

# **Exhibit A:**

## **Regulation 11**

### **Mark-up Draft**

# ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION



## REGULATION NO. 11

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

**MARK-UP DRAFT**

**Submitted to the Arkansas Pollution Control & Ecology  
Commission in August 2016**

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## 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, Ark. Code Ann. § 8-6-601 *et seq.*; the Landfill Post-Closure Trust Fund Act, Ark. Code Ann. § 8-6-1001 *et seq.*; and the Regional Solid Waste Management Districts and Boards Act, Ark. Code Ann. § 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;
- (3) The administration of a solid waste management planning and recycling fund distribution program; and
- (4) The administration of ~~grants for recycling~~ an electronic waste recycling fund distribution program.

#### (B) Solid Waste Management and Recycling Fund Usage

Fees collected, in accordance with Ark. Code Ann. § 8-6-601 *et seq.*, ~~will~~ may be used to fund a solid waste management planning and recycling fund distribution program for local governments for integrated waste management planning and ~~construction~~ infrastructure development. The fund also ~~will~~ may 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 Ark. Code Ann. § 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) Electronic Waste

Fees collected in accordance with Ark. Code Ann. § 8-6-612 will be used to fund an electronic waste distribution program.

~~(D)~~**(E) Landfill Post-Closure Trust Fund Usage**

Fees collected for waste received at landfills, in accordance with Ark. Code Ann. § 8-6-1001 *et seq.*, will provide a trust fund to be used for specific landfill post-closure corrective actions and meet a portion of financial responsibility obligations. The trust fund may be used for the closure of a permitted waste tire processing or disposal site that is owned or operated by a District pursuant to statutory provisions and as otherwise provided in this regulation.

~~(E)~~**(F) 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~~ that is received at Arkansas landfills or to solid waste ~~which~~ that is generated within Arkansas but transported to disposal facilities in other states.

~~(F)~~**(G) Waste Amount Determinations**

~~These~~ The laws referenced herein 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~~ that 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~~ Distribution Programs.

**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 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 Ark. Code Ann. § 8-6-701 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  $3' \times 3' \times 3'$  3' x 3' x 3' of solid waste ~~which~~ that has received any amount of mechanical compaction.

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

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

**“Disposal site”** means any place where solid waste is dumped, abandoned, accepted, or disposed of for final disposition by incineration, landfilling, composting, or any other method.

**“District”** means a Regional Solid Waste Management District formed under Ark. Code Ann. § 8-6-701 *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, Ark. Code Ann. § 8-6-201 *et seq.*, and subject to permitting requirements ~~provided under Regulation 22,~~ and applies to all landfills ~~which that,~~ 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~~ where 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 Recycling Facility”** means a facility; not subject to permitting requirements under Regulation 22, ~~which that~~ 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.~~

**“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.

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

**“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, Ark. Code Ann. § 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 that~~ 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, decontaminating, and returning of waste materials to commerce as commodities for use or exchange.



**“Regional Solid Waste Management Board”** means a “Board” formed under Ark. Code Ann. § 8-6-701 *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 a “District” established pursuant to Ark. Code Ann. § 8-6-701 *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, 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, Ark. Code Ann. § 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 that~~ is developed according to the provisions of the Arkansas Solid Waste Management Act, Ark. Code Ann. § 8-6-201 *et seq.*, the Statewide Solid Waste Management Plan Act, Ark. Code Ann. § 8-6-1901 *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, Ark. Code Ann. § 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 (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, 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, Ark. Code Ann. § 8-6-701 *et seq.*

**“Uncompacted Cubic Yard of Waste”** means a volume equal to a ~~3<sup>2</sup> x 3<sup>2</sup> x 3<sup>2</sup>~~ 3' x 3' x 3' of solid waste ~~which~~ that has received no amount of mechanical compaction.

**“Waste Tire Disposal Site”** means any place where waste tires are dumped, abandoned, accepted, or disposed for final disposition.

**“Waste Tire Processing Facility”** means a site where equipment is used to cut, chip, grind, or otherwise alter whole waste tires under a permit issued by ADEQ.

## 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, Ark. Code Ann. § 8-6-601 *et seq.*, and the Landfill Post-Closure Trust Fund Act, Ark. Code Ann. § 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, Ark. Code Ann. § 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 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 Except as otherwise provided by law, the collection of landfill fees pursuant to Ark. Code Ann. §§ 8-6-601 and 8-6-1001 *et seq.*, and imposed herein, commenced October 1, 1989, for 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 Except as otherwise provided by law, 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 Ark. Code Ann. § 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 Ark. Code Ann. §§ 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 and shall not require the certification by a Professional Engineer to be approved.

