

## Environmental Protection Agency

## § 265.144

amount at least equal to the current closure cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, he may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two or more mechanisms. The Regional Administrator may use any or all of the mechanisms to provide for closure of the facility.

(g) *Use of a financial mechanism for multiple facilities.* An owner or operator may use a financial assurance mechanism specified in this section to meet the requirements of this section for more than one facility. Evidence of financial assurance submitted to the Regional Administrator must include a list showing, for each facility, the EPA Identification Number, name, address, and the amount of funds for closure assured by the mechanism. If the facilities covered by the mechanism are in more than one Region, identical evidence of financial assurance must be submitted to and maintained with the Regional Administrators of all such Regions. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. In directing funds available through the mechanism for closure of any of the facilities covered by the mechanism, the Regional Administrator may direct only the amount of funds designated for that facility, unless the owner or operator agrees to the use of additional funds available under the mechanism.

(h) *Release of the owner or operator from the requirements of this section.* Within 60 days after receiving certifications from the owner or operator and a qualified Professional Engineer that final closure has been completed in accordance with the approved closure plan, the Regional Administrator will notify the owner or operator in writing that he is no longer required by this section to maintain financial assurance for final closure of the facility, unless the Regional Administrator has reason to believe that final closure has not been in accordance with the approved closure plan. The Regional Ad-

ministrator shall provide the owner or operator a detailed written statement of any such reason to believe that closure has not been in accordance with the approved closure plan.

[47 FR 15064, Apr. 7, 1982, as amended at 51 FR 16456, May 2, 1986; 57 FR 42843, Sept. 16, 1992; 71 FR 16909, Apr. 4, 2006]

### § 265.144 Cost estimate for post-closure care.

(a) The owner or operator of a hazardous waste disposal unit must have a detailed written estimate, in current dollars, of the annual cost of post-closure monitoring and maintenance of the facility in accordance with the applicable post-closure regulations in §§ 265.117 through 265.120, 265.228, 265.258, 265.280, and 265.310.

(1) The post-closure cost estimate must be based on the costs to the owner or operator of hiring a third party to conduct post-closure care activities. A third party is a party who is neither a parent nor subsidiary of the owner or operator. (See definition of parent corporation in § 265.141(d).)

(2) The post-closure cost estimate is calculated by multiplying the annual post-closure cost estimate by the number of years of post-closure care required under § 265.117.

(b) During the active life of the facility, the owner or operator must adjust the post-closure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with § 265.145. For owners or operators using the financial test or corporate guarantee, the post-closure care cost estimate must be updated for inflation no later than 30 days after the close of the firm's fiscal year and before submission of updated information to the Regional Administrator as specified in § 265.145(d)(5). The adjustment may be made by recalculating the post-closure cost estimate in current dollars or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the U.S. Department of Commerce in its *Survey of Current Business* as specified in § 265.145 (b)(1) and (2). The inflation factor is the result of dividing the latest published annual

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Deflator by the Deflator for the previous year.

(1) The first adjustment is made by multiplying the post-closure cost estimate by the inflation factor. The result is the adjusted post-closure cost estimate.

(2) Subsequent adjustments are made by multiplying the latest adjusted post-closure cost estimate by the latest inflation factor.

(c) During the active life of the facility, the owner or operator must revise the post-closure cost estimate no later than 30 days after a revision to the post-closure plan which increases the cost of post-closure care. If the owner or operator has an approved post-closure plan, the post-closure cost estimate must be revised no later than 30 days after the Regional Administrator has approved the request to modify the plan, if the change in the post-closure plan increases the cost of post-closure care. The revised post-closure cost estimate must be adjusted for inflation as specified in §265.144(b).

(d) The owner or operator must keep the following at the facility during the operating life of the facility: the latest post-closure cost estimate prepared in accordance with §265.144 (a) and (c) and, when this estimate has been adjusted in accordance with §265.144(b), the latest adjusted post-closure cost estimate.

[47 FR 15064, Apr. 7, 1982, as amended at 50 FR 4514, Jan. 31, 1985; 51 FR 16457, May 2, 1986]

**§ 265.145 Financial assurance for post-closure care.**

By the effective date of these regulations, an owner or operator of a facility with a hazardous waste disposal unit must establish financial assurance for post-closure care of the disposal unit(s).

(a) *Post-closure trust fund.* (1) An owner or operator may satisfy the requirements of this section by establishing a post-closure trust fund which conforms to the requirements of this paragraph and submitting an originally signed duplicate of the trust agreement to the Regional Administrator. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated

and examined by a Federal or State agency.

(2) The wording of the trust agreement must be identical to the wording specified in §264.151(a)(1), and the trust agreement must be accompanied by a formal certification of acknowledgment (for example, see §264.151(a)(2)). Schedule A of the trust agreement must be updated within 60 days after a change in the amount of the current post-closure cost estimate covered by the agreement.

(3) Payments into the trust fund must be made annually by the owner or operator over the 20 years beginning with the effective date of these regulations or over the remaining operating life of the facility as estimated in the closure plan, whichever period is shorter; this period is hereafter referred to as the "pay-in period." The payments into the post-closure trust fund must be made as follows:

(i) The first payment must be made by the effective date of these regulations, except as provided in paragraph (a)(5) of this section. The first payment must be at least equal to the current post-closure cost estimate, except as provided in §265.145(f), divided by the number of years in the pay-in period.

(ii) Subsequent payments must be made no later than 30 days after each anniversary date of the first payment. The amount of each subsequent payment must be determined by this formula:

$$\text{Next payment} = \frac{\text{CE} - \text{CV}}{\text{Y}}$$

where CE is the current post-closure cost estimate, CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

(4) The owner or operator may accelerate payments into the trust fund or he may deposit the full amount of the current post-closure cost estimate at the time the fund is established. However, he must maintain the value of the fund at no less than the value that the fund would have if annual payments were made as specified in paragraph (a)(3) of this section.

(5) If the owner or operator establishes a post-closure trust fund after having used one or more alternate mechanisms specified in this section,