

EXHIBIT E

DEPARTMENT OF ENVIRONMENTAL QUALITY, SOLID WASTE MANAGEMENT DIVISION

SUBJECT: Regulation No. 11: Solid Waste Management Fees, Funds & Grants

DESCRIPTION: The department proposes this rulemaking before the Arkansas Pollution Control and Ecology Commission to incorporate statutory changes passed by the General Assembly that amend various provisions of the Solid Waste Management and Recycling Fund Act, Ark. Code Ann. § 8-6-601 et seq., particularly Act 602 and Act 819 of 2011, Act 189 of 2009, and Act 1325 of 2005. In addition, this proposed rulemaking is necessary to establish regulations for the Computer and Electronic Equipment Recycling and Grant Program.

Further, the proposed rulemaking clarifies the Landfill Post-Closure Trust Fund and the recycling grant program timelines and obligations contained in Ark. Code Ann. § 8-6-609. Remaining changes include minor stylistic revisions and formatting changes that will make the regulation consistent with the formatting guidelines of the commission.

PUBLIC COMMENT: A public hearing was held on September 5, 2012. The public comment period ended on September 20, 2012. The following public comment was received:

Mark S. Koch of FTN Associates, Ltd.:

Comment: There exist a few landfill facilities which are adjacent to old landfills operated by municipalities or other in the distant past. The fact that they are adjacent has nothing to do with common ownership or operation. Should one of those older facilities have an issue, the elimination of eligibility to address the older facility under the current regulation seems arbitrary.

Response: ADEQ acknowledges the comment. The comment is outside the scope of the proposed changes to Regulation No. 11 as presented to the Commission for rulemaking. This comment could be considered if initiated through third-party rulemaking. The Department will maintain this comment for future Regulation 11 changes. Therefore, no changes to the rulemaking to reflect the comment are proposed.

In addition to the public comment above, ADEQ Solid Waste Chief Roger Lawrence submitted a comment for correction, as follows:

An error was discovered in the mark-up draft of Regulation 11.205(G). The proposed draft inadvertently omitted "transporter", which is required by Ark. Code Ann. § 8-6-1004. Thus, Regulation 11.205(G) has been amended.

The proposed effective date of this rule is January 25, 2013.

CONTROVERSY: This is not expected to be controversial.

FINANCIAL IMPACT:

Economic Impact

1. Who will be affected economically by this proposed rule? State: a) the specific public and/or private entities affected by this rulemaking, indicating for each category if it is a positive or negative economic effect; and b) provide the estimated number of entities affected by the proposed rule.

a) Ark. Code Ann. § 25-15-302(a)(2)(C) exempts from the required analysis rules that “substantially codify existing state or federal law.” Since most of the changes proposed in this rulemaking codify into the regulation new and existing state laws as outlined above, this rulemaking should be exempt from the analysis. Those changes that do not codify new and existing laws are minor administrative and stylistic changes that should not affect small businesses. Deadlines are clarified under the recycling grants program, but should not have an economic impact on small businesses.

b) There are approximately 18 regional solid waste management districts and their respective counties and municipalities within their jurisdictional boundaries.

2. What are the economic effects of the proposed rule? State: 1) The estimated increased or decreased cost for an average facility to implement the proposed rule; and 2) the estimated total cost to implement the rule.

1. Unknown. The department doesn’t have sufficient data to determine an estimated increase or decrease. However, the proposed changes provide clarification to deadlines and should not have an economic impact.

2. Unknown. There is no anticipated cost to implement this rule on small businesses or the department.

3. List any fee changes imposed by this proposal and justification for each.

None.

4. What is the probably cost to ADEQ in manpower and associated resources to implement and enforce this proposed change, and what is the source of revenue supporting this proposed rule.

None.

5. Is there a known beneficial or adverse impact to any other relevant state agency to implement or enforce this proposed rule? Is there any other relevant state agency's rule that could adequately address this issue, or is this proposed rulemaking in conflict with or have any nexus to any other relevant state agency's rule? Identify the state agency and/or rule.

There is no known impact to another state agency nor is there another state agency’s rule that could address any of the proposed changes. This rulemaking is not in conflict with, nor has any nexus to, any other relevant state agency’s rule.

6. Are there any less costly, non-regulatory, or less intrusive methods that would achieve the same purpose of this proposed rule?

No.

Environmental Impact

1. What issues affecting the environment are addressed by this proposal?

While the rule is mostly administrative, it is expected to provide indirect long-term positive effects on the environment. The regulation pertains to solid waste disposal fees, the Landfill-Post-Closure Trust Fund, and the Recycling Grants Program.

2. How does this proposed rule protect, enhance, or restore the natural environment for the well being of all Arkansas?

The regulation pertains to solid waste disposal fees, the Landfill-Post-Closure Trust Fund, and the Recycling Grants Program. Minimizing waste placed in landfills is crucial through the recycling program and providing mechanisms for proper landfill maintenance is crucial to the environment and human health.

3. What detrimental effect will there be to the environment or to the public health and safety if this proposed rule is not implemented?

Unknown.

4. What risks are addressed by the proposal and to what extent are the risks anticipated to be reduced?

Unknown.

LEGAL AUTHORIZATION: This rule implements Acts 819 and 602 of 2011 and Act 189 of 2009. Ark. Code Ann. § 8-6-602(d) authorizes the Arkansas Department of Environmental Quality (“ADEQ”) and the Arkansas Pollution Control and Ecology Commission (“Commission”) to promulgate policies, regulations, and procedures for administering the Solid Waste Management and Recycling Fund Act. Ark. Code Ann. § 8-6-609(c)(3)(B) grants ADEQ the authority to develop regulations concerning grant programs for recycling. Ark. Code Ann. § 8-6-610 authorizes the Commission to adopt rules and regulations for conditions imposed upon grant recipients. Ark. Code Ann. § 8-6-613 authorizes the Commission to adopt rules that are necessary to implement an effective computer and electronic equipment recycling program.

EXHIBIT E

QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS WITH THE ARKANSAS LEGISLATIVE COUNCIL AND JOINT INTERIM COMMITTEE

DEPARTMENT/AGENCY Arkansas Department of Environmental Quality
DIVISION Solid Waste Management Division
DIVISION DIRECTOR Roger Lawrence
CONTACT PERSON Lorielle Gutting
ADDRESS 5301 Northshore Drive, North Little Rock, AR 72218-5317
PHONE NO. 501-682-0884 FAX NO. 501-682-0891
E-MAIL gutting@adeq.state.ar.us

INSTRUCTIONS

- A. Please make copies of this form for future use.
- B. Please answer each question completely using layman terms. You may use additional sheets, if necessary.
- C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
- D. Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

Donna K. Davis
Subcommittee on Administrative Rules and Regulations
Arkansas Legislative Council
Bureau of Legislative Research
Room 315, State Capitol
Little Rock, AR 72201

1. What is the short title of this rule?

Regulation No. 11: Solid Waste Management Fees, Funds and Grants.

2. What is the subject of the proposed rule?

Regulation No. 11 contains the regulations for solid waste disposal fees; Landfill Post-Closure Trust Fund; and the Recycling Grants Program.

3. Is this rule required to comply with federal statute or regulations? Yes _____
No X

If yes, please provide the federal regulation and/or statute citation.

Not applicable.

EXHIBIT B

4. Was this rule filed under the emergency provisions of the Administrative Procedure Act?
Yes _____ No X

If yes, what is the effective date of the emergency rule? NA

When does the emergency rule expire? NA

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act? Yes _____ No X

5. Is this a new rule? Yes _____ No X If yes, please provide a brief summary explaining the regulation.

Not applicable.

Does this repeal an existing rule? Yes _____ No X If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does.

Not applicable.

Is this an amendment to an existing rule? Yes X No _____ If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."

Incorporate statutory changes passed by the General Assembly that amend various provisions of the Solid Waste Management and Recycling Fund Act, Ark. Code Ann. § 8-6-601 *et seq.*, particularly Act 602 and Act 819 of 2011, Act 189 of 2009, and Act 1325 of 2005; establish regulations for the Computer and Electronic Equipment Recycling and Grant Program; clarify provisions of the Landfill Post-Closure Trust Fund; clarify the recycling grant program timelines and obligations contained in Ark. Code Ann. § 8-6-609; and make minor stylistic revisions.

6. Cite the state law that grants the authority for this proposed rule? If codified, please give Arkansas Code citation.

Ark. Code Ann. § 8-6-602(d). Act 602 of 2011 (amends Ark. Code Ann. § 8-6-612); Act 819 of 2011 (amends Ark. Code Ann. §§ 8-6-603 and 8-6-609) and Act 1325 of 2005 (amends Ark. Code Ann. § 8-6-609(c)(1)).

7. What is the purpose of this proposed rule? Why is it necessary?

The amendments to Regulation 11 incorporate statutory changes passed by the General Assembly that amend various provisions of the Solid Waste Management

EXHIBIT B

and Recycling Fund Act, Ark. Code Ann. § 8-6-601 *et seq.*, particularly Act 602 and Act 819 of 2011, Act 189 of 2009, and Act 1325 of 2005; establish regulations for the Computer and Electronic Equipment Recycling and Grant Program; clarify provisions of the Landfill Post-Closure Trust Fund; clarify the recycling grant program timelines and obligations contained in Ark. Code Ann. § 8-6-609; and make minor stylistic revisions.

8. Will a public hearing be held on this proposed rule? Yes No

If yes, please complete the following:

Date: September 5, 2012

Time: 2:00 -4:00 p.m.

Place: APC&EC Commission Room, 5301 Northshore Drive, North Little Rock, AR

9. When does the public comment period expire for permanent promulgation?

The period for receiving all written comments shall conclude ten (10) business days after the public hearing pursuant to APC&EC Reg.8.806(B). The projected date for the close of public comment period will be approximately 4:30 p.m. September 20, 2012.

10. What is the proposed effective date of this proposed rule?

Final promulgation of the rule is anticipated on January 25, 2013. The rule will become effective 10 days after filing with the Arkansas Secretary of State, the State Library and the Bureau of Legislative Research, which is anticipated to be February 4, 2013.

11. Do you expect this rule to be controversial? Yes No If yes, please explain.

Not applicable.

12. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Please provide their position (for or against) if known.

Unknown.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Arkansas Department of Environmental Quality
DIVISION Solid Waste Management Division
PERSON COMPLETING THIS STATEMENT Lorielle Gutting
TELEPHONE NO. 682-0884 FAX NO. 682-0891
EMAIL: gutting@adeq.state.ar.us

To comply with Act 1104 of 1995, please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE Regulation No. 11: Regulations for Solid Waste Disposal Fees; Landfill Post-Closure Trust Fees; Illegal Dumps Program; and Recycling Grants Program

1. Does this proposed, amended, or repealed rule or regulation have a financial impact?
Yes _____ No X

2. If you believe that the development of a financial impact statement is so speculative as to be cost prohibitive, please explain.
Not applicable.

3. If the purpose of this rule or regulation is to implement a federal rule or regulation, please give the incremental cost for implementing the regulation. Please indicate if the cost provided is the cost of the program.
Not applicable.

Current Fiscal Year

Next Fiscal Year

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____
 (Identify) _____
 Total _____

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other _____
 Total _____

- 4. What is the total estimated cost by fiscal year to any party subject to the proposed, amended, or repealed rule or regulation? Identify the party subject to the proposed regulation, and explain how they are affected.

Current Fiscal Year

None

Next Fiscal Year

None

- 5. What is the total estimated cost by fiscal year to the agency to implement this regulation?

Current Fiscal Year

\$ 0

Next Fiscal Year

\$0

MEMORANDUM

TO: ROGER LAWRENCE
CHIEF, SWM DIVISION

THROUGH: TAMMY HARRELSON
CHIEF, LEGAL DIVISION

FROM: LORIELLE GUTTING
STAFF ATTORNEY, LEGAL DIVISION

DATE: July 2, 2012

RE: ANALYSIS OF PROPOSED CHANGES
FOR REGULATION NO. 11

Pursuant to Ark. Code Ann. § 25-15-302, a determination must be made whether or not the proposed rules will affect small businesses.

1. The proposed amendment incorporates statutory changes passed by the General Assembly that amend various provisions of the Solid Waste Management and Recycling Fund Act, Ark. Code Ann. § 8-6-601 *et seq.*, particularly Act 602 and Act 819 of 2011, Act 189 of 2009, and Act 1325 of 2005; establishes regulations for the Computer and Electronic Equipment Recycling and Grant Program; clarifies provisions of the Landfill Post-Closure Trust Fund; clarifies the recycling grant program timelines and obligations contained in Ark. Code Ann. § 8-6-609; and makes minor stylistic revisions.

2. The proposed amendment will not have an effect on small businesses. Therefore, there is no means known to exist to make the rule less costly for small businesses without compromising the objective of the rule pursuant to Ark. Code Ann. § 25-15-302(b).

ECONOMIC IMPACT/ENVIRONMENTAL BENEFIT ANALYSIS

Answer to best of the proponent's ability, as required by APC&EC Regulation 8, Chapter 3.5

STEP 1: DETERMINATION OF ANALYSIS REQUIREMENT (to be included in petition to initiate rulemaking)

APC&EC REGULATION NO. 11
REGULATIONS FOR SOLID WASTE DISPOSAL FEES; LANDFILL POST-CLOSURE
TRUST FEES; ILLEGAL DUMPS PROGRAM AND RECYCLING GRANTS PROGRAM
FEBRUARY 2008 UPDATE

1A. Is the proposal expressly addressed by a Federal requirement? No.

If yes, see 1B.

If no, an Economic Impact/Environmental Benefit Analysis is not required.

1B. If 1A is YES, is proposed regulation equivalent, or more stringent, or less stringent than federal requirement? N/A

- If equivalent – Economic Impact/Environmental Benefit Analysis is not required
- If more stringent - Economic Impact/Environmental Benefit Analysis is required
- If less stringent - Economic Impact/Environmental Benefit Analysis is not required, but does require federal agency approval prior to adoption if the proposal is part of an authorized state program.

STEP 2: THE ANALYSIS (to be included in petition to initiate rulemaking, if required)

2A. ECONOMIC IMPACT

1. Who will be affected economically by this proposed rule?

State: a) the specific public and/or private entities affected by this rulemaking, indicating for each category if it is a positive or negative economic effect; and b) provide the estimated number of entities affected by this proposed rule.

(a) Ark. Code Ann. § 25-15-302(a)(2)(C) exempts from the required analysis rules that "substantially codify existing state or federal law." Since most of the changes proposed in this rulemaking codify into the regulation new and existing state laws as outlined above, this rulemaking should be exempt from the analysis. Those changes that do not codify new and existing laws are minor administrative and stylistic changes that should not affect small businesses. Deadlines are clarified under the recycling grants program, but should not have an economic impact on small businesses.

(b) There are approximately 18 regional solid waste management districts and their respective counties and municipalities within their jurisdictional boundaries.

2. What are the economic effects of the proposed rule? State: 1) the estimated increased or decreased cost for an average facility to implement the proposed rule; and 2) the estimated total cost to implement the rule.

1) Unknown. The Department doesn't have sufficient data to determine an estimated increase or decrease. However, the proposed changes provide clarification to deadlines and should not have an economic impact.

2) Unknown. There is no anticipated cost to implement this rule on small businesses or the Department.

3. List any fee changes imposed by this proposal and justification for each.

None.

4. What is the probable cost to ADEQ in manpower and associated resources to implement and enforce this proposed change, and what is the source of revenue supporting this proposed rule?

None.

5. Is there a known beneficial or adverse impact to any other relevant state agency to implement or enforce this proposed rule? Is there any other relevant state agency's rule that could adequately address this issue, or is this proposed rulemaking in conflict with or have any nexus to any other relevant state agency's rule? Identify state agency and/or rule.

There is no known impact to another state agency nor is there another state agency's rule that could address any of the proposed changes. This rulemaking is not in conflict with, nor has any nexus to, any other relevant state agency's rule.

