**Section 811.710 Trust Fund**

a) An owner or operator may satisfy the requirements of this Subpart G by establishing a trust fund that conforms to the requirements of this Section and submitting an original signed duplicate of the trust agreement to the Agency.

b) The trustee must be an entity that has the authority to act as a trustee and of whom either of the following is true:

1) It is an entity whose trust operations are examined by the Illinois Department of Financial and Professional Regulation pursuant to the Illinois Banking Act [205 ILCS 5]; or

2) It is an entity that complies with the Corporate Fiduciary Act [205 ILCS 620].

c) The trust agreement must be on the forms specified in Appendix A, Illustration A of this Part, and the trust agreement must be accompanied by a formal certification of acknowledgement, on the form specified in Appendix A, Illustration B. Schedule A of the trust agreement must be updated within 60 days after a change in the amount of the current closure, post-closure, and corrective action cost estimates covered by the agreement.

d) Payments into the trust.

1) For closure and post-closure care.

A) The owner or operator must make a payment into the trust fund each year during the pay-in period.

B) The pay-in period is the initial permit term or the remaining operating life of the facility as estimated in the closure plan, whichever period is shorter.

C) Annual payments are determined by the following formula:

|  |  |  |
| --- | --- | --- |
| Annual payment | = | CE-CV |
| Y |

Where:

|  |  |  |
| --- | --- | --- |
| CE | = | Current cost estimate |
| CV | = | Current value of the trust fund |
| Y | = | Number of years remaining in the pay-in period. |

D) The owner or operator must make the first annual payment prior to the initial receipt of waste for disposal. The owner or operator must also, prior to initial receipt of waste, submit to the Agency a receipt from the trustee for the first annual payment.

E) Subsequent annual payments must be made no later than 30 days after each anniversary of the first payment.

F) The owner or operator may accelerate payments into the trust fund, or may deposit the full amount of the current cost estimate at the time the fund is established.

G) An owner or operator required to provide additional financial assurance for an increase in the cost estimate because of an amendment to this Subchapter i may provide such additional financial assurance pursuant to this subsection (d)(1)(G). The owner or operator may provide the increase by contributing to a new or existing trust fund pursuant to this Section. Subsection (d)(2) of this Section notwithstanding, the pay-in period for such additional financial assurance must be not less than three years.

2) For corrective action at MSWLF units.

A) The owner or operator must make payments into the trust fund annually over one-half of the estimated length of the corrective action program in the case of corrective action for known releases. This period is referred to as the pay-in period.

B) The owner or operator must make the first payment into the trust fund equal to at least one-half of the current cost estimate for corrective action divided by the number of years in the corrective action pay-in period, as defined in subsection (d)(2)(A) of this Section. The amount of subsequent payments must be determined by the following formula:

|  |  |  |
| --- | --- | --- |
| Next Payment | = | RB-CV |
| Y |

Where:

|  |  |  |
| --- | --- | --- |
| RB | = | Most recent estimate of the required trust fund balance for corrective action (i.e., the total costs that will be incurred during the second half of the corrective action period) |
| CV | = | Current value of the trust fund |
| Y | = | Number of years remaining in the pay-in period. |

C) The owner or operator must make the initial payment into the trust fund no later than 120 days after the remedy has been selected in accordance with the requirements of Section 811.325.

BOARD NOTE: Subsection (d) of this Section is partly derived from 40 CFR 258.74(a)(2), (a)(4), and (a)(5) (2005).

e) The trustee must evaluate the trust fund annually, as of the day the trust was created or on such earlier date as may be provided in the agreement. The trustee must notify the owner or operator and the Agency of the value within 30 days after the evaluation date.

f) If the owner or operator of a MSWLF unit establishes a trust fund after having used one or more alternative mechanisms specified in this Subpart G, the initial payment into the trust fund must be at least the amount that the fund would contain if the trust fund were established initially and annual payments made according to the specifications of this Section.

 BOARD NOTE: Subsection (f) of this Section is derived from 40 CFR 258.74(a)(6) (2005).

g) Release of excess funds.

1) If the value of the financial assurance is greater than the total amount of the current cost estimate, the owner or operator may submit a written request to the Agency for a release of the amount in excess of the current cost estimate.

2) Within 60 days after receiving a request from the owner or operator for a release of funds, the Agency must instruct the trustee to release to the owner or operator such funds as the Agency specifies in writing to be in excess of the current cost estimate.

h) Reimbursement for closure, post-closure care, and corrective action expenses.

1) After initiating closure or corrective action, an owner or operator, or any other person authorized to perform closure, post-closure care, or corrective action, may request reimbursement for closure, post-closure care, or corrective action expenditures, by submitting itemized bills to the Agency.

2) Within 60 days after receiving the itemized bills for closure, post-closure care, or correction action activities, the Agency must determine whether the expenditures are in accordance with the closure, post-closure care, or corrective action plan. The Agency must instruct the trustee to make reimbursement in such amounts as the Agency specifies in writing as expenditures in accordance with the closure, post-closure care, or corrective action plan.

3) If the Agency determines, based on such information as is available to it, that the cost of closure and post-closure care or corrective action will be greater than the value of the trust fund, it must withhold reimbursement of such amounts as it determines are necessary to preserve the fund in order to accomplish closure and post-closure care or corrective action until it determines that the owner or operator is no longer required to maintain financial assurance for closure and post-closure care or corrective action. In the event the fund is inadequate to pay all claims, the Agency must pay claims according to the following priorities:

A) Persons with whom the Agency has contracted to perform closure, post-closure care, or corrective action activities (first priority);

B) Persons who have completed closure, post-closure care, or corrective action authorized by the Agency (second priority);

C) Persons who have completed work that furthered the closure, post-closure care, or corrective action (third priority);

1. The owner or operator and related business entities (last priority).

(Source: Amended at 35 Ill. Reg. 10842, effective June 22, 2011)