

MINUTE ORDER NO. 89-15

#11 Promulgation
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WHEREAS, the Arkansas General Assembly of 1989 promulgated the Solid Waste Management and Recycling Fund Act (Act 934 of 1989).

WHEREAS, the Department of Pollution Control and Ecology was given the authority under Act 934 of 1989 to develop rules and regulations necessary to implement or effectuate the purposes and intent of Act 934.

Therefore, the Commission hereby approves the attached Part I of Regulation No. 11, Landfill Disposal Fees and Solid Waste Planning Grants.

BY ORDER OF THE COMMISSION ON POLLUTION CONTROL AND ECOLOGY

BY: [Signature]
CHAIRMAN

ATTEST:

[Signature]
RANDALL MATHIS
DIRECTOR

APPROVED: [Signature]
BILL CLINTON, GOVERNOR
STATE OF ARKANSAS

COMMISSIONERS

[Signature]
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[Signature]
CHAIRMAN

SUBMITTED BY: Mark Witherspoon DATE PASSED: 9-22-89

ARKANSAS DEPARTMENT OF POLLUTION CONTROL AND ECOLOGY

REGULATION # 11

REGULATION FOR THE FEE SYSTEM FOR LANDFILL DISPOSAL
AND
FOR THE SOLID WASTE PLANNING AND RECYCLING GRANT PROGRAM

September 22, 1989

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AND
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PART II. SOLID WASTE PLANNING AND RECYCLING GRANT PROGRAM

(Reserved)

GENERAL PROVISIONS

SECTION 1. PURPOSE

It is the purpose of this regulation to develop and implement a system for the assessment and collection of fees for landfill disposal in the state of Arkansas, to develop and implement a solid waste planning and recycling grant program, and to encourage the recycling of wastes and thus conserve landfill capacity, pursuant to the provisions of the Solid Waste Management and Recycling Fund Act (Act 934 of 1989). Fees collected in accordance with Act 934 will be used to fund a solid waste management planning and recycling fund which will provide grants to qualified local governments for integrated waste management planning and construction. The fund will also be used, in accordance with Act 934, for increased waste management compliance and enforcement activities by the Department of Pollution Control and Ecology. This regulation encourages the recycling of wastes by applying fees to only those wastes which are received at the landfill.

SECTION 2. SHORT TITLE

This regulation shall be known and may be cited by the short title: Department Regulation #11, Landfill Disposal Fees and Solid Waste Planning Grants.

SECTION 3. 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:

Commission - the Arkansas Commission on Pollution Control and Ecology.

Compacted Cubic Yard of Waste - a volume equal to a 3' x 3' x 3' cube of solid waste which has received any amount of mechanical compaction within the delivery vehicle or is delivered in a baled form.

Department - the Arkansas Department of Pollution Control and Ecology.

Director - the Director of the Arkansas Department of Pollution Control and Ecology.

PART I. ASSESSMENT AND COLLECTION OF FEES

SECTION 1. APPLICABILITY

1.1 Landfill fees established by Part I of this regulation shall be applicable to all publicly or privately operated and permitted landfills receiving solid waste under the provisions of the Arkansas Solid Waste Management Act, Arkansas Code Annotated (A.C.A.) 8-6-201 et seq., unless the landfill permittee can demonstrate both of the following:

- (1) That the expense of constructing and operating the landfill is borne solely by the industry or industries which use the landfill for disposal of wastes; and
- (2) That the permitted landfill is used only for the disposal of wastes specifically outlined in the operating permit as being generated by that industry or business.

1.2 Assessment of landfill fees under Part I of this regulation shall not commence until October 1, 1989.

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

SECTION 2. FEE SCHEDULE AND ASSESSMENT OF FEES

2.1 The following fee schedule shall be effective, based on the following methods of measure, for each permitted landfill:

- (1) Fifteen cents (15c) for each uncompacted cubic yard of solid waste received at the landfill; and
- (2) Thirty cents (30c) for each compacted cubic yard of solid waste received at the landfill; or
- (3) One dollar (\$1.00) for each ton of solid waste received at the landfill.

2.2 Fees imposed pursuant to the provisions of Act 934 of 1989, the Solid Waste Management and Recycling Fund Act, shall be assessed as follows:

(a) The initial assessment for permitted landfills shall be based on average monthly waste flows. These waste flows shall be reported by the landfill permittee on a pre-implementation survey conducted by the Department.