**(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~~ that 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~~ Solid Waste Management and Recycling Fund**

The following fee schedule for fees imposed under the provisions of the Solid Waste Management and Recycling Fund Act, Ark. Code Ann. § 8-6-601 *et seq.*, shall be paid by Class 1 landfills, Class 3C landfills, Class 4 landfills, and out-of-state transporters. ~~The fee schedule is 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~~ Landfill Post-Closure Trust Fund**

The following fee schedule for fees imposed under the provisions of the Landfill Post-Closure Trust Fund Act, Ark. Code Ann. § 8-6-1001 *et seq.*, shall be paid by Class 1 landfills, Class 3C landfills, and Class 4 landfills. This fee is only collected after the balance of the Post-Closure Trust Fund equals or is less than fifteen million dollars (\$15,000,000). This fee will continue to be collected until the balance of the Post-Closure Trust Fund equals or exceeds twenty-five million dollars (\$25,000,000). ~~The fee schedule is 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 Computer and Electronic Waste Fund Distribution Program**

Except as otherwise provided by law, the following fee schedule for fees imposed under the provisions of Ark. Code Ann. § 8-6-612 et seq. shall be paid by Class 1 landfills, Class 3C landfills, and Class 4 landfills until June 30, 2021. The fee schedule is 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 the landfill;
- (2) Thirty Cents (30¢) for each compacted cubic yard of solid waste received at the landfill;  
or
- (3) One dollar (\$1.00) for each one (1) ton of solid waste received at the landfill.

**(D) ~~(C)~~ Fee Schedule for Private Industry Landfills**

The fee schedule imposed under the provisions of the Solid Waste Management and Recycling Fund Act, Ark. Code Ann. § 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.

**(E) ~~(D)~~ Scales and Weight Reporting Requirements**

- (1) (a) Pursuant to 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 shall install scales and weigh all solid waste received at the landfill.  
  
(b) This requirement may be satisfied ~~utilizing~~ using 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, 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.

(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) 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)~~(F) Fee Collection**

Fees Except as otherwise provided by law, fees imposed pursuant to the provisions of the Solid Waste Management and Recycling Fund Act, Ark. Code Ann. § 8-6-601 *et seq.*, or the Landfill Post-Closure Trust Fund Act, Ark. Code Ann. § 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.

### **~~(F)~~(G) Unreported Fees May Be Estimated**

When the information on the quarterly report is incomplete, 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 capita solid waste multipliers;
- (3) Waste amounts as determined by a Department audit;
- (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.

### **~~(G)~~(H) Quarterly Report Forms**

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)~~(I) 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~~ using 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 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~~ that 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~~ that 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~~ that 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~~ that the landfill closed or the landfill or transporter stopped operation and shall indicate on the report the final date ~~upon which~~ that 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 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 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~~ that 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~~ that 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, Ark. Code Ann. § 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. Failure to pay the required fees shall constitute grounds for legal action by the Department, ~~which~~ that may result in assessment of civil penalties as provided in the Arkansas Solid Waste Management Act, Ark. Code Ann. § 8-6-201 *et seq.*, or the revocation of a landfill permit, ~~issued pursuant to Ark. Code Ann. § 8-6-201 *et seq.*, or both.~~

**Reg.11.214      Audit**

**Department Audit** — At the discretion of the Department, an audit of 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, Ark. Code Ann. § 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, Ark. Code Ann. § 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: 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, Ark. Code Ann. § 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, waste tire processing facility, or waste tire disposal site to follow in order to be eligible for funding consideration by the Landfill Post-Closure Trust Fund Program. Disposal fees, collected in accordance with Ark. Code Ann. § 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 under the Landfill ~~Post-Closure~~ 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 Ark. Code Ann. § 8-6-1001 *et seq.*, and to Regulation 22.



(2) Any expenditures in excess of fifty thousand dollars (\$50,000) per site from the Landfill Post-Closure Trust Fund for corrective action to remedy 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 Ark. Code Ann. § 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 and may be used for closure of eligible waste tire processing facilities and waste tire disposal sites, ~~which is defined as any measures if~~ deemed necessary by the Director to prevent or abate contamination of the environment from any landfill ~~which that~~ that has been certified as properly closed by the Department or from eligible waste tire processing facilities and waste tire disposal sites.

#### **(B) Project Evaluation**

The Department shall evaluate for funding those projects ~~which that~~ that comply with the requirements and the intent of Ark. Code Ann. § 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, and may apply to eligible waste tire processing facilities and waste tire disposal sites.

