



# RCRA Subtitle C Financial Assurance Instrument Fact Sheet

## TRUST FUND

**Instrument Summary:** A Trust Fund (Trust) is an agreement between two parties. One party (the Grantor) transfers assets to a Trust that a second party (the Trustee) holds and administers for the benefit of the Beneficiary. Thus, for purposes of financial assurance, the owner/operator of a Subtitle C facility (“the Company”) is the Grantor. It transfers funds to a financial institution, which acts as Trustee. The Regulator is the Beneficiary.

The funds are held in the Trust for the purpose of paying expenses related to closure and/or post-closure. The Company establishes the Trust, and funds are deposited into it to cover the current estimated costs of closure/post-closure. Depending on the situation, the regulations allow the Company to deposit funds in phases. The schedule and size of payments depends on: 1) the value of the Trust at the time; 2) the current cost estimates subject to financial assurance; and 3) the period of time over which payments are to be made (see §264.143(a)(3)).

A Trust may be used in combination with other third-party financial assurance mechanisms including insurance, surety bonds guaranteeing payment and letters of credit.

The Company usually pays a fee for the administrative services provided by the Trustee. These fees will vary depending on the financial institution. For example, the fees may be lower if the Company uses other services at the institution.

Although the Trustee is empowered to invest the funds held in Trust, the types of investments are limited by the RCRA hazardous waste regulations (see §264.151(a)(1), Section 6) and sometimes by state law. Investment income accrues to the Trust. At the Regulator’s discretion, this income may reduce the required payments of the Company.

The Trust is used to provide for the payment of costs associated with closure or post-closure at the direction of the Regulator. The Regulator may direct the Trustee to release the funds to another party that is authorized to conduct the closure/post-closure activity (see §264.143(a)(10) and §265.143(a)(10)).

**Regulatory Requirements:** The RCRA hazardous waste regulations that address the use of a Trust by a Company demonstrating financial assurance for closure and post-closure are found at §264.143(a) and §264.145(a), respectively. Key regulatory requirements include:

- The Company must submit to the Regional Administrator an original signed copy of the Trust Agreement which matches the Federal regulatory wording specified in §264.151(a) or the authorized equivalent state regulatory wording (see §264.143(a)(1) and/or §264.145(a)(1)).
- The Trust Agreement shall be accompanied by:
  - A certificate of acknowledgment that meets the requirements of the applicable state’s laws (see §264.143(a)(2) and/or §264.145(a)(2));
  - Schedule A listing the facilities covered by the Trust and the current cost estimates for conducting closure/post-closure activities (see §264.151(a)(1)(section 2));

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### Regulatory Resources:

- [Code of Federal Regulations, Title 40, Volume 22, Chapter 1, Part 264](#)
- [Code of Federal Regulations, Title 40, Volume 22, Chapter 1, Part 265](#)
- [Federal Register](#)

### EPA Resources:

- [RCRA Financial Assurance Training Module](#)
- [RCRA Financial Assurance for TSDFs](#)
- [RCRA Online: Financial Assurance](#)



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- Schedule B showing the funds or property transferred to establish the Trust; (see §264.151(a)(1)(section 3));
- Exhibit A listing the persons designated to send instructions to the Trustee (see §264.151(a)(1)(section 14)).
- The Company must maintain accurate and current cost estimates and are required to adjust the cost estimates for inflation within 60 days prior to the anniversary of the establishment of the Trust (see §264.142(b) and/or §264.144(b)).
- Schedule A must be updated and resubmitted within 60 days of a change in the cost estimate (see §264.143(a)(2) and/or §264.145(a)(2)).
- The Trustee must have the authority to act as a trustee and have its trust operations regulated/examined by an appropriate federal or state agency (see §264.143(a)(1) and/or §264.145(a)(1)).
- The Trustee shall submit an annual statement confirming the value of the Trust at least thirty (30) days before the anniversary of the establishment of the Trust (see §264.151(a)(1)(section 10)).

**Recommended Best Practices:** Note: The following best practices are not required under the regulations.

- Place the original, signed document(s) in a safe place (e.g., a fire-proof safe) with no public access.
- Proofread all documents to ensure that the language conforms to the stipulated regulatory wording and that both the Company and the Trustee have signed the agreement.
- Establish and maintain contact with the Trustee managing the Trust.
- Verify and monitor the value of the Trust on an annual basis. Ensure that administrative fees do not erode the value of the Trust Fund.
- To help alleviate any problems with lost/unavailable trust documents, or changes in the financial institution holding the trust, include the account number of the trust within the document, as well as the bank name and address on the signature page.

### Frequently Asked Questions:

#### 1. What if the Trustee loses its authority?

EPA requires that the Trustee be an entity with the authority to act as a Trustee and who is regulated by a state or federal agency. If the Trustee loses this authority, the Company shall make arrangements for a new Trustee or for another financial mechanism within 60 days after such event (see §264.148(b)).