6. Are there any less costly, non-regulatory, or less intrusive methods that would achieve the same purpose of this proposed rule?

No.

2B. ENVIRONMENTAL BENEFIT

1. What issues affecting the environment are addressed by this proposal?

While the rule is mostly administrative, it is expected to provide indirect long-term positive effects on the environment. The regulation pertains to solid waste disposal fees, the Landfill-Post-Closure Trust Fund, and the Recycling Grants Program.

EXHIBIT E

2. How does this proposed rule protect, enhance, or restore the natural environment for the well-being of all Arkansans?

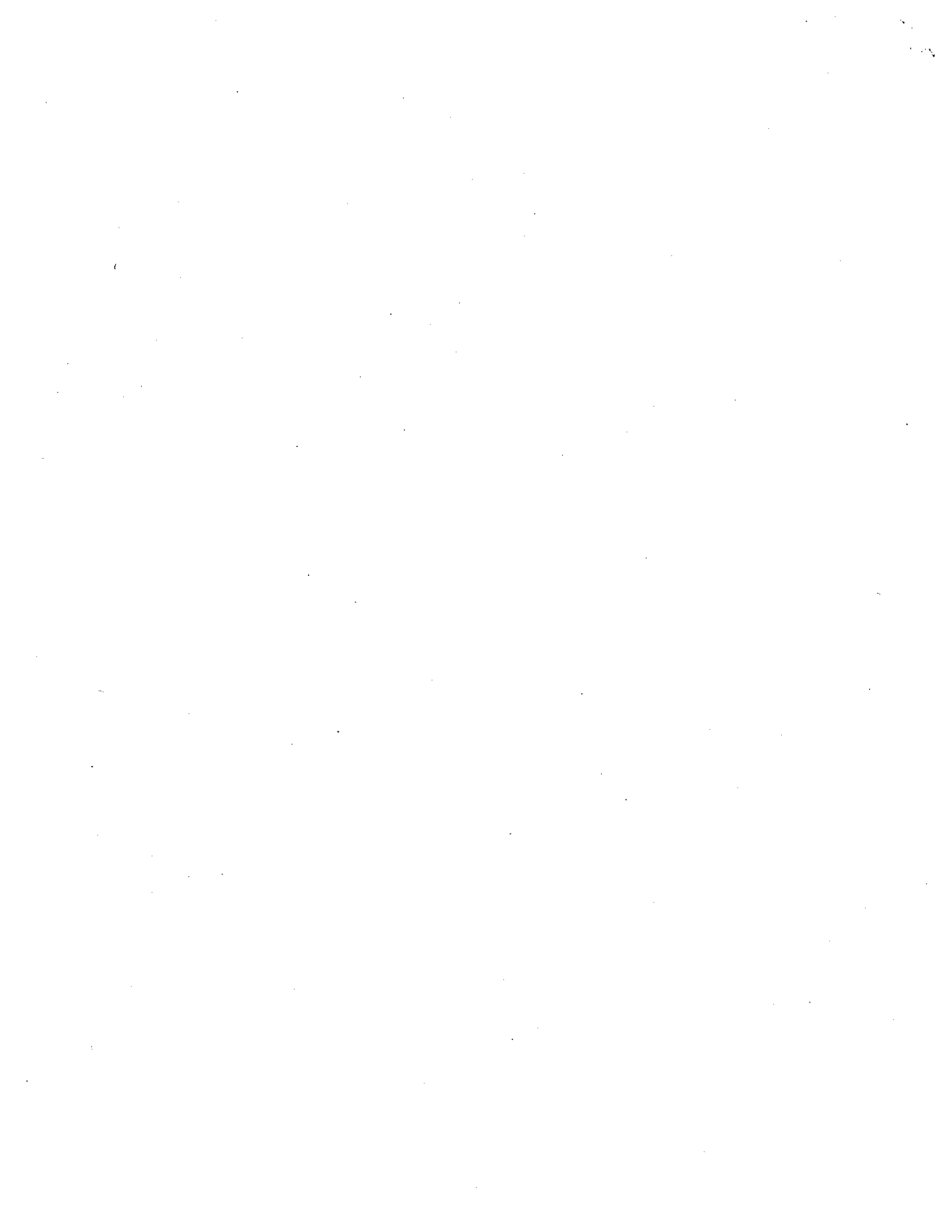
The regulation pertains to solid waste disposal fees, the Landfill-Post-Closure Trust Fund, and the Recycling Grants Program. Minimizing waste placed in landfills is crucial through the recycling program and providing mechanisms for proper landfill maintenance is crucial to the environment and human health.

3. What detrimental effect will there be to the environment or to the public health and safety if this proposed rule is not implemented?

Unknown.

4. What risks are addressed by the proposal and to what extent are the risks anticipated to be reduced?

Unknown.



APC&EC Regulation No. 11

Proposed Amendments – Executive Summary

The Arkansas Department of Environmental Quality proposes this rulemaking before the Arkansas Pollution Control and Ecology Commission to incorporate statutory changes passed by the General Assembly that amend various provisions of the Solid Waste Management and Recycling Fund Act, Ark. Code Ann. § 8-6-601 *et seq.*, particularly Act 602 and Act 819 of 2011, Act 189 of 2009, and Act 1325 of 2005. In addition, this proposed rulemaking is necessary to establish regulations for the Computer and Electronic Equipment Recycling and Grant Program.

Further, the proposed rulemaking will clarify provisions of the Landfill Post-Closure Trust Fund and the recycling grant program timelines and obligations contained in Ark. Code Ann. § 8-6-609. Remaining changes include minor stylistic revisions and formatting changes that will make the regulation consistent with the formatting guidelines of the Commission.

BEFORE THE ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION

IN THE MATTER OF AMENDMENTS TO)
REGULATION NO. 11: REGULATIONS FOR) DOCKET NO. 12 ___-R
SOLID WASTE DISPOSAL FEES;)
LANDFILL POST-CLOSURE TRUST FUND;)
AND RECYCLING GRANTS PROGRAM)

PETITION TO INITIATE RULEMAKING TO AMEND
REGULATION NO.11: REGULATIONS FOR SOLID WASTE DISPOSAL FEES;
LANDFILL POST-CLOSURE TRUST FUND; AND RECYCLING GRANTS PROGRAM

The Arkansas Department of Environmental Quality (hereinafter "ADEQ" or the "Department"), for its Petition to Initiate Rulemaking to Amend Regulation No. 11: Regulations for Solid Waste Disposal Fees; Landfill Post-Closure Trust Fund; and Recycling Grants Program, states:


1. ADEQ proposes to initiate this rulemaking to incorporate statutory changes passed by the General Assembly that amend various provisions of the Solid Waste Management and Recycling Fund Act, Ark. Code Ann. § 8-6-601 *et seq.*, particularly Act 602 and Act 819 of 2011, Act 189 of 2009, and Act 1325 of 2005; to establish regulations for the Computer and Electronic Equipment Recycling and Grant Program; to clarify provisions of the Landfill Post-Closure Trust Fund; to clarify the recycling grant program timelines and obligations contained in Ark. Code Ann. § 8-6-609; and to make minor stylistic revisions.

2. Lorielle Gutting and Roger Lawrence from ADEQ will be available to answer questions concerning this proposed rulemaking. A red-lined version of the regulation showing the proposed changes is attached as Exhibit "A" and is hereby incorporated by reference. A copy of the Legislative Questionnaire is attached as Exhibit "B", and a copy of a financial impact statement for the proposed revision is attached as Exhibit "C", both of

which are incorporated by reference. An analysis of the impact to small businesses required pursuant to Ark. Code Ann. § 25-15-302 is attached as Exhibit "D" and hereby incorporated by reference. A copy of the Economic Impact/Environmental Benefit Analysis is attached hereto as Exhibit "E" and is hereby incorporated by reference. A proposed minute order is attached as Exhibit "F" and is hereby incorporated by reference.

WHEREFORE, ADEQ requests that the Commission initiate the rulemaking process, adopt the proposed Minute Order, and adopt the proposed amendments to Regulation No. 11.

Respectfully Submitted,

By: 
Lorielle Gutting, Attorney
Arkansas Department of
Environmental Quality
5301 Northshore Drive
North Little Rock, Arkansas 72218
(501) 682-0884

**ARKANSAS POLLUTION CONTROL
AND ECOLOGY COMMISSION**

**SUBJECT: Petition to
Initiate Rulemaking
Regulation No. 11**

Docket No. 12-007-R

MINUTE ORDER NO. 12-31

PAGE 1 OF 3

On July 11, 2012, the Arkansas Department of Environmental Quality, ("ADEQ") filed a Petition to Initiate Rulemaking to Amend Regulation No. 11: Regulations for Solid Waste Disposal Fees; Landfill Post-Closure Trust Fees; Illegal Dumps Program; and Recycling Grants Program. The Petition has been designated as Docket No. 12-007-R.

The Commission's Regulations Committee met on the 27th day of July, 2012, to review the Petition and it recommends that the Commission institute a rulemaking proceeding to consider adopting the proposed amendments to Regulation No. 11. The Regulations Committee also recommends adoption of the following procedures and schedule.

1. The Arkansas Department of Environmental Quality ("ADEQ") shall file an original and one (1) copy and a computer disk in Word of all materials required under this Minute Order. This requirement does not apply to transcripts.

2. Persons submitting written public comments shall submit them to ADEQ and ADEQ will deliver the originals of all comments to the Commission Secretary at the conclusion of the proceeding.

3. A public hearing shall be conducted on September 5, 2012 at 2:00 p.m. at APC&EC Commission Room, 5301 Northshore Drive, North Little Rock, Arkansas.

4. The period for receiving all written comments shall conclude ten (10) business days after the date of the public hearing, at 4:30 p.m. September 20, 2012, unless an extension of time is granted.

5. ADEQ shall file, not later than fourteen (14) days before the Commission meets to consider adoption of the proposed rule, a Statement of Basis and Purpose and Responsive Summary as required by Reg. 8.814 and Reg. 8.815. In addition, ADEQ shall file a proposed Minute Order deciding this matter.

6. ADEQ shall seek review of the proposed rule from the Joint Interim Committee on Public Health and Welfare and/or from the Joint Interim Committee on Administrative Rules and Regulations.

7. The Regulations Committee and the Commission may consider this matter at their December 2012 meeting. In the event the appropriate legislative committees do not complete review of the proposed rule by the above date, the Regulations Committee and the Commission will consider the proposed amendments to the regulation after review by the appropriate legislative committees. Members of the Regulations Committee may ask

**ARKANSAS POLLUTION CONTROL
AND ECOLOGY COMMISSION**

**SUBJECT: Petition to
Initiate Rulemaking
Regulation No. 11**

Docket No. 12-007-R

MINUTE ORDER NO. 12- 31

PAGE 2 OF 3

questions of any persons that made oral or written comments and it will make a recommendation to the Commission.

8. At the Commission meeting, the presentation of oral statements and legal arguments will be regulated as follows:

a. The Chair of the Commission will permit members of the public to make a statement to the Commission. No more than three (3) minutes will be allowed for each statement. The period for statements will close at the end of one (1) hour, or sooner if all interested persons have completed their statements. At the discretion of the Chair, the one (1) hour oral statement period may be extended.

b. At the discretion of the Chair, an attorney representing one or more individuals, a corporation or other legal entity may be permitted five (5) minutes in which to address the Commission.

c. ADEQ shall be permitted ten (10) minutes in which to address the Commission.

d. At the conclusion of all statements, the Chair will call on each Commissioner for the purpose of asking the attorneys or persons sponsoring statements who are present, any questions they may have. Attorneys will not be permitted to respond or ask follow-up questions of any person questioned by a Commissioner.

After each Commissioner has had an opportunity to ask questions, the Chair will entertain a motion on the matter, allow discussion, and call for a vote of the Commission members.

9. Pursuant to Ark. Code Ann. § 25-15-302, the Commission finds the proposed regulation does not affect small businesses.

The Commission accepts the recommendation of the Regulations Committee and initiates the rulemaking proceeding in this docket. The Commission adopts, without modification, the procedural schedule set forth above.

ARKANSAS POLLUTION CONTROL
AND ECOLOGY COMMISSION

SUBJECT: Petition to
Initiate Rulemaking
Regulation No. 11

MINUTE ORDER NO. 12- 31

Docket No. 12-007-R

PAGE 3 OF 3

COMMISSIONERS:

JAB J. Bates
LB L. Bengal
JSF J. Fox
DH D. Hendrix
LH L. Hitchcock
SJ S. Jorgensen

DS D. Samples
LS L. Sickel
JS J. Simpson
WT W. Thompson
BW B. White
RY R. Young

John Chamberlin
John Chamberlin, Chair

Submitted by: Lorielle Gutting

DATE PASSED: July 27, 2012



NOTICE OF PUBLIC HEARING

The Arkansas Pollution Control and Ecology Commission (APC&EC) will hold a public hearing at North Little Rock September 5, 2012, to receive public comments on proposed revisions to Commission Regulation 11 (Solid Waste Disposal Fees; Landfill Post-Closure Trust Fund; and Recycling Grants Program). The hearing will begin at 2:00 p.m. in the Commission Room at the Arkansas Department of Environmental Quality (ADEQ) headquarters building, 5301 Northshore Drive, North Little Rock.

The deadline for submitting written comments on the proposed Regulation 11 changes is October 5, 2012.

In the event of inclement weather or other unforeseen circumstances, a decision may be made to postpone the hearing. If the hearing is postponed and rescheduled, a new legal notice will be published to announce the details of the new hearing date and comment period.

The Commission's authority for amending Regulation No. 11 is found in Arkansas Code Annotated, Section 8-6-201, et seq.

Proposed changes to Regulation 11 include:

- Addition of an extensive new chapter dealing with electronic waste (E-waste) recycling.
- Inclusion of a provision that once the balance in the state Landfill Post-Closure Trust Fund (LPCTF) reaches \$25,000,000, fees collected for the trust fund will instead go into an account to fund the E-waste program.
- Clarifying language involving the designation of a "closed disposal site" to be eligible for remedial activities using LPCTF money.
- New language to exempt from normal landfill disposal fees any wastes collected by campaigns sponsored by Keep Arkansas Beautiful.
- Clarification of criteria involving eligibility of administrative expenses by Regional Solid Waste Management Districts (RSWMDs).
- Addition of language to encourage waste reduction activities and stimulate demand for products made from recyclable materials, as well as adding initiatives involving recycling programs, waste reduction activities, and recycling system activities to the list of projects eligible for grant awards.
- New language regarding requirements for the use of all equipment purchased using recycling grant funds by RSWMDs.
- Clarification of the schedule for the annual recycling grants round administered by the ADEQ.
- New record-keeping and auditing requirements for grant recipients.
- Clarification of provisions which could require the reimbursement of grant funds by recipients if grant conditions are not met.
- Revised language regarding requirements that grant applicants must publish legal notices concerning grant applications that allow time for public comments on the proposals.
- Clarification of a number of definitions in the regulation; correction of typographical errors; and various language style changes.

Copies of the proposed changes are available for public inspection during regular business hours at the ADEQ office in the Public Outreach and Assistance (POA) Division, or at ADEQ information depositories located in public libraries at Arkadelphia, Batesville, Blytheville, Camden, Clinton, Crossett, El Dorado, Fayetteville, Forrest City, Fort Smith, Harrison, Helena, Hope, Hot Springs, Jonesboro, Little Rock, Magnolia, Mena, Monticello, Mountain Home, Pocahontas, Russellville, Searcy, Stuttgart, Texarkana, and West Memphis; in campus libraries at the University of Arkansas at Pine Bluff and the University of Central Arkansas at Conway; or in the Arkansas State Library, 900 West Capitol, Suite 100, in Little Rock. In addition, a copy of the regulation showing the proposed changes, along with related support documents, is available for viewing or downloading at the ADEQ web site located at www.adeg.state.ar.us.