(b) Following the initial assessment, solid waste disposal fees will be assessed quarterly based on the total amount of

Department if the permittee wishes to contest the assessment or assessment adjustments.

3.2 Each landfill permittee shall submit to the Department on or before January 15, April 15, July 15, and October 15 of each year a quarterly report which accurately states the total weight or volume of solid waste received at the landfill during the previous quarter. A form, prepared and furnished by the Department, will be made available for use by the permittee for this purpose and included with the quarterly assessment notice. The permittee's failure to submit the required quarterly report on or before the due date may result in the Department's estimating the next quarterly assessment in accordance with Part I, Section 2.3, of this regulation.

3.3 For record keeping and reporting purposes, commercial waste transportation vehicles and trailers, in lieu of weight based systems, shall be presumed to be full to vehicle capacity upon entering the landfill to deposit contents, unless otherwise demonstrable.

3.4 Any records, reports, or information obtained under this regulation and any permits, permit applications, and related documentation shall be available to the public for inspection and copying.

3.5 (a) 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.

(b) 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 owner or operator of the facility 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.

SECTION 4. PAYMENT OF FEES

4.1 On or before January 1, April 1, July 1, and October 1, of each year, each landfill permittee shall pay to the Department the full fee amount as stated in the assessment notice which was received during the month preceding each due date. Payment shall be made by check or money order payable

SECTION 7. TERMINATION OF ASSESSMENT

7.1 In the event a permitted landfill permanently ceases receiving waste, the permittee shall immediately submit a final quarterly report for the quarter during which the landfill closed and shall indicate on the report the final date upon which the landfill ceased receiving waste.

7.2 Upon the Department's receipt of the final quarterly report, one of the following shall apply:

(a) If the final quarterly report is received by the Department before the next quarterly assessment notice has been prepared by the Department for mailing, the Department shall adjust the quarterly assessment to reflect the amount of waste actually received before the landfill ceased receiving waste.

(b) If the final quarterly report is received by the Department after the next quarterly assessment notice has been mailed, but before the payment due date specified in Part I, Section 4.1 of this regulation, the Department shall issue an amended assessment notice and mail it to the permittee by certified mail, return receipt requested. Payment of the full amount stated in the amended assessment notice shall be due on or before twenty (20) days after the permittee's receipt of such notice or on or before the payment due date specified in Part I, Section 4.1, whichever is later, and late payment charges as provided in Part I, Section 5, shall then begin to accrue.

(c) If the final quarterly report is received by the Department after the payment due date specified in Part I, Section 4.1, the permittee may seek a refund from the Arkansas State Claims Commission of any overpayment made as a result of the landfill's having ceased receiving waste, less any late payment charges due.

SECTION 8. REVIEW OF ASSESSMENT OR ADJUSTMENT

8.1 Any landfill permittee who disagrees with the amount of an assessment or adjustment may file a petition for review with the Director within twenty (20) days following the receipt of the assessment notice containing the contested assessment or adjustment, or by the payment due date specified in Part I, Section 4.1 or Section 7.2 (b), of this regulation, whichever date is later. The petition must contain:

(1) A statement of the amount of the assessment and the adjustment the permittee admits is due and payable;

(c) Notwithstanding the preceding, the filing of a petition for review which is deemed by the Director to be frivolous and completely without merit shall not operate as a stay of the timely payment procedures and late payment charges. If the Director determines that the petition for review is frivolous and completely without merit, the notice of the Director's decision, as described in Part I, Section 8.2, of this regulation shall so state.

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

SECTION 9. PENALTIES

A landfill permittee failing or refusing to pay the disposal fee in a timely manner shall be subject to late payment procedures and charges as established in Part I, Section 5, of this regulation. Refusal to pay the required fees shall constitute grounds for legal action by the Department, which may result in assessment of civil penalties as provided in the Arkansas Solid Waste Management Act, A.C.A. 8-6-201 et seq., or revocation of the solid waste permit, or both.

