**Section 820.404 Trust Fund**

a) An owner or operator may satisfy the requirements of this Subpart 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 whose trust operations are regulated and examined by a federal or state agency.

c) Trust Agreement

1) The trust agreement must be on Agency forms and must be accompanied by a formal certification of acknowledgment on an Agency form.

2) The trust agreement must be irrevocable and must contain provisions addressing establishing, managing, and terminating the trust.

3) The trust agreement must include a schedule listing the GCDD recovery facility or facilities covered by the trust and the current approved removal cost for each of those GCDD recovery facilities.

4) The trust agreement must prohibit third-party access to the trust funds other than as provided in the trust agreement. This prohibition must be in the Agency form and must be updated within 60 days after a change in the amount of the current approved removal cost for any GCDD recovery facility covered by the trust.

d) Payments into the Trust

1) The owner or operator must make a payment into the trust fund each year during the pay-in period. However, after the pay-in period expires, neither the owner nor the operator may use a pay-in period to fund the trust and must instead make a lump sum payment to further fund the trust.

2) Pay-in Period

A) The pay-in period for a trust fund used as financial assurance under this Part is three years.

B) The pay-in period for any facility that has not accepted GCDD before establishing a trust fund as financial assurance under this Part starts on the date any of the GCDD recovery facilities covered by the trust agreement first receives GCDD.

C) The pay-in period for any facility operating at the time the owner or operator establishes a trust fund as the financial assurance mechanism starts on the date the trust fund is established.

3) Annual payments are determined by subtracting the value of the trust fund from the current approved cost estimate for all facilities covered by the trust agreement and dividing the difference by the number of years remaining in the pay-in period.

4) First Annual Payment

A) For any facility that has not accepted GCDD before establishing a trust fund as financial assurance under this Part, the owner or operator must make the first annual payment before GCDD is received at a facility covered by the trust agreement. Before receiving GCDD at a facility covered by the trust agreement, the owner or operator must submit to the Agency a receipt from the trustee for the first annual payment.

B) For any facility operating at the time the owner or operator establishes a trust fund as the financial assurance mechanism, the owner or operator must make the first annual payment immediately upon establishing the trust fund for use as financial assurance under this Part. The first payment must be made before submitting an original signed duplicate to the Agency under subsection (a). The owner or operator must submit to the Agency a receipt from the trustee for the first annual payment at the time the original signed duplicate is submitted to the Agency.

5) Subsequent annual payments must be made within 30 days after each anniversary of the first payment.

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

7) The owner or operator must maintain the value of the fund at no less than the value the fund would have if annual payments were made as specified in subsection (d)(3).

8) If the owner or operator establishes a trust fund after having used one or more alternative mechanisms, the first payment must be at least the amount the fund would contain if the trust fund were established initially and payments were made as provided in subsection (d)(3).

e) Evaluation by Trustee

1) The trustee must evaluate the trust fund annually as of the anniversary of the day the trust was created or on another date provided in the agreement.

2) Within 30 days after the evaluation date each year, the trustee must furnish the owner or operator and the Agency with a statement confirming the value of the trust fund.

3) The failure of the owner or operator to object in writing to the trustee within 90 days after the trustee furnishes the statement to the owner or operator and the Agency constitutes a conclusively binding assent by the owner or operator, which bars the owner or operator from asserting any claim or liability against the trustee regarding matters disclosed in the statement.

f) After the pay-in period is completed, whenever the cost estimate changes, the owner or operator must compare the new cost estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new cost estimate, the owner or operator must, within 60 days after the change in the cost estimate, either deposit an amount into the fund so that its value after this deposit at least equals the amount of the cost estimate, or obtain other financial assurance as specified in this Subpart to cover the difference.

g) Release of Excess Funds

1) If the value of the trust fund is greater than the total amount of the current approved closure cost estimate, the owner or operator may submit a written request to the Agency for a release of the amount exceeding the current approved closure cost estimate.

2) If an owner or operator substitutes other financial assurance as specified in this Subpart for all or part of the trust fund, he or she may submit a written request to the Agency for release of the amount exceeding the current approved closure cost estimate covered by the trust fund.

3) As soon as practicable after receiving a request from the owner or operator for a release of funds under this subsection, but within 120 days following the Agency's receipt of the request, the Agency must instruct the trustee to release to the owner or operator the amount of funds the Agency specifies in writing as exceeding the current approved closure cost estimate.

h) Reimbursement for Removal Expenses

1) After initiating closure, an owner or operator, or any other person authorized to perform closure, may request reimbursement for partial or final closure expenditures by submitting itemized bills to the Agency. The owner or operator may request reimbursements for partial closure only if sufficient funds remain in the trust fund to cover the costs of closure.

2) As soon as practicable after receiving the itemized bills for partial or final closure activities, but within 120 days following the Agency's receipt of the itemized bills, the Agency must determine whether the expenditures are for closure activities under Section 820.305. If the Agency determines, based on the information available to it, that the remaining cost of closure will be less than the value of the trust fund, the Agency must instruct the trustee to make reimbursement in such amounts as the Agency specifies in writing as expenditures for closure activities under Section 820.305.

3) If the Agency determines, based on such information available to it, that the remaining cost of closure will be greater than the value of the trust fund, it must withhold reimbursement of amounts it determines are necessary to preserve the trust corpus to accomplish closure until it determines that the owner or operator is no longer required to maintain financial assurance. If the fund is inadequate to pay all claims after closure is completed, the Agency must pay claims according to the following sequential priorities:

A) Persons the Agency has contracted and authorized to perform closure activities;

B) Persons who have completed closure activities authorized by the Agency;

C) Persons who have completed work that furthered closure;

D) The owner or operator and related business entities.