Oral and written comments will be accepted at the hearing, but written comments are preferred in the interest of accuracy. In addition, written and electronic mail comments will be considered if received no later than 4:30 p.m. October 5, 2012. Written comments should be mailed to Doug Szenher, POA Division, Arkansas Department of Environmental Quality, 5301 Northshore Drive, North Little Rock, AR 72118. E-mail comments should be sent to: reg-comment@adeq.state.ar.us.

Published August 1 and 2, 2012,

Teresa Marks, Director,
Arkansas Department of Environmental Quality

**BEFORE THE ARKANSAS POLLUTION
CONTROL AND ECOLOGY COMMISSION**

IN THE MATTER OF AMENDMENTS TO)
REGULATION NO. 11: REGULATIONS FOR) **DOCKET NO. 12-007-R**
SOLID WASTE DISPOSAL FEES;)
LANDFILL POST-CLOSURE TRUST FUND;)
AND RECYCLING GRANTS PROGRAM)

RESPONSE TO COMMENTS

On July 27, 2012, the Arkansas Pollution Control and Ecology Commission (“APC&EC”) passed Minute Order 12-31, which initiated rulemaking procedures for amendments to APC&EC Regulation No. 11, Regulations for Solid Waste Disposal Fees; Landfill Post-Closure Trust Fund; and Recycling Grants Program. A public hearing on the proposed changes was held on September 5, 2012. The deadline for submitting written comments was October 5, 2012.

One written comment was received regarding the proposed amendments. That comment is set out below, with the Department’s response following. A copy of the emailed comment letter is attached as Exhibit A.

Comment from Mark S. Koch of FTN Associates, Ltd.:

I would like to respectfully submit the following comment on Reg 11. There exist a few landfill facilities which are adjacent to old landfills operated by municipalities or other in the distant past. The fact that are adjacent has nothing to do with common ownership or operation. Should one of those older facilities have an issue, the elimination of eligibility to address the older facility under the current regulation seems arbitrary. My comment is listed below.

Section 11.308(B) current reads:

“Closed areas or operational phases are not eligible for funding when the areas or phases are contiguous to any landfill which is receiving solid waste when the Director determines that corrective action is necessary.”

I recommend adding the following language at the end of the paragraph listed above.

“Unless it can be determined that no common ownership or operation of the two facilities in question exists or has existed in the past.”

Thank you for your consideration.

Response:

ADEQ acknowledges the comment. The comment is outside the scope of the proposed changes to Regulation No. 11 as presented to the Commission for rulemaking. This comment could be considered if initiated through third-party rulemaking. The Department will maintain this comment for future Regulation 11 changes. Therefore, no changes to the rulemaking to reflect the comment are proposed.

In addition to the written comment above, ADEQ Solid Waste Chief Roger Lawrence submitted a comment for correction.

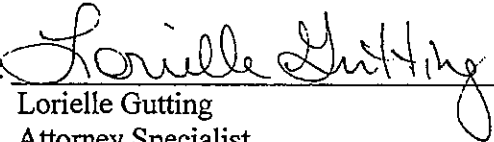
An error was discovered in the mark-up draft of Reg.11.205(G). The proposed draft inadvertently omitted “transporter”, which is required by Ark. Code Ann. § 8-6-1004.

Reg.11.205(G) is proposed to be amended as follows:

(F)(G) Quarterly Report Forms

~~The Department shall mail quarterly reporting forms to each landfill permittee and to each transporter prior to the calendar quarters ending the last day of December, March, June, and September, respectively. Failure to receive this form does not relieve a landfill facility permittee or a transporter from fee liability.~~ A landfill permittee and a transporter of solid waste that is generated within the state, but to be disposed of outside the state, shall submit quarterly reports in a format approved by the Department.

Respectfully Submitted,

By: 
Lorielle Gutting
Attorney Specialist
Arkansas Department of
Environmental Quality
5301 Northshore Drive
North Little Rock, AR 72118
(501) 682-0884
gutting@adeq.state.ar.us

- (1) capita solid waste multipliers;
- (2) Waste amounts as determined by a Department audit; ~~or~~
- (3) Waste amounts as reflected in previously submitted quarterly reports or in a survey; or
- (4) Waste amounts reflected by any other reasonable means, as determined by the Department, to measure or weigh the solid waste.

(FG) Quarterly Report Forms

~~The Department shall mail quarterly reporting forms to each landfill permittee and to each transporter prior to the calendar quarters ending the last day of December, March, June, and September, respectively. Failure to receive this form does not relieve a landfill facility permittee or a transporter from fee liability. A landfill facility permittee and a transporter of solid waste that is generated within the state, but to be disposed of outside the state, shall submit quarterly reports on a form approved by the Department.~~

(H) Landfill Fee Exemptions

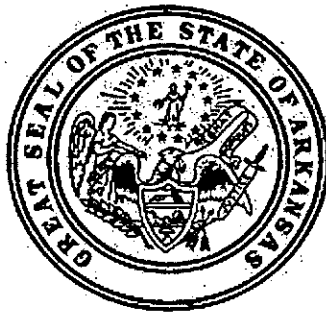
Solid waste collected during the annual Keep Arkansas Beautiful and Keep America Beautiful campaigns that are sponsored by the Keep Arkansas Beautiful Commission are exempt from the landfill disposal fee pursuant to Ark. Code Ann. §§ 8-6-606(e), 8-6-612(d), and 8-6-1003(c).

Reg.11.206 Record Keeping and Reporting

(A) Adequate Record Keeping

- (1) The owner, operator, or any other responsible party of any permitted landfill facility and each out-of-state transporter or any other responsible party shall establish and maintain adequate records in order to facilitate the reporting process and to assure accurate waste net weight or amounts and fee determinations.
- (2) At a minimum, each facility or transporter shall have in place a waste ticket system, whereby a ticket is provided to the customer and the facility or transporter retains a duplicate of the ticket.
- (3) These records shall be maintained on a daily basis, as the solid waste is received at a landfill gate, and shall include, at a minimum, the customer name, the geographic source of the waste, by county at the least, the type or kind of solid waste, defined herein, received or transported, and the net weight or amounts (compacted and uncompacted) of the waste.

**ARKANSAS POLLUTION CONTROL
AND ECOLOGY COMMISSION**



REGULATION NO. 11

**REGULATIONS FOR SOLID WASTE DISPOSAL FEES;
LANDFILL POST-CLOSURE TRUST FUND; AND
RECYCLING GRANT PROGRAMS**

INITIAL DRAFT

**Submitted to the
Arkansas Pollution Control & Ecology Commission in July 2012**

TABLE OF CONTENTS

CHAPTER ONE: GENERAL PROVISIONS.....	1-1
Reg.11.101 Purpose.....	1-1
Reg.11.102 Short Title.....	1-2
Reg.11.103 Definitions.....	1-2
CHAPTER TWO: SOLID WASTE MANAGEMENT LANDFILL AND OUT-OF-STATE TRANSPORTER DISPOSAL FEE SYSTEM.....	2-1
Reg.11.201 Authority to Administer Disposal Fee System.....	2-1
Reg.11.202 Applicability.....	2-1
Reg.11.203 Short Title.....	2-2
Reg.11.204 Disposal Fee Plan.....	2-2
Reg.11.205 Fee Schedule and Collection of Fees.....	2-3
Reg.11.206 Record Keeping and Reporting.....	2-6
Reg.11.207 Payment of Fees.....	2-9
Reg.11.208 Late Payment Charge and Notice.....	2-10
Reg.11.209 Adjustments.....	2-10
Reg.11.210 Termination of Fees.....	2-11
Reg.11.211 Petitioning Director for Review of Fees.....	2-11
Reg.11.212 Appeals.....	2-12
Reg.11.213 Penalties.....	2-13
Reg.11.214 Audit.....	2-13
Reg.11.215 Right of Entry and Access.....	2-13
Reg.11.216 Fund Establishment.....	2-13
CHAPTER THREE: THE LANDFILL POST-CLOSURE.....	3-1
TRUST FUND PROGRAM.....	3-1
Reg.11.301 Authority to Administer Trust Fund Program.....	3-1
Reg.11.302 Short Title.....	3-1
Reg.11.303 Availability of Landfill Post-Closure Trust Funds.....	3-1
Reg.11.304 Department Responsibilities.....	3-2
Reg.11.305 Applicability.....	3-3
Reg.11.306 Eligible Projects and Activities.....	3-3
Reg.11.307 Owner or Other Responsible Party Obligations.....	3-4
Reg.11.308 Projects and Activities Not Eligible.....	3-4
Reg.11.309 Disbursement of Funds.....	3-5
Reg.11.310 Reporting and Oversight Requirements.....	3-5
Reg.11.311 Appeals of Funding Decisions.....	3-6
CHAPTER FOUR: SOLID WASTE MANAGEMENT AND RECYCLING GRANTS PROGRAM.....	4-1
Reg.11.401 Authority to Administer Grants Program.....	4-1
Reg.11.402 Short Title.....	4-1
Reg.11.403 Applicant Eligibility.....	4-1
Reg.11.404 Responsibilities of District Board.....	4-2
Reg.11.405 Grant-Eligible Activities, and Projects, and Programs.....	4-4
Reg.11.406 Existing Equipment or Facilities.....	4-5
Reg.11.407 Departmental Responsibilities.....	4-6

Reg.11.408	Disbursement of Funds.....	4-8
Reg.11.409	Reporting and Oversight Requirements	4-8
Reg.11.410	Conditions of Grant.....	4-11
Reg.11.411	Appeals of Grant Decisions.....	4-12
CHAPTER FIVE: SEVERABILITY AND EFFECTIVE DATE COMPUTER AND ELECTRONIC EQUIPMENT.....		5-1
RECYCLING GRANTS PROGRAM.....		5-1
Reg.11.501	Authority to Administer Grants Program.....	5-1
Reg.11.502	Short Title.....	5-1
Reg.11.503	Applicant Eligibility	5-1
Reg.11.504	Responsibilities of District Board	5-2
Reg.11.505	Grant-Eligible Activities, Projects, and Programs	5-3
Reg.11.506	Ineligible Grant Activities, Projects, and Programs	5-4
Reg.11.507	Existing Equipment or Facilities	5-4
Reg.11.508	Departmental Responsibilities.....	5-4
Reg.11.509	Disbursement of Funds.....	5-6
Reg.11.510	Reporting and Oversight Requirements	5-7
Reg.11.511	Conditions of Grant.....	5-9
Reg.11.512	Appeals of Grant Decisions.....	5-10
CHAPTER SIX: SEVERABILITY AND EFFECTIVE DATE.....		6-1
Reg.11.501 Reg.11.601	Severability.....	6-1
Reg.11.502 Reg.11.602	Effective Date.....	6-1

CHAPTER ONE: GENERAL PROVISIONS

Reg.11.101 Purpose

(A) Purpose

It is the purpose of this regulation, pursuant to the provisions of the Solid Waste Management and Recycling Fund Act, ~~Arkansas Code Annotated (A.C.A.)~~ Ark. Code Ann. § 8-6-601 et seq. et seq.; the Landfill Post-Closure Trust Fund Act, ~~A.C.A.~~ Ark. Code Ann. § 8-6-1001 et seq. et seq.; and the Regional Solid Waste Management Districts and Boards Act, ~~A.C.A.~~ Ark. Code Ann. § 8-6-701 et seq. et seq., to develop and implement systems for:

- (1) The collection of fees for waste received at landfill facilities within the State of Arkansas, and the collection of fees for waste generated within the ~~State~~ state and transported to landfill facilities in other states;
- (2) The administration of a landfill post-closure trust fund program; and
- (3) The administration of a solid waste management planning and recycling grants program.

(B) Recycling Grant Fund Usage

Fees collected, in accordance with ~~A.C.A.~~ Ark. Code Ann. § 8-6-601 et seq. et seq., will be used to fund a solid waste management planning and recycling grants program for local governments for integrated waste management planning and construction. The fund also will ~~also~~ be used for administrative costs incurred by Regional Solid Waste Management Districts, as well as for waste management compliance and enforcement activities by the Department of Environmental Quality.

(C) State Marketing Board for Recyclables

An apportionment of fees collected from landfills where private industry bears the expenses of operating and maintaining a landfill solely for the disposal of wastes generated by the industry, in accordance with ~~A.C.A.~~ Ark. Code Ann. § 8-6-601 et seq. et seq., shall be used by the Arkansas State Marketing Board for Recyclables in the administration and performance of its duties.

(D) Landfill Post-Closure Trust Fund Usage

Fees collected for waste received at landfills, in accordance with ~~A.C.A.~~ Ark. Code Ann. § 8-6-1001 et seq. et seq., will provide a trust fund to be used for landfill post-closure corrective actions pursuant to statutory provisions.

(E) Fees Encourage Recycling and Solid Waste Reduction Activities

These laws and this regulation encourage the recycling of wastes and solid waste reduction activities by applying fees to solid waste which is received at Arkansas landfills or to solid waste which is generated within Arkansas but transported to disposal facilities in other states.

(F) Waste Amount Determinations

These laws and this regulation provide a means, through reporting and record-keeping systems, to monitor waste amounts generated within the ~~State~~ state and, in turn, provide information to the Department and local governments which helps ensure that adequate solid waste management systems are available to the citizens of the State of Arkansas.

Reg.11.102 Short Title

This regulation shall be known and may be cited by the short title, Regulation 11: Solid Waste Management Fees, Funds and Grants.

Reg.11.103 Definitions

All terms used in this regulation, unless the context otherwise requires, or unless specifically defined in the enabling legislation, shall have their usual meanings. In addition, for purposes of this regulation, the following definitions apply, unless otherwise noted:

“**Agent of the Grantee**” means any corporation, “profit or nonprofit”, or any person rendering services to the grantee under the terms of this regulation and under the terms of a written agreement with the grantee for the stated purpose of implementing the grantee’s solid waste programs.

“**Applicant**” means a District as defined in ~~A.C.A.~~ Ark. Code Ann. § 8-6-702, a local government, or a delegated authority or agent of such District or government that makes application for a grant pursuant to this regulation.

“**Board**” means a Regional Solid Waste Management Board formed under ~~A.C.A.~~ Ark. Code Ann. § 8-6-701 et seq. et seq. and pursuant to the authority of the Arkansas Pollution Control and Ecology Commission as provided by Ark. Code Ann. § 8-6-707.

“**Commission**” means the Arkansas Pollution Control and Ecology Commission.

“**Compacted Cubic Yard of Waste**” means a volume equal to 3’ x 3’ x 3’ of solid waste which has received any amount of mechanical compaction.

“**Department**” means the Arkansas Department of Environmental Quality, or its successor.

“Director” means the Director of the Arkansas Department of Environmental Quality or the Director's designee.

“District” means a Regional Solid Waste Management District formed under ~~A.C.A. Ark. Code Ann. § 8-6-701 et seq.~~ et seq. and pursuant to the authority of the Arkansas Pollution Control and Ecology Commission as provided by Ark. Code Ann. § 8-6-707.

“Expense Itemization” means a listing of expenditures that includes expenditure date, item purchased, purchase price, and name of vendor.

“Facility” means all contiguous land and structures, other appurtenances, and improvements on the land used for the disposal, treatment, or processing of solid waste.

“Fund Decisions” means final administrative decisions by the Director on applications for or disbursement of funds pursuant to the Department's administration of fund programs represented under this regulation and the final decision of the Director on any disputes arising under any such fund.

“Grant Decisions” means final administrative decisions by the Director on all applications for grants pursuant to the Department's administration of grant programs represented under this regulation and the final decision of the Director on any disputes arising under any such grant.

“Grant Round” means a single grant cycle that the Department opens with the acceptance of new applications for funding and ends with the disbursement of grant awards from funds available for the grant cycle.

“Grantee” means the grant applicant awarded funding for a grant proposal.

“In-Kind Contribution” means a contribution to a grant or fund project, which is not cash, but has value, such as real estate, goods, or services, which is provided by the grantee or another contributor.