**Reg.11.306 Eligible Projects and Activities**

**(A) Applicability**

(1) 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.

(2) The Post-Closure Trust Fund program also may apply to waste tire processing facilities and waste tire disposal sites owned and operated by Districts that lack sufficient funds to complete closure of the permitted waste tire processing or waste tire disposal site.

**(B) Funding Determination**

The fund shall be used if the Director determines that:

(1) **Closed Landfill** — A landfill, ~~which~~ that 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.

(3) **Waste tire processing facilities and disposal sites** – The District that owns and operates a waste tire processing facility or waste tire disposal site lacks sufficient funds to complete closure of the facility or site.

**(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 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~~ the 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 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~~ that 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 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 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 FUND DISTRIBUTION AND GRANTS PROGRAM**

### **Reg.11.401 Authority to Administer Solid Waste Management and Recycling Fund Programs**

Under 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 distributions and administrative expenditures from the fund.

### **Reg.11.402 Solid Waste Management and Recycling Fund Distribution Program**

#### **(A) General Information**

Act 1333 of 2013, as codified at Ark. Code Ann. § 8-6-602 *et seq.*, eliminated the Recycling Grant Program under the Solid Waste Management and Recycling Fund Act and provided for an alternate means of distributing these funds. ~~This act does not revise requirements for funds that were disbursed under the Recycling Grants Program prior to August 16, 2013.~~

#### **(B) Allocation**

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 and Recycling Fund, less up to twenty percent (20%) for administrative support for the Department, shall be allocated annually to each of the approved ~~Regional Solid Waste Management Districts (Districts)~~, ~~utilizing~~ using a combination of two (2) methods stated in subsections (b) and (c) of Ark. Code Ann. § 8-6-615. Fifty percent (50%) of set aside funds will be determined using the method in subsection (b), hereafter referred to as “Method A,” and fifty percent (50%) will be determined using the method in subsection (c), hereafter referred to as “Method B.” The total figures obtained from each method will be combined to arrive at each ~~Regional Solid Waste Management 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 *et seq.* 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 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 Regional Solid Waste Management District.

**Formula for Method A:**

- (1) Begin with fifty percent (50%) of the total remaining 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~~ where the county is located. (This determines the portion per county.)
- (5) Individual county portions are grouped and totaled by each Regional Solid Waste Management District to give the Regional Solid Waste Management District's allocation under Method A.

**Method B:**

The remaining fifty percent (50%) of set-aside funds in a distribution 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 ~~Regional Solid Waste Management~~ District's total population.
- (2) Divide by the state's most recent federal decennial census population. (This determines the ~~Regional Solid Waste Management~~ District's percentage.)
- (3) Multiply by the total remaining funds.
- (4) Equals each ~~Regional Solid Waste Management~~ District's allocation under Method B.

**(C) Disbursement of Funds**

The Department shall disburse the allocated funds to each ~~Regional Solid Waste Management~~ District no later than September 1 each year.

**Reg.11.403 — Recycling Grants Program**

Funds disbursed prior to August 16, 2013, are part of the Recycling Grants Program eliminated by Act 1333 of 2013 and are subject to requirements in place at the time of disbursement. These requirements are detailed in sections 11.404 through 11.409. Requirements of Reg.11.406(G) — Equipment Usage and Reg.11.407(C) — Right of Entry and Access will remain in effect until the

equipment or facility is disposed of (sold for scrap, recycled, or otherwise properly disposed), is sold (to an entity ineligible for recycling grant funds) or has reached the end of its usable life. All other requirements will remain in effect until they are met or the funds are returned to the Department for redistribution. Sections 11.404 through 11.409 do not apply to funds disbursed under the distribution program described in Reg. 11.402.

#### **Reg. 11.404 — Eligibility for Grant Funding**

Funds disbursed prior to August 16, 2013, are part of the Recycling Grants Program and are subject to the requirements in this section. Sections 11.404 through 11.409 do not apply to funds disbursed under the distribution program described in Reg. 11.402.

##### **(A) — Eligible Entities**

The following entities are considered eligible to receive grant funds:

(1) — **Cities and Counties:** Duly incorporated cities and towns and county governments of the State of Arkansas.

(2) — **Solid Waste Authorities:** Authorities incorporated under Ark. Code Ann. § 14-233-101 *et seq.*

(3) — **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.*

(4) — **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.*

(5) — **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.

(6) — **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.

