

**SUBCHAPTER D: WORDING OF THE MECHANISMS
FOR CLOSURE, POST CLOSURE, AND CORRECTIVE ACTION
§§37.301, 37.311, 37.321, 37.331, 37.341, 37.351, 37.361, 37.371, 37.381
Effective September 14, 2006**

§37.301. Trust Agreement.

(a) A trust agreement for closure, post closure, or corrective action, as specified in §37.201 of this title (relating to Trust Fund), must be worded as specified in the Trust Agreement in this subsection, except that the instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted.

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 Commission on Environmental Quality, "TCEQ," 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, post closure, or corrective action 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.

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 permit number, name, physical and mailing addresses, and the current cost estimate, or portions

thereof, for which financial assurance is demonstrated by this Agreement. Identify for each current cost estimate the amount designated for closure, post closure, or corrective action).

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of TCEQ. 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 TCEQ.

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

TCEQ 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 TCEQ, except as provided for herein.

Section 15. Notice of Nonpayment. The Trustee shall notify the Grantor and the TCEQ 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 TCEQ executive director, or by the Trustee and the TCEQ 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 TCEQ executive director, or by the Trustee and the TCEQ 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 TCEQ 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 (Title)

Attest:

(Title)

(Seal)

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

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 of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

(signature of Notary Public)

Adopted January 23, 2003

Effective February 12, 2003

§37.311. Payment Bond.

A surety bond guaranteeing payment for closure, post closure, or corrective action, as specified in §37.211 of this title (relating to Surety Bond Guaranteeing Payment), must be worded as specified in the Payment Bond in this section, except that the instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted.

PAYMENT BOND

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))_____.

Permit number, name, physical and mailing addresses, and closure, post closure, or corrective action amount(s) for each facility guaranteed by this bond (indicate closure, post closure, or corrective action amounts separately 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 Commission on Environmental Quality, hereinafter called TCEQ, 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 area, to comply with permit requirements in order to own or operate each facility identified above, and

Whereas said Principal is required to provide financial assurance for closure, post closure, or corrective action as a condition of the permit or other applicable requirements, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, therefore, the conditions of the obligation are such that if the Principal shall faithfully, before the beginning of final closure of, or corrective action at, each facility identified above, fund into the standby trust fund the amount(s) identified above for the facility,

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

Or, if the Principal shall provide alternate financial assurance, as specified in 30 Texas Administrative Code, Chapter 37 (relating to Financial Assurance) and obtain the TCEQ executive director's written approval of such assurance, within 90 days after the date notice of cancellation is received by both the Principal and the TCEQ 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 the TCEQ 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 TCEQ 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 TCEQ 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 TCEQ 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 TCEQ 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, post closure, or corrective action 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 TCEQ 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 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 §37.311 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) _____

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: \$ _____

Adopted January 23, 2003

Effective February 12, 2003

§37.321. Performance Bond.

A surety bond guaranteeing performance for closure, post closure, or corrective action, as specified in §37.221 of this title (relating to Surety Bond Guaranteeing Performance), must be worded as specified in the Performance Bond in this section, except that the instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted.

PERFORMANCE BOND

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)) _____

_____.

Permit number, name, physical and mailing addresses, and closure, post closure, or corrective action amounts(s) for each facility guaranteed by this bond (indicate closure, post closure, or corrective action amounts separately 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 Commission on Environmental Quality, hereinafter called TCEQ, 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 area, to comply with permit requirements in order to own or operate each facility identified above, and

Whereas said Principal is required to provide financial assurance for closure, post closure, or corrective action as a condition of the permit or other applicable requirements, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, therefore, the conditions of this obligation are such that if the Principal shall faithfully perform closure, post closure, or corrective action, whenever required to do so, of each facility for which this bond guarantees closure or post closure in accordance with the closure plan or post closure plan and other applicable requirements of the permit, or perform corrective action in accordance with the permit or other applicable requirements 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, as specified in 30 Texas Administrative Code, Chapter 37 (relating to Financial Assurance) and obtain the TCEQ 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 TCEQ 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 the TCEQ executive director that the Principal has been found in violation of the closure, post closure, or corrective action requirements for a facility for which this bond guarantees performance of closure, post closure, or corrective action, the Surety(ies) shall either perform closure, post closure, or corrective action in accordance with the closure plan or post closure plan and other applicable requirements of the permit, or perform corrective action in accordance with the permit or other applicable requirements, or place the amount guaranteed for the facility in the standby trust fund as directed by the TCEQ executive director.