“Landfill” means a solid waste management landfill facility subject to permitting requirements provided under Regulation 22.

“Landfill” means, for purposes of the Landfill Post-Closure Trust Fund Program, landfills permitted under the Arkansas Solid Waste Management Act, ~~A.C.A. Ark. Code Ann. § 8-6-201 et seq.~~ et seq., and subject to permitting requirements provided under Regulation 22, and applies to all landfills which, upon receipt of solid waste at the landfill gate, are required to participate in the fee system for landfill disposal, except those landfills where a private industry bears the expense of operating and maintaining the landfill solely for the disposal of waste generated by the industry or wastes of a similar kind or character.

“Landfill Gate” means the entry point at a solid waste management landfill facility at which the waste is received from the landfill customer, the waste is weighed or measured, waste receipt

fees are determined, and waste tickets are issued, except those landfills where a private industry bears the expense of operating and maintaining the landfill solely for the disposal of waste generated by the industry or wastes of a similar kind or character.

“Material Recovery Facility” means a facility, not subject to permitting requirements under Regulation 22, which is engaged in the storage, processing, and resale of recovered materials and receives source-separated recyclable materials.

“Municipal Landfill” means a permitted solid waste management landfill facility, except for those where private industry bears the expense of operating and maintaining the landfill solely for the disposal of wastes generated by the industry. Such a facility is subject to requirements provided under Regulation 22.

“Owner” means the person or any other responsible party who owns a facility or any part of a facility.

“Operator” means an individual or individuals charged with the responsibility of managing or operating a solid waste management facility, including the responsibility for assuring the operations of said facility is in accordance with the provisions of this regulation and other applicable regulations.

“Permittee” means any individual, corporation, company, firm, partnership, association, trust, local solid waste authority, institution, ~~County~~ county, ~~City~~ city, town or municipal authority or trust, venture or other legal entity holding a solid waste disposal permit, as provided in the Arkansas Solid Waste Management Act, ~~A.C.A.~~ Ark. Code Ann. § 8-6-201 et seq. et seq.

“Post-Closure Corrective Action” means any measures deemed necessary by the Director to prevent or abate contamination of the environment from any landfill which has been approved as properly closed by the Department, pursuant to Regulation 22.

“Private Industry Landfill” means a solid waste management landfill facility, subject to permitting requirements under Regulation 22, where private industry bears the expense of operating and maintaining the landfill solely for the disposal of wastes generated by the industry.

“Recycling” means the systematic collection, sorting, ~~decontamination~~ decontaminating, and ~~return~~ returning of waste materials to commerce as commodities for use or exchange.

“Regional Solid Waste Management Board” means ~~Regional Solid Waste Management Board~~ a “Board” formed under ~~A.C.A.~~ Ark. Code Ann. § 8-6-701 et seq. et seq. and pursuant to the authority of the Arkansas Pollution Control and Ecology Commission as provided by Ark. Code Ann. § 8-6-707.

“Regional Solid Waste Management District” means ~~Regional Solid Waste Management District~~ a “District” established pursuant to ~~A.C.A.~~ Ark. Code Ann. § 8-6-701 et seq. et seq. and pursuant to the authority of the Arkansas Pollution Control and Ecology Commission as provided by Ark. Code Ann. § 8-6-707.

“Solid Waste” means any garbage, refuse, or sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permit under 33 U.S.C. § 1342, or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, ~~as amended (68 Stat. 923.)~~ 42 U.S.C. § 2011 et seq., as amended.

“Solid Waste Disposal Permit” means a permit, subject to requirements provided under Regulation 22, issued by the State of Arkansas under provisions of the Arkansas Solid Waste Management Act, ~~A.C.A. Ark. Code Ann. § 8-6-201 et seq.~~ et seq., for the construction and operation of a solid waste landfill facility.

“Solid Waste Management” means management activities including, but not limited to, the storage, collection, transfer, transportation, treatment, utilization, processing, and final disposal of solid waste including, but not limited to, the prevention, reduction, or recycling of wastes.

“Solid Waste Management Plan” means a plan, subject to requirements provided under Regulation 22, which is developed according to the provisions of the Arkansas Solid Waste Management Act, ~~A.C.A. Ark. Code Ann. § 8-6-201 et seq.~~ et seq., and guidelines of the Department, and which is subject to written approval by the Department.

“Solid Waste Management System” means the entire process of source reduction, storage, collection, transportation, processing, waste minimization, recycling, and disposal of solid wastes by any person engaging in the process as a business or by any municipality, authority, trust, county, or by any combination thereof.

“Solid Waste Material Recovery Facility” means a solid waste handling facility, subject to permitting requirements under Regulation 22, that provides for the extraction from mixed solid waste of recoverable materials, materials suitable for use as a fuel or soil amendment, or any combination of such materials.

“Solid Waste Reduction Activities” means other activities that divert materials from landfills for reuse including, without limitation:

(A) Using waste items as raw materials in a production process, such as adding shingles to asphalt mix for paving;

(B) Using waste items to produce an end product without recycling, such as returning wood chips to citizens as mulch;

(C) Using waste items as fuel, such as burning wood chips or tire chips in a waste-to-fuel process; or

(D) Other activities as approved by the Department.

“Solid Waste Services Area” means Solid Waste Services Area as described in the Regional Solid Waste Management Districts and Boards Act, ~~A.C.A. Ark. Code Ann. § 8-6-701 et seq.~~ et seq.

“Tipping Fee” means a charge made by a landfill or a transporter to its customers for waste received and may or may not include the disposal fees imposed under this regulation.

“Ton” means a short ton consisting of a net weight measure of two thousand pounds (2,000 lbs.)

“Transfer Station” means any facility, subject to permitting requirements under Regulation 22, that is used to manage the removal, compaction, or transfer of solid waste from collection vehicles and containers, or from other private and commercial vehicles to greater capacity transport vehicles.

“Transporter or Solid Waste Transporter or Hauler” means any individual, corporation, company, firm, partnership, association, trust, local solid waste authority, institution, ~~County~~ county, ~~City~~ city, town, municipal authority or trust, venture or other legal entity transporting solid waste and licensed pursuant to the Regional Solid Waste Management Districts and Boards Act, ~~A.C.A.~~ Ark. Code Ann. § 8-6-701 et seq. et seq.

“Uncompacted Cubic Yard of Waste” means a volume equal to a 3’ x 3’ x 3’ of solid waste which has received no amount of mechanical compaction.

CHAPTER TWO: SOLID WASTE MANAGEMENT LANDFILL AND OUT-OF-STATE TRANSPORTER DISPOSAL FEE SYSTEM

Reg.11.201 Authority to Administer Disposal Fee System

Statutory Authority — Pursuant to the Solid Waste Management and Recycling Fund Act, A.C.A. Ark. Code Ann. § 8-6-601 et seq. et seq., and to the Landfill Post-Closure Trust Fund Act, A.C.A. Ark. Code Ann. § 8-6-1001 et seq. et seq., the Commission is given the authority to promulgate regulations and the Department is given the authority to implement Commission regulations, to issue administrative policies and procedures, and to administer the Solid Waste Management Disposal Fee System.

Reg.11.202 Applicability

(A) Fee Applicability

- (1) Landfill fees established by this regulation shall be applicable to all landfills receiving solid waste under the provisions of the Arkansas Solid Waste Management Act, A.C.A. Ark. Code Ann. § 8-6-201 et seq. et seq., except those landfills operated by a regulated public utility for ash generated by the combustion of coal to produce electric energy.
- (2) Transporter fees established by of this regulation shall be applicable for any solid waste transporter who is transporting solid waste generated within the State state that is to be disposed of out of the State state.

(B) Onset of Landfill Fees

The collection of landfill fees pursuant to A.C.A. Ark. Code Ann. §§ 8-6-601 and § 8-6-1001 et seq. et seq., and imposed herein, commenced October 1, 1989, for ~~public~~ publicly and privately owned and operated municipal landfills and on July 16, 1991, for applicable private industry owned and operated landfills.

(C) Onset of Transporter Fees

The collection of transporter fees on solid waste that is generated and transported within Arkansas that is to be disposed of outside the State state pursuant to A.C.A. Ark. Code Ann. § 8-6-601 et seq. et seq., and imposed herein, commenced September 1, 1993.

(D) Fee Responsibility

It is the responsibility of a landfill permittee or a transporter to insure that all fees are submitted in accordance with the provisions of this regulation.

Reg.11.203 Short Title

The fee systems, described herein, shall be known and may be cited by the short title, Disposal Fees.

Reg.11.204 Disposal Fee Plan

(A) Required Disposal Fee Plan

Each landfill and each transporter, required under this regulation to pay disposal fees, shall provide a written Disposal Fee Plan to the Department that establishes an accurate method of quantifying the amount of solid waste received and a suitable means of calculating the amount of disposal fees payable to the Department pursuant to ~~A.C.A.~~ Ark. Code Ann. §§ 8-6-606 and § 8-6-1003, ~~et seq.~~, et seq. and this regulation.

(B) Landfill's Disposal Fee Plan

If the existing Operating Plan and Narrative, required under Regulation 22, does not adequately address waste and recycle stream accounting, the landfill permittee shall update the Operating Plan and Narrative to conform to the requirements of this regulation. The Department will provide a format for permittees to follow when establishing the disposal fee plan portion of the Operating Plan and Narrative. The Disposal Fee Plan shall be considered an integral part of the Operating Plan required under Regulation 22. The Disposal Fee Plan shall not be subject to permit modification fee charges required under Regulation 9.

(C) Transporter's Disposal Fee Plan

The Department will provide a format for each transporter to follow when establishing a Disposal Fee Plan.

(D) Initiation Date

New or revised Disposal Fee Plans will be effective on the first day of the first quarterly reporting cycle after written approval, by the Department, of the Disposal Fee Plan or Operational Plan.

(E) Submittal Date

(1) Landfills

Landfills, with Operating Plans which do not adequately address disposal fee accounting, shall submit a Disposal Fee Plan to the Department no later than ninety (90) days following the effective date of this regulation.

(2) Transporters

A Disposal Fee Plan shall be submitted to the Department no later than ninety (90) days following the effective date of this regulation.

(F) Resubmittal Date

Any Disposal Fee Plan that is not approved must be rewritten and resubmitted for approval within thirty (30) days of the date of the written disapproval notice from the Department. Disapproval of a submitted Disposal Fee Plan is a decision of the Director and may be appealed under Regulation 8.5 Administrative Procedures.

(G) Request for Extension

A landfill or a transporter may, in writing, request an extension from the Department at least two (2) weeks prior to the Disposal Fee Plan due date. If the request is approved, the Department will issue a written extension agreement.

Reg.11.205 Fee Schedule and Collection of Fees

(A) Fee Schedule for Municipal Landfills and for Out-of-State Transporters

The following fee schedule for fees imposed under the provisions of the Solid Waste Management and Recycling Fund Act, ~~A.C.A. Ark. Code Ann. § 8-6-601 et seq.~~ *et seq.*, shall be effective, based on the following methods of measure, for each landfill, except as specified herein, and for each out-of-state transporter:

- (1) Twenty-five cents (25¢) for each uncompacted cubic yard of solid waste received at a landfill or transported out of state for disposal; and
- (2) Forty-five cents (45¢) for each compacted cubic yard of solid waste received at a landfill or transported out of state for disposal; or
- (3) One dollar and fifty cents (\$1.50) for each ton of solid waste received at a landfill or transported out of state for disposal.

(B) Fee Schedule for Municipal Landfills

The following fee schedule for fees imposed under the provisions of the Landfill Post-Closure Trust Fund Act, ~~A.C.A. Ark. Code Ann. § 8-6-1001 et seq.~~ *et seq.*, shall be effective, based on the following methods of measure, for each permitted landfill, except as specified herein:

- (1) Fifteen cents (15¢) for each uncompacted cubic yard of solid waste received at a landfill;

- (2) Thirty cents (30¢) for each compacted cubic yard of solid waste received at a landfill;
or
- (3) One dollar (\$1.00) for each ton of solid waste received at a landfill.

(C) Fee Schedule for Private Industry Landfills

The following fee schedule for fees imposed under the provisions of the Solid Waste Management and Recycling Fund Act, A.C.A. Ark. Code Ann. § 8-6-601 ~~et seq.~~ *et seq.*, shall be effective, based on the following methods of measure for each applicable landfill facility where private industry bears the expense of operating and maintaining the landfill solely for the disposal of wastes generated by the industry, except for those landfills operated by a regulated public utility for ash generated by the combustion of coal to produce electric energy:

- (1) Ten cents (10¢) for each uncompacted cubic yard of solid waste received at a landfill;
and
- (2) Twenty cents (20¢) for each compacted cubic yard of solid waste received at a landfill; or
- (3) Fifty cents (50¢) for each ton of solid waste received at a landfill.

(D) Scales and Weight Reporting Requirements

- (1) (a) Pursuant to ~~A.C.A.~~ Ark. Code Ann. § 8-6-606(d), by January 1, 2004, all permitted facilities identified by regulation of the Arkansas Pollution Control and Ecology Commission as Class 1 and Class 3C landfills, ~~except those permitted landfills that shall comply with closure requirements before January 1, 2005,~~ shall install scales and ~~commence weighing~~ weigh all solid waste received at the landfill.

(b) This requirement may be satisfied utilizing an alternative weighing system approved by the Director of the Arkansas Department of Environmental Quality.
- (2) Class 1 and Class 3C landfills shall be required to weigh all loads in excess of one (1) ton (~~2,000 pounds~~), unless otherwise authorized in writing by the Arkansas Department of Environmental Quality. This provision authorizes Class 1 and Class 3C landfills to estimate weights for residential and other similar loads weighing less than one (1) ton (~~2,000 pounds~~).
- (3) Class 1 and Class 3C landfills shall install and operate scales for the purpose of weighing solid waste received at the landfill gate and shall maintain and operate the scales in accordance with the U.S. Department of Agriculture standards.
- (4) ~~Beginning January 1, 2004,~~ Except as provided in (D)(1) and (D)(2) above:

- (a) All quarterly reports required herein to be submitted by Class 1 and Class 3C landfill permittees to the Arkansas Department of Environmental Quality shall accurately state the total weight of solid waste received at the landfill, and the total weight of solid waste received at the landfill shall be based upon the recorded weight scale measurements; and
- (b) The recorded weight scale measurements of solid waste received at Class 1 and Class 3C landfills shall be used to calculate the solid waste disposal fees payable to the Arkansas Department of Environmental Quality by Class 1 and Class 3C landfill permittees.

(E) Fee Collection

Fees imposed pursuant to the provisions of the Solid Waste Management and Recycling Fund Act, ~~A.C.A. Ark. Code Ann. § 8-6-601 et seq.~~ *et seq.*, or the Landfill Post-Closure Trust Fund Act, ~~A.C.A. Ark. Code Ann. § 8-6-1001 et seq.~~ *et seq.*, or both, whichever is applicable, shall be assessed and collected as follows:

- (1) Fees shall be assessed and collected based upon solid waste amounts received at landfill facilities within the ~~State~~ state and on solid waste that is generated and transported within the ~~State~~ state that is to be disposed outside the ~~State~~ state.
 - (a) Fees for solid waste received at landfill facilities within Arkansas shall be submitted to the Department by the landfill.
 - (b) Fees for solid waste that is generated in Arkansas but transported out of state shall be submitted to the Department by the transporter.
- (2) Fees shall be due and payable quarterly and shall be based upon solid waste amounts received or transported during the previous quarter and shall be calculated in accordance with procedures set forth in an approved disposal fee plan submitted by the landfill or transporter, pursuant to the provisions of this regulation.
- (3) Fees for a newly permitted landfill or fees for a new transporter shall begin at the onset of operation.

