated. The rules are administrative in nature and simply expand the instruments available to corporate guarantors who provide guarantees on behalf of noncorporate entities.

The purpose of these rules is to adopt a Texas definition for “substantial business relationship” which will allow corporations to provide financial test guarantees for entities including LLCs, LLPs, and LPs. The new definition will allow corporations to use the financial test for demonstrating financial responsibility on behalf of LLCs, LLPs, and LPs.

This proposal does not exceed a standard set by federal law and is specifically allowed by federal law. The federal regulations allow the corporations to use the financial test as a corporate guarantee for closure, post-closure, and liability coverage, on behalf of third parties with which the corporation has a substantial business relationship. The federal regulations defer to each state to ensure that guarantee contracts issued incident to that relationship are valid and enforceable.

This proposal does not exceed the requirements of a delegation agreement or contract between the state and federal government, as the substantial business relationship requirements as proposed will be equivalent to the federal financial assurance mechanism requirements.

The rules are proposed under specific state law and the general powers of the commission. The specific state law is Texas Health and Safety Code, §361.085.

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 adopt the definition of substantial business relationship which would allow corporations to provide financial test guarantees for entities including LLCs, LLPs, and LPs. The new definition will allow corporate guarantors to use the financial test to demonstrate financial responsibility on behalf of noncorporate entities such as LPs, LLPs, and LLCs. The federal regulations allow guarantor corporations to provide corporate guarantees using the financial test on behalf of: (1) their subsidiaries; and (2) entities with which the guarantor has a substantial business relationship. Federal regulations define “subsidiaries” as corporations. For the purpose of providing corporate guarantees using the financial test, guarantors cannot treat LLCs, LLPs, LPs or other noncorporate entities as “subsidiaries.” The commission’s proposed rules will adopt a definition for “substantial business relationship” and allow corporate guarantors to use the financial test to demonstrate financial responsibility on behalf of noncorporate (non-subsidiary) entities such as LLCs, LLPs, and LPs for liability, closure, and post-closure. The proposed definition would recognize a substantial business relationship between a guarantor corporation and entities such as LLCs, LLPs, and LPs in which the guarantor corporation has at least a 50% ownership interest. Such a definition for substantial business relationship will provide an additional option to corporations which choose to provide financial test guarantees to the state on behalf of noncorporate entities in which the corporation has an ownership interest, similar to a corporate parent’s interest in a corporate subsidiary. This definition narrowly defines the relationship and preserves the state’s ability to enforce the guarantee for financial

responsibility. The promulgation and enforcement of these rules will not burden private real property nor adversely affect property values because the proposed rules will not reduce the amount of financial assurance required to be demonstrated.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has determined that this rulemaking action is not subject to the Texas Coastal Management Program 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 submitted to Lisa Martin, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 98059-037-AD. Comments must be received by 5:00 p.m., July 5, 1999. For further information or questions concerning this proposal, please contact Linda Shirck of the Financial Administration Division, Office of Administrative Services, (512) 239-6260.

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code, §5.103 and §5.105, and Texas Health and Safety Code, §361.011, and §361.017, 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 amendment implements Texas Health and Safety Code, §361.085.

SUBCHAPTER A : GENERAL FINANCIAL ASSURANCE REQUIREMENTS

§37.11

§37.11. Definitions.

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

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

(2) **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.

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

(4) **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.

(5) **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).

(6) **Entity** - For the purposes of this chapter, means a legal organization engaged in lawful business or purpose, such as a corporation, partnership, sole proprietorship, limited liability company, limited liability partnership, or limited partnership.

(7) [(6)] **Face amount** - The total amount the insurer is obligated to pay under an insurance policy.

(8) [(7)] **Financial responsibility** - This term shall mean the same as financial assurance.

(9) [(8)] **Independent audit** - An audit performed by an independent certified public accountant in accordance with generally accepted auditing standards.

(10) [(9)] **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.

(11) [(10)] **Net working capital** - Current assets minus current liabilities.

(12) [(11)] **Net worth** - Total assets minus total liabilities and equivalent to owner's equity.

(13) [(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.

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

(15) **Substantial business relationship** - a relationship where the guarantor is a corporation and owns at least 50% of the entity guaranteed.

(16) [(14)] **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.

SUBCHAPTER C : FINANCIAL ASSURANCE MECHANISMS FOR CLOSURE

§37.261

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code, §5.103 and §5.105, and Texas Health and Safety Code, §361.011 and §361.017, 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 amendment implements Texas Health and Safety Code, §361.085.