Upon notification by the TCEQ executive director that the Principal has failed to provide alternate financial assurance, as specified in 30 Texas Administrative Code, Chapter 37, and obtain written approval of such assurance from the TCEQ executive director during the 90 days following receipt by both the Principal and the TCEQ 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 the standby trust fund.

The surety(ies) hereby waive(s) notification of amendments to closure plans or post closure plans and other applicable requirements of the permit, or permits requiring corrective action or other applicable requirements for corrective action, 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 TCEQ 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 TCEQ 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 TCEQ 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, post closure, or corrective action 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 TCEQ 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: \$ _____

Adopted January 23, 2003

Effective February 12, 2003

§37.331. Irrevocable Standby Letter of Credit.

An irrevocable standby letter of credit for closure, post closure, or corrective action, as specified in §37.231 of this title (relating to Irrevocable Standby Letter of Credit), must be worded as specified in the Irrevocable Standby Letter of Credit in this section, except that the instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted.

IRREVOCABLE STANDBY LETTER OF CREDIT

Executive Director

Texas Commission on Environmental Quality

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 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").

Adopted January 23, 2003

Effective February 12, 2003

§37.341. Certificate of Insurance.

A certificate of insurance for closure, post closure, or corrective action, as specified in §37.241 of this title (relating to Insurance), must be worded as specified in the Certificate of Insurance in this section, except that the instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted.

CERTIFICATE OF INSURANCE

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

Name and Physical and Mailing Addresses of Insured (herein called the "insured"): _____
_____.

Facilities covered: (list for each facility: The permit number, name, physical and mailing addresses, and the amount of insurance for closure, post closure, or corrective action (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, post closure, or corrective action for the facilities identified above. The Insurer further warrants that such policy conforms in all respects with the requirements of 30 Texas Administrative Code §37.241 (relating to Insurance), 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 Commission on Environmental Quality, 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) _____

Adopted January 23, 2003

Effective February 12, 2003

§37.351. Financial Test.

A letter from the chief financial officer for closure, post closure, or corrective action, as specified in §37.251 of this title (relating to Financial Test), must be worded as specified in the Financial Test in this section, except that the instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted.

FINANCIAL TEST
LETTER FROM CHIEF FINANCIAL OFFICER

(Address to TCEQ 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, post closure, or corrective action as specified in 30 Texas Administrative Code (TAC) Chapter 37 (relating to Financial Assurance). (Fill out the following five paragraphs. For each facility include: the name, permit number, program area (hazardous waste, municipal solid waste, etc.), physical and mailing addresses, and current cost estimate. Identify for each current cost estimate the amount designated for closure, post closure, or corrective action. If your firm has no facilities that belong in a particular paragraph, write "None" in the space indicated.)

1. This firm is the owner or operator of the following facilities in Texas for which financial assurance for closure, post closure, or corrective action is being demonstrated through a financial test specified in 30 TAC Chapter 37. The current cost estimate covered by the test is shown for each facility: _____.
2. This firm guarantees, through a corporate guarantee specified in 30 TAC Chapter 37, the cost for closure, post closure, or corrective action of the following facilities owned or operated by the guaranteed party. The current cost estimates so guaranteed are shown for each facility: _____. The firm identified above is (the direct or higher-tier parent corporation of the owner or operator, or engaged in a substantial business relationship with the owner or operator).
3. In States where TCEQ 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, post closure, or corrective action of the following facilities through the use of a test equivalent

to a financial test specified in 30 TAC Chapter 37. The current 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, post closure, or corrective action costs, is not demonstrated through the financial test or any other financial assurance mechanisms specified in 30 TAC Chapter 37 or equivalent State mechanisms to TCEQ, a federal agency, or another state. The current 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 facilities for which financial assurance is being demonstrated under other EPA regulations or state programs authorized by EPA through a financial test or guarantee. The following amounts have not been included in Paragraphs 1- 4. (For each program area identify: the facility name, physical and mailing address, federal or state equivalent regulations, permit number, and current cost estimate. Identify for each current cost estimate the amount designated for closure, post closure, or corrective action).
 - (a) Municipal solid waste management facilities under 30 TAC Chapter 330, 40 CFR Part 258 or equivalent \$ _____
 - (b) Underground injection control facilities under 30 TAC Chapter 331, 40 CFR Part 144 or equivalent \$ _____
 - (c) Petroleum underground storage tank facilities under 30 TAC Chapter 334, and 40 CFR Part 280 or equivalent \$ _____
 - (d) PCB storage facilities under 40 CFR Part 761 or equivalent \$ _____
 - (e) Hazardous waste treatment, storage, and disposal facilities under 30 TAC Chapter 335, 40 CFR Parts 264 and 265 or equivalent \$ _____
 - (f) Additional environmental obligations not shown above \$ _____Total (a)-(f) \$ _____

