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Guidance Document for Trust Agreements

A trust fund is an arrangement in which the grantor of the trust transfers legal title of property to a trustee, who manages the property for the beneficiary of the trust. The trustee would be a financial institution whose trust operations are regulated and examined by a Federal or State agency. The trustee must manage the property according to the terms of the trust agreement and in accordance with applicable state law. The trust agreement provides for a pay-in period during which the grantor makes payments of specified amounts into the trust so the value of the trust property equals the required amount of coverage at closure of the facility as determined by the facility specific cost estimates.

A trust fund must be irrevocable, (i.e., it cannot be changed or terminated by the owner or operator without the written agreement of the trustee and the NDEE Director). Initial payment into a trust fund must be made prior to the initial receipt of waste or the effective date, whichever is later. The formula for determining the trust fund payment is:

$$CE\text{-}CV/Y$$

where CE= current cost estimate
CV= current value of the trust
Y = number of years in the pay-in schedule.

1. The first step in determining the amount to pay-in is to develop the closure and/or post-closure cost estimates.

2. Next, determine the facility life as of the date of payment, the life of each phase, and the amount of time to closing for the largest area ever open at one time.

3. For the post-closure payment divide the facility life into the 30 year post-closure cost estimate minus the current value of the post-closure funds.

4. For closure, divide the number of years to close phase I into the cost estimate for Phase I closure minus the current value of the closure fund and compare that figure with the cost estimate for closure of the largest area open at any one time divided by the number of years until closure of that area. The larger of the two numbers should be used for the payment into the trust fund to assure funds are available when needed for closure. Often, the closure of Phase I will require a larger pay-in because there are fewer years to accumulate the required funds. The closure plan should specify the closure schedule to determine how soon funds will be needed to be available for closure.

Please note that the Y in the post-closure pay-in formula may be different than the Y in the closure pay-in formula because they are based on different activities. Closure is frequently done in phases while post-closure would be based on the life of the entire facility.

Discounting payments into the Trust Fund is allowed under certain conditions. Please refer to the Discounting Guidance Document.

Reimbursements from trust funds for closure and post-closure care costs are allowed, as long as there are sufficient funds left in the fund to cover the remaining cost of closure and/or post-closure.

The cost estimates are attached to the trust fund and are required to be updated annually for inflation.

The attached guidance document for trust agreements provides suggested wording. Once a trust agreement is approved by NDEE an originally signed duplicate must be submitted to NDEE.

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