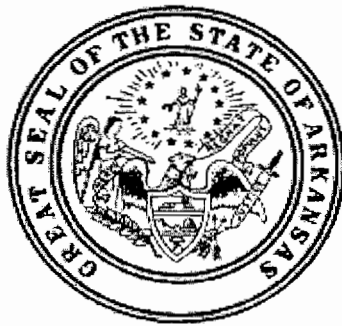


ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION



REGULATION NO. 11

REGULATIONS FOR SOLID WASTE DISPOSAL FEES; LANDFILL POST-CLOSURE TRUST FUND; AND RECYCLING GRANTS PROGRAM

Initial Draft

**Submitted to the
Arkansas Pollution Control and Ecology Commission in
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**REGULATION NUMBER 11
SOLID WASTE MANAGEMENT FEES, FUNDS AND GRANTS**

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**ARKANSAS POLLUTION CONTROL
AND ECOLOGY COMMISSION
REGULATION NUMBER 11**

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.) § 8-6-601 et seq.; the Landfill Post-Closure Trust Fund Act, A.C.A. § 8-6-1001 et seq.; and the Regional Solid Waste Management Districts and Boards Act, A.C.A. § 8-6-701 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 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. § 8-6-601 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 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. § 8-6-601 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. § 8-6-1001 et seq., will provide a trust fund to be used for landfill post-closure corrective actions pursuant to statutory provisions.

(E) Fees Encourage Recycling

These laws and this regulation encourage the recycling of wastes 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 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. § 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. § 8-6-701 et seq.

“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.

“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. § 8-6-701 et seq.

“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. §8-6-201 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, 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. § 8-6-201 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, and return of waste materials to commerce as commodities for use or exchange.

"Regional Solid Waste Management Board" means Regional Solid Waste Management Board formed under A.C.A. § 8-6-701 et seq.

"Regional Solid Waste Management District" means Regional Solid Waste Management District established pursuant to A.C.A. § 8-6-701 et seq.

"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).

"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. § 8-6-201 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. § 8-6-201 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 Services Area" means Solid Waste Services Area as described in the Regional Solid Waste Management Districts and Boards Act, A.C.A. § 8-6-701 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 (2000 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, 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. § 8-6-701 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. § 8-6-601 et seq., and to the Landfill Post-Closure Trust Fund Act, A.C.A. § 8-6-1001 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. § 8-6-201 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 that is to be disposed of out of the State.

(B) Onset of Landfill Fees

The collection of landfill fees pursuant to A.C.A. § 8-6-601 and § 8-6-1001 et seq., and imposed herein, commenced October 1, 1989, for public 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 pursuant to A.C.A. § 8-6-601 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. §8-6-606 and §8-6-1003, 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, 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. § 8-6-601 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. § 8-6-1001 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. § 8-6-601 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. § 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 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 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 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. § 8-6-601 et seq., or the Landfill Post-Closure Trust Fund Act, A.C.A. § 8-6-1001 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 and on solid waste that is generated and transported within the State that is to be disposed outside the 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.

(E) 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 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 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.
- (5) Waste amounts reflected by any other reasonable means, as determined by the Department, to measure or weigh the solid waste.

(F) 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.

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 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) 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) 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) 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 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) 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. § 8-6-201 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 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. § 8-6-201 et seq., or the revocation of a landfill permit, issued pursuant to A.C.A. § 8-6-201 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. § 8-6-601 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. § 8-6-1001 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. § 8-6-1001 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. § 8-6-1001 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 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.

(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. § 8-6-1001 et seq., and to Regulation 22.

(2) Any expenditures in excess of \$50,000.00 per site from the Landfill Post-closure Trust Fund, for corrective action for 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.

Reg.11.304 Department Responsibilities

(A) Use of Funds

In accordance with the provisions of A.C.A. § 8-6-1001 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. § 8-6-1001 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 owner 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 Post-Closure Trust Fund to satisfy the requirements of 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 Post-Closure Trust Fund due to the failure of an 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 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 and 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. § 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.11.402 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. § 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 A.C.A. §14-233-101 et seq.
- (C) **Regional Solid Waste Management Boards:** Boards formed pursuant to A.C.A. § 8-6-701 et seq., which have entered into agreements pursuant to A.C.A. § 8-6-701 et seq., and are empowered to administer a grant award pursuant to the requirements of A.C.A. § 8-6-601 et seq.
- (D) **Subordinate Service Districts:** Subordinate Service Districts which are formed pursuant to A.C.A. § 14-14-708 et seq., and are empowered to administer a grant award pursuant to the requirements of A.C.A. § 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.
- (F) **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. § 8-6-201 et seq., and of Regulation 22: The Arkansas Solid

Waste Management Regulation, 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. § 8-6-609, Boards shall submit a list and brief description of planned projects to the Department sixty (60) days prior to each grant round for written pre-approval by the Department.

(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 five hundred thousand dollar (\$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 five hundred thousand dollar (\$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.

(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, 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 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.

(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 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, with the Department's written consent.

Reg.11.405 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 recycling as a waste-management strategy, consistent with the intent of A.C.A. § 8-6-601, 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. § 8-6-201 et seq., § 8-6-1901 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)

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.

(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. § 8-6-601 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.

(D) Transfer Stations

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

Reg.11.406 Existing Equipment or Facilities

Grant assistance shall not be provided for the purpose of purchasing equipment or facilities if existing equipment and facilities efficiently and adequately serve the relevant area, unless the Department determines that the equipment or facility is indispensable to the otherwise eligible project.

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. § 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. The Department will determine the amount of funds available for the current grant round. Funds collected under the provisions of A.C.A. § 8-6-607 and deposited in 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. § 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 ADD 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 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 along with notification of pre-approved projects. Notification shall be made at least thirty (30) days prior to each grant round.

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.

Reg.11.409 Reporting and Oversight Requirements

(A) Record Keeping

Boards shall require grantees to maintain an orderly 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.
- (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 the 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 invoice or purchase order number. When equipment is purchased, Boards shall submit serial numbers, vehicle identification numbers or other identifiers. 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 made 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.

(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). 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 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 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) Copies of each Regional Solid Waste Management District's annual audit report shall be filed with the Department, the Division of Legislative Audit and shall be available for public inspection with the books and records of the District.
- (5) 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.

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 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. § 8-6-610(b) and this regulation, the Department may order the grantee to reimburse the grant award in accordance with A.C.A. § 8-6-610(c), plus interest monies earned from the holding of grant funds by grant recipient. Grantees will be ineligible for further grant awards until reimbursement is made. Reimbursed monies 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 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 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 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 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.

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

Reg.11.501 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 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.