

7035.2720 DEDICATED LONG-TERM CARE TRUST FUNDS.

Subpart 1. **Application.** Subparts 1 to 15 apply to dedicated long-term care trust funds.

Subp. 2. **Trust fund allowed.** An owner or operator of a facility owned by a political subdivision may satisfy the requirements of part 7035.2695 by establishing by resolution a dedicated long-term care trust fund for the facility. The fund trustee who is designated by the resolution incurs a fiduciary responsibility for the fund and is responsible for reporting to the commissioner the information required under this part.

A. An owner or operator of a new facility shall submit the originally signed duplicate of the resolution which orders establishment of the fund to the commissioner with the final permit application for the facility.

B. An owner or operator of an existing facility with a remaining capacity of more than five years or 500,000 cubic yards shall submit the originally signed duplicate of the resolution which orders establishment of the fund to the commissioner within 180 days after November 15, 1988.

C. An owner or operator of an existing facility that does not meet the criterion in item B shall submit the originally signed duplicate of the resolution which orders establishment of the fund to the commissioner within a year after November 15, 1988.

D. If the owner or operator cannot meet the requirements of item A, B, or C because the required cost estimates have not been completed, the commissioner will provide the owner or operator with cost estimates. The owner or operator must then submit to the commissioner an originally signed duplicate of the resolution and make first payment into the fund within 60 days after the owner or operator receives the cost estimates. The commissioner shall also make appropriate revisions to the cost estimates until the owner or operator submits the required plans and cost estimates.

E. The owner or operator of a facility owned by a political subdivision must substitute another financial assurance mechanism as specified in parts 7035.2705 to 7035.2750 if:

(1) at any time after November 15, 1988, the owner or operator does not respond on time to agency orders to perform activities which are described in the facility permit or other compliance documents and which relate to facility closure, postclosure care and maintenance, and/or corrective action;

(2) the reports required under subpart 3 indicate that the owner or operator has not managed the dedicated long-term care trust fund according to the requirements of this part; or

(3) the owner or operator rescinds or changes the resolution required under subpart 4 without having first obtained written permission from the commissioner.

The commissioner shall notify the owner or operator when any of the conditions described in this item occurs. Within 60 days after receiving the notice, the owner or operator shall provide the commissioner with evidence that a substitute financial assurance mechanism has become effective. If the required substitution is not made within 60 days after the owner or operator receives notice, the owner or operator shall close the facility as provided in part 7035.2635.

Subp. 3. **Submission to commissioner.** The owner or operator shall send the following items to the commissioner to demonstrate that the dedicated long-term care trust fund is being developed in compliance with this part:

A. A copy of the owner's or operator's financial statements for the latest completed fiscal year. The owner or operator shall send the financial statements prepared in accordance with Minnesota Statutes, section 375.17, 471.697, or 471.698. The statements must clearly report the status of the dedicated long-term care trust fund.

B. A report from an independent certified public accountant stating that the status of the dedicated long-term care trust fund conforms to the requirements of this part.

The initial submission to the commissioner of the materials required under items A and B is due one year after submission of the originally signed duplicate of the resolution. After the initial submission of materials specified in items A and B, the owner or operator must send updated information to the commissioner within 90 days after the close of each succeeding fiscal year.

Subp. 4. **Resolution language.** The wording of the resolution that establishes the dedicated long-term care trust fund must be identical to the wording in part 7035.2805, subpart 9.

Subp. 5. **Monthly payments required.** The owner or operator must make monthly payments into the dedicated long-term care trust fund over the term of the pay-in period. The payments into the fund must be made as described in items A, B, and C.

A. The owner or operator of a new facility must make the first payment before the initial receipt of waste for disposal. The owner or operator must submit to the commissioner a certification from the trustee for the first payment before the initial receipt of waste. The first payment must be determined by this formula:

$$\text{payment} = \frac{\text{CE}}{\text{Y} \times 12}$$

where CE is the sum of the current cost estimates and Y is the number of years remaining in the operating life of the site. Subsequent payments must be made no later than

the last day of the month following the previous payment. The amount of each subsequent payment must be determined by this formula:

$$\text{payment} = \frac{\text{CE} - \text{CV}}{\text{Y} \times 12}$$

where CE is the sum of the current cost estimates, CV is the current balance of the fund, and Y is the number of years remaining in the operating life of the site.

The operating life of the site must be determined by the following formula:

$$\text{Y} = \frac{\text{DC}}{\text{A} \times \text{W} \times (1+\text{B})}$$

where:

DC = the design capacity of the site,

A = the ratio of loose to compacted waste volume achieved at the site,

B = the ratio of the volume of cover material (both intermittent and final) to waste receipts at the site, and

W = the weighted five-year moving average of reported annual waste receipts.

The weights applied to the annual waste receipts are:

previous year = .50

two years ago = .25

three years ago = .15

four years ago = .07

five years ago = .03

B. For an existing facility, the first payment must be made no later than one year after November 15, 1988. The owner or operator must submit to the commissioner a certification from the trustee for this payment within ten days after the payment is made. Payments into the fund must be determined by the methods in item A.

C. If an owner or operator previously has established a fund and the value of that fund is less than the sum of the current cost estimates when a permit is issued for the facility, the portion of the sum of the current cost estimates still to be paid into the fund must be paid in over the operating life of the site. The first payment must be made within 30 days of the permit issuance. Subsequent payments must be made no later than the last day of the month

following the previous payment. The amount of each payment must be determined by the second formula contained in item A.

D. The owner or operator must make annual revisions of the estimated operating life of the facility. The revisions must be made no later than the anniversary date of the first payment into the trust fund.

