

**SUBCHAPTER P: FINANCIAL ASSURANCE FOR HAZARDOUS AND
NONHAZARDOUS INDUSTRIAL SOLID WASTE FACILITIES**

**§§37.6001, 37.6021
Effective March 21, 2004**

§37.6001. Applicability.

(a) This subchapter applies to owners and operators of interim status hazardous waste facilities required to provide financial assurance under §335.128 of this title (relating to Financial Assurance); owners or operators of hazardous waste facilities required to provide financial assurance under §335.179 of this title (relating to Financial Assurance); owners or operators of industrial solid waste or municipal hazardous waste facilities required to provide financial assurance under §335.7 of this title (relating to Financial Assurance Required); owners and operators of commercial nonhazardous industrial solid waste facilities required to provide financial assurance under Chapter 335, Subchapter T of this title (relating to Permitting Standards for Owners and Operators of Commercial Industrial Nonhazardous Waste Landfill Facilities); and owners or operators required to provide financial assurance for corrective action under §335.167 of this title (relating to Corrective Action for Solid Waste Management Units).

(b) This subchapter does not apply to owners or operators which are state or federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States.

(c) This subchapter establishes requirements and mechanisms for demonstrating financial assurance for closure, post closure, or corrective action.

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§37.6011. Definitions.

Definitions for terms that appear throughout this subchapter may be found in Subchapter A of this chapter (relating to General Financial Assurance Requirements) and Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste).

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Effective March 21, 2000

§37.6021. Financial Assurance Requirements for Closure, Post Closure, and Corrective Action.

(a) In addition to the requirements of this subchapter, owners or operators required to demonstrate for closure, post closure, or corrective action must comply with Subchapters A - D of this chapter (relating to General Financial Assurance Requirements; Financial Assurance Requirements for Closure, Post Closure, and Corrective Action; and Wording of the Mechanisms for Closure, Post

Closure, and Corrective Action), §335.112 of this title (relating to Standards), and §335.152 of this title (relating to Standards).

(b) Owners or operators subject to this subchapter may use any of the following mechanisms as specified in Subchapter C of this chapter to demonstrate financial assurance for closure, post closure, or corrective action:

(1) trust fund (fully funded or pay-in trust), except that:

(A) owners or operators of interim status hazardous waste facilities required to provide evidence of financial assurance under §335.128 of this title (relating to Financial Assurance) must make annual payments to fully fund the trust fund by July 6, 2002 or must make annual payments into the trust fund over the remaining operating life of the facility as estimated in the closure plan, whichever period is shorter;

(B) owners or operators of permitted hazardous waste facilities required to provide evidence of financial assurance under §335.179 of this title (relating to Financial Assurance), who previously operated under interim status rules and choose to establish a trust fund after having used one or more alternate mechanisms specified in this chapter, must make an initial payment in at least the amount that the fund would contain if the trust fund were established initially and annual payments made as specified in subparagraph A of this paragraph; and

(C) owners or operators of nonhazardous industrial solid waste facilities required to provide financial assurance under Chapter 335, Subchapter T of this title (relating to Permitting Standards for Owners and Operators of Commercial Industrial Nonhazardous Waste Landfill Facilities) or §335.7 of this title (relating to Financial Assurance Required) using a pay-in trust must use a pay-in period of the shorter of ten years or the remaining life of the facility, unless the owner or operator satisfies the requirements of clause (i) of this subparagraph.

(i) If a pay-in period in excess of ten years is used, the owner or operator shall submit, on an annual basis, certification from an independent registered professional engineer that there is adequate financial assurance for closure or post closure. The owner or operator must:

(I) submit the completed certification on the form provided by the executive director;

(II) submit the initial certification with the initial trust payment; and

(III) submit subsequent certifications annually with subsequent payments no later than 30 days after the anniversary date of the initial payment.

(ii) The pay-in trust will revert to a fully funded trust and the entire current closure or post closure cost estimate shall be paid into the trust upon direction of the executive director if:

(I) the owner or operator fails to submit the annual certification by the required time frame in clause (i) of this subparagraph;

(II) the certification is incomplete; or

(III) the certification is not submitted on the form provided by the executive director.

