

**SUBCHAPTER T: FINANCIAL ASSURANCE FOR RADIOACTIVE  
SUBSTANCES AND AQUIFER RESTORATION**  
**§§37.9030, 37.9035, 37.9040, 37.9045, 37.9050, 37.9052, 37.9059**  
**Effective June 25, 2015**

**§37.9030. Applicability.**

This subchapter applies to owners or operators required to provide financial assurance under Chapter 336, Subchapters G, H, L, or M of this title (relating to Decommissioning Standards; Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste; Licensing of Source Material Recovery and By-Product Material Disposal Facilities; or Licensing of Radioactive Substances Processing and Storage Facilities). This subchapter establishes requirements and mechanisms for demonstrating financial assurance for closure, post closure, corrective action, and liability coverage.

Adopted February 11, 2009

Effective March 12, 2009

**§37.9035. Definitions.**

Definitions for terms that appear throughout this subchapter may be found in Subchapter A of this chapter (relating to General Financial Assurance Requirements), §336.2 of this title (relating to Definitions), and §336.702 of this title (relating to Definitions), except the following definitions shall apply for this subchapter.

(1) **Annual review**--Conducted on the anniversary date of the establishment of the financial assurance mechanism.

(2) **Closure**--Any one or combination of the following: closure, dismantlement, decontamination, decommissioning, reclamation, disposal, aquifer restoration, stabilization, monitoring, or post closure observation and maintenance.-

(3) **Corrective action**--The activities to remediate unplanned events that pose a risk to public health, safety, and the environment and that may occur after the decommissioning and closure of the compact waste disposal facility or a federal facility waste disposal facility.

(4) **Facility**--The term "Facility" has the same meaning as the term "Site" as defined in §336.702 of this title (relating to Definitions). Facility also means all contiguous land, water, buildings, structures, and equipment which are or were used for activities associated with:

(A) the disposal of radioactive material, including disposal, receipt, storage, processing, or handling of radioactive material, waste, soil, and groundwater contaminated by radioactive material;

(B) the recovery of source material as provided in Chapter 336, Subchapter L of this title (relating to Licensing of Source Material Recovery and By-Product Material Disposal Facilities); or

(C) the processing and storage of radioactive substances as provided in Chapter 336, Subchapter M of this title (relating to Licensing of Radioactive Substances Processing and Storage Facilities).

(5) **Institutional control**--Shall have the same meaning as post closure.

(6) **Licensee**--Shall have the same meaning as owner, operator, or license holder.

(7) **Post closure**--The activities that are identified as institutional control as specified in §336.734 of this title (relating to Institutional Requirements).

Adopted February 11, 2009

Effective March 12, 2009

#### **§37.9040. Submission of Documents.**

An owner or operator required by this subchapter to provide financial assurance for closure, post closure, corrective action, and liability coverage must submit originally signed and effective financial assurance mechanisms to the executive director 60 days prior to the initial receipt, production or possession of radioactive substances or injection operations in a production area.

Adopted February 11, 2009

Effective March 12, 2009

#### **§37.9045. Financial Assurance Requirements for Closure, Post Closure, and Corrective Action.**

(a) An owner or operator subject to this subchapter shall establish financial assurance for the closure, post closure, and corrective action of the facility that meets the requirements of this section, in addition to the requirements specified under Subchapters A, B, C, and D of this chapter (relating to General Financial Assurance Requirements; Financial Assurance Requirements for Closure, Post Closure, and Corrective Action; Financial Assurance Mechanisms for Closure, Post Closure, and Corrective Action; and Wording of the Mechanisms for Closure, Post Closure, and Corrective Action).

(1) An owner or operator subject to this subchapter may use any of the mechanisms as specified in §37.9050 of this title (relating to Financial Assurance Mechanisms) to demonstrate financial assurance for closure, post closure, and corrective action. On a case-by-case basis, the executive director may approve other alternative financial assurance mechanisms.

(2) The executive director will respond within 60 days after receiving a written request for a financial assurance reduction in accordance with §37.151 of this title (relating to Decrease in Current Cost Estimate).