This (owner, operator, or guarantor) (has or has not) received an adverse opinion, a disclaimer of opinion, or a "going concern" qualification from an independent auditor on its financial statements for the latest completed fiscal year.

This firm (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 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) | Sum of current closure, post closure, and corrective action costs
(total of all cost estimates shown in the five paragraphs above) | \$ _____ |
| | (b) | Amount of annual aggregate liability coverage to be demonstrated by
a financial test or corporate guarantee | \$ _____ |
| | (c) | Total of lines (a) and (b) | \$ _____ |
| *2. | | Total liabilities (if any portion of the closure, post closure, or corrective
action cost(s), 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.) | \$ _____ |

Indicate 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) Sum of current closure, post closure, and corrective action costs (total of all cost estimates shown in the five paragraphs above) \$ _____
- (b) Amount of annual aggregate liability coverage to be demonstrated by a financial test or corporate 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, post closure care, or corrective action cost estimate(s), 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.) \$ _____

Indicate 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) _____

Adopted January 23, 2003

Effective February 12, 2003

§37.361. Corporate Guarantee.

A corporate guarantee for closure, post closure, or corrective action, as specified in §37.261 of this title (relating to Corporate Guarantee), must be worded as specified in the Corporate Guarantee in this section, except that the instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted.

CORPORATE GUARANTEE

Guarantee made this (date) by (name of guaranteeing entity), a business corporation organized under the laws of the State of (insert name of State), herein referred to as guarantor. This guarantee is made to the Texas Commission on Environmental Quality (TCEQ) on behalf of (owner or operator) of (business address), which is (one of the following: "our subsidiary;" or "an entity with which guarantor has a substantial business relationship, as defined in 30 TAC §37.11 (relating to Definitions)."

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 (relating to Financial Test) and §37.261 (relating to Corporate Guarantee).
2. (Owner or operator) owns or operates the following facility(ies) covered by this guarantee: (List for each facility: permit number, name, and physical and mailing addresses. Indicate for each whether guarantee is for closure, post closure, or corrective action).
3. "Closure or post closure plans" as used below refer to the plans maintained as required for the closure or post closure of the facilities as identified above.
4. For value received from (owner or operator), (describe consideration and dollar amount), guarantor guarantees to TCEQ that in the event that (owner or operator) fails to perform (closure, post closure, or corrective action) of the above facility(ies) in accordance with the closure plans, post closure plans, or corrective action, permits, and other applicable requirements whenever required to do so, the guarantor shall do so or establish a trust fund as specified in 30 TAC §37.201 (relating to Trust Fund), in the name of (owner or operator) in the amount of the current cost estimate.

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 TCEQ executive director and to (owner or operator) that the guarantor intends to provide alternate financial assurance as specified in 30 TAC Chapter 37 (relating to Financial Assurance), as applicable, in the name of (owner or operator). Within 120 days after the end of such fiscal year, the guarantor shall establish such financial assurance unless (owner or operator) has done so.
6. The guarantor agrees to notify the TCEQ 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 TCEQ executive director of a determination that guarantor no longer meets the financial test criteria or is disallowed from continuing as a guarantor of (closure, post closure, or corrective action), guarantor shall establish alternate financial assurance as specified in Subchapter C of 30 TAC Chapter 37 (relating to Financial Assurance Mechanisms for Closure, Post Closure, and Corrective Action), in the name of (owner or operator) unless (owner or operator) has done so.
8. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or modification of the closure or post closure plans, or corrective action requirements, amendment or modification of the permit, the extension or reduction of the time of performance, 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 of 30 TAC Chapter 37 for the above-listed facilities, except as provided in paragraph 10 of this agreement.
10. Guarantor may terminate this guarantee by sending notice by certified mail to the TCEQ 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 TCEQ executive director approves, alternate financial assurance.
11. Guarantor agrees that if (owner or operator) fails to provide alternate financial assurance as specified in 30 TAC Chapter 37, as applicable, and obtain written approval of such assurance from the TCEQ executive director within 90 days after a notice of termination by the guarantor is received by the TCEQ executive director from guarantor, guarantor shall provide such alternate financial assurance in the name of the (owner or operator).
12. Guarantor expressly waives notice of acceptance of this guarantee by the TCEQ or by (owner or operator). Guarantor also expressly waives notice of amendments or modifications of the closure plans, post closure plans, or corrective action requirements, and of amendments or modifications of the permit(s).