SECTION 10. AUDIT

At the discretion of the Department, an audit of the landfill permittee's records and/or the operation of the landfill may be performed to assure compliance with this regulation. An audit may include, but is not limited to, an unannounced on-site visit monitoring the operation and operating procedures of the landfill or the Department's requiring submission of additional records by the permittee for review by the Department, or both.

SECTION 11. APPEALS

The assessment of disposal fees or the credit or addition of fees shall constitute a specific condition imposed on the landfill permit. If any landfill permittee disagrees with the final decision of the Director following a petition to review an assessment, credit, or addition of fees, the permittee may appeal such permit decision by requesting Commission review in accordance with Department Regulation #8, Administrative Procedures and the Arkansas Solid Waste Management Act, A.C.A. 8-6-201 et seq.



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ARKANSAS DEPARTMENT OF POLLUTION
CONTROL & ECOLOGY

LOCATION - SUBJECT REQUEST FOR

MINUTE ORDER NO. 89-14

RULEMAKING
PAGE 1 OF 1

Terry Horton, on behalf of the Arkansas Wildlife Federation, has requested that rulemaking be initiated to amend or repeal the changes to Regulation No. 2 adopted at the July Commission meeting. The request is hereby denied.

COMMISSIONERS

(Absent)

Justin A. Canale
CHAIRMAN

SUBMITTED BY: STEVE WEAVER DATE PASSED: 9-22-89

Landfill- all landfills permitted under the Arkansas Solid Waste Management Act, Arkansas Code Annotated (A.C.A.) 8-6-201 et seq., except those permitted landfills where a private industry bears the expense of operating and maintaining the landfill solely for the disposal of wastes generated by the industry.

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

Recycling - to separate or divert an item or items from the solid waste stream for the purposes of processing it or causing it to be processed into a material product, including the production of compost, in order to provide for the final disposition of the material product in a manner other than landfilling or incineration.

Solid Waste - all putrescible and nonputrescible wastes in solid or semisolid form, including, but not limited to, yard or food waste, waste glass, waste metals, waste plastics, waste papers, waste paperboard and all other solid and semisolid wastes resulting from industrial, commercial, agricultural, community, and residential activities.

Solid Waste Disposal Permit - a permit issued by the State of Arkansas under provisions of the Arkansas Solid Waste Management Act, A.C.A. 8-6-201 et seq., for the construction and operation of a landfill waste disposal facility.

Solid Waste Management - the management of, 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.

Uncompacted Cubic Yard of Waste - a volume equal to a 3' x 3' x 3' cube of solid waste which has received no amount of mechanical compaction.

waste received and reported by the landfill permittee in the quarterly report.

(c) Newly permitted landfills which begin accepting waste after the promulgation of this regulation will be assessed during the first quarter of operation or fraction thereof by utilizing projected waste volumes as defined in the operating permit. Subsequent assessment will be in accordance with Part I, Section 2.2 (b), of this regulation.

2.3 When the information on the pre-implementation survey or the quarterly report is incomplete, or when the quarterly report is not submitted on or before the due date, or when the Department has determined through an audit that a permittee has underreported or overreported the amount of waste received by two percent (2%) or more, the Department may estimate the assessment based on one or more of the following sources of information:

(1) Projected waste volumes as defined in the operating permit;

(2) Waste volumes as determined by applying per capita municipal solid waste multipliers, which are used by the Environmental Protection Agency, as representative for the landfill's service area population;

(3) Waste volumes as determined by a Department audit as provided in Part I, Section 10, of this regulation; or

(4) Waste volumes as reflected in previously submitted quarterly reports or the pre-implementation survey.

2.4 The Department shall send notification of assessment by certified mail to each landfill permittee on December 1, March 1, June 1, and September 1 of each year for the calendar quarters ending the last day of December, March, June, and September, respectively. Failure to receive this notice does not relieve the permittee from liability for the landfill disposal fee.

SECTION 3. RECORD KEEPING AND REPORTING

3.1 Each landfill permittee should keep adequate records in order to facilitate the reporting process and to assure an accurate assessment. These records should be made on a daily basis and include the geographic source of waste, the kind of waste received, and the weight or volume (compacted and uncompacted) of the waste. At the minimum, monthly subtotals should be made of the weight or volume of solid waste received during that time period to arrive at a quarterly total. These records must be made available to the

to the Department for deposit in the State Treasury to the credit of the Solid Waste Management and Recycling Fund.

