

## **Exhibit A, Mark-up Draft**

# Proposed Rulemaking

## Title

**Promulgated by:**  
**Arkansas Pollution Control and Ecology Commission**

**Title 8. Environmental Law**

**Chapter I. Arkansas Pollution Control and Ecology Commission, Department  
of Energy and Environment**

**Subchapter E. Land Resources — Solid Waste**

**Part 60. Solid Waste Management Rules**

**Subpart 13. Closure and Post-Closure Care**

**8 CAR § 60-1301. Closure criteria.**

**(a) Landfill cover design.**

(1) This section applies to all Class 1 landfills that accepted wastes after October 9, 1991, and to all other Class 1, Class 3, and Class 4 landfill units in operation after May 7, 1995.

(2) Owners or operators of all landfill units must install a final cover system that is designed to minimize infiltration and erosion.

(3) The final cover system must be comprised of an erosion layer underlain by an infiltration layer as follows:

(A)(i) The infiltration layer must be comprised of a minimum of eighteen inches (18") of earthen material that has a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present, or a permeability no greater than  $1 \times 10^{-5}$  cm/sec, whichever is less.

(ii) To meet this requirement, a flexible membrane liner shall be incorporated into the final cover design where the bottom liner design includes a

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composite liner; and

(B)(i) The erosion layer must consist of a minimum six inches (6") of earthen material that is capable of sustaining native plant growth.

(ii) The final cover system requirements specified above are in addition to any daily or intermediate cover required by this part, or any drainage or gas collection layers necessary for proper performance of the cover system.

(b) **Alternative final cover design.** The Director of the Division of Environmental Quality may approve an alternative final cover design that includes:

(1) An infiltration layer that achieves an equivalent reduction in infiltration as the infiltration layer specified in subdivision (a)(3)(A) of this section; and

(2) An erosion layer that provides equivalent protection from wind and water erosion as the erosion layer specified in subdivision (a)(3)(B) of this section.

(c) **Closure plans.**

(1) The owner or operator must prepare a written closure plan that describes the steps necessary to close all landfill units at any point during its active life in accordance with the cover design requirements in subsection (a) or (b) of this section, as applicable.

(2) The closure plan, at a minimum, must include the following information:

(A) A description of the final cover, designed in accordance with subsection (a) or (b) of this section and the methods and procedures to be used to install the cover;

(B) An estimate of the largest area of the unit ever requiring a final cover at any time during the active life;

(C) An estimate of the maximum inventory of wastes ever on site over the active life of the landfill facility; and

(D) A schedule for completing all activities necessary to satisfy the closure criteria in this section.

(d) **Closure plan approval.** The owner or operator of all Class 1, Class 3, and Class 4 landfills shall:

(1) Prepare a closure plan meeting the requirements of this subpart;

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- (2) Place the closure plan in the operating record; and
- (3) Submit the closure plan to the Division of Environmental Quality for approval with the application for a new landfill permit or no later than:
  - (A) The compliance date specified in 8 CAR § 60-104(d) for all Class 1 landfills; or
  - (B) May 7, 1995, for all Class 3 and Class 4 landfills.

(e) **Notification of closed landfill or completed unit.** The landfill owner or operator shall notify the division when the landfill or a landfill unit stops receiving wastes for disposal and place the notice in the operating record.

(f) **Timely initiation of closure required.** The owner or operator must begin closure activities of each landfill unit no later than thirty (30) days after:

- (1) The date on which the unit receives the known final receipt of wastes;
- (2) When the unit has reached its final permitted elevations; or
- (3)(A) If the unit has remaining capacity and there is a reasonable likelihood that the unit will receive additional wastes, no later than one (1) year after the most recent receipt of wastes.

(B) Extensions beyond the one-year deadline for beginning closure may be granted by the director if the owner or operator demonstrates that the unit has the capacity to receive additional wastes and the owner or operator has taken and will continue to take all steps necessary to prevent threats to human health and the environment from the unclosed unit.

(g) **Timely completion of closure required.**

(1) The owner or operator of all landfill units must complete closure activities of each unit in accordance with the approved closure plan within one hundred eighty (180) days following the beginning of closure as specified in subsection (f) of this section.

(2) Extensions of the closure period may be granted by the director if the owner or operator demonstrates that closure will, of necessity, take longer than one hundred eighty (180) days and he or she has taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed unit.

**(h) Proper grading required.**

(1) The entire site shall be graded prior to installation of the cover system so that storm water does not run onto the landfill and so that there are no depressions in the landfill where water can pond.

(2) Erosion control measures shall be implemented as necessary to protect the final cover and prevent off-site sedimentation.