§37.261. Corporate Guarantee for Closure.

(a) (No change.)

(b) The guarantor shall be the direct or higher-tier parent corporation of the owner or operator or a corporation with a “substantial business relationship” with 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) (No change.)

(d) If the guarantor has a “substantial business relationship” with the owner or operator, in addition to the requirements specified in this chapter for the financial test and corporate guarantee, the guarantor will submit a description of the “substantial business relationship” and the value received in consideration of the guarantee; an original or certified original copy of the Resolution by the Board of Directors authorizing the corporate guarantee on behalf of the entity; the Resolution by the Board of Directors authorizing the formation of the guaranteed entity; an organizational chart which shows the relationship between the two entities; the partnership agreement or other agreements, articles, or bylaws which set out the formation, structure, and operation of the guaranteed entity.

(e) [(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.

SUBCHAPTER F : FINANCIAL ASSURANCE MECHANISMS FOR LIABILITY

§37.551

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code, §5.103 and §5.105, and Texas Health and Safety Code, §361.011 and §361.017, 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 amendment implements Texas Health and Safety Code, §361.085.

§37.551. Corporate Guarantee for Liability.

(a) (No change.)

(b) The guarantor must be the direct or higher-tier parent corporation of the owner or operator or a corporation with a “substantial business relationship” with 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) If the guarantor has a “substantial business relationship” with the owner or operator, in addition to the requirements specified in this chapter for the financial test and corporate guarantee, the guarantor will submit a description of the “substantial business relationship” and the value received in consideration of the guarantee; an original or certified original copy of the Resolution by the Board of Directors authorizing the corporate guarantee on behalf of the entity; the Resolution by the Board of Directors authorizing the formation of the guaranteed entity; an organizational chart which shows the relationship between the two entities; the partnership agreement or other agreements, articles, or bylaws which set out the formation, structure, and operation of the guaranteed entity.

(e) [(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.

(f) [(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.

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §335.112 and §335.152, regarding Industrial Solid Waste and Municipal Hazardous Waste.

EXPLANATION OF PROPOSED RULES

The commission is proposing the adoption of a definition for “Substantial business relationship.” The definition will be placed in 30 TAC Chapter 37, concerning Financial Assurance. The purpose of this rulemaking for Chapter 335 is to adopt the “substantial business relationship” for closure and post-closure and to provide the appropriate references to “substantial business relationship” in Chapter 335. The “substantial business relationship” rule will allow corporations to provide financial test guarantees for entities including Limited Liability Companies (LLCs), Limited Liability Partnerships (LLPs), and Limited Partnerships (LPs).

In September 1988, the United States Environmental Protection Agency (EPA) modified 40 Code of Federal Regulations (CFR) Parts 264 and 265, Subpart H, to expand the mechanisms available to owners and operators to demonstrate financial responsibility for third party liability. The modifications included a new option which allowed corporate guarantors to demonstrate financial responsibility for liability using the financial test on behalf of entities with which the guarantor had a “substantial business relationship.” In September 1992, EPA modified 40 CFR Parts 264 and 265, Subpart H, again and expanded the use of substantial business relationship to financial test guarantees for closure and post-closure care. In 40 CFR 254.141(h), EPA defines the “substantial business relationship” as “the extent of a business relationship necessary under applicable state law to make a guarantee contract

issued incident to that relationship valid and enforceable. A ‘substantial business relationship’ must arise from a pattern of recent or ongoing business transactions, in addition to the guarantee itself, such that a currently existing business relationship between the guarantor and the owner or operator is demonstrated to the satisfaction of the applicable EPA Regional Administrator.” This broad federal definition requires each state to determine under its own laws what constitutes “a business relationship necessary . . . to make a guarantee contract issued incident to that relationship valid and enforceable.”

Current federal regulations allow corporations to use the financial test to provide guarantees on behalf of: (1) their subsidiaries; and (2) entities with which the guarantor has a substantial business relationship. Federal regulations define “subsidiaries” as corporations. The federal regulations, in 40 CFR 264.141(d), define a “parent” corporation as “a corporation which directly owns at least 50% of the voting stock of the corporation which is the facility owner or operator; the latter corporation is deemed a ‘subsidiary’ of the parent corporation. For the purpose of providing corporate guarantees using the financial test, guarantors cannot treat LLCs, LLPs, LPs, or other non-corporate entities as ‘subsidiaries.’”