(D) the executive director will respond in writing within 60 days to requests for reimbursements made in accordance with §37.201(j) of this title (relating to Trust Fund);

(2) surety bond guaranteeing payment;

(3) surety bond guaranteeing performance, except that this mechanism may not be used by interim status hazardous waste facilities required to provide evidence of financial assurance under §335.128 of this title (relating to Financial Assurance);

(4) irrevocable standby letter of credit;

(5) insurance;

(6) financial test; or

(7) corporate guarantee.

(c) References in Subchapter D of this chapter to permit numbers should be changed to solid waste registration numbers.

(d) Owners or operators using a financial test or corporate guarantee must comply with §37.141 of this title (relating to Increase in Current Cost Estimate) except that mechanism increases must be made within 90 days after the close of each succeeding fiscal year.

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March 21, 2004

§37.6031. Financial Assurance Requirements for Liability.

(a) Owners or operators required to demonstrate for liability must comply with Subchapters A, E, F, and G of this chapter (relating to General Financial Assurance Requirements; Financial Assurance Requirements for Liability Coverage; Financial Assurance Mechanisms for Liability; and

Wording of the Mechanisms for Liability).

(b) An owner or operator of a hazardous waste treatment, storage, or disposal facility, subject to this section must demonstrate financial assurance for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage for sudden accidental occurrences in the amount of at least \$1 million per occurrence with an annual aggregate of at least \$2 million, exclusive of legal defense costs.

(c) An owner or operator of a hazardous waste surface impoundment, landfill, land treatment facility, or disposal miscellaneous unit used to manage hazardous waste subject to this section must demonstrate financial assurance for bodily injury and property damage to third parties caused by nonsudden accidental occurrences arising from operations of the facility or group of facilities. An owner or operator must have and maintain liability coverage for nonsudden accidental occurrences in the amount of at least \$3 million per occurrence with an annual aggregate of at least \$6 million, exclusive of legal defense costs.

(d) Owners or operators who must meet the requirements of this section may combine the required per-occurrence coverage levels for sudden and nonsudden accidental occurrences into a single per-occurrence level, and combine the required annual aggregate coverage levels for sudden and nonsudden accidental occurrences into a single annual aggregate level. Owners or operators who combine coverage levels for sudden and nonsudden accidental occurrences must maintain liability coverage in the amount of at least \$4 million per occurrence and \$8 million annual aggregate.

(e) Owners or operators subject to this subchapter may use any of the mechanisms specified in Subchapter F of this chapter to demonstrate financial assurance for sudden and for nonsudden liability.

(f) Owners or operators required to provide liability coverage may not use a claims-made insurance policy as security unless the applicant places in escrow, as provided by the executive director, an amount sufficient to pay an additional year of premiums for renewal of the policy by the state on notice of termination of coverage.

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§37.6041. State Assumption of Responsibility.

(a) If the State of Texas either assumes legal responsibility for an owner's or operator's compliance with the closure, post closure, corrective action, or liability requirements of this chapter, or assures that funds will be available from state sources to cover those requirements, the owner or operator will be in compliance with the requirements of this chapter if the executive director determines that the state's assumption of responsibility is at least equivalent to the financial mechanisms specified in this chapter. The executive director will evaluate the equivalency of state guarantees principally in terms of certainty of the availability of funds for the required closure, post closure, or

corrective action activities, or liability coverage; and the amount of funds that will be made available. The executive director may also consider other factors as the executive director deems appropriate. The owner or operator must submit to the executive director a letter from the State of Texas describing the nature of the state's assumption of responsibility together with a letter from the owner or operator requesting that the state's assumption of responsibility be considered acceptable for meeting the requirements of this chapter. The letter from the state must include, or have attached to it, the following information: the facility's permit number, name, physical and mailing addresses, and the amount of funds for closure, post closure, or corrective action or liability coverage that are guaranteed by the state. The executive director will notify the owner or operator of the determination regarding the acceptability of the state's guarantee in lieu of financial mechanisms specified in this chapter. The executive director may require the owner or operator to submit additional information as is deemed necessary to make this determination. Upon approval by the executive director, the owner or operator will be deemed to be in compliance with the requirements of this chapter.

(b) If the State of Texas' assumption of responsibility is found acceptable as specified in subsection (a) of this section except for the amount of funds available, the owner or operator may satisfy the requirements of this chapter by use of both the state's assurance and additional financial mechanisms as specified in this chapter. The amount of funds available through the state and the owner or operator's mechanisms must at least equal the required amount.

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