##### **(B) — 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 Ark. Code Ann. § 8-6-601 *et seq.*, are eligible for grant funding:



**(1) — Solid Waste Planning**

Planning studies are eligible for funding if an applicant's proposed study meets the solid waste planning requirements of Ark. Code Ann. § 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.

**(2) — Recycling or Composting Equipment and Material Recovery Facilities (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. 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.

**(3) — 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 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.

**(4) — Transfer Stations**

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

**(5) Recycling Programs**

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

**(6) 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.~~

~~(7) **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.11.405 — Existing Equipment or Facilities**~~

~~Funds disbursed prior to August 16, 2013, are part of the Recycling Grants Program and are subject to the requirements in this section. Sections Reg. 11.404 through 11.409 do not apply to funds disbursed under the Recycling Fund Distribution Program described in Reg. 11.402.~~

~~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.11.406 — Responsibilities of District Board**~~

~~Funds disbursed prior to August 16, 2013, are part of the Recycling Grants Program and are subject to the requirements in this section. Sections Reg. 11.404 through 11.409 do not apply to funds disbursed under the Recycling Fund Distribution Program described in Reg. 11.402.~~

~~(A) **Regional Plan**~~

~~All projects approved by Regional Solid Waste Management Boards for Recycling Grant 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) **Administrative Allocation**~~

~~Each Board shall ensure that no more than the “Administrative Amount” that was disbursed in a grant round is used for administrative expenses. Each District was allocated twenty five percent (25%) of its annual grant funds for administrative purposes up to a statewide cap of five hundred thousand dollars (\$500,000). When twenty five percent (25%) of the funds available in a given grant round exceeded five hundred thousand dollars (\$500,000), the Department determined the administrative allocation for each District by utilizing the following formula to ensure the cap of five hundred thousand dollars (\$500,000) was 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.~~

~~**(C) 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.~~

~~**(D) 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.~~

~~**(E) Permits and Licenses**~~

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

**(F) — 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.~~

**(G) — Equipment Usage**

~~Boards shall ensure that facilities or equipment purchased with 2011 and 2012 Recycling Grant Round funds disbursed by the Boards be used no less than fifty percent (50%) of the time on recycling activities or other grant funded projects as specified in the grant application. For 2010 and prior Recycling Grant Round funds, facilities or equipment must be used exclusively for the project 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.11.407 — Reporting and Oversight Requirements**

~~Funds disbursed prior to August 16, 2013, are part of the Recycling Grants Program and are subject to the requirements in this section. Sections Reg. 11.404 through 11.409 do not apply to funds disbursed under the Recycling Fund Distribution Program described in Reg. 11.402.~~

**(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. An expense itemization is a listing of expenditures that includes expenditure date, item purchased, purchase price, and name of vendor.~~

~~(c) 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~~

~~(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 September 1.~~

**~~(C) — 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 office and shall produce these items upon request for on-site inspection by the Department.~~

**~~(D) — 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 in a newspaper of general circulation in the area affected describing the requested change 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 a Change Order submission to the Department. Proof of publication of the notice and copies of comments submitted shall be forwarded to the Department. Change Orders cannot be approved until these items are received by the Department.~~

**~~(E) — 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 Reg.11.408(A). 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 Recycling Fund Distribution.~~

**~~(F) — Forms~~**

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

### **(G) — 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 their expenditure. Such audits shall also identify project 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, 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.
- (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.

### **(H) — Limitations**

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

### **Reg.11.408 — Conditions of Grant**

Funds disbursed prior to August 16, 2013, are part of the Recycling Grants Program and are subject to the requirements in this section. Sections Reg. 11.404 through 11.409 do not apply to funds disbursed under the Recycling Fund Distribution Program described in Reg. 11.402.

~~(A) — Funds Forfeited~~

~~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 this regulation, the Department may order the grantee to reimburse the grant award plus interest 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 percent (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 percent (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 percent (33%) of the grant. Reimbursed moneys will become a part of the total fund available for all Districts in the next Recycling Fund Distribution.~~

~~(B) — Earned Interest on Grant Awards~~

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

**Reg.11.409 — Appeals of Grant Decisions**

Funds disbursed prior to August 16, 2013, are part of the Recycling Grants Program and are subject to the requirements in this section. Sections Reg. 11.404 through 11.409 do not apply to funds disbursed under the Recycling Fund Distribution Program described in Reg. 11.402.

~~(A) — Appeals~~

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

~~(1) A grantee;~~

~~(2) 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;~~

~~(3) A Regional Solid Waste Management District Board; or~~

~~(4) 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: COMPUTER AND ELECTRONIC EQUIPMENT RECYCLING GRANTS DISTRIBUTION FUND PROGRAM**

### **Reg.11.501 Authority to Administer Grants Distribution Fund 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 Computer and Electronic Equipment Recycling Grants Distribution Fund Program.