**(i) Site survey.**

(1) Upon completion of the final cover, the site shall be surveyed by a professional land surveyor or professional engineer registered in the State of Arkansas to document the:

- (A) Final elevations of the landfill;
- (B) Location of all surface improvements such as monitoring points;
- (C) Site boundaries; and
- (D) Areas that received wastes.

(2) Other permanent features such as benchmarks, access roads, buildings, gas monitoring, collection and processing systems, leachate collection, removal and storage systems, and any run-on and run-off control systems should also be shown on the final survey.

**(j) Recording of land use restriction.**

(1) Following closure of all units, the owner or operator shall record a notation on the deed to the landfill facility property, or some other instrument that is normally examined during the title search.

(2) A copy of the file marked "deed notation" shall be furnished to the division and a copy shall be placed in the operating record.

(3)(A) The notation on the deed must in perpetuity notify any potential purchaser of the property:

- (i) Of the past use of the land as a landfill facility;
- (ii) That future land uses shall comply with Arkansas Pollution Control and Ecology Commission rules and shall not disturb the integrity of the final cover system, the liner system, or any other components of the containment or monitoring

system;

(iii) That in accordance with Arkansas Code § 8-6-1404, it shall be unlawful for any person, partnership, company, corporation, or other entity to build, erect, or construct any house, home, or building to be used for a residential purpose;

(iv) That the land has been used for the disposal of asbestos containing waste material; and

(v) That the survey plot and record of the location and quantity of asbestos containing waste disposed of within the disposal site required in Asbestos Abatement Rule, 20 CAR pt. 860, have been filed with the division.

(B) The owner or operator may request permission from the director to remove the notation from the deed if all wastes are removed from the facility.

**(k) Land use restriction applicability.**

(1) Restrictions on land uses shall apply only to the area or areas used for the actual disposal of solid waste.

(2) The residential land use restriction shall not apply to residential structures that were in existence and in use as of August 13, 1993, or to landfills that stopped accepting waste for disposal prior to August 13, 1968.

**(l) Certification of closure.**

(1) Following closure of each unit, the owner or operator must furnish the director a certification, signed by a professional engineer registered in the State of Arkansas, verifying that:

(A) Closure has been completed in accordance with the closure plan; and

(B) That this certification has been placed in the operating record.

(2) A final closure report shall accompany the certification that includes:

(A) The final survey in accordance with subsection (i) of this section;

(B) Quality control and quality assurance data documenting proper construction and installation of the cover system;

(C) A copy of the deed notation required under subsection (j) of this section; and

(D) Other information that the division may deem necessary to making

the certification described in subsection (h) of this section.

**(m) Division certification of closure.**

(1) Closure must be timely and approved in writing by the division if the facility is to be eligible for inclusion under the Landfill Post-Closure Trust Fund.

(2) Upon written request, the division will inspect the site for conformance to closure requirements.

(3) Division written certification of closure begins the post-closure period.

**8 CAR § 60-1302. Post-closure care requirements.**

**(a) Applicability.** The standards of this section shall apply as follows:

(1) Class 1 landfill units that accepted waste for disposal after the compliance dates specified in 8 CAR § 60-104(d) shall meet all of the requirements of this section;

(2) Class 1 landfills that stopped accepting waste for disposal prior to the compliance dates specified in 8 CAR § 60-104(d) and completed installation of the cover system prior to October 9, 1994, shall meet the requirements of subsections (b) and (c) of this section, subdivision (d)(3) of this section, and subsection (f) of this section; and

(3) Class 3 and Class 4 landfills that stop accepting waste after May 7, 1995, shall meet all of the requirements of this section.

**(b) Post-closure care requirements.**

(1) Following closure of each landfill unit, the owner or operator must conduct post-closure care.

(2) Post-closure care shall be conducted for the time periods specified in subsection (c) of this section, and shall consist of at least the following:

(A)(i) Maintaining the integrity and effectiveness of any final cover, including making repairs to the cover as necessary to correct the effects of settlement, subsidence, erosion, leachate seepage, or other events, and preventing run-on and run-off from eroding or otherwise damaging the final cover and maintaining cover vegetation.

(ii) Vegetation shall be periodically mowed to control the growth of undesirable vegetation that may interfere with the integrity of the landfill cover or

establishment of a perennial vegetative cover and to facilitate inspection of the landfill cover.

(iii) All cracked, eroded, and uneven areas must be filled and reseeded and ditches maintained;

(B)(i) Maintaining and operating the leachate collection system in accordance with the requirements in 8 CAR § 60-429.