(3) An owner or operator may use multiple financial assurance mechanisms provided in §37.41 of this title (relating to Use of Multiple Financial Assurance Mechanisms), but must use only those financial assurance mechanisms as specified in §37.9050 of this title.

(4) The executive director may accept financial assurance established to meet requirements of other federal, state agencies, or local governing bodies for closure or post closure, provided such mechanism complies with the requirements of this chapter and the full amount of financial assurance required for the specific license is clearly identified and committed for use for the purposes of Chapter 336, Subchapters G, H, L, and M of this title (relating to Decommissioning Standards; Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste; Licensing of Source Material Recovery and By-Product Material Disposal Facilities; and Licensing of Radioactive Substances Processing and Storage Facilities).

(5) Proof of forfeiture must not be necessary to collect the financial assurance, so that in the event that the owner or operator does not provide acceptable replacement financial assurance within the required time prior to the expiration, cancellation, or termination of the financial assurance mechanism, the financial assurance provider shall pay the face amount of the financial assurance to the State of Texas for deposit as specified in paragraph (6) of this subsection.

(6) All financial assurance required under §§336.619, 336.736 - 336.738, 336.1125, and 336.1235 of this title (relating to Financial Assurance for Decommissioning; Liability Coverage and Funding for Disposal Site Closure and Stabilization; Funding for Institutional Control; Funding for Corrective Action; Financial Assurance Requirements; and Financial Assurance for Storage and Processing) to be converted to cash by direction of the executive director pursuant to §37.101 of this title (relating to Drawing on the Financial Assurance Mechanisms) and paragraph (5) of this subsection shall be payable to the State of Texas for deposit to the credit of the perpetual care account or upon the Environmental Radiation and Perpetual Care Account being recreated and rededicated by legislation, then such financial

assurance proceeds as described in this subsection shall be paid to the State of Texas for deposit to the credit of the Environmental Radiation and Perpetual Care Account.

(b) Financial assurance for aquifer restoration shall be provided in an amount no less than the cost estimate for aquifer restoration approved for each production area authorization. The executive director shall have discretion to apply financial assurance approved for one production area to the restoration of any other production area.

(c) The owner or operator shall comply with §37.71 of this title (relating to Incapacity of Owners or Operators, Guarantors, or Financial Institutions), except financial assurance must be established within 30 days after such an event.

Adopted June 3, 2015

Effective June 25, 2015

**§37.9050. Financial Assurance Mechanisms.**

(a) An owner or operator may satisfy the requirements of a fully funded trust or standby trust fund as provided in §37.201 of this title (relating to Trust Fund), except within 60 days following the executive director's final review and approval of closure or post closure expenditures for reimbursement, release of funds shall occur.

(b) An owner or operator may satisfy the requirements of a surety bond guaranteeing payment as provided in §37.211 of this title (relating to Surety Bond Guaranteeing Payment) except:

(1) the surety must also be licensed in the State of Texas;

(2) cancellation may not occur during the 90 days beginning on the date of receipt of the notice of cancellation; and

(3) the bond must guarantee that the owner or operator will provide alternate financial assurance within 30 days after receipt of a notice of cancellation of the bond.

(c) An owner or operator may satisfy the requirements of an irrevocable standby letter of credit as provided in §37.231 of this title (relating to Irrevocable Standby Letter of Credit), except:

(1) the letter of credit shall be automatically extended unless the issuer provides notice of cancellation at least 90 days before the current expiration date. Under the terms of the letter of credit, the 90 days shall begin on the date when both the owner or operator and the executive director have received the notice, as evidenced by the return receipts; and

(2) in accordance with §37.231(h) of this title, the executive director shall draw on the letter of credit within 30 days after receipt of notice from the issuing institution that the letter of credit will not be extended, or within 60 days of an extension, if the owner or operator fails to establish and obtain approval of such alternate financial assurance from the executive director.

(d) A statement of intent may be used by a governmental entity subject to this subchapter. The statement of intent shall be subject to the executive director's approval and shall include the following:

(1) a statement that funds will be made immediately available upon demand by the executive director;

(2) the signature of an authorized official who has the authority to bind the governmental entity into a financial obligation, and has the authority to sign the statement of intent;

(3) name of facility(ies), license number, and physical and mailing addresses; and

(4) corresponding current cost estimates.