(EF) Unreported Fees May Be Estimated

When the information on the quarterly report is incomplete, ~~or~~ when the quarterly report is not submitted by the due date, or when the Department has determined that a landfill facility or a transporter has misreported the amount of waste received or transported, the Department may estimate the fee amounts due based on one (1) or more of the following sources of information:

- (1) Projected waste amounts, as defined in a landfill operating permit or a transporter license;
- (2) Waste amounts as determined by applying current service area population and per ~~capital~~

capita solid waste multipliers;

- (3) Waste amounts as determined by a Department audit; or
- (4) Waste amounts as reflected in previously submitted quarterly reports or in a survey; or
- (5) Waste amounts reflected by any other reasonable means, as determined by the Department, to measure or weigh the solid waste.

(FG) Quarterly Report Forms

~~The Department shall mail quarterly reporting forms to each landfill permittee and to each transporter prior to the calendar quarters ending the last day of December, March, June, and September, respectively. Failure to receive this form does not relieve a landfill facility permittee or a transporter from fee liability. A landfill facility permittee shall submit quarterly reports on a form approved by the Department.~~

(H) Landfill Fee Exemptions

Solid waste collected during the annual Keep Arkansas Beautiful and Keep America Beautiful campaigns that are sponsored by the Keep Arkansas Beautiful Commission are exempt from the landfill disposal fee pursuant to Ark. Code Ann. §§ 8-6-606(e), 8-6-612(d), and 8-6-1003(c).

Reg.11.206 Record Keeping and Reporting

(A) Adequate Record Keeping

- (1) The owner, operator, or any other responsible party of any permitted landfill facility and each out-of-state transporter or any other responsible party shall establish and maintain adequate records in order to facilitate the reporting process and to assure accurate waste net weight or amounts and fee determinations.
- (2) At a minimum, each facility or transporter shall have in place a waste ticket system, whereby a ticket is provided to the customer and the facility or transporter retains a duplicate of the ticket.
- (3) These records shall be maintained on a daily basis, as the solid waste is received at a landfill gate, and shall include, at a minimum, the customer name, the geographic source of the waste, by county at the least, the type or kind of solid waste, defined herein, received or transported, and the net weight or amounts (compacted and uncompacted) of the waste.

(B) Fee Determination

Quarterly reports shall relate the total net weight or amounts of solid waste either received at a landfill facility gate within Arkansas or generated within the state and transported out of state for disposal.

- (1) Waste net weight or amounts and fee amounts shall be determined utilizing one or more of the following methods, or another method that has received written approval by the Department, and shall be calculated in accordance with procedures set forth in an approved disposal fee plan, pursuant to this regulation:
 - (a) If the waste has received any amount of mechanical compaction, such as in the delivery vehicle, upon receipt at a landfill gate, the waste amounts on the quarterly report shall be reported in compacted cubic yards with the respective fee amounts as calculated and as set forth herein and in the approved disposal fee plan;
 - (b) If the waste has not received any amount of mechanical compaction, such as in the delivery vehicle, upon receipt at a landfill gate, the waste amounts on the quarterly report shall be reported in uncompacted cubic yards with the respective fee amounts calculated as set forth herein and in the approved disposal fee plan; or
 - (c) If the landfill operates on a weight basis, the waste net weight reported on the quarterly report shall be reported in tons with the respective fee amounts calculated as set forth herein and in the approved disposal fee plan.
- (2) Each landfill facility, landfill permittee or owner, operator or any other responsible party shall provide and maintain an adequate means of recording the amount of waste that is received by the landfill, as required under Regulation 22. Such records shall be used by the landfill to calculate disposal fees submitted quarterly to the Department and shall be available to the Department for inspection.
- (3) Each transporter shall provide and maintain an adequate means of recording the amount of waste that is collected from its customers and transported to a landfill disposal facility out of state. At a minimum, the transporter ~~retains~~ shall retain a copy of each ticket or receipt received from the landfill. The ticket received from the landfill shall be used by the transporter to calculate disposal fees to be submitted quarterly to the Department. Such records shall be available to the Department for inspection.

(C) Waste Reduction

If a landfill or transporter chooses to remove recyclable materials from the solid waste suitable for marketing or beneficial reuse, disposal fee credit, to be reflected on the quarterly reports to the Department, may be received for such materials, provided that the following conditions are

met:

- (1) Suitable materials, approved by the Department as recyclable and marketable, pursuant to Regulation 28, or that can otherwise be put to a beneficial reuse, may be set aside from the waste that has been received and ticketed, but prior to disposal.
- (2) Materials set aside for recycling shall have been completely removed from the premises for marketing, or otherwise put to a beneficial reuse that has been approved by the Department, before credits for such materials shall be approved by the Department.
- (3) Records showing types, descriptions, and net weight or amounts of materials removed for marketing or beneficial reuse, and the final destination of such materials, shall be maintained by the landfill or transporter. Such records shall be available to the Department for inspection.
- (4) Credit shall be applied solely to materials that were previously included in the solid waste net weight or amounts and fee calculations submitted to the Department, as specified in this regulation.
- (5) In order for any waste reduction means or methodology to be utilized by a landfill or a transporter that involves the setting aside, prior to disposal, of materials from waste that has been received, such a means or methodology shall be a part of the approved disposal fee plan, as specified in this regulation.

(D) Not Allowed in Fees Calculation

For purposes of the assessment of fees under this regulation, net weight or amounts calculations shall be determined on waste upon receipt at the landfill gate. This prohibits, at the least, the following:

- (1) Calculating the net weight or amounts for fees after marketable or beneficially reusable materials have been removed from the waste stream;
- (2) Calculating the net weight or amounts for fees after the waste has been tipped and baled at a landfill facility;
- (3) Calculating the net weight or amounts for fees after the waste has been placed in a landfill cell; or
- (4) Calculating the net weight or amounts for fees based on landfill cell capacities.

(E) Quarterly Reporting Dates

Each landfill and each transporter shall submit to the Department on or before January 15, April 15, July 15, and October 15 of each year, a quarterly report which accurately states the total net weight or amounts of solid waste received at or transported to a landfill facility during the previous quarter.

(F) Determining Vehicle Capacity

For record keeping and reporting purposes, under this regulation, commercial waste transportation vehicles and trailers, shall be presumed to be full to vehicle capacity upon being received at a landfill facility gate, unless otherwise demonstrable.

(G) Records Availability

Any records, reports, or information obtained under this regulation and any permits, permit applications, and related documentation shall be available to the Department for inspection and copying during normal business hours, unless otherwise deemed necessary by the Department, and any records obtained by the Department shall be available to the public for inspection and copying during normal business hours.

(H) Records Location

The landfill facility owner, operator, or any other responsible party shall maintain records at the facility and a transporter or any other responsible party shall maintain records at the quarterly reporting address, unless an alternative location is required and has been requested in writing and approved by the Department.

(I) Record Confidentiality

Upon a satisfactory showing to the Director that the records, reports, permits, documentation, or information, or any part thereof, if made public, would divulge methods, processes, or customer lists entitled to protection as trade secrets, then the Director shall consider, treat, and protect such records, reports, or information as confidential.

(J) Restriction of Confidentiality

As necessary to carry out the provisions of this regulation, information afforded confidential treatment may be transmitted under a continuing restriction of confidentiality to other officers, employees, or authorized representatives of this state or of the United States, if the landfill permittee, owner, operator or any other responsible party, or the transporter, or any other responsible party, to which the information pertains is informed at least two (2) weeks prior to the transmittal, and if the information has been acquired by the Department under the provisions of this regulation.

Reg.11.207 Payment of Fees

Fees imposed pursuant to the separate provisions of this subchapter shall be collected as follows:

(A) Fee Submission

On or before January 15, April 15, July 15, and October 15 of each year, each landfill facility permittee and each transporter shall pay to the Department the full fee amount owed for the preceding quarter. Payment shall be made by check or money order payable to the Department.

(B) Timely Payments

A landfill permittee or a transporter shall be deemed to have made a timely payment and shall avoid a late payment charge if the permittee or transporter complies with both of the following:

- (1) The payment enclosed is for the full amount owed for the preceding quarter and no further Departmental action is required for collection; and
- (2) The payment is received by the Department or is postmarked by the United States Postal Service on or before the final day on which the payment is due, or the payee presents a receipt indicating the payment was mailed by registered or certified mail on or before the final day on which the payment is due.

Reg.11.208 Late Payment Charge and Notice

(A) Late Payment Charges

A late payment charge of ten percent (10%) of the quarterly fee amount will be added to the net amount due if full payment is not received by the Department within fifteen (15) calendar days after the due date. An additional five percent (5%) of that quarterly fee amount will be added to the net amount for each additional month or fraction thereof during which such failure continues past the first fifteen (15) calendar days, not to exceed a total of twenty-five percent (25%).

(B) Late Payment Charge Notification

If the Department determines that any landfill permittee or transporter has not made a timely payment of the fee, a notification will be sent. Failure of the Department to send such notice shall not operate as a waiver of a late payment charge.

Reg.11.209 Adjustments

Report or Fee Adjustments — Upon written approval by the Department, any adjustments to any previous quarterly report or fee payment, found upon review or as the result of an audit by the Department, and any unpaid late payment charges may be reflected on the next quarterly report and fee payment.

Reg.11.210 Termination of Fees

(A) Stopped Operation

In the event a landfill or a transporter permanently ceases receiving or transporting waste, the permittee or transporter shall immediately submit a final quarterly report, along with final fee payment, for the quarter during which the landfill closed or the landfill or transporter stopped operation and shall indicate on the report the final date upon which the landfill or transporter ceased receiving waste.

(B) Refunds

After operations have ceased, a landfill permittee or a transporter may seek a refund of any fee overpayment.

Reg.11.211 Petitioning Director for Review of Fees

(A) Petition Filing

Any landfill permittee or transporter, who disagrees with the fee amount due, may file a petition for review with the Director within twenty (20) calendar days following the payment or payment due date. The petition must contain:

- (1) A statement of the fee amount the landfill permittee or transporter admits is due and payable;
- (2) A statement of the fee amount the landfill permittee or transporter contests; and
- (3) Documentation of the amount of solid waste received during the contested payment period including, but not limited to, daily gate or transporting receipts showing the geographic source of waste, the type or kind of waste, defined in this regulation and in Regulation 22, received, and the net weight or amounts of the waste.

(B) Petition Review

The Director shall review the petition and make a final determination of the amount of the contested fee. Such notice shall contain:

- (1) The name, business address, and permit or transporter billing identification number of the landfill permittee or transporter;
- (2) The Director's decision and date of decision; and
- (3) A statement that the landfill permittee or transporter may request an adjudicatory hearing and Commission review on whether the decision of the Director should be modified and

that such a request shall be in the form and manner required of Regulation 8: Administrative Procedures.

(C) Late Fee Due and Payable

If the a landfill permittee or a transporter files a petition for review, the full amount of the contested fee and the adjustment the permittee or transporter admits is due and payable shall be paid by the date the petition for review is due. Any late payment charges also shall ~~also~~ be due and payable by the date the petition for review is due.

(D) Procedures Stayed

Upon the filing of a petition for review, the timely payment procedures and late payment charges contained in this regulation are automatically stayed for the amount of the fee which is contested. Payment of the full amount of the fee, as determined by the Director following a petition for review, shall be due within thirty (30) calendar days of issuance of the Director's decision and late payment charges shall then begin to accrue on that amount.

(E) Petition Determination

Notwithstanding the preceding, the filing of a petition for review, which is deemed by the Director to be frivolous and completely without merit, shall not operate as a stay of the timely payment procedures and late payment charges. If the Director determines that the petition for review is frivolous and completely without merit, the notice of the Director's decision, as described in this regulation, shall so state.

(F) Subsequent Quarterly Fees

Filing a petition for review of a fee does not affect the application of the timely payment procedures or late payment charges for any subsequent quarterly fee or adjustment.

Reg.11.212 Appeals

Appeal Procedures — Fees imposed under this regulation shall constitute a specific condition imposed on a landfill permittee or on a transporter. Provided a landfill permittee or a transporter disagrees with the final decision of the Director following a petition to review fees, the permittee or transporter may appeal such decision by requesting a Commission review, in accordance with Regulation 8: Administrative Procedures, and with the Arkansas Solid Waste Management Act, A.C.A. Ark. Code Ann. § 8-6-201 et seq. et seq.

Reg.11.213 Penalties

Fee Penalty Procedures — A landfill permittee or transporter failing or refusing to pay the fee required under the provisions of this regulation in a timely manner shall be subject to late payment procedures and charges as established in this regulation. ~~Refusal~~ Failure to pay the required fees shall constitute grounds for legal action by the Department, which may result in assessment of civil penalties, as provided in the Arkansas Solid Waste Management Act, ~~A.C.A. Ark. Code Ann. § 8-6-201 et seq.~~ et seq., or the revocation of a landfill permit, issued pursuant to ~~A.C.A. Ark. Code Ann. § 8-6-201 et seq.~~ et seq., or both.

Reg.11.214 Audit

Department Audit — At the discretion of the Department, an audit of ~~the~~ a landfill permittee's or a transporter's records or the operation of the landfill or transporter, or both, may be performed to assure compliance with this regulation. An audit by the Department may include, but shall not be limited to, an unannounced on-site visit to monitor the operation and operating procedures of a landfill or a transporter, or a requirement that additional records be submitted for review, or both.

Reg.11.215 Right of Entry and Access

Department Entry Rights — The Department or any authorized employee or agent shall have right of entry during normal business hours, unless otherwise deemed necessary by the Department, to any public or private property for the purpose of obtaining information or conducting investigations, examining or copying any books, papers, records, or memoranda pertaining to the operation of the facility or transporter necessary or appropriate for the purpose of this regulation.

Reg.11.216 Fund Establishment

Funds Affected — Fees collected under this regulation, pursuant to the Solid Waste Management and Recycling Fund Act, ~~A.C.A. Ark. Code Ann. § 8-6-601 et seq.~~ et seq., shall be deposited into the State Treasury and shall be credited to the Solid Waste Management and Recycling Fund and to the Marketing Board Fund. Fees collected under this regulation, pursuant to the Arkansas Landfill Post-Closure Trust Fund Act, ~~A.C.A. Ark. Code Ann. § 8-6-1001 et seq.~~ et seq., shall be deposited into the State Treasury and shall be credited to the Landfill Post-Closure Trust Fund.

CHAPTER THREE: THE LANDFILL POST-CLOSURE TRUST FUND PROGRAM

Reg.11.301 Authority to Administer Trust Fund Program

Statutory Authority — Under the Landfill Post-Closure Trust Fund Act, ~~A.C.A. Ark. Code Ann. § 8-6-1001 et seq.~~ *et seq.*, the Commission is given the authority to promulgate regulations and the Department is given the authority to implement Commission regulations, to issue administrative policies and procedures, and to administer the Landfill Post-Closure Trust Fund Program.

Reg.11.302 Short Title

This program shall be known and may be cited by the short title: Post-Closure Fund.

Reg.11.303 Availability of Landfill Post-Closure Trust Funds

(A) Funding Specificity

Landfill Post-Closure Trust Funds are to be made available on specific individual corrective action cases from post-closure landfill disposal fees imposed under this regulation.

(B) Funding Guidelines and Mechanisms

This regulation and Regulation 22 provide compliance guidelines for a landfill to follow in order to be eligible for funding consideration by the Landfill Post-Closure Trust Fund Program. Disposal fees, collected in accordance with ~~A.C.A. Ark. Code Ann. § 8-6-1001 et seq.~~ *et seq.*, and with this regulation, provide the funding mechanism for the Landfill Post-Closure Trust Fund.

(C) Funding Cap

In the event that the total amount in the Landfill Post-Closure Trust Fund equals or exceeds twenty-five million dollars (\$25,000,000), no additional fees shall be collected under the Landfill Post Closure Trust Fund provisions of Ark. Code Ann. §§ 8-6-1003 and 8-6-1004 until the total amount in the fund equals or is less than fifteen million dollars (\$15,000,000), at which time such collection of fees shall resume to the credit of the Landfill Post-Closure Trust Fund. In the event that the total amount in the Landfill Post-Closure Trust Fund reaches twenty-five million dollars (\$25,000,000), fees shall be collected pursuant to Ark. Code Ann. § 8-6-612 to the credit of the Solid Waste Management and Recycling Fund for support of the computer and electronic equipment recycling program.