#### 2. What if the Company or the Trustee changes its name?

In the event the Company or Trustee changes its name, experiences a merger, or is sold, all financial documents should reflect the current legal name of both the Company and the Trustee. The Trustee should issue a 'rider' or 'amendment' to the Trust Agreement stipulating such changes. Any amendments needs to be acknowledged in writing by all parties (see Section 16 of the Trust Agreement § 264.151(a)).

#### 3. What if the Company wishes to accelerate payment into the Trust?

A Company may choose to accelerate payment into the Trust or to deposit the full amount at the time the

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Trust is established. In either case, the value of the Trust shall be no less than what it would be if annual payments were made (see §264.143(a)(4) and/or §264.145(a)(4)).

#### 4. What if the cost estimates change after the pay-in period is complete?

If the cost estimates change, the Company is required to submit an updated Schedule A to the regulator within 60 days after a change in the amount of the current cost estimates covered by the agreement (see §264.143(a)(2) and/or §264.145(a)(2)). If the cost estimates increase to an amount greater than the current value of the Trust, the Company shall either: 1) deposit sufficient funds so that the value of the Trust is equal to the current cost estimate, or 2) obtain alternate financial assurance using one or more of the other financial assurance mechanisms allowed to make up the shortfall (see §264.143(a)(6) and/or §264.145(a)(6)).

If the cost estimates decrease, the Company may submit a written request to the Regulator to release the funds in excess of current cost estimates (see §264.143(a)(7) and/or §264.145(a)(7)).

#### 5. What if the Company requests cost reimbursement?

To be reimbursed for closure/post-closure costs already incurred, a Company shall submit itemized bills to the Regulator. If the Regulator decides that the expenses are justified as specified in §264.143(a)(10) and/or §264.145(a)(10), it will instruct the Trustee to reimburse the Company from the Trust.

The Regulator can withhold reimbursements if it has reason to believe that the maximum cost of closure and/or post-closure activities will be significantly greater than the value of the Trust (see §264.143(a)(10) and/or §264.145(a)(10)).

#### 6. What if the facility is sold or transferred?

Changes in the ownership or operational control of a facility may be made as a Class 1 permit modification with prior written approval of the Regulator in accordance with §270.42. In the case of facility transfer, the Trust does not automatically transfer to another Company. The old Company will not be released from the financial assurance requirements until the successor Company has provided alternate financial assurance using one or more of the available financial assurance mechanisms, is in compliance with §264 Subpart H, and the Regulator has notified the old Company that it no longer needs to provide financial assurance. The successor Company must demonstrate compliance within six (6) months of the date of the change in ownership or operational control of the Company (§§270.40, 270.72(a)(4)). The Regulator should not authorize the Trustee to release any funds to the old Company until the new financial assurance is in place (see §§270.40(b) and 270.72(a)(4)).

#### 7. Who is responsible for paying administrative fees to the financial institution?

While Section 9 of the Trust Agreement wording allows the trustee to disburse funds directly from the Trust to pay for Trustee administrative fees (see §264.151(a)), all fees are the responsibility of the Company.

#### For More Information:

- **U.S. Department of the Treasury**
  - Comptroller of the Currency, Trust Division regulates nationally-chartered commercial banks, nationally-licensed foreign banks, and Washington D.C. banks. [www.occ.treas.gov](http://www.occ.treas.gov)
  - Office of Thrift Supervision regulates nationally-chartered savings and loans institutions, as well as nationally-chartered mutual savings banks. [www.ots.treas.gov](http://www.ots.treas.gov)
  - National Credit Union Administration regulates nationally-chartered credit unions. [www.ncua.gov](http://www.ncua.gov)

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- **Various State Authorities**
  - Regulated state-chartered financial institutions, including commercial banks, savings and loans, mutual savings banks, credit unions, and state licensed foreign banks.
- **Links to State Banking Agencies**
  - [http://dir.yahoo.com/Business\\_and\\_Economy/Finance\\_and\\_Investment/Banking/Government\\_Agencies/U\\_S\\_State\\_Agencies/](http://dir.yahoo.com/Business_and_Economy/Finance_and_Investment/Banking/Government_Agencies/U_S_State_Agencies/)
- **National Trade Associations/Organizations**
  - American Bankers Association [www.aba.com](http://www.aba.com)
  - Conference of State Bank Supervisors <http://www.csbs.org>
  - Links to other banking organizations
  - [http://dir.yahoo.com/Business\\_and\\_Economy/Finance\\_and\\_Investment/Banking/Organizations/](http://dir.yahoo.com/Business_and_Economy/Finance_and_Investment/Banking/Organizations/)
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- **Other Sources**
  - FDIC Bank Data <http://www.fdic.gov/bank/index.html>

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