(ii) The Director of the Division of Environmental Quality may allow the owner or operator to stop managing leachate if the owner or operator demonstrates that leachate no longer poses a threat to human health and the environment;

(C) Monitoring the ground water in accordance with the requirements of Subpart 12 of this part and maintaining the ground water monitoring system, if applicable;

(D) Maintaining and operating the gas monitoring system in accordance with the requirements of 8 CAR § 60-415;

(E) Maintaining and operating the gas collection and processing system if applicable; and

(F) Maintaining and operating the surface water control systems in accordance with 8 CAR §§ 60-419 and 60-427, or until such time as permanent erosion control measures have been established at the site.

(c)(1) **Post-closure care period.** Except as provided in subdivision (c)(2) of this section, post-closure care shall be conducted for:

(A) Thirty (30) years for Class 1 landfill units that accepted waste for disposal after the compliance dates specified in 8 CAR § 60-104(d);

(B) Two (2) years for Class 1 landfills that stopped accepting waste for disposal prior to the compliance dates specified in 8 CAR § 60-104(d) and completed installation of the cover system prior to October 9, 1994; and

(C) Two (2) years for Class 3 and Class 4 landfills.

(2) The length of the post-closure care period may be:

(A) Decreased by the director if the owner or operator demonstrates that the reduced period is sufficient to protect human health and the environment and this

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demonstration is approved by the director; or

(B) Increased by the director if the director determines that the lengthened period is necessary to protect human health and the environment.

(d) **Post-closure care plan.** The owner or operator of all landfills must prepare a written post-closure plan that includes, at a minimum, the following information:

(1) A description of the monitoring and maintenance activities required in subsection (b) of this section for each landfill unit, and the frequency at which these activities will be performed;

(2) Name, address, and telephone number of the person or office to contact about the facility during the post-closure period; and

(3) A description of the planned uses of the property during the post-closure period.

(e) **Post-closure care plan approval.** The owner or operator of all Class 1, Class 3, and Class 4 landfills shall:

(1) Prepare a post-closure care plan that meets the requirements of this section;

(2) Place the post-closure care plan in the operating record; and

(3) Submit the post-closure care plan to the Division of Environmental Quality for approval with the application for a new landfill permit, but no later than:

(A) For Class 1 landfills, the compliance dates specified in 8 CAR § 60-104(d) or by the initial receipt of waste, whichever is later; or

(B) For Class 3 and Class 4 landfills, prior to the completion of closure activities described in this subpart.

(f) **Certification of post-closure completion.** Following completion of the post-closure care period for each landfill unit, the owner or operator shall provide a written certification to the director, signed by an independent registered professional engineer, verifying that post-closure care has been completed in accordance with the post-closure care plan and shall place the certification in the operating record.

(g) **Phasing of closure and post-closure care.**

(1) Landfill sites that consist of multiple landfill units may, with division

approval, begin the post-closure care period on completed landfill units while other landfill units at the site remain active.

(2) To qualify for phasing, landfill units must be discrete areas of land that do not share common liner or cover systems.

(3) At sites where active disposal operations continue, landfill units certified by the division as in the post-closure care period shall not be eligible for inclusion in the Landfill Post-Closure Trust Fund until such time as all active contiguous landfill units are closed and certified by the division.

**(h) Post-closure land uses.**

(1) Post-closure use of the property shall not disturb the integrity of the final cover, liner or liners, or any other components of the containment system, or the function of the collection, control, processing, and monitoring systems unless necessary to comply with the requirements in this part.

(2) The director may approve any other disturbance if the owner or operator demonstrates that disturbance of the final cover, liner, or other component of the containment system, including any removal of waste, will not increase the potential threat to human health or the environment.

**8 CAR § 60-1303. Closure of open dumps and unpermitted facilities.**

(a) **Applicability.** The closure of open dumps shall meet the same criteria specified in 8 CAR § 60-1301 unless otherwise specified by the Division of Environmental Quality.

(b) **Deed notation.** After division approval of closure of an open dump, the owner or operator shall cause to be recorded at the county courthouse a property use description stating that the property was used as a dump site.

**8 CAR § 60-1304. Landfill post-closure cleanup restrictions.**

(a) The Landfill Post-Closure Trust Fund ~~may shall~~ be used for landfill post-closure corrective action in accordance with Arkansas Code § 8-6-1001 et seq., for corrective actions deemed necessary by the Director of the Division of Environmental Quality to

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prevent or abate contamination of the environment from ~~a formerly permitted any~~ landfill which has been certified as properly closed by the Division of Environmental Quality.

(b) Any expenditures in excess of ~~fifty thousand dollars (\$50,000)~~two million dollars (\$2,000,000) per site from the fund for corrective action for remedy to environmental impacts of closed disposal sites previously operated as a landfill pursuant to state law, will be prioritized and authorized by the Arkansas Pollution Control and Ecology Commission, by adoption of a minute order, after addressing corrective actions needed to address environmental impacts from permitted landfills closed properly.