I hereby certify that the wording of this guarantee is identical to the wording specified in 30 Texas Administrative Code §37.361 as such regulations were constituted on the date first above written.

Effective date: _____

(Name of guarantor) _____

(Authorized signature for guarantor) _____

(Type name of person signing) _____

(Title of person signing) _____

Signature of witness or notary: _____

Adopted January 23, 2003

Effective February 12, 2003

§37.371. Local Government Financial Test.

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

**LOCAL GOVERNMENT FINANCIAL TEST
LETTER FROM CHIEF FINANCIAL OFFICER**

(Address to TCEQ Executive Director)

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

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

1. This local government is the owner or operator of the following facilities for which financial assurance for closure, post closure, or corrective action is demonstrated through the financial test specified in 30 TAC §37.271 (relating to Local Government Financial Test). The current cost estimates covered by the test are shown for each facility: _____.

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

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

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

RATIO INDICATORS OF FINANCIAL STRENGTH

1. Sum of current cost estimates

(total of all cost estimates shown in the paragraphs above) \$ _____

*2. Sum of cash and marketable securities \$ _____

*3. Total expenditures \$ _____

*4. Annual debt service \$ _____

5. Environmental obligations assured by a financial test to demonstrate financial assurance in the following amounts under commission regulations and the Code of Federal Regulations (CFR) or state equivalent rules:

(a) Municipal solid waste under 30 TAC Chapter 330 (relating to Municipal Solid Waste) and 40 CFR Part 258 \$ _____

(b) Hazardous waste treatment, storage and disposal facilities under 30 TAC Chapter 335 (relating to Industrial Solid Waste and Municipal Hazardous Waste) and 40 CFR Parts 264 and 265 \$ _____

(c) Petroleum underground storage tanks under 30 TAC Chapter 334 (relating to Underground and Aboveground Storage Tanks) and 40 CFR Part 280 \$ _____

(d) Underground Injection Control System facilities under 30 TAC Chapter 331 (relating to Underground Injection Control) and 40 CFR Part 144 \$ _____

(e) Polychlorinated biphenyl (PCB) commercial storage facilities under 40 CFR Part 761 \$ _____

(f) Additional environmental obligations not shown above \$ _____

Total (a) - (f) \$ _____

*6. Total Annual Revenue \$ _____

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

7. Is line 2 divided by line 3 greater than or equal to 0.05? (yes/no)

8. Is line 4 divided by line 3 less than or equal to 0.20? (yes/no)

9. Is line 5 divided by line 6 less than or equal to 0.43? (yes/no)

BOND RATING INDICATOR OF FINANCIAL STRENGTH

1. Sum of current cost estimates (total of all cost estimates shown in the paragraphs above) \$ _____

2. List the following information on all the outstanding, rated, unsecured general obligation bonds, revenue bonds, or certificates of obligation issued to the local government: Current bond rating of most recent issuance and name of rating service _____

Date of issuance of bond _____

Date of maturity of bond _____

3. Environmental obligations assured by a financial test to demonstrate financial assurance in the following amounts under commission regulations and the CFR or state equivalent rules:

(a) Municipal solid waste under 30 TAC Chapter 330 and 40 CFR Part 258 \$ _____

(b) Hazardous waste treatment, storage and disposal facilities under 30 TAC Chapter 335 and 40 CFR Parts 264 and 265 \$ _____

(c) Petroleum underground storage tanks under 30 TAC Chapter 334 and 40 CFR Part 280 \$ _____

(d) Underground Injection Control System facilities under 30 TAC Chapter 331 and 40 CFR Part 144 \$ _____

(e) PCB commercial storage facilities under 40 CFR Part 761 \$ _____

(f) Additional environmental obligations not shown above \$ _____

Total (a) - (f) \$ _____

*4. Total Annual Revenue \$ _____

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

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

I hereby certify that the wording of this letter is identical to the wording specified in 30 TAC §37.371 as such regulations were constituted on the date shown immediately below. I further certify the following: that the local government's financial statements are prepared in conformity with Generally Accepted Accounting Principles for governments, including conformance with General Accounting Standards Board Statement 18, and its financial statements have been audited by an independent Certified Public Accountant (CPA); that the local government has not operated at a deficit equal to 5.0% or more of total annual revenue in each of the past two fiscal years; that the local government is not in default on any outstanding general obligations bonds; that the local government does not have outstanding general obligations rated lower than Baa as issued by Moody's or BBB as issued by Standard and Poor's; and that the local government has not received an adverse opinion, disclaimer of opinion, or other qualified opinion from the independent CPA.

