

QUESTION: The operator of a hazardous waste management facility established a letter of credit and a stand-by trust fund (containing \$1 to keep it active) in accordance with the financial responsibility requirement (40CFR 265.143 (c) of RCRA). The trustee (i.e., the bank) then levied a \$1,500 per annum service charge on the stand-by trust fund. Does RCRA prescribe service charge rates for stand-by trust funds or control the service charge in anyway?

ANSWER: No, RCRA only prescribes the mechanisms that can be used to meet the financial requirements. Trustee's fees can be expected to vary depending on the specific institution chosen, the amount of funds held in trust, the extent to which the owner or operator uses other services of the institution, and the extent and type of investment activity and trustee involvement. The owner or operator should not only find out what fees the institution itself will charge but other applicable fees and charges, including brokerage fees, legal fees (such as those for setting up trust), accounting fees, and provisions for local, State, and Federal income taxes. There is currently no provision in the U.S. Internal Revenue Code that allows payments into the fund to be deducted from taxable income or allows trust income to be exempt from taxation. Owners or operators may want to request private rulings on the tax aspects of RCRA trust funds from the Internal Revenue Service under Revenue Procedure 80-20.

SOURCE: Carole Ansheles