The commission’s proposed rules in Chapters 37 and Chapter 335 will adopt a definition for “substantial business relationship” and allow corporate guarantors to use the financial test to demonstrate financial responsibility for liability, closure, and post-closure on behalf of non-corporate (non-subsidiary) entities such as LLCs, LLPs, and LPs. The proposed definition would recognize a

substantial business relationship between a guarantor corporation and entities such as LPs, LLPs, and LLCs in which the guarantor corporation has at least a 50% ownership interest. Such a definition for substantial business relationship will provide an additional option to corporations which choose to provide guarantees on behalf of non-corporate entities in which the corporation has an ownership interest, similar to a corporate parent's interest in a subsidiary. This definition will narrowly define the relationship and preserve the state's ability to enforce the guarantee for financial responsibility. In addition, the proposed rules require the guarantor to provide documentation to the commission which demonstrates that the guarantee contract is valid and enforceable under state law and that a substantial business relationship exists between guarantor corporation and the entity guaranteed.

Amended §335.112, concerning Standards, adds a reference to the definition of substantial business relationship. The definition of substantial business relationship will be in a concurrent proposed rulemaking for Chapter 37, concerning Financial Assurance.

Amended §335.152, concerning Standards, also adds references to the definition of substantial business relationship.

FISCAL NOTE

Matthew Johnson, Financial Administration Division, has determined that for 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. There are no new

economic costs anticipated for any owners or operators required to comply with these sections as proposed. The rules will not reduce the amount of financial assurance required to be demonstrated. However, corporate guarantors who demonstrate financial assurance for an LLC, LLP, or LP in which it has at least a 50% interest will experience lower costs by using the financial test. The financial test is a less expensive mechanism than a letter of credit, bond, trust, etc. Savings realized by corporate guarantors will vary with the amount of financial assurance demonstrated and the guarantor's cost of previously available mechanisms. For a demonstration of \$64 million, a corporate guarantor could realize an estimated savings of \$160,000 annually, assuming the guarantor's cost for a bank letter of credit is 0.25%. For a demonstration of \$1.7 million, a corporate guarantor could realize an estimated savings of \$4,250 annually, assuming a similar letter of credit cost. A corporate guarantor's savings would be greater if its cost for bank letters of credit or other similar mechanisms exceeded 0.25%.

PUBLIC BENEFIT

Mr. Johnson 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 new sections will be a potential reduction in cost of demonstrating financial assurance.

SMALL BUSINESS ANALYSIS

The proposed rules provide a new option for corporations to use the financial test to provide a financial guarantee on behalf of entities with which the corporation has a substantial business relationship. As a financial assurance mechanism, the financial test is a less expensive mechanism than other mechanisms, such as letters of credit, bonds, or trusts. 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 to the extent that a small business is either a guarantor corporation or a noncorporate entity for which a guarantee is provided. There are no new 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 Texas Government Code inasmuch as the rules will merely offer an additional option for financial assurance, and they do not meet any of the four applicability requirements listed in §2001.0225(a). The rules will merely offer greater flexibility in instances where corporations guarantee financial responsibility for entities with which the corporation has a substantial business relationship.

The economy, a sector of the economy, productivity, competition, or jobs, will not be adversely affected in a material way because no additional costs are caused by the rules.

The rules do not adversely affect in a material way the environment, or the public health and safety of the state or a sector of the state, because the rules will not reduce the amount of financial assurance required to be demonstrated. The rules are administrative in nature and simply expand the instruments available to corporate guarantors who provide guarantees on behalf of non-corporate entities.

The purpose of these rules is to adopt a Texas definition for “substantial business relationship” which will allow corporations to provide financial test guarantees for entities including LLCs, LLPs, and LPs. The new definition will allow corporations to use the financial test for demonstrating financial responsibility on behalf of LLCs, LLPs, and LPs.

This proposal does not exceed a standard set by federal law and is specifically allowed by federal law. The federal regulations allow the corporations to use the financial test as a corporate guarantee for closure, post-closure, and liability coverage, on behalf of third parties with which the corporation has a substantial business relationship. The federal regulations defer to each state to ensure that guarantee contracts issued incident to that relationship are valid and enforceable.

This proposal does not exceed the requirements of a delegation agreement or contract between the state and federal government, as the substantial business relationship requirements as proposed will be equivalent to the federal financial assurance mechanism requirements.

The rules are proposed under specific state law and the general powers of the commission. The specific state law is Texas Health and Safety Code, §361.085.