(e) An owner or operator may satisfy the requirements of financial assurance by establishing an external sinking fund as specified in this subsection. An external sinking fund has two components: a sinking fund account and a financial assurance mechanism such that the total of both equals, at all times, the current cost estimate. A sinking fund account is an account segregated from the owner's or operator's assets and is outside the owner's or operator's administrative control. As the value of the sinking fund account increases, the value of the second financial assurance mechanism decreases. When the external sinking fund account is equal to the current cost estimate, the second financial assurance mechanism will no longer be required to be maintained.

(1) An external sinking fund account shall be approved by the executive director and administered by a third party that is regulated and examined by a federal or state agency.

(2) The external sinking fund is established and maintained by setting aside funds periodically, at least annually.

(f) An owner or operator may satisfy the requirements of financial assurance by obtaining insurance that conforms to the requirements of this subsection, in addition to the requirements specified in Subchapters A and B of this chapter (relating to General

Financial Assurance Requirements; and Financial Assurance Requirements for Closure, Post Closure, and Corrective Action), and submitting an originally-signed endorsement to the insurance policy to the executive director.

(1) At a minimum, the insurer on the policy must be authorized to transact or be a surplus lines insurer eligible to engage in the business of insurance in Texas and have a minimum financial strength rating of "A" and a financial size category of "XV" as assigned by the A.M. Best Company.

(2) The insurance policy must designate the commission as an additional insured.

(3) The owner or operator must maintain the policy in full force and effect until the executive director consents to termination of the policy. Failure to pay the premium, without substitution of alternate financial assurance as specified in this subchapter, shall constitute a violation of these regulations, warranting such remedy as the executive director deems necessary. Such violation shall be deemed to begin upon receipt by the executive director of a notice of future cancellation, termination, or failure to renew due to nonpayment of the premium, rather than upon the date of expiration of the policy.

(4) The policy must provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy shall, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the owner or operator and the executive director. Cancellation, termination, or failure to renew may not occur, however, during 120 days beginning with the date of receipt of the notice by both the executive director and the owner or operator, as evidenced by the return receipts. The policy must also provide that the insurer shall pay the face amount of the insurance policy to the State of Texas for deposit as specified under §37.9045(a)(6) of this title (relating to Financial Assurance Requirements for Closure, Post Closure, and Corrective Action), if the executive director does not approve acceptable replacement financial assurance within 90 days of receiving notice by certified mail from the insurer of its election to cancel, terminate, or not renew the policy.

(5) The insurance policy may not contain an exclusion for intentional, willful, knowing, or deliberate noncompliance with a statute, regulation, order, notice, or government instruction.

(6) The wording of the endorsement to the insurance policy must be identical to the wording specified in §37.9052 of this title (relating to Endorsement).

(7) The insurance policy must be issued for a face amount at least equal to the current cost estimate for closure, post closure, or corrective action, except when a combination of mechanisms are used in accordance with §37.41 of this title (relating to Use of Multiple Financial Assurance Mechanisms). Actual payments by the insurer shall not change the face amount, although the insurer's future liability shall be lowered by the amount of the payments.

(8) The insurance policy must guarantee that funds shall be available to provide for closure, post closure, or corrective action of the facility. The policy shall also guarantee that once closure, post closure, or corrective action begins, the issuer shall be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the executive director, to such party or parties as the executive director specifies.

(9) An owner or operator or any other person authorized to perform closure, post closure, or corrective action may request reimbursement for closure, post closure, or corrective action expenditures by submitting itemized bills to the executive director. The request shall include an explanation of the expenses and all applicable itemized bills. The owner or operator may request reimbursement for partial closure only if the remaining value of the policy is sufficient to cover the maximum costs of closing the facility over its remaining operating life. Within 60 days after receiving bills for closure, post closure, or corrective action activities, the executive director shall determine whether the closure, post closure, or corrective action expenditures are in accordance with the approved closure, post closure, or corrective action activities or are otherwise justified and, if so, shall instruct the insurer to make reimbursement in such amounts as the executive director specifies in writing. If the executive director has reason to believe that the maximum cost of closure, post closure, or corrective action over the remaining life of the facility will be greater than the face amount of the policy, the executive director may withhold reimbursement of such amounts as deemed prudent until the executive director determines, in accordance with Subchapters A and B of this chapter, that the owner or operator is no longer required to maintain financial assurance requirements for closure, post closure, or corrective action of the facility. If the executive director does not instruct the insurer to make such reimbursements, the executive director shall provide the owner or operator with a detailed written statement of reasons.