(D) Funding Availability

(1) Landfill Post-Closure Trust Fund moneys are to be made available, upon written approval from the Director, for specific landfill post-closure corrective action cases and activities as set forth herein, pursuant to ~~A.C.A. Ark. Code Ann. § 8-6-1001 et seq. et seq.~~, and to Regulation 22.

(2) Any expenditures in excess of ~~\$50,000.00~~ fifty thousand dollars (\$50,000) per site from the Landfill ~~Post-closure~~ Post-Closure Trust Fund, for corrective action ~~for~~ to remedy ~~to~~ environmental impacts of closed disposal sites previously operated as a landfill pursuant to state law will be prioritized and authorized by the Commission, by adoption of a Minute Order, after addressing corrective actions needed to address environmental impacts from permitted landfills closed properly.

For purposes of Reg.11.303(D)(2), "closed disposal site" means a disposal site previously operated as a landfill pursuant to state law that ceased receiving waste prior to October 1, 1991, performed closure activities approved by the Department, and did not pay into the Landfill Post-Closure Trust Fund.

Reg.11.304 Department Responsibilities

(A) Use of Funds

In accordance with the provisions of ~~A.C.A. Ark. Code Ann. § 8-6-1001 et seq. et seq.~~, of Regulation 22, and with this regulation, the Landfill Post-Closure Trust Fund shall be used by the Department for landfill post-closure corrective action, which is defined as any measures deemed necessary by the Director to prevent or abate contamination of the environment from any landfill which has been certified as properly closed by the Department.

(B) Project Evaluation

The Department shall evaluate for funding those projects which comply with the requirements and the intent of ~~A.C.A. Ark. Code Ann. § 8-6-1001 et seq. et seq.~~

(C) Project Selection and Administration

Unless allowed elsewhere in this regulation or in Regulation 22, corrective action measures shall be selected by the Department and corrective action work shall be monitored by the Department or its agent.

Reg.11.305 Applicability

The provisions and benefits of the Landfill Post-Closure Trust Fund shall apply to landfill facility classifications as determined in Regulation 22 and in this regulation.

Reg.11.306 Eligible Projects and Activities

(A) Applicability

The Landfill Post-Closure Trust Fund Program applies to all landfills subject to permitting requirements provided under Regulation 22, which, upon receipt of solid waste at the landfill gate, are required to participate in the fee system for landfill disposal and which otherwise comply with the provisions set forth herein and in Regulation 22, except for those landfills where a private industry bears the expense of operating and maintaining the landfill solely for the disposal of waste generated by the industry or wastes of a similar kind or character.

(B) Funding Determination

The fund shall be used if the Director determines that:

- (1) **Closed Landfill** — A landfill, which is no longer receiving waste and has received an approved closure from the Department, pursuant to Regulation 22, regardless of when it ceased operating, is causing groundwater contamination or is causing other contamination that, in the determination of the Director, is a hazard to public health or endangers the environment; and
- (2) **Owner Obligation Met or Emergency Exists** — The landfill permittee, owner, operator, or any other responsible party of the landfill site has expended at least ten thousand dollars (\$10,000) toward corrective action, unless the landfill permittee or owner or any other responsible party, cannot be located or the Director determines an emergency exists necessitating immediate corrective action, in which case the Department shall take action to recover the ten thousand dollars (\$10,000) from the landfill permittee, owner, operator, or any other responsible party.

(C) Owner/Other Responsible Party Unavailable

If, after proper closure of a landfill, the Department determines that the landfill permittee, owner, operator, or any other responsible party cannot be located or cannot otherwise satisfy, in whole or part, post-closure maintenance obligations, the Department is authorized to expend the necessary funds from the Landfill Post-Closure Trust Fund to satisfy the requirements of State state and federal law and to prevent or abate releases to the environment.

(D) Refunds

In the event that preliminary studies are required before implementation of a corrective measure to confirm or deny the existence of suspected contamination and those studies indicate that contamination is not present, the Department shall refund any moneys, in excess of ten thousand dollars (\$10,000), the landfill permittee, owner, operator, or any other responsible party contributed to the studies.

Reg.11.307 Owner or Other Responsible Party Obligations

(A) Financial Assurance

A landfill permittee, owner, operator, or any other responsible party of a landfill shall establish, and at all times maintain, financial assurance for the post-closure maintenance of said landfill, pursuant to Regulation 22.

(B) Owner/Other Responsible Party Contribution

The landfill permittee, owner, operator, or any other responsible party shall make the initial contribution, required herein, to the Department for use in the corrective action work after the measure has been selected in accordance with Regulation 22.

(C) Owner/Other Responsible Party Failed Obligation

If the Department is required to expend funds from the Landfill Post-Closure Trust Fund due to the failure of an a landfill permittee, owner, operator, or any other responsible party to meet the requirements of the subsection, the Department may pursue collection and recovery of the funds.

Reg.11.308 Projects and Activities Not Eligible

(A) Third-Party Compensation

The fund shall not be used to compensate third parties for damages to property caused by the contamination. However, projects or studies that address an alternate potable water supply system for affected residences or other entities may be considered eligible.

(B) Areas Adjacent to Existing Landfill

Closed areas or operational phases are not eligible for funding when the areas or phases are contiguous to any landfill which is receiving solid waste when the Director determines that corrective action is necessary.

(C) Routine Activities

Except as provided herein, funds shall not be used by a landfill permittee in the performance of routine post-closure care and monitoring activities, pursuant to Regulation 22.

Reg.11.309 Disbursement of Funds

(A) Contracting

The Department may, at its discretion, enter into a contract or another written agreement with a Regional Solid Waste Management District, or any other responsible public or private party, for corrective action services.

(B) Distribution of Funds

Depending upon the specific corrective action project, periodic payments will be made to a fund recipient during the corrective action process or upon final inspection by the Department, or both.

Reg.11.310 Reporting and Oversight Requirements

(A) Record Keeping

A fund recipient shall maintain an ~~orderly~~ accurate accounting system to document that expenditures are made in accordance with the project budget.

(B) Reporting

A fund recipient shall comply with reporting conditions specified in the contract documents or other written agreements.

(C) Expense Documentation

A fund recipient shall, when requested, submit copies of bids, invoices on equipment or services, canceled checks, or other documentation relative to the project.

(D) Right of ~~entry~~ Entry and ~~access~~ Access

Department personnel shall have the right of entry to the premises of a fund recipient and shall have the right of access to all records relative to a funded project or activity.

(E) Modifications

After the Department has approved funding for a project, modifications may be made to the project provided documentation of the proposed changes has received written approval from the Department.

(F) Notice of Irregularities

It shall be the responsibility of a fund recipient to immediately notify the Department in the event that conditions set forth in the contract or Commission regulations cannot be or have not been met. Funding for a project that does not meet such conditions may be terminated by the Department. Funds set aside, but not utilized, for a specific project shall be returned to the Landfill Post-Closure Trust Fund.

Reg.11.311 Appeals of Funding Decisions

A funding decision may be appealed by requesting an adjudicatory hearing and Commission review, in accordance with Regulation 8: Administrative Procedures.

CHAPTER FOUR: SOLID WASTE MANAGEMENT AND RECYCLING GRANTS PROGRAM

Reg.11.401 Authority to Administer Grants Program

Under the Solid Waste Management and Recycling Fund Act, ~~A.C.A. Ark. Code Ann. § 8-6-601 et seq.~~ *et seq.*, the Commission is given the authority to promulgate regulations and the Department is given the authority to implement Commission regulations, to issue administrative policies and procedures, and to administer the Solid Waste Management and Recycling Grants Program.

Reg.11.402 Short Title

This program shall be known and may be cited by the short title, Recycling Grants.

Reg.11.403 Applicant Eligibility

Pursuant to the provisions of ~~A.C.A. Ark. Code Ann. § 8-6-609~~, the following entities are considered eligible to apply for and to receive grants:

- (A) **Cities and Counties:** Duly incorporated cities and towns and ~~County~~ county governments of the State of Arkansas.
- (B) **Solid Waste Authorities:** Authorities incorporated under ~~A.C.A. Ark. Code Ann. § 14-233-101 et seq.~~ *et seq.*
- (C) **Regional Solid Waste Management Boards:** Boards formed pursuant to ~~A.C.A. Ark. Code Ann. § 8-6-701 et seq.~~ *et seq.*, which have entered into agreements pursuant to ~~A.C.A. Ark. Code Ann. § 8-6-701 et seq.~~ *et seq.*, and are empowered to administer a grant award pursuant to the requirements of ~~A.C.A. Ark. Code Ann. § 8-6-601 et seq.~~ *et seq.*
- (D) **Subordinate Service Districts:** Subordinate Service Districts which are formed pursuant to ~~A.C.A. Ark. Code Ann. § 14-14-708 et seq.~~ *et seq.*, and are empowered to administer a grant award pursuant to the requirements of ~~A.C.A. Ark. Code Ann. § 8-6-601 et seq.~~ *et seq.*
- (E) **Multi-County or Multi-Regional Projects,** provided that concurrent resolutions regarding the joint application have been adopted by participating Regional Solid Waste Management District Boards and that a joint application is signed by the Board Chairman for each Regional Solid Waste Management District.

Partnerships Between Public Entities and Private Recycling Interests: Public entities identified herein partnered with private recycling interests to provide recycling services, provided that the public entity maintains ownership of facilities and equipment purchased with grant funds and that the public entity assumes responsibility for meeting the requirements of this regulation.

Reg.11.404 Responsibilities of District Board

(A) Regional Plan

Unless otherwise excused by the Director, each District shall have a solid waste management plan. The plan must meet the solid waste planning requirements of ~~A.C.A. Ark. Code Ann. § 8-6-201 et seq. et seq.~~, and of Regulation 22: ~~The Arkansas Solid Waste Management Regulation~~ Solid Waste Management, and must have been reviewed and approved by the Department prior to the opening of the grant round. All projects approved by Regional Solid Waste Management Boards for funding in that District must be compatible with the approved District plan on file with the Department or must document to demonstrate why a deviation is necessary.

(B) Application Prioritization

Each Board is responsible for the grant application process and acceptance of grant applications from within its District. Each District shall prioritize and select grant projects from within District boundaries for submission to the Department, such selection being in the sole discretion of the District. To ensure that every grant approved by the Boards meets the intent and requirements of ~~A.C.A. Ark. Code Ann. § 8-6-609~~, Boards shall submit a list and brief description of planned projects to the Department sixty (60) calendar days prior to each grant round for written pre-approval by the Department, and shall submit such information no later than July 15 of each year.

(C) Administrative Allocation

Each Board shall ensure that no more than twenty-five percent (25%) of the annual allocation of grant funds be used for administrative purposes. However, total funds for administrative purposes for all Districts shall not exceed five hundred thousand dollars (\$500,000). To determine if the cap of five hundred thousand dollar dollars (\$500,000) ~~cap~~ is exceeded, the Department shall multiply the annual allocation of grant funds in any given grant round by twenty-five percent (25%). If such product is equal to or less than five hundred thousand dollars (\$500,000), Districts may then use up to twenty-five percent (25%) of that year's allocation for administrative purpose. In the event that twenty-five percent (25%) of the funds available in a given grant round exceeds five hundred thousand dollars (\$500,000), the Department shall determine the administrative allocation for each District by utilizing the following formula to ensure the cap of five hundred thousand dollar dollars (\$500,000) ~~cap~~ is not exceeded:

- (1) Divide five hundred thousand dollars (\$500,000) by the total amount of funds available in the grant round to derive the percentage to be used in determining the amount of administrative funds available for each District.
- (2) Multiply the percentage derived in part (1) above by the amount allocated to each District to determine each District's administrative allotment for a given grant round.

For the purposes of the Recycling Grants Program, administrative expenses are expenses for the administration of the Regional Solid Waste Management District's solid waste management plan and may include record keeping, periodic reporting requirements, budgeting, and other related activities. Examples of administrative expenses include the salaries and fringe benefits of the District Director and other staff supporting the administration of the plan (including accounting, payroll and human resources, information technology, legal, and procurement functions); the cost of supplies and equipment used for administrative functions or activities; rent, utilities, phone service, postage, and licenses associated with the administrative office of the Regional Solid Waste Management District; and other expenditures approved by the Department. Examples of expenses not considered administrative expenses for the purposes of the Recycling Grants program include, but are not limited to:

1. Solid Waste Plan development or updates. These expenses are defined through a separate grant category and are not considered an administrative expense;
2. Solid Waste Education and Public Awareness. These expenses are defined through a separate grant category and are not included in the definition of administrative expenses; and
3. Expenses directly related to recycling or waste reduction activities, including but not limited to, necessary salaries and wages with related fringe benefits, operating costs for collection or processing facilities, collection or processing equipment, insurance on collection/processing facilities and equipment, and costs to market materials.

(D) Distribution within District

Boards shall make distribution of grant funds to approved grant projects within their District as scheduled in the grant application and subject to the grantee's compliance with all grant conditions. Funds shall not be disbursed by the Boards prior to the start of the project.

(E) Adequate Revenues

Boards shall ensure that the grantee show that adequate revenues are being collected to support the long-term operation and maintenance of a grant-funded project prior to the disbursement of any grant funds.

(F) Permits and Licenses

Boards shall ensure that grantee has obtained all applicable federal, ~~State~~ state, and local permits and licenses prior to disbursement of funds.

(G) Equipment and Facility Purchasing

Boards shall conform to, and ensure that all applicants conform to all ~~State~~ state laws that are applicable to the purchase, use or sale of equipment and facilities secured with ~~State~~ state funding including, but not limited to, ~~State~~ state laws on commodity purchases and bids for construction by local governments.

(H) Equipment Usage

Boards shall ensure that facilities or equipment purchased with grant funds disbursed by the Boards be used ~~exclusively for the general purposes~~ no less than fifty percent (50%) of the time on recycling activities or other grant-funded projects as specified in the grant application. Facilities or equipment purchased with grant funds shall not be sold, traded, or transferred except for the purpose of upgrading recycling facilities or improving recycling programs within the ~~State~~ state, with the Department's written consent.

Reg.11.405 Grant-Eligible Activities, ~~and~~ Projects, and Programs

The following activities, projects, or programs, in addition to other activities that support the objectives of increasing and improving recycling as a waste-management strategy, consistent with the intent of A.C.A. Ark. Code Ann. § 8-6-601, et seq. et seq., are eligible for grant funding:

(A) Solid Waste Planning

Planning studies are eligible for funding if an applicant's proposed study meets the solid waste planning requirements of A.C.A. Ark. Code Ann. § 8-6-201 et seq. et seq., § 8-6-1901 ~~et seq.~~ et seq., Regulation 22: Solid Waste Management, and the Minimum Requirements for Regional Solid Waste Management District Plans as set forth in the Statewide Solid Waste Management Plan. The funded planning study must include goals for the diversion of recyclable materials from disposal at landfills or incinerators and must set out methods for increasing recycling in the study area. Only first-year costs for planning staff are eligible. Boards may expend an amount equal to no more than ten percent (10%) of their administrative allocation for plan updates.

(B) Recycling or Composting Equipment and Material Recovery Facilities (~~MRF's~~ MRFs)

Recycling equipment and recycling facilities are eligible for funding if existing facilities and equipment do not provide adequate and efficient service for the project area. The facilities must meet the objectives of the solid waste management plan for recycling facilities. Composting facilities and equipment are also eligible. Equipment is to be used no less than fifty percent (50%) of the time on recycling activities or other grant-funded projects. Pursuant to Ark. Code Ann. § 8-6-610(b)(2)(D), applicants shall provide information that reasonably demonstrates that existing mechanical processing equipment or facilities are not serving or could not serve the relevant area. The applicant must describe in detail the equipment to be purchased and explain

why the applicant has concluded that such equipment is not available in the private sector.