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 adopt the definition of substantial business relationship which would allow corporations to provide financial test guarantees for entities including LLCs, LLPs, and LPs. The new definition will allow corporate guarantors to use the financial test to demonstrate financial responsibility on behalf of non-corporate entities such as LLCs, LLPs, and LPs. The federal regulations allow guarantor corporations to provide corporate guarantees using the financial test on behalf of: (1) their subsidiaries; and (2) entities with which the guarantor has a substantial business relationship. Federal regulations define “subsidiaries” as corporations. For the purpose of providing corporate guarantees using the financial test, guarantors cannot treat LLCs, LLPs, LPs, or other non-corporate entities as “subsidiaries.” The commission’s proposed rules will adopt a definition for “substantial business relationship” and allow corporate guarantors to use the financial test to demonstrate financial responsibility on behalf of non-corporate (non-subsiary) entities such as LLCs, LLPs, and LPs for liability, closure, and post-closure. The proposed definition would recognize a substantial business relationship between a guarantor corporation and entities such as LLCs, LLPs, and LPs in which the guarantor corporation has at least a 50% ownership interest. Such a definition for substantial business relationship will provide an additional option to corporations which choose to provide financial test

guarantees to the state on behalf of non-corporate entities in which the corporation has an ownership interest, similar to a corporate parent's interest in a corporate subsidiary. This definition narrowly defines the relationship and preserves the state's ability to enforce the guarantee for financial responsibility. The promulgation and enforcement of these rules will not burden private real property nor adversely affect property values because the proposed rules will not reduce the amount of financial assurance required to be demonstrated.

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 CMP.

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 submitted to Lisa Martin, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number

98059-037-AD. Comments must be received by 5:00 p.m., July 5, 1999. For further information or questions concerning this proposal, please contact Linda Shirck of the Financial Administration Division, Office of Administrative Services, (512) 239-6260.

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code, §5.103 and §5.105, and Texas Health and Safety Code, §361.011, and §361.017, 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 amendment implements Texas Health and Safety Code, §361.085.

SUBCHAPTER E : INTERIM STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE STORAGE, PROCESSING, OR DISPOSAL FACILITIES

§335.112

§335.112. Standards.

(a) The following regulations contained in 40 Code of Federal Regulations (CFR) Part 265 (including all appendices to Part 265) (except as otherwise specified herein) are adopted by reference as amended and adopted in the CFR through June 1, 1990, at 55 FedReg 22685 and as further amended as indicated in each paragraph of this section:

(1) - (6) (No change.)

(7) Subpart H -- Financial Requirements (as amended through September 16, 1992, at 57 FedReg 42832); except 40 CFR §265.142(a)(2); provided that the corporate guarantee for closure or for post-closure care, described in 40 CFR §265.143(e)(10) or §265.145(e)(11), respectively, may be provided [only] by a direct or higher-tier parent corporation of the owner or operator, or a corporation which has a substantial business relationship, as defined in §37.11 of this title (relating to Definitions), with the entity guaranteed;

(8) - (22) (No change.)

(b) - (c) (No change.)

**SUBCHAPTER F : PERMITTING STANDARDS FOR OWNERS
AND OPERATORS OF HAZARDOUS WASTE STORAGE,
PROCESSING, OR DISPOSAL FACILITIES**

§335.152

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code, §5.103 and §5.105, and Texas Health and Safety Code, §361.011, and §361.017, 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 amendment implements Texas Health and Safety Code, §361.085.

§335.152. Standards.

(a) The following regulations contained in 40 Code of Federal Regulations (CFR) Part 264 (including all appendices to Part 264) are adopted by reference as amended and adopted in the Code of Federal Regulations through June 1, 1990, at 55 FedReg 22685 and as further amended and adopted as indicated in each paragraph of this section:

(1) - (5) (No change.)

(6) Subpart H -- Financial Requirements (as amended through June 10, 1994, in 59 FedReg 29958); except 40 CFR §264.142(a)(2); and subject to the limitations set forth in this section:

(A) (No change.)

(B) Facilities which qualify for the corporate guarantee for liability are additionally subject to 40 CFR §264.147(g)(2) and § 264.151(h)(2). The corporate guarantee for liability may be provided by a direct or higher-tier parent corporation of the owner or operator, or a corporation which has a substantial business relationship, as defined in §37.11 of this title (relating to Definitions), with the entity guaranteed; and

(C) The corporate guarantee for closure or for post-closure care, described in 40 CFR §264.143(f)(10) or §264.145(f)(11), respectively, may be provided by a direct or higher-tier parent corporation of the owner or operator, or a corporation which has a substantial business relationship, as defined in §37.11 of this title, with the entity guaranteed;

(7) - (20) (No change.)

(b) - (d) (No change.)