

## 1. Changing Financial Assurance Mechanisms During Post-Closure

A permitted treatment, storage, and disposal facility (TSDF) uses the financial test to satisfy the 30-year maintenance and monitoring post-closure period financial assurance requirements (40 CFR Section 264.145(f)). If the owner or operator no longer passes the financial test, he must establish an alternative financial assurance mechanism to fund the remainder of post-closure care. One option is to use a trust fund. If the facility chooses to utilize a trust fund for the remainder of the post-closure period, what would be the pay-in period?

The facility does not have a pay-in period. The owner or operator must establish a fully funded trust fund that can immediately cover all remaining costs of post-closure care. If an owner or operator initially chooses the trust fund as the financial assurance mechanism, the owner or operator would contribute annually to the trust fund over the term of the initial RCRA permit, or over the remaining operating life of the facility, whichever period is shorter, as specified in the closure plan (Section 264.145(a)(3)). If the owner or operator switched from the financial test or any other mechanism to the trust fund during the operating life of the facility, the first payment into the trust fund would have to equal the amount the fund would have contained if the trust fund were used initially (Section 264.145(a)(5)). In both cases, by the time the facility began the post-closure period, the fund would contain enough money to cover the full cost of post-closure care. In contrast, phasing payments into a trust fund during a post-closure pay-in period would not meet the requirement that the facility provide full funding for post-closure at the time of post-closure activity.

A TSDF switching to a trust fund during post-closure must ensure that the first payment into the fund is the full amount to cover post-closure care, since the facility would need to draw from that fund immediately in the event that it must cover the costs of monitoring and maintenance. The facility in the example has to either switch to a fully funded trust fund, or establish some other financial assurance mechanism. This guidance also applies to interim status facilities.