(10) Commencing on the date that liability to make payments pursuant to the policy accrues, the insurer will thereafter annually increase the face amount of the policy. Such increase must be equivalent to the face amount of the policy, less any payments made, multiplied by an amount equivalent to 85% of the most recent investment rate or of the equivalent coupon issue yield announced by the United States Treasury for 26-week Treasury securities.

(11) Upon notification by the executive director that the institutional control period has begun, the insurer will pay the remaining face amount of the policy to the State of Texas for deposit as specified under §37.9045(a)(6) of this title.

(g) This subsection applies only to owner or operators required to provide financial assurance under Chapter 336, Subchapter M of this title (relating to Licensing of Radioactive Substances Processing and Storage Facilities). Owners or operators required to provide financial assurance under Chapter 336, Subchapter M of this title may satisfy the requirements of financial assurance by demonstrating that it passes a financial test as provided in §37.251 of this title (relating to Financial Test), except the owner or operator which has issued rated bonds must also meet the criteria of paragraphs (1) and (3) of this subsection, or the owner or operator which has not issued rated bonds must also meet the criteria of paragraphs (2) and (3) of this subsection.

(1) The owner or operator must have:

(A) tangible net worth of at least ten times the total current cost estimate (or the current amount required if a certification is used) for all closure activities;

(B) assets located in the United States amounting to at least 90% of total assets or at least ten times the total current cost estimate (or the current amount required if a certification is used) for all closure activities;

(C) a current rating for its most recent bond issuance of AAA, AA, or A as issued by Standard and Poor's, or Aaa, Aa, A as issued by Moody's; and

(D) at least one class of equity securities registered under the Securities Exchange Act of 1934.

(2) The owner or operator must have:

(A) tangible net worth greater than \$10 million, or of at least ten times the total current cost estimate (or the current amount required if a certification is used) for all closure activities, whichever is greater;

(B) assets located in the United States amounting to at least 90% of total assets or at least ten times the total current cost estimate (or the current amount required if a certification is used) for all closure activities;

(C) a ratio of cash flow divided by total liabilities greater than 0.15;  
and

(D) a ratio of total liabilities divided by net worth less than 1.5.

(3) To demonstrate that the owner or operator meets the test, it must submit the following items to the executive director:

(A) a letter signed by the owner's or operator's chief financial officer and worded identically to the wording specified in §37.9025(a) of this title (relating to Wording of Financial Assurance Mechanisms); and

(B) a written guarantee, hereafter referred to as "self-guarantee," signed by an authorized representative which meets the requirements specified in §37.261 of this title (relating to Corporate Guarantee). The wording of the self-guarantee shall be acceptable to the executive director and must include the following:

(i) the owner or operator will fund and carry out the required closure or post closure activities, or upon issuance of an order by the executive director, the owner or operator will set up and fund a trust, as specified in §37.201 of this title in the name of the owner or operator, in the amount of the current cost estimates; and

(ii) if, at any time, the owner's or operator's most recent bond issuance ceases to be rated in any category of "A" or above by either Standard and Poor's or Moody's, the owner or operator will provide notice in writing of such fact to the executive director within 20 days after publication of the change by the rating service. If the owner's or operator's most recent bond issuance ceases to be rated in any category of "A" or above by both Standard and Poor's and Moody's, the owner or operator no longer meets the requirements of paragraph (1) of this subsection.