### **Reg.11.502 Short Title Computer and Electronic Equipment Recycling Distribution Fund Program**

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

#### **(A) General Information**

Act 1333 of 2013, as codified at Ark. Code Ann. § 8-6-602 et seq., eliminated the Computer and Electronic Equipment Recycling Grant Program. Act 1176 of 2015, as codified at Ark. Code Ann. § 8-6-616, provides for an alternate means of distributing these funds.

#### **(B) Allocation**

Funds collected under the provisions of Ark. Code Ann. § 8-6-612 and deposited into the State Treasury to the credit of the Solid Waste Management and Recycling Fund for support of an approved computer and electronic equipment recycling program shall be allocated annually, subject to appropriation and available funds, to each of the approved Districts, using a combination of the two (2) methods stated in Ark. Code Ann. § 8-6-616(b) and (c). Fifty percent (50%) of set aside funds will be determined using the method in subsection (b), hereafter referred to as “Method A,” and fifty percent (50%) will be determined using the method in subsection (c), hereafter referred to as “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 et seq. 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 by determining each county's share of the funds available within each Planning and Development District.

- (3) 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.
- (4) The county's determined proportional share shall be added to all other counties' shares within the same Regional Solid Waste Management District.

**Formula for Method A:**

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

**Method B:**

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

**Formula for Method B:**

- (1) Begin with each Regional Solid Waste Management District's total population.
- (2) Divide this number by the state's most recent federal decennial census population. (This determines the Regional Solid Waste Management District's percentage.)
- (3) Multiply this number by the total remaining funds.
- (4) The final number equals each Regional Solid Waste Management District's allocation under Method B.

**(C) Disbursement of Funds**

The Department shall disburse the allocated funds to each Regional Solid Waste Management District no later than October 15 each year.

**(D) Combined Funds**

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

**Reg.11.503 Applicant Eligibility**

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 Reg.11.503 Responsibilities of District the 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~~ the 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 the Computer and Electronic Equipment Recycling Grants Program, 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)~~(B) Permits and Licenses**

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

**~~(F)~~(C) Equipment and Facility Purchasing**

Each Board shall conform to, and ensure that all applicants projects 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.

**(D) Audit Requirements**

Each Board shall procure an annual financial audit pursuant to Ark. Code Ann. § 8-6-704(d).

- (1) The audits shall be conducted following each District's fiscal year end.
- (2) The audits shall, at the minimum, define recycling 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. The audits also shall identify project costs or contractual costs separate from administrative costs.

- (3) The 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 Board.
- (5) Copies of each 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 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 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.11.505 Reg.11.504      Grant-Distribution Funds: 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 the Solid Waste Management and Recycling Fund Act, 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~~ 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~~ are specifically attributable to an approved a 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~~ District or local facility for management of computer and electronic equipment collection, processing, or transportation.

**(F) Administrative Costs**

Ten percent (10%) of the distribution funds for the funding year as calculated by the Department using a combination of the two (2) methods stated in Reg.11.502. For a year in which the District did not receive funds to cover administrative cost of an approved computer and electronic equipment recycling program, ten percent (10%) of the funds currently on hand for that year.

**(G) Additional Recycling Program**

Funds received by a District may be redirected for use on other recycling projects operated by the District only if the Board certifies that the funds are not needed for the approved computer and electronic equipment recycling program.

**~~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~~ Reg.11.505 Existing Equipment or Facilities**

~~Grant assistance Funds 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 Reg.11.506 Reporting and Oversight Requirements Right of Entry and Access~~**

**~~(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)(A) Pursuant to Ark. Code Ann. § 8-6-214, 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 distribution-funded facility and the right of access to all records pertaining to a grant distribution-funded project or activity.~~

~~(2)(B) Boards shall maintain copies of invoices, purchase orders, checks, or other supporting documents for grant distribution 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 Reg.11.511(A). 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 Reg.11.507      Conditions of Grant Earned Interest on Distribution Funds**

**~~(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 this Regulation, the Department may order the grantee to reimburse the grant award plus interest moneys earned from the holding of grant funds by the 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 percent (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 percent (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 percent (33%) of the grant. 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 distribution 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 District to monitor the collection of earned interest and direct interest earned moneys to the specific project supported by the grant award distribution funds 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.11.601 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~~ that can be given effect without the invalid provision or application, and to this end provisions of this regulation are declared to be severable.

### **Reg.11.602 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.