

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas  
2 86th General Assembly  
3 Regular Session, 2007  
4

# A Bill

HOUSE BILL 2317

5 By: Representative Reep  
6  
7

## For An Act To Be Entitled

9 AN ACT TO AMEND THE LANDFILL POST-CLOSURE TRUST  
10 FUND ACT TO AUTHORIZE THE DIRECTOR OF THE  
11 ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY TO  
12 EXPEND FUNDS FROM THE LANDFILL POST-CLOSURE TRUST  
13 FUND AT A DISPOSAL SITE; TO CLARIFY WHEN FUNDS  
14 SPENT MUST BE RECOVERED; AND FOR OTHER PURPOSES.  
15

## Subtitle

16 AN ACT TO AUTHORIZE THE DIRECTOR OF THE  
17 ARKANSAS DEPARTMENT OF ENVIRONMENTAL  
18 QUALITY TO EXPEND FUNDS FROM THE  
19 LANDFILL POST-CLOSURE TRUST FUND AT A  
20 DISPOSAL SITE AND TO CLARIFY WHEN FUNDS  
21 SPENT FROM THE FUND MUST BE RECOVERED.  
22  
23  
24

25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
26

27 SECTION 1. Arkansas Code § 8-6-1001 is amended to read as follows:  
28 8-6-1001. Definitions.

29 As used in this subchapter, ~~unless the context otherwise requires:~~

30 (1) "Commission" means the Arkansas Pollution Control and  
31 Ecology Commission;

32 (2) "Department" means the Arkansas Department of Environmental  
33 Quality;

34 (3) "Director" means the Director of the Arkansas Department of  
35 Environmental Quality;

36 (4) "Disposal site" means a place at which solid waste is



1 dumped, abandoned, or accepted or disposed of for final disposition by  
2 incineration, landfilling, composting, or any other method;

3 ~~(4)~~(5) "Landfill" means all landfills permitted under the  
4 Arkansas Solid Waste Management Act, § 8-6-201 et seq., except those  
5 landfills where a private industry bears the expense of operating and  
6 maintaining the landfill solely for the disposal of wastes generated by the  
7 industry or wastes of a similar kind or character;

8 ~~(5)~~(6) "Permittee" means any person holding a solid waste  
9 disposal permit as provided in the Arkansas Solid Waste Management Act, § 8-  
10 6-201 et seq.;

11 ~~(6)~~(7) "Post-closure corrective action" means any measures  
12 deemed necessary by the director to prevent or abate contamination of the  
13 environment from any closed landfill which has been certified as properly  
14 closed by the department or a closed disposal site previously operated as a  
15 landfill pursuant to state law;

16 ~~(7)~~(8) "Solid waste" means any garbage or refuse, sludge from a  
17 wastewater treatment plant, water supply treatment plant, or air pollution  
18 control facility, and other discarded material, including solid, liquid,  
19 semisolid, or contained gaseous material resulting from industrial,  
20 commercial, mining, and agricultural operations, and from community  
21 activities, but does not include solid or dissolved materials in domestic  
22 sewage or solid or dissolved materials in irrigation return flows or  
23 industrial discharges that are point sources subject to permit under 33  
24 U.S.C. § 1342 or source, special nuclear, or by-product material as defined  
25 by the Atomic Energy Act of 1954, 68 Stat. 923;

26 ~~(8)~~(9) "Solid waste disposal permit" means a permit issued by  
27 the State of Arkansas under the provisions of the Arkansas Solid Waste  
28 Management Act, § 8-6-201 et seq. for the construction and operation of a  
29 landfill waste disposal facility; and

30 ~~(9)~~(10) "Transporter" or "solid waste transporter" means any  
31 individual, corporation, company, firm, partnership, association, trust,  
32 local solid waste authority, institution, county, city, town, or municipal  
33 authority or trust, venture, or other legal entity transporting solid waste  
34 within the state that is to be disposed of outside of the state.

35  
36 SECTION 2. Arkansas Code § 8-6-1002 is amended to read as follows:

1 8-6-1002. Creation.

2 (a)(1) There is established on the books of the Treasurer of State,  
 3 the Auditor of State, and the Chief Fiscal Officer of the State a trust fund  
 4 to be known as the "Landfill Post-Closure Trust Fund".