(h) This subsection only applies to owners or operators required to provide financial assurance under Chapter 336, Subchapter M of this title. A parent company controlling a majority of the voting stock of the owner or operator may satisfy the requirements of financial assurance by demonstrating that it passes a financial test as specified in §37.251 of this title, and by meeting the requirements of a corporate guarantee as specified in §37.261 of this title. The guarantor shall also comply with the requirements identified in this subsection.

(1) The wording of the corporate guarantee as specified in §37.361 of this title (relating to Corporate Guarantee) shall also include:

(A) the signatures of two officers of the owner or operator and two officers of the guarantor who are authorized to bind the respective entities; and

(B) the corporate seals.

(2) The guarantor shall also certify and submit to the executive director that the guarantor has:

(A) majority control of the owner or operator;

(B) full authority under the laws of the state under which it is incorporated and its articles of incorporation and bylaws to enter into this corporate guarantee;

(C) full approval from its board of directors to enter into this corporate guarantee; and

(D) authorization of each signatory.

(i) A parent company guarantee may not be used in combination with other financial assurance mechanisms to satisfy the requirements of this subchapter. A financial test by the owner or operator may not be used in combination with any other financial assurance mechanisms to satisfy the requirements of this subchapter or in any situation where the owner or operator has a parent company holding majority control of the voting stock of the company.

Adopted June 3, 2015

Effective June 25, 2015

**§37.9052. Endorsement.**

An endorsement to the insurance policy for closure, post closure, or corrective action, as specified in §37.9050(f) of this title (relating to Financial Assurance Mechanisms), must be worded as specified in the Endorsement in this section, except that the instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted.

Figure: 30 TAC §37.9052

ENDORSEMENT

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

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

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Additional Insured: Texas Commission on Environmental Quality  
Physical Address: 12100 Park 35 Circle, MC 214, Austin, TX 78753  
Mailing Address: MC 214, P.O. Box 13087, Austin, TX 78711-3087

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.*

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Face Amount:

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Policy Number:

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Effective Date:

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This endorsement certifies that the policy to which this endorsement is attached provides 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 (TAC) §37.9050(f) (relating to Financial Assurance Mechanisms) and 30 TAC §37.9045(a)(5) (relating to Financial Assurance Requirements for Closure, Post Closure, and Corrective Action), 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. This endorsement also covenants that the insurer shall not raise as a defense any provision of the policy that is inconsistent with the requirements of 30 TAC §37.9050(f) and 30 TAC §37.9045(a)(5).

Whenever requested by the Executive Director of the Texas Commission on Environmental Quality, the insurer agrees to furnish a duplicate original of the policy listed above, including all endorsements thereon.

We hereby certify that the wording of this endorsement is identical to the wording specified in 30 TAC §37.9052 (relating to Endorsement), as such regulations were constituted on the date shown immediately below. The undersigned insurer certifies that it is authorized to transact or be a surplus lines insurer eligible to engage in the business of insurance in Texas and it has a minimum financial strength rating of "A" and a financial size category of "XV" as assigned by the A.M. Best Company.

(Authorized signature) Insurer:

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(Name of person signing)

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(Title of person signing)

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(Signature of witness or notary)

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(Date) \_\_\_\_\_

Adopted December 17, 2003

Effective January 8, 2004

**§37.9059. Financial Assurance Requirements for Liability.**

(a) Owners or operators required to demonstrate financial assurance 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 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 compact waste disposal facility and/or federal facility waste disposal facility. 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 subject to this section must demonstrate financial assurance for bodily injury and property damage to third parties caused by non-sudden accidental occurrences arising from operations of the compact waste disposal facility

and/or federal facility waste disposal facility. An owner or operator must have and maintain liability coverage for non-sudden 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 non-sudden accidental occurrences into a single per-occurrence level, and combine the required annual aggregate coverage levels for sudden and non-sudden accidental occurrences into a single annual aggregate level. Owners or operators who combine coverage levels for sudden and non-sudden 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 except for the Financial Test for Liability and the Corporate Guarantee for Liability to demonstrate financial assurance for sudden and for non-sudden 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. The escrow account must be funded at the same time the insurance policy becomes effective.

(g) The required limits of coverage in this subsection are distinct from any other liability requirements under this chapter.

Adopted December 17, 2003

Effective January 8, 2004