

Environmental Protection Agency

§ 144.65

fund for the other mechanisms. A single standby trust may be established for two or more mechanisms. The Regional Administrator may invoke any or all of the mechanisms to provide for plugging and abandonment of the injection well.

(h) *Use of a financial mechanism for multiple facilities.* An owner or operator may use a financial assurance mechanism specified in this section to meet the requirements of this section for more than one injection well. Evidence of financial assurance submitted to the Regional Administrator must include a list showing, for each injection well, the EPA Identification Number, name, address, and the amount of funds for plugging and abandonment assured by the mechanism. If the injection wells covered by the mechanism are in more than one Region, identical evidence of financial assurance must be submitted to and maintained with the Regional Administrators of all such Regions. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each injection well. In directing funds available through the mechanism for plugging and abandonment of any of the injection wells covered by the mechanism, the Regional Administrator may direct only the amount of funds designated for that injection well, unless the owner or operator agrees to use additional funds available under the mechanism.

(i) *Release of the owner or operator from the requirements of this section.* Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that plugging and abandonment has been accomplished in accordance with the plugging and abandonment plan, the Regional Administrator will notify the owner or operator in writing that he is no longer required by this section to maintain financial assurance for plugging and abandonment of the injection well, unless the Regional Administrator has reason to believe that plugging and abandonment has not been in accordance with the plugging and abandonment plan.

§ 144.64 Incapacity of owners or operators, guarantors, or financial institutions.

(a) An owner or operator must notify the Regional Administrator by certified mail of the commencement of a voluntary or involuntary proceeding under title 11 (Bankruptcy), U.S. Code, naming the owner or operator as debtor, within 10 business days after the commencement of the proceeding. A guarantor of a corporate guarantee as specified in § 144.63(f) must make such a notification if he is named as debtor, as required under the terms of the guarantee (§ 144.70(f)).

(b) An owner or operator who fulfills the requirements of § 144.63 by obtaining a letter of credit, surety bond, or insurance policy will be deemed to be without the required financial assurance or liability coverage in the event of bankruptcy, insolvency, or a suspension or revocation of the license or charter of the issuing institution. The owner or operator must establish other financial assurance or liability coverage within 60 days after such an event.

§ 144.65 Use of State-required mechanisms.

(a) For a facility located in a State where EPA is administering the requirements of this subpart but where the State has plugging and abandonment regulations that include requirements for financial assurance of plugging and abandonment, an owner or operator may use State-required financial mechanisms to meet the requirements of this subpart if the Regional Administrator determines that the State mechanisms are at least equivalent to the mechanisms specified in this subpart. The Regional Administrator will evaluate the equivalency of the mechanisms mainly in terms of (1) certainty of the availability of funds for the required plugging and abandonment activities and (2) the amount of funds that will be made available. The Regional Administrator may also consider other factors. The owner or operator must submit to the Regional Administrator evidence of the establishment of the mechanism together with a

letter requesting that the State-required mechanism be considered acceptable for meeting the requirements of this subpart. The submittal must include the following information: The facility's EPA Identification Number, name and address, and the amounts of funds for plugging and abandonment coverage assured by the mechanism. The Regional Administrator will notify the owner or operator of his determination regarding the mechanism's acceptability. The Regional Administrator may require the owner or operator to submit additional information as is deemed necessary for making this determination.

(b) If a State-required mechanism is found acceptable as specified in paragraph (a) of this section except for the amount of funds available, the owner or operator may satisfy the requirements of this subpart by increasing the funds available through the State-required mechanism or using additional mechanisms as specified in this subpart. The amounts of funds available through the State and Federal mechanisms must at least equal the amounts required by this subpart.

§ 144.66 State assumption of responsibility.

(a) If a State either assumes legal responsibility for an owner's or operator's compliance with the plugging and abandonment requirements of these regulations or assures that funds will be available from State sources to cover these requirements, the owner or operator will be in compliance with the requirements of this subpart if the Regional Administrator determines that the State's assumption of responsibility is at least equivalent to the mechanisms specified in this subpart. The Regional Administrator will evaluate the equivalency of State guarantees mainly in terms of (1) certainty of the availability of funds for the required plugging and abandonment coverage and (2) the amount of funds that will be made available. The Regional Administrator may also consider other factors. The owner or operator must submit to the Regional Administrator a letter from the State describing the nature of the State's assumption of responsibility together with a letter from

the owner or operator requesting that the State's assumption of responsibility be considered acceptable for meeting the requirements of this subpart. The letter from the State must include, or have attached to it, the following information: the facility's EPA Identification Number, name and address, and the amounts of funds for plugging and abandonment coverage that are guaranteed by the State. The Regional Administrator will notify the owner or operator of his determination regarding the acceptability of the State's guarantee in lieu of mechanisms specified in this subpart. The Regional Administrator may require the owner or operator to submit additional information as is deemed necessary to make this determination. Pending this determination, the owner or operator will be deemed to be in compliance with § 144.63.

(b) If a State's assumption of responsibility is found acceptable as specified in paragraph (a) of this section except for the amount of funds available, the owner or operator may satisfy the requirements of this subpart by use of both the State's assurance and additional financial mechanisms as specified in this subpart. The amount of funds available through the State and Federal mechanisms must at least equal the amount required by this subpart.

§ 144.70 Wording of the instruments.

(a)(1) A trust agreement for a trust fund, as specified in § 144.63(a) of this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

TRUST AGREEMENT

TRUST AGREEMENT, the "Agreement," entered into as of [date] by and between [name of the owner or operator], a [name of State] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert "incorporated in the State of ____" or "a national bank"], the "Trustee."

Whereas, the United States Environmental Protection Agency, "EPA," an agency of the United States Government, has established certain regulations applicable to the Grantor, requiring that an owner or operator of an injection well shall provide assurance that