5 (2) In addition to all moneys appropriated by the General  
 6 Assembly to the fund, there shall be deposited in the fund all landfill  
 7 disposal fees collected pursuant to this subchapter and any moneys received  
 8 by the state as a gift or donation to the fund or any federal moneys  
 9 designated to enter the fund and all interest earned upon moneys deposited in  
 10 the fund.

11 (3)(A) Moneys received into the fund may also be used by the  
 12 Arkansas Department of Environmental Quality for administrative purposes at a  
 13 level not to exceed three hundred thousand dollars (\$300,000) annually with  
 14 an annual escalator not to exceed three percent (3%).

15 (B) In the event the total amount in the fund equals or  
 16 exceeds twenty-five million dollars (\$25,000,000), no additional moneys shall  
 17 be collected pursuant to this subchapter until the total amount in the fund  
 18 equals or is less than fifteen million dollars (\$15,000,000) at which time  
 19 the collection of moneys shall resume.

20 (b)(1) The Landfill Post-Closure Trust Fund shall be administered by  
 21 the department, which shall authorize funding and administrative expenditures  
 22 from the fund according to the provisions of this subchapter.

23 (2)(A) The fund shall be administered by the department and  
 24 shall be used by the department for landfill post-closure corrective action.

25 (B) The fund shall be used only if the director determines  
 26 that:

27 (i) A landfill, which is no longer receiving waste,  
 28 regardless of when it ceased operating, or a disposal site operated as a  
 29 landfill pursuant to state law and closed prior to May 7, 1995, that is  
 30 causing, or has the potential to cause, groundwater contamination or ~~is~~  
 31 ~~causing~~ other contamination that is a hazard to public health or endangers  
 32 the environment; and

33 (ii) The owner or operator of the landfill or the  
 34 disposal site has expended at least ten thousand dollars (\$10,000) toward  
 35 corrective action, unless:

36 (a) ~~the~~ The owner or operator cannot be

1 located;

2 (b) After reasonable notice, the owner or  
 3 operator fails to take corrective action as approved by the department; or

4 (c) the The director determines an emergency  
 5 exists necessitating immediate corrective action.

6 (c) The fund shall not be used to compensate third parties for damages  
 7 to property caused by the contamination.

8 (d) For the purposes of this subchapter only, closed areas or  
 9 operational phases contiguous to any permitted landfill which is receiving  
 10 solid waste when the director determines that corrective action is necessary  
 11 are not eligible for funding as contemplated by this subchapter.

12 (e)~~(1)~~ An owner or operator of a permitted landfill shall establish  
 13 and at all times maintain financial assurance for the post-closure  
 14 maintenance of the landfill. At a minimum, each owner or operator shall  
 15 provide no less than twenty percent (20%) of estimated post-closure  
 16 maintenance costs through a financial mechanism readily negotiable by the  
 17 department to cash funds, for example, a letter of credit, surety bond,  
 18 irrevocable trust, insurance, or other mechanism approved by the department,  
 19 upon default by the owner and operator of post-closure obligations.

20 ~~(2)(f)~~ If, ~~after proper closure of a landfill,~~ the department  
 21 reasonably determines that the owner or operator of a landfill or a disposal  
 22 site cannot be located or cannot otherwise satisfy, in whole or part, post-  
 23 closure maintenance obligations, the department is authorized to expend the  
 24 necessary funds from the Landfill Post-Closure Trust Fund to satisfy the  
 25 requirements of state and federal law and to prevent or abate releases to the  
 26 environment.

27 ~~(3)(g)~~ If the department is required to expend funds from the Landfill  
 28 Post-Closure Trust Fund due to the failure of an owner or operator of a  
 29 landfill or a disposal site to meet the requirements of this ~~subsection~~  
 30 section, the department shall pursue collection and recovery of the funds ~~by~~  
 31 ~~issuing an administrative order notifying the owner or operator by certified~~  
 32 ~~mail at the last known address of the owner or operator of the action taken~~  
 33 ~~by the department and the amount of funds expended from the Landfill Post-~~  
 34 ~~Closure Trust Fund and that the administrative order may be appealed in~~  
 35 ~~accordance with the department's regulations~~ in any court of competent  
 36 jurisdiction in the county in which the funds were expended.