(Signature) _____

(Name) _____

(Title) _____

(Date) _____

Adopted August 23, 2006

Effective September 14, 2006

§37.381. Local Government Guarantee.

The local government guarantee, as specified in §37.281 of this title (relating to Local Government Guarantee), must be worded as specified in the Local Government Guarantee in this section, except that the instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted.

LOCAL GOVERNMENT GUARANTEE

Guarantee made this (date), by (name of the local government), herein referred to as guarantor, to the Texas Commission on Environmental Quality, obligee, on behalf of the following (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) §37.281 (relating to Local Government Guarantee).
2. (Owner or operator) owns or operates the following facility(ies) covered by this guarantee: (List for each facility: permit number, name, and physical and mailing addresses. Indicate for each, whether the guarantee is for closure, post closure, or corrective action.)
3. "Closure, post closure, or corrective action plans" as used below refer to the plans maintained as required for the closure, post closure, or corrective action of facilities as identified above.
4. For value received from (owner or operator), guarantor guarantees to the TCEQ that in the event that (owner or operator) fails to perform (closure, post closure, or corrective action) of the above facility(ies) in accordance with the closure, post closure, or corrective action plans, permits, and other requirements whenever required to do so, the guarantor shall do so, or pay a third party to perform closure, post closure, or corrective action or establish a fully funded trust fund as specified in 30 TAC §37.201 (relating to Trust Fund) in the name of (owner or operator) in the amount of the current cost estimate.
5. Guarantor agrees that if, the guarantor fails to meet the financial test criteria, the guarantor shall send within 90 days after the end of the fiscal year, by certified mail, notice to the TCEQ's executive director and to (owner or operator) that the guarantor intends to provide alternate financial assurance as specified in 30 TAC Chapter 37 (relating to Financial Assurance), as applicable, in the name of (owner or operator). Within 120 days after the end of such fiscal year, the guarantor shall establish such financial assurance unless (owner or operator) has done so.
6. Within 10 days after its commencement of the proceeding, the guarantor agrees to notify the executive director, by certified mail, of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor.
7. Guarantor agrees that within 30 days after being notified by the executive director of a determination that guarantor no longer meets the financial test criteria or that guarantor is disallowed from continuing as a guarantor of (closure, post closure, or corrective action), guarantor shall establish alternate financial assurance as specified in Subchapter C of 30 TAC Chapter 37 (relating to Financial Assurance Mechanisms for Closure, Post Closure, and Corrective Action), in the name of (owner or operator) unless (owner or operator) has done so.
8. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or modification of the closure plans, post closure plans, or corrective action requirements, amendment or modification of the permit, the extension or reduction of the time of performance, 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 as provided in paragraph 10 of this agreement.
10. Guarantor may terminate this guarantee by sending notice by certified mail to the TCEQ 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 executive director approves, alternate financial assurance.
11. Guarantor agrees that if (owner or operator) fails to provide alternate financial assurance as specified in 30 TAC Chapter 37, as applicable, and obtain written approval of such assurance from the TCEQ executive director within 90 days after a notice of termination by the guarantor is received by the TCEQ executive director from guarantor, guarantor shall provide such alternate financial assurance in the name of the (owner or operator).
12. Guarantor expressly waives notice of acceptance of this guarantee by the TCEQ or by (owner or operator). Guarantor also expressly waives notice of amendments or modifications of the closure plans, post closure plans, or corrective action requirements, and of amendments or modifications of the permit(s).

I hereby certify that the wording of this guarantee is identical to the wording specified in 30 Texas Administrative Code §37.381 as such regulations were constituted on the date first above written.

Effective date: _____

(Name of guarantor) _____

(Authorized signature for guarantor) _____

(Type name of person signing) _____

(Title of person signing) _____

Signature of witness or Notary: _____

Adopted January 23, 2003

Effective February 12, 2003