

9477.1986(11)

RCRA/SUPERFUND HOTLINE MONTHLY SUMMARY

JUNE 86

3. Financial Requirements/Closure Costs

The regulations under 40 CFR 265.143(a) apply to the use of a trust fund as a financial assurance mechanism for closure of an interim status facility. Section 265.143(a)(3) requires the owner/operator to make annual payments into the fund throughout the "pay-in period." The "pay-in period" is defined as the 20-year period following July 6, 1982 (the effective date of the regulation per 47 FR 15032) or the remaining operating life of the facility, whichever period is shorter. An interim status facility with three surface impoundments has estimated different closure dates for each unit. If the facility uses a trust fund for closure/financial assurance, how does it make adjustments in the pay-in period for the different closure dates? Do the new closure/financial assurance regulations, effective October 29, 1986 (see the May 2, 1986 Federal Register)(51 FR 16422)), change these requirements?

Assuming that the estimated closure dates fall before July 6, 2002 for the units, the pay-in period for the facility would equal the pay-in period for the units closing last. Specifically, Section 265.143(a)(3) states that the owner/operator must make payments into the trust fund "over the remaining operating life of the facility as estimated in the closure plan...." For example, if unit A closes in six years, unit B in eight years, and unit C in ten years, the pay-in period would be ten years. Closure of the first two impoundments would constitute partial closure, as defined in §260.10, so that the facility would continue operating until the last unit closed. A definition of "final closure" was added to §260.10 by the May 2, 1986 regulations.

The new closure/financial assurance regulations published in the May 2, 1986 Federal Register (51 FR 16422) do not directly affect the current pay-in period system. EPA requested comments on the system in the preamble to the proposed closure/financial assurance regulations published in the March 19, 1985 Federal Register (see 50 FR 11068). Some comments suggested that the pay-in period should be as long as the shortest operating life

of a unit at a multiple process facility. EPA believes that the accelerated pay-in period may be cost-prohibitive for smaller facilities and discourage owners/operators from conducting partial closures (51 FR 16438). Presently, EPA will maintain the existing pay-in period regulations and evaluate the situation further.

Source: Michael Northridge (202) 382-4790
Research: Jennifer Brock