

7035.2705 TRUST FUND.

Items A to M apply to trust funds:

A. An owner or operator may satisfy the requirements of part 7035.2695 by establishing a trust fund that conforms to the requirements of items A to M and by submitting to the commissioner an originally signed duplicate of the trust agreement. The trustee shall be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or Minnesota state agency.

(1) An owner or operator of a new facility shall submit the originally signed duplicate of the trust agreement to the commissioner with the final permit application for the facility.

(2) 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 trust agreement to the commissioner within 180 days of November 15, 1988.

(3) An owner or operator of an existing facility that does not meet the criterion in subitem (2) shall submit the originally signed duplicate of the trust agreement to the commissioner within a year of November 15, 1988.

(4) If the owner or operator cannot meet the requirements of subitem (1), (2), or (3) because the needed 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 trust agreement and make first payment into the trust account within 60 days after the owner or operator receives the cost estimates. The commissioner will also make appropriate revisions, until the owner or operator submits the required plans and cost estimates.

B. The wording of the trust agreement must be identical to the wording specified in part 7035.2805, subpart 1, and must be accompanied by a formal certification of acknowledgment as shown in part 7035.2805, subpart 2. The trust agreement must be updated within 60 days after a change in the amount of the current cost estimates covered by the agreement.

C. The owner or operator must make monthly payments into the trust fund over the term of the pay-in period. The payments into the trust fund must be made as described in subitems (1), (2), and (3).

(1) 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 receipt 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 value of the trust 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

(2) 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 receipt from the trustee for this payment within ten days after the payment is made. Payments into the trust fund must be determined by the formula in subitem (1).

(3) If an owner or operator previously has established a trust fund and the value of that trust fund is less than the sum of the current cost estimates when a permit is issued to the facility, the amount of the sum of the current cost estimates still to be paid into the trust 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 formula contained in subitem (1).

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

(5) 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.

D. The owner or operator may make payments less than those calculated under item C under the following conditions:

(1) For privately owned sites, the owner or operator must show that the payment calculated under item C exceeds, on an annual basis, the facility's current cash flow minus 150 percent of current depreciation expenses. The facility's cash flow consists of net income plus depreciation costs plus amortizations of intangible assets. The information presented in support of this demonstration must include at least:

- (a) balance sheets for the past three years;
- (b) income statements for the past three years;
- (c) funds statements for the past three years; and
- (d) a certified public accountant's written opinion that the statements are accurate.

(2) For publicly owned sites, the owner or operator must show that the payment calculated under item C 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 item C by the population in the facility's service area. The information provided in support must be the latest income data compiled by the state demographer.

(3) If the owner or operator has shown that the trust fund payment exceeds the criterion set in subitem (1) or (2), 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:

- (a) current measurements and future estimates, for at least ten years, of waste flow into the facility;
- (b) ten-year pro forma statements of operating income and expense;
- (c) estimates, for at least ten years, of demographic and economic trends in the facility's service area;
- (d) compilations and analyses supporting the information provided under units (a), (b), and (c); and
- (e) any further information the owner or operator believes relevant to the matter.

(4) If the commissioner determines that the site cannot generate enough revenue to satisfy the criteria set in subitem (1) or (2), then the owner or operator must either:

- (a) make payments into the trust fund larger than the payment calculated under item C, so that these payments will be large enough to develop a trust fund equal to the current cost estimates; or
- (b) schedule the closure procedures described in parts 7035.2625 and 7035.2635.

E. The owner or operator may accelerate payments into the trust 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 annual payments were made as specified in item C.

F. If the owner or operator establishes a 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 trust fund must be at least the amount that the fund would contain if the trust fund were established initially and monthly payments made according to specifications of this part.

G. 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 trust 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 trust 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.

H. During the operating life of the facility, if the value of the 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 release of the amount in excess of the sum of the current cost estimates covered by the trust fund.

I. 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 trust fund, the owner or operator may submit a written request to the commissioner for release of the amount in excess of the sum of the current cost estimates covered by the trust fund.

J. Within 60 days after receiving a request from the owner or operator for release of funds as specified in item H or I, the commissioner shall instruct the trustee to release to the owner or operator funds in excess of the current cost estimates covered by the trust fund.

K. 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.

L. After beginning actions at the facility that are specified in closure, postclosure care or contingency action plans, an owner, operator, or other person authorized to perform those actions may request reimbursement for expenditures on completed work by submitting itemized bills to the commissioner. Within 90 days after receiving bills for closure activities, postclosure care or contingency actions, 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 instruct the trustee to make reimbursement in the amounts the commissioner specifies in writing. If the commissioner determines that the total cost incurred will be significantly greater than the value of the trust fund, the commissioner may withhold reimbursement of the amounts as deemed prudent 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 reimbursement 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 reimbursement. The commissioner shall, within 30 days of the decision, provide the owner or operator with written reasons for withholding reimbursement.

M. The commissioner shall agree to termination of the trust if:

(1) an owner or operator substitutes alternate financial assurance as specified in parts 7035.2705 to 7035.2750; or

(2) 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*

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