(C) Solid Waste Education and Public Awareness Programs

Education and public awareness activities and materials are eligible if, in accordance with the legislative intent of A.C.A. Ark. Code Ann. § 8-6-601 et seq. et seq., they are part of a plan for introducing or promoting recycling, composting, or other solid waste management practices that divert wastes from landfills, encourage waste reduction and stimulate demand for products produced from recycled materials.

(D) Transfer Stations

Waste transfer stations which accept three (3) or more recyclable materials, as identified in Regulation 28, are eligible for funding.

(E) Recycling Programs

Recycling activities that meet the intent and requirements of Ark. Code Ann. § 8-6-601 et seq. are eligible for funding.

(F) Waste Reduction Activities

Other waste stream reduction activities that divert the flow of materials away from landfills to be put to beneficial use are eligible for funding.

(G) Recycling System Activities

Activities that support and are an integral part of a recycling system, including without limitation, operation, construction, and logistical systems, are eligible for funding.

Reg.11.406 Existing Equipment or Facilities

Grant Pursuant to Ark. Code Ann. § 8-6-609(c)(2), grant assistance shall not be provided for the purpose of purchasing mechanical processing equipment or facilities if existing mechanical processing equipment and or facilities efficiently and adequately serve the relevant area, unless the Department Regional Solid Waste Management Board determines and submits the rationale for the determination along with the grant application to the Department that the equipment or facility is an indispensable component to the otherwise eligible project and would more efficiently serve the relevant area.

Reg.11.407 Departmental Responsibilities

(A) Departmental Approval

Once grant project applications are submitted to the Department, the Department shall approve of those projects which comply with the requirements and intent of ~~A.C.A.~~ Ark. Code Ann. § 8-6-601 et seq. et seq., and this regulation.

(B) Funding Cycle for Grant Rounds

At least once per year the Department will accept and review applications for funding. Pre-applications will be received by the Department no later than July 15 of each year. On or before August 15 of each year, the Department will notify each District of the amount of funds available for the current grant round. A new grant round will open September 15 of each year. Applications will be accepted until December 31 of each year and funds will be disbursed no later than March 31 of the following year after the grant round opens. ~~The Department will determine the amount of funds available for the current grant round.~~ Funds collected under the provisions of ~~A.C.A.~~ Ark. Code Ann. § 8-6-607 and deposited ~~in~~ into the State Treasury to the credit of the Solid Waste Management Recycling Fund, less up to twenty-five percent (25%) for administrative support for the Department, shall annually be allocated to each of the approved Districts, utilizing a combination of two (2) methods referred to as Method A and Method B. Fifty percent (50%) of set aside funds will be determined by using Method A and fifty percent (50%) will be determined using Method B. The total figures obtained from each method will be combined to arrive at each District's fund distribution.

Method A:

- (1) The Department shall determine the amount of funds within each Planning and Development District, organized under ~~A.C.A.~~ Ark. Code Ann. §§ 14-166-201 through § 14-166-205 and recognized by the Governor based upon the same distribution as general revenue support is distributed to the Planning and Development Districts in the current fiscal year.
- (2) The Department shall adjust the distribution within the Planning and Development Districts to coincide with the boundaries of the Regional Solid Waste Management Districts (Districts) by determining each ~~County's county's~~ county's share of the funds available within each Planning and Development District. Each ~~County's county's~~ county's share shall be based upon the proportion that each ~~County's county's~~ county's population bears to the total population in the Planning and Development District to which the ~~County county~~ county is assigned, multiplied by the amount of funds determined to be available within the Planning and Development District. The ~~County's county's~~ county's proportional share, as determined, shall be added to all other counties' shares within the same District.

Formula for Method A:

- (1) Begin with fifty percent (50%) of the total remaining grant funds.

- (2) Divide equally by the eight (8) Planning and Development Districts.
- (3) Multiply this result by the most recent federal decennial census population of each County county.
- (4) Divide this result by the ADD Planning and Development District population in which the County county is located. (This determines the portion per County county.)
- (5) Individual County county portions are grouped and totaled by each District to give the District's allocation under Method A.

Method B:

The remaining fifty percent (50%) of set-aside funds in a grant round shall be based upon the ratio of the current decennial Regional Solid Waste Management District's population divided by the most recent federal decennial State state population.

Formula for Method B:

- (1) Begin with each District's total population.
- (2) Divide by the State's state's most recent federal decennial census population. (This determines the District's percentage.)
- (3) Multiply by the total remaining grant funds.
- (4) Equals each District's allocation under Method B.

(C) Fund Rollover

Funds set aside for each District in a grant round that are not awarded to the District by March 31 of the year following the grant round opening will be rolled over to the next round and become a part of the total funds available for all Districts in that grant round.

(D) Combined Funds

Funds set aside for two or more Districts in a grant round may be combined to fund a joint application provided that concurrent resolutions regarding the joint application have been adopted by participating Boards and provided that the joint application has been signed by the Board Chairman for each District.

(E) Forms Provided

The Department shall provide the forms necessary for the application process.

(F) Estimated Funds Available

The Department shall provide an estimate of funds available to each District by August 15 of each year along with notification of pre-approved projects. Notification shall be made at least thirty (30) calendar days prior to each grant round. Pre-applications for upcoming grant rounds will be received no later than July 15 of each year.

Reg.11.408 Disbursement of Funds

Disbursement of Funds — The Department shall disburse grant funds to Districts following written approval of grant applications in a given grant round if all requirements from the previous round are complete. Grant funds shall not be disbursed after March 31 of each year unless the Department approves a request for extension to the grant round by a Regional Solid Waste Management District.

Reg.11.409 Reporting and Oversight Requirements

(A) Record Keeping

Boards shall require grantees to maintain an ~~orderly~~ accurate accounting system to document that grant expenditures are made in accordance with the project budget.

(B) Reporting

- (1) Until all grant funds have been expended on a project, regional solid waste management boards shall provide the Department with an annual report summarizing:
 - (a) Progress in the project; and
 - (b) ~~Expenditures from the grant award~~ An expense itemization for each grant award. An expense itemization is a listing of expenditures that includes expenditure date, item purchased, purchase price, and name of vendor.
- (2) For a period of five (5) years after a grant recipient's receipt of grant funds, regional solid waste management boards shall provide the Department with an annual report summarizing:
 - (a) Tonnage of materials collected by the grant recipient; and
 - (b) Revenues produced by the sale of materials collected.
- (3) ~~Reporting requirements described herein became effective as of July 1, 2003, grant reporting period.~~ The reports shall be filed annually on or before September 1.

- (4) Failure by a board to file the required reports shall provide grounds for the department to withhold disbursement of grant funds for subsequent grant rounds.

(C) Submittal Required

Boards must submit an annual expense itemization for each grant, including date of purchase, item purchased, ~~vendor,~~ purchase price, and ~~vendor invoice or purchase order number.~~ When equipment is purchased, Boards shall submit copies of invoices, purchase orders, checks, or other supporting documents to the Department with progress reports. These documents should include serial numbers, vehicle identification numbers or other identifiers and physical location of the equipment. ~~These requirements became effective as of the July 1, 2003, grant reporting period.~~ Funds for the next grant round will not be disbursed until these requirements for the previous round, and the requirements in this regulation are complete.

(D) Right of Entry and Access

- (1) Department personnel shall have the right of entry during normal business hours, unless otherwise deemed necessary by the Department, to the premises of a grant-funded facility and the right of access to all records pertaining to a grant-funded project or activity.

- (2) ~~Boards shall maintain, or have access to, copies of all bids, paid invoices on equipment or services, and canceled checks pertinent to the project. Upon request, such records shall be available for inspection by the Department or for submittal to the Department. These requirements became effective as of the July 1, 2003, grant reporting period.~~ Boards shall maintain copies of invoices, purchase orders, checks, or other supporting documents for grant expenditures at the Regional Solid Waste District office and shall produce these items upon request for on-site inspection by the Department.

(E) Modifications

After the Department has approved a grant, modifications may be made to the grant project if the grantee submits adequate documentation of the proposed changes and receives written approval by the Board and the Department. Modifications that alter the grant category or materially change the project must be public noticed under the provisions of this regulation.

(F) Notice of Irregularities

It shall be the responsibility of the Boards to immediately notify the Department in the event that the grantee has not met conditions of the Department approved grant application. A grant may be terminated by the Board or the Department, if either the Board or the Department determines that the grantee is unable or unwilling to complete or meet the conditions of the grant as set forth in the grant application. If a grant is terminated, grant funds shall be reimbursed in accordance with ~~A.C.A. § 8-6-610(C)~~ Ark. Code Ann. § 8-6-610(c). Funds returned may be used to fund the next prioritized project with written approval from the Department. Funds not reallocated within one hundred twenty (120) days shall be returned to the Department for allocation in the next

grant round.

(G) Forms

The Department shall provide forms to be used by the Districts in the reporting process.

(H) Audit Requirements

Each Regional Solid Waste Management Board shall procure an annual financial audit.

- (1) Such audits shall be conducted following each District's fiscal year end.
- (2) Such audits shall, at the minimum define recycling grant funds and other grant funds distributed by the Department ~~received~~ separate from other District revenues, delineating interest and/or other receipts received as a result of the funds and documenting their expenditure. Such audits shall also identify project or contractual costs separate from administrative costs.
- (3) Such audits shall be conducted by ~~accountants~~ a Certified Public Accountant in good standing with the Arkansas State Board of Public Accountancy and in accordance with the Governmental Auditing and Reporting Standards issued by the Comptroller General of the United States.
- (4) Each audit report and accompanying comments and recommendations shall be reviewed by the appropriate Regional Solid Waste Management Board.
- ~~(4)~~(5) Copies of each Regional Solid Waste Management District's annual audit report shall be filed with the Department, and the Division of Legislative Audit, and shall be available for public inspection with the books and records of the District.
- (6) An audit report containing a qualified opinion or adverse opinion shall require written explanation and supporting documentation from the Regional Solid Waste Management Board or the Regional Solid Waste Management Board's chairman or designee and shall become part of the audit report.
- (7) An audit report with an unqualified opinion, but containing control deficiencies, significant deficiencies, or material weaknesses shall require written explanation and supporting documentation from the Regional Solid Waste Management Board or the Regional Solid Waste Management Board's chairman or designee and shall become part of the audit report.
- ~~(5)~~(8) Failure to provide the Department and the Division of Legislative Audit with a full and complete annual audit report within nine (9) months of the District's fiscal year ending date shall be cause to suspend or terminate any and all Solid Waste Management and Recycling Grant Funds revenue from funding programs that are administered by the Department unless otherwise authorized by the Director.

(I) Limitations

The provisions of this chapter, unless specifically set forth elsewhere, shall not apply to the Computer and Electronic Equipment Recycling Grants Program.

Reg.11.410 Conditions of Grant

(A) Funds Forfeited

Funds for any grant project not started prior to ~~the date that pre-applications for the next grant round are submitted to the Department~~ July 15 of each year will be forfeited and become a part of the total funds available for all Districts in the next grant round unless the project delay receives written approval by the Board and the Department. District administrative grants are excluded from this requirement.

If, within a three-year period beginning on the date that the Department awards a grant, the grantee does not meet the conditions of the grant prescribed under ~~A.C.A. Ark. Code Ann. § 8-6-610(b)~~ and this regulation, the Department may order the grantee to reimburse the grant award in accordance with ~~A.C.A. Ark. Code Ann. § 8-6-610(c)~~, plus interest ~~monies~~ moneys earned from the holding of grant funds by grant recipient. If the grantee fails to meet the conditions in the first year after the grant award, the grantee may be required to reimburse one hundred (100%) of the grant. If the grantee fails to meet the conditions in the second year of the grant award, the grantee may be required to reimburse sixty-six (66%) of the grant. If the grantee fails to meet the conditions in the third year after the grant award, the grantee may be required to reimburse thirty-three (33%) of the grant. Grantees will be ineligible for further grant awards until reimbursement is made. Reimbursed ~~monies~~ moneys will become a part of the total fund available for all Districts in the next grant round.

(B) Earned Interest on Grant Awards

Interest ~~monies~~ moneys earned from the holding of grant funds by grant recipients or Districts shall be used exclusively for recycling programs consistent with the District's Solid Waste Management Plan. It shall be the responsibility of grantees to monitor the collection of earned interest and direct interest ~~monies~~ moneys to the project supported by the grant award or to other recycling program(s) consistent with the applicable District's Solid Waste Management Plan.

(C) Project Deadlines

All ~~grantees~~ grant applicants shall actively develop recycling programs, as outlined in the grant application, and expend all grant funds within three (3) years following the date of disbursement of funds by the Department unless a written extension is granted by the Department.

(D) Markets Sought

All ~~grantees~~ grant applicants shall seek to market or reuse the materials diverted under the recycling program from deposition in landfill ~~or incinerators~~ in the period of three (3) years following the grant award.

(E) Notice Published

~~Thirty (30) days prior to submission of a grant application, the applicant shall be required to insert in a newspaper of general circulation in the area affected a notice describing the applicant's grant request and soliciting written comments from the public for a twenty-day period. Proof of publication of the notice and copies of the comments shall accompany the grant application.~~ The grant applicant shall insert in a newspaper of general circulation in the area affected a notice describing the applicant's grant request and soliciting written comments from the public. The comment period shall last for thirty (30) calendar days after the date of publication and may be concurrent with an application submission to the Department. Proof of publication of the notice and copies of comments submitted shall be forwarded to the Department. Grants cannot be approved or funded until these items are received by the Department.

(F) Solid Waste Management Plan on File

All grant applicants shall have a solid waste management plan on file with the Department within the first year following the date of the grant awarded by the Department.

Reg.11.411 Appeals of Grant Decisions

(A) Appeals

The following persons shall have the right to appeal any grant decisions as defined herein made by the Department:

- (1) A grant applicant;
- (2) A grantee;
- (3) Provided the matter to be appealed is subject to a public comment period, any person who submitted written comments on the contested matter within the comment period;
- (4) A Regional Solid Waste Management District Board; or
- (5) Any other person entitled by law to contest the Director's decision.

(B) Review

Any such person may appeal a grant decision by requesting an adjudicatory hearing and Commission review in accordance with Regulation 8: Administrative Procedures, provided however that the definition of "grant decisions" contained herein will apply instead of the definition of "grant decisions" contained in Regulation 8. Such request shall be in the form and manner required by Regulation 8.

**CHAPTER FIVE: ~~SEVERABILITY AND EFFECTIVE DATE~~ COMPUTER
AND ELECTRONIC EQUIPMENT
RECYCLING GRANTS PROGRAM**

Reg.11.501 Authority to Administer Grants Program

Under Ark. Code Ann. § 8-6-613, a program for the recycling of computer and electronic equipment is created. Pursuant to Ark. Code Ann. § 8-6-613(c) and the Solid Waste Management and Recycling Fund Act, Ark. Code Ann. § 8-6-601 et seq., the Commission is given the authority to promulgate regulations and the Department is given the authority to implement Commission regulations, to issue administrative policies and procedures, and to administer the Solid Waste Management and Recycling Grants Program.

Reg.11.502 Short Title

This program shall be known and may be cited by the short title, Computer and Electronic Equipment Recycling Grants.