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

(1) The enclosed payment is for the full amount owed as stated in the notice of assessment and no further Departmental action is required for collection; and

(2) The payment is received by the Department or is postmarked by the United States Postal Service on or before the final day on which the payment is due, or the permittee presents a receipt indicating the payment was mailed by registered or certified mail on or before the final day on which the payment is due.

SECTION 5. LATE PAYMENT CHARGE AND NOTICE

5.1 A late payment charge of ten percent (10%) of the quarterly assessment will be added to the amount of fee actually due if full payment is not received within fifteen (15) days after the due date. Five percent (5%) will be added to the amount of fee actually due for each additional month or fraction thereof during which such failure continues past the first fifteen (15) days, not to exceed twenty-five percent (25%) in the aggregate.

5.2 If the Department determines that any landfill permittee has not made a timely payment of the fee, it will send the permittee a written notice of the amount of the deficiency plus the late payment charge within fifteen (15) days of determining such deficiency. Failure of the Department to send such notice in a timely manner shall not operate as a waiver of any deficiency or late payment charge.

SECTION 6. ADJUSTMENTS

If, upon review of the landfill permittee's completed quarterly report, the Department determines there has been an overassessment or underassessment of the landfill disposal fee, and the permittee has made the assessed payment, the discrepancy will be reflected as a credit or charge on a separate line on the next quarterly assessment notice. Any underpayments or overpayments from any previous quarterly assessment found as the result of an audit conducted under the provisions of Part I, Section 10, of this regulation and any unpaid late payment charges will also be reflected on the next quarterly assessment notice.

(2) A statement of the amount of the assessment and the adjustment the permittee contests; and

(3) Documentation of the amount of waste received during the contested payment period including, but not limited to, daily gate receipts showing the geographic source of waste, the kind of waste received, and the weight or volume of the waste.

8.2 The Director shall review the petition and make a final determination of the amount of the assessment, credit, or charge. The permittee shall be served with notice of the decision of the Director. Such notice shall contain:

(1) The name, business address, and permit identification number of the permittee;

(2) The Director's decision and date of decision; and

(3) A statement that the permittee 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 by Part III, Section 4, of Department Regulation #8, Administrative Procedures.

8.3 If the permittee files a petition for review, the amount of the assessment and the adjustment the permittee admits is due and payable shall be paid by the permittee in full by the date the petition for review is due. A late payment charge of ten percent (10%) of such admitted amount will be added to the fee if the full amount is not received within fifteen (15) days after the due date. Five percent (5%) will be added to the fee for each additional month or fraction thereof during which such failure continues past the first fifteen (15) days, not to exceed twenty-five percent (25%) in the aggregate.

8.4 (a) Upon the filing of a petition for review, the timely payment procedures and late payment charges contained in Part I, Section 5, of this regulation are automatically stayed for the amount of the fee which is contested. Payment of the full amount of the fee as determined by the Director following a petition for review shall be due within thirty (30) days of issuance of the Director's decision, and late payment charges shall then begin to accrue on that amount.

(b) The provisions of 8.4 (a) shall not apply if Commission review under Part III, Section 4, of Department Regulation #8, Administrative Procedures, and a request for a stay under Part VIII, Section 1, of that regulation have been properly requested and the stay has been granted.

SECTION 12. FUND ESTABLISHMENT

The disposal fees collected pursuant to Act 934 of 1989 shall be deposited into the State Treasury and credited to the Solid Waste Management and Recycling Fund.

SECTION 13. SEVERABILITY

If any provisions of this regulation or the application thereof to any person or circumstances are held invalid, such invalidity shall not affect other provisions or applications of this regulation which can be given effect with the invalid provision or application, and to this end provisions of this regulation are declared to be severable.

SECTION 14. EFFECTIVE DATE

This regulation, as amended, shall be in full force and effect upon the date of adoption by the Commission.

PART II. SOLID WASTE PLANNING AND RECYCLING GRANT PROGRAM

(Reserved)

Promulgated this 22nd day of September, 1989, BY ORDER OF THE COMMISSION ON POLLUTION CONTROL AND ECOLOGY.

By: _____
Joseph A. Pascale, Chairman

Attest:

Randall Mathis, Director