E. The pay-in amount per cubic yard need not exceed the previous year's tipping fee per cubic yard. If the owner or operator does not charge a tipping fee, then the pay-in amount per cubic yard need not exceed the statewide average tipping fee, as determined and communicated by the commissioner.

Subp. 6. **Exceptions to calculation method.** The owner or operator may make payments less than those calculated in accordance with subpart 5 under the following conditions:

A. The owner or operator must show that the payment calculated under subpart 5 exceeds, on an annual cost per capita basis, 0.1 percent of per capita income within the owner's or operator's jurisdiction. The annual cost per capita will be derived by dividing the total annual cost of payments calculated under subpart 5 by the population in the facility's service area. The information provided must be the latest income data compiled by the state demographer.

B. If the owner or operator has shown that the trust fund payment exceeds the criterion in item A, the commissioner shall determine, in consultation with the owner or operator, whether it is possible for the facility to generate enough revenue to develop a trust fund that will cover the current cost estimates. The information that will inform the decision must be provided by the owner or operator and must consist of:

(1) current measurements and future estimates, for at least ten years, of waste flow into the facility;

(2) ten-year pro forma statements of income and expense;

(3) estimates, for at least ten years, of demographic and economic trends in the facility's service area;

(4) compilations and analyses supporting the information provided under subitems (1), (2), and (3); and

(5) any further information the owner or operator believes relevant to the matter.

C. If the commissioner determines that the site cannot generate enough revenue to satisfy the criterion in item A, then the owner or operator must either:

(1) make payments into the trust fund larger than the payment calculated under subpart 5, so that these payments will be large enough to develop a trust fund equal to the current cost estimates; or

(2) schedule the closure procedures described in parts 7035.2625 and 7035.2635.

Subp. 7. **Accelerated payment allowed.** The owner or operator may accelerate payments into the fund or may deposit the full amount of the sum of the current cost estimates at the time the fund is established. However, the owner or operator shall maintain the value of the fund at no less than the value that the fund would have if monthly payments were made as specified in subpart 5.

Subp. 8. **Minimum alternate payment.** If the owner or operator establishes a dedicated long-term care trust fund after having used one or more alternate financial assurance mechanisms specified in parts 7035.2705 to 7035.2750, the first payment into the fund must be at least the amount that the fund would contain if the fund were established initially and monthly payments made according to specifications of this part.

Subp. 9. **Increase in cost estimate.** If the sum of the current cost estimates changes, the owner or operator shall compare the new estimates with the trustee's most recent annual valuation of the fund. If the value of the fund is less than the amount of the new estimates, the owner or operator, within 60 days after the change in the cost estimates, shall either change the fund pay-in schedule so that it incorporates the changes in the sum of the current cost estimates and submit evidence of this change to the commissioner, or establish other financial assurance mechanisms as specified in parts 7035.2705 to 7035.2750 to cover the difference.

Subp. 10. **Increase in trust fund value.** During the operating life of the facility, if the value of the dedicated long-term care trust fund is greater than the sum of the current cost estimates, the owner or operator may submit a written request together with supporting documents to the commissioner for permission to release the amount in excess of the sum of the current cost estimates covered by the fund.

Subp. 11. **Excess in other financial mechanisms.** If an owner or operator substitutes other financial assurance mechanisms as specified in parts 7035.2705 to 7035.2750 in place of all or part of the dedicated long-term care trust fund, then the owner or operator may submit a written request to the commissioner for permission to release the amount in excess of the sum of the current cost estimates covered by the fund.

Subp. 12. **Release of excess funds.** Within 60 days after receiving a request from the owner or operator for release of funds as specified in subpart 10 or 11, the commissioner

shall instruct the trustee to release to the owner or operator funds in excess of the latest cost estimates covered by the fund.

Subp. 13. **Late payment; effect.** The trustee shall notify the owner or operator and the commissioner by certified mail within ten days if a payment is not made on the required date. The owner or operator must then stop accepting waste until the required payment is made. If the required payment is not made within 60 days of the commissioner's receipt of the nonpayment notice, the owner or operator shall close the facility as provided in part 7035.2635.

Subp. 14. **Trust fund disbursements.** After beginning actions at the facility that are specified in closure, postclosure care, or contingency action plans, the owner or operator must request and receive the commissioner's permission before the trustee may authorize any disbursements from the dedicated long-term care trust fund. The owner or operator must provide itemized bills in support of the request for permission to make payments from the fund.

Within 90 days after receiving a request to authorize a disbursement from the fund, the commissioner shall determine whether the expenditures are in accordance with the appropriate plan or are needed to ensure proper closure, postclosure care, or corrective action. The commissioner shall then authorize the trustee to make payments from the fund in amounts specified in writing. If the commissioner determines that the total cost incurred will be significantly greater than the value of the fund, the commissioner may withhold permission until it is determined, in accordance with part 7035.2775, that the owner or operator is no longer required to maintain financial assurance.

The commissioner shall decide whether to withhold permission to make payment based on changes in unit costs incurred. If costs per unit incurred at the site exceed contingency allowances made in cost estimates, the commissioner may withhold permission to make payment. The commissioner shall, within 30 days of the decision, provide the owner or operator with written reasons for withholding permission to make payment.

Subp. 15. **Termination of trust fund.** The commissioner shall agree to termination of the dedicated long-term care trust fund if:

A. the owner or operator substitutes alternate financial assurance as specified in parts 7035.2705 to 7035.2750; or

B. the agency releases the owner or operator from the requirements of this part in accordance with part 7035.2775.

Statutory Authority: *MS s 115.03; 116.07*

History: *13 SR 1150*

Published Electronically: *October 4, 2013*