Reg.11.503 Applicant Eligibility

Pursuant to the provisions of Ark. Code Ann. § 8-6-609, the following entities are considered eligible to apply for and to receive grants:

- (A) Cities and Counties: Duly incorporated cities and towns and county governments of the State of Arkansas.**
- (B) Solid Waste Authorities: Authorities incorporated under Ark. Code Ann. § 14-233-101 et seq.**
- (C) Regional Solid Waste Management Boards: Boards formed pursuant to Ark. Code Ann. § 8-6-701 et seq., which have entered into agreements pursuant to Ark. Code Ann. § 8-6-701 et seq., and are empowered to administer a grant award pursuant to the requirements of Ark. Code Ann. § 8-6-601 et seq.**
- (D) Subordinate Service Districts: Subordinate Service Districts which are formed pursuant to Ark. Code Ann. § 14-14-708 et seq., and are empowered to administer a grant award pursuant to the requirements of Ark. Code Ann. § 8-6-601 et seq.**
- (E) Multi-County or Multi-Regional Projects, provided that concurrent resolutions regarding the joint application have been adopted by participating Regional Solid Waste Management District Boards and that a joint application is signed by the Board**

Chairman for each Regional Solid Waste Management District.

Partnerships Between Public Entities and Private Recycling Interests: Public entities identified herein partnered with private recycling interests to provide recycling services, provided that the public entity maintains ownership of facilities and equipment purchased with grant funds and that the public entity assumes responsibility for meeting the requirements of this regulation.

Reg.11.504 Responsibilities of District Board

(A) Regional Plan

Unless otherwise excused by the Director, each District shall have a solid waste management plan. The plan must meet the solid waste planning requirements of Ark. Code Ann. § 8-6-201 et seq., and of Regulation 22: Solid Waste Management, and must have been reviewed and approved by the Department prior to the opening of the grant round. All projects approved by Regional Solid Waste Management Boards for funding in that District must be compatible with the approved District plan on file with the Department or must provide documentation to demonstrate why a deviation is necessary.

(B) Application Prioritization

Each Board is responsible for the grant application process and acceptance of grant applications from within its District. Each District shall prioritize and select grant projects from within District boundaries for submission to the Department, such selection being in the sole discretion of the District. To ensure that every grant approved by each Board meets the intent and requirements of Ark. Code Ann. § 8-6-609, each Board shall submit a list and brief description of planned projects to the Department by January 1 of each year, which is sixty (60) calendar days prior to the opening of each grant round, for written pre-approval by the Department.

(C) Distribution within District

Each Board shall distribute grant funds to approved grant projects within its District as scheduled in the grant application and subject to the grantee's compliance with all grant conditions. Funds shall not be disbursed by the Boards prior to the start of the project.

(D) Adequate Revenues

Each Board shall ensure that the grantee demonstrates that adequate revenues are collected to support the long-term operation and maintenance of a grant-funded project prior to the disbursement of any grant funds.

(E) Permits and Licenses

Each Board shall ensure that the grantee has obtained all applicable federal, state, and local permits and licenses prior to disbursement of funds.

(F) Equipment and Facility Purchasing

Each Board shall conform to, and ensure that all applicants conform to all state laws that are applicable to the purchase, use, or sale of equipment and facilities secured with state funding including, but not limited to, state laws on commodity purchases and bids for construction by local governments.

Reg.11.505 Grant-Eligible Activities, Projects, and Programs

The following activities, projects, or programs in addition to other activities that support the objectives of increasing and improving computer and electronic equipment recycling as a waste-management strategy, consistent with the intent of Ark. Code Ann. § 8-6-601 et seq., are eligible for grant funding:

(A) Solid Waste Education and Public Awareness Programs

Education and public awareness activities and materials are eligible if, in accordance with the legislative intent of Ark. Code Ann. § 8-6-601 et seq., they are part of a plan for introducing or promoting computer and electronic equipment recycling.

(B) Computer and Electronic Equipment Transportation Cost

Cost incurred in the process of transporting computer and electronic equipment for the purpose of recycling or reuse. Funds may be used to pay a contractor or local or district transporter.

(C) Computer and Electronic Equipment Supplies

Cost incurred to purchase materials associated directly with reuse, recycling, processing, or transportation of computer and electronic equipment.

(D) Computer and Electronic Equipment Collection Cost

Wages incurred for physical labor to collect, process, and transport computer and electronic equipment for the purpose of reuse or recycling. Wages that directly relate to a specific computer or electronic equipment recycling project and have received the prior written approval from the Department as specifically attributable to an approved project are eligible. Administrative costs are not eligible pursuant to Reg.11.506(A).

(E) Contractual Services

Cost incurred for services contracted outside of the district or local facility for management of computer and electronic equipment collection, processing, or transportation.

Reg.11.506 Ineligible Grant Activities, Projects, and Programs

(A) Administrative Costs

Funding assistance shall not be used for costs that do not directly relate to a specific computer or electronic equipment recycling project and have not received written approval from the Department as specifically attributable to an approved project. Examples of ineligible administrative expenditures include, but are not limited to: administrative salaries; planning; land acquisition, unless part of a building acquisition; and food.

(B) Retroactive Costs

Funding assistance shall not be provided to reimburse for cost incurred by a grantee for a computer or electronic equipment project prior to the date that a project is approved for funding by the Department.

Reg.11.507 Existing Equipment or Facilities

Pursuant to Ark. Code Ann. § 8-6-609(c)(2), grant assistance shall not be provided for purchasing mechanical processing equipment or facilities if existing mechanical processing equipment or facilities efficiently and adequately serve the relevant area, unless the Regional Solid Waste Management Board determines and submits the rationale for the determination along with the grant application to the Department that the equipment or facility is an indispensable component to the otherwise eligible project and would more efficiently serve the relevant area.

Reg.11.508 Departmental Responsibilities

(A) Departmental Approval

Once grant project applications are submitted to the Department, the Department shall approve of those projects which comply with the requirements and intent of Ark. Code Ann. § 8-6-601 et seq., and this regulation.

(B) Funding Cycle for Grant Rounds

At least once per year the Department will accept and review applications for funding. Pre-applications will be received by the Department beginning January 1 of each year. On or before February 1 of each year, the Department will notify each District of the amount of funds available for the current computer and electronic equipment grant round. A new grant round will open March 1 of each year. Applications will be accepted until June 1 of each year and funds will be disbursed no later than September 1 of the current grant round. Funds collected under the provisions of Ark. Code Ann. § 8-6-607 and deposited into the State Treasury to the credit of the Solid Waste Management Recycling Fund, shall annually be allocated to each of the

approved Districts, utilizing a combination of two (2) methods referred to as Method A and Method B. Fifty percent (50%) of set-aside funds will be determined by using Method A and fifty percent (50%) will be determined using Method B. The total figures obtained from each method will be combined to arrive at each District's fund distribution.

Method A:

- (1) The Department shall determine the amount of funds within each Planning and Development District, organized under Ark. Code Ann. §§ 14-166-201 through 14-166-205 and recognized by the Governor based upon the same distribution as general revenue support is distributed to the Planning and Development Districts in the current fiscal year.
- (2) The Department shall adjust the distribution within the Planning and Development Districts to coincide with the boundaries of the Regional Solid Waste Management Districts (Districts) by determining each county's share of the funds available within each Planning and Development District. Each county's share shall be based upon the proportion that each county's population bears to the total population in the Planning and Development District to which the county is assigned, multiplied by the amount of funds determined to be available within the Planning and Development District. The county's proportional share, as determined, shall be added to all other counties' shares within the same District.

Formula for Method A:

- (1) Begin with fifty percent (50%) of the total remaining grant funds.
- (2) Divide equally by the eight (8) Planning and Development Districts.
- (3) Multiply this result by the most recent federal decennial census population of each county.
- (4) Divide this result by the Planning and Development District population in which the county is located. (This determines the portion per county.)
- (5) Individual county portions are grouped and totaled by each District to give the District's allocation under Method A.

Method B:

The remaining fifty percent (50%) of set-aside funds in a grant round shall be based upon the ratio of the current decennial Regional Solid Waste Management District's population divided by the most recent federal decennial state population.

Formula for Method B:

- (1) Begin with each District's total population.
- (2) Divide by the state's most recent federal decennial census population. (This determines the District's percentage.)
- (3) Multiply by the total remaining grant funds.
- (4) Equals each District's allocation under Method B.

(C) Fund Rollover

Funds set aside for each District in a grant round that are not awarded to the District by September 1 of the year following the grant round opening will be rolled over to the next round and become a part of the total funds available for all Districts in that grant round.

(D) Combined Funds

Funds set aside for two (2) or more Districts in a grant round may be combined to fund a joint application provided that concurrent resolutions regarding the joint application have been adopted by participating Boards and provided that the joint application has been signed by the Board Chairman for each District.

(E) Forms Provided

The Department shall provide the forms necessary for the application process.

(F) Estimated Funds Available

The Department shall provide an estimate of funds available to each District by February 1 of each year along with notification of pre-approved projects. Notification shall be made at least thirty (30) calendar days prior to each grant round. Pre-applications for upcoming grant rounds will be received beginning January 1 of each year.

Reg.11.509 Disbursement of Funds

Disbursement of Funds — The Department shall disburse grant funds to Districts following written approval of grant applications in a given grant round if all requirements from the previous round are complete.

Reg.11.510 Reporting and Oversight Requirements

(A) Record Keeping

Boards shall require grantees to maintain an accurate accounting system to document that grant expenditures are made in accordance with the project budget.

(B) Reporting

(1) Until all grant funds have been expended on a project, Regional Solid Waste Management Boards shall provide the Department with an annual report summarizing:

(a) Progress in the project; and

(b) An expense itemization for each grant award.

(2) For a period of five (5) years after a grant recipient's receipt of grant funds, Regional Solid Waste Management Boards shall provide the Department with an annual report summarizing:

(a) Tonnage of materials collected by the grant recipient; and

(b) Revenues produced by the sale of materials collected.

(3) The reports shall be filed annually on or before February 1.

(4) Failure by a board to file the required reports shall provide grounds for the Department to withhold disbursement of grant funds for subsequent grant rounds.

(C) Submittal Required

Boards must submit an annual expense itemization for each grant, including date of purchase, item purchased, purchase price, and vendor. When equipment is purchased, Boards shall submit copies of invoices, purchase orders, checks, or other supporting documents to the Department with progress reports. These documents should include serial numbers, vehicle identification numbers or other identifiers and physical location of the equipment. Funds for the next grant round will not be disbursed until these requirements for the previous round, and the requirements in this regulation are complete.

(D) Right of Entry and Access

(1) Department personnel shall have the right of entry during normal business hours, unless otherwise deemed necessary by the Department, to the premises of a grant-funded facility and the right of access to all records pertaining to a grant-funded project or activity.

(2) Boards shall maintain copies of invoices, purchase orders, checks, or other supporting documents for grant expenditures at the Regional Solid Waste District and shall produce these items upon request for on-site inspection by the Department.

(E) Modifications

After the Department has approved a grant, modifications may be made to the grant project if the grantee submits adequate documentation of the proposed changes and receives written approval by the Board and the Department. Modifications that alter the grant category or materially change the project must be public-noticed under the provisions of this regulation.

(F) Notice of Irregularities

It shall be the responsibility of the Boards to immediately notify the Department in the event that the grantee has not met conditions of the Department approved grant application. A grant may be terminated by the Board or the Department, if either the Board or the Department determines that the grantee is unable or unwilling to complete or meet the conditions of the grant as set forth in the grant application. If a grant is terminated, grant funds shall be reimbursed in accordance with Ark. Code Ann. § 8-6-610(c). Funds returned may be used to fund the next prioritized project with written approval from the Department. Funds not reallocated within one hundred twenty (120) calendar days shall be returned to the Department for allocation in the next grant round.

(G) Forms

The Department shall provide forms to be used by the Districts in the reporting process.

(H) Audit Requirements

Each Regional Solid Waste Management Board shall procure an annual financial audit.

- (1) Such audits shall be conducted following each District's fiscal year end.
- (2) Such audits shall, at the minimum, define recycling grant funds and other grant funds distributed by the Department separate from other District revenues, delineating interest and/or other receipts received as a result of the funds and documenting each expenditure. Such audits also shall identify project costs or contractual costs separate from administrative costs.
- (3) Such audits shall be conducted by a Certified Public Accountant in good standing with the Arkansas State Board of Public Accountancy and in accordance with the Governmental Auditing and Reporting Standards issued by the Comptroller General of the United States.
- (4) Each audit report and accompanying comments and recommendations shall be reviewed by the appropriate regional solid waste management board.
- (5) Copies of each Regional Solid Waste Management District's annual audit report shall be filed with the Department and the Division of Legislative Audit. Copies shall also be available for public inspection with the books and records of the District.

- (6) An audit report containing a qualified opinion or adverse opinion shall require written explanation and supporting documentation from the Regional Solid Waste Management Board, and shall become part of the audit report.
- (7) An audit report with an unqualified opinion, but containing control deficiencies, significant deficiencies, or material weaknesses shall require written explanation and supporting documentation from the Regional Solid Waste Management Board and shall become part of the audit report.
- (8) Failure to provide the Department and the Division of Legislative Audit with a full and complete annual audit report within nine (9) months of the District's fiscal year ending date shall be cause to suspend or terminate any and all revenue from funding programs that are administered by the Department unless otherwise authorized by the Director.

Reg.11.511 Conditions of Grant

(A) Funds Forfeited

Funds for any grant project not started prior to the date that pre-applications for the next grant round are submitted to the Department will be forfeited and become a part of the total funds available for all Districts in the next grant round unless the project delay receives written approval by the Board and the Department.

If, within a three-year period beginning on the date that the Department awards a grant, the grantee does not meet the conditions of the grant prescribed under Ark. Code Ann. § 8-6-610(b) and Regulation 11, the Department may order the grantee to reimburse the grant award in accordance with Ark. Code Ann. § 8-6-610(c), plus interest moneys earned from the holding of grant funds by the grant recipient. Grantees will be ineligible for further grant awards until reimbursement is made. Reimbursed moneys will become a part of the total fund available for all Districts in the next grant round.

(B) Earned Interest on Grant Awards

Interest moneys earned from the holding of grant funds by a grant recipient or District shall be used exclusively for computer and electronic equipment recycling programs consistent with the District's Solid Waste Management Plan. It shall be the responsibility of the grantee to monitor the collection of earned interest and direct interest moneys to the project supported by the grant award or to other recycling programs consistent with the applicable District's Solid Waste Management Plan.

(C) Project Deadlines

All grantees shall develop recycling programs, as outlined in the grant application, and expend all grant funds within three (3) years following the date of disbursement of funds by the Department unless a written extension is granted by the Department.

(D) Markets Sought

All grantees shall seek to market or reuse the materials diverted under the recycling program from disposal into a landfill in the period of three (3) years following the grant award.

(E) Notice Published

The applicant shall insert in a newspaper of general circulation in the area affected a notice describing the applicant's grant request and soliciting written comments from the public. The comment period shall last for thirty (30) calendar days after the date of publication and may be concurrent with an application submission to the Department. Proof of publication of the notice and copies of comments submitted shall be forwarded to the Department. Grants cannot be approved or funded until these items are received by the Department.

Reg.11.512 Appeals of Grant Decisions

(A) Appeals

The following persons shall have the right to appeal any grant decisions as defined herein made by the Department:

- (1) A grant applicant;
- (2) A grantee;
- (3) Provided the matter to be appealed is subject to a public comment period, any person who submitted written comments on the contested matter within the comment period;
- (4) A Regional Solid Waste Management District Board; or
- (5) Any other person entitled by law to contest the Director's decision.

(B) Review

Any such person may appeal a grant decision by requesting an adjudicatory hearing and Commission review in accordance with Regulation 8: Administrative Procedures, provided however that the definition of "grant decisions" contained herein will apply instead of the definition of "grant decisions" contained in Regulation 8. Such request shall be in the form and shall follow the procedures required by Regulation 8.

CHAPTER SIX: SEVERABILITY AND EFFECTIVE DATE

~~Reg.11.501~~ Reg.11.601 Severability

If any provision of this regulation or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this regulation which can be given effect without the invalid provision or application, and to this end provisions of this regulation are declared to be severable.

~~Reg.11.502~~ Reg.11.602 Effective Date

This regulation is effective ten (10) days after filing with the Secretary of State, the State Library, and the Bureau of Legislative Research.

