

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT (EXCERPT)
Act 451 of 1994

324.11525 Perpetual care fund.

Sec. 11525. (1) The owner or operator of a landfill shall establish and maintain a perpetual care fund for a period of 30 years after final closure of the landfill as specified in this section. A perpetual care fund may be established as a trust, an escrow account, or a perpetual care fund bond and may be used to demonstrate financial assurance for type II landfills under section 11523 and section 11523a.

(2) Except as otherwise provided in this section, the owner or operator of a landfill shall increase the amount of his or her perpetual care fund 75 cents for each ton or portion of a ton or 25 cents for each cubic yard or portion of a cubic yard of solid waste that is disposed of in the landfill after June 17, 1990 until the fund reaches the maximum required fund amount. As of July 1, 1996, the maximum required fund amount is \$1,156,000.00. This amount shall be annually adjusted for inflation and rounded to the nearest thousand. The department shall adjust the maximum required fund amount for inflation annually by multiplying the amount by an inflation factor derived from the most recent bureau of reclamation composite index published by the United States department of commerce or another index more representative of the costs of closure and postclosure monitoring and maintenance as determined appropriate by the department. Increases to the amount of a perpetual care fund required under this subsection shall be calculated based on solid waste disposed of in the landfill as of the end of the state fiscal year and shall be made within 30 days after the end of each state fiscal year.

(3) The owner or operator of a landfill that is used for the disposal of the following materials shall increase the amount of the perpetual care fund 7.5 cents for each ton or cubic yard or portion of a ton or cubic yard of the following materials that are disposed of in the landfill after June 17, 1990:

(a) Coal ash, wood ash, or cement kiln dust that is disposed of in a landfill that is used only for the disposal of coal ash, wood ash, or cement kiln dust, or a combination of these materials, or that is permanently segregated in a landfill.

(b) Wastewater treatment sludge or sediments from wood pulp or paper producing industries that is disposed of in a landfill that is used only for the disposal of wastewater treatment sludge and sediments from wood pulp or paper producing industries, or that is permanently segregated in a landfill.

(c) Foundry sand or other material that is approved by the department for use as daily cover at an operating landfill, that is disposed of in a landfill that is used only for the disposal of foundry sand, or that is permanently segregated in a landfill.

(4) The owner or operator of a landfill that is used only for the disposal of a mixture of 2 or more of the materials described in subsection (3)(a) to (c) or in which a mixture of 2 or more of these materials are permanently segregated shall increase the amount of the perpetual care fund 7.5 cents for each ton or cubic yard or portion of a ton or cubic yard of these materials that are disposed of in the landfill after July 1, 1996.

(5) The amount of a perpetual care fund is not required to be increased for materials that are regulated under part 631.

(6) The owner or operator of a landfill may increase the amount of the perpetual care fund above the amount otherwise required by this section at his or her discretion.

(7) The custodian of a perpetual care fund trust or escrow account shall be a bank or other financial institution that has the authority to act as a custodian and whose account operations are regulated and examined by a federal or state agency. Until the perpetual care fund trust or escrow account reaches the maximum required fund amount, the custodian of a perpetual care fund trust or escrow account shall credit any interest and earnings of the perpetual care fund trust or escrow account to the perpetual care fund trust or escrow account. After the perpetual care fund trust or escrow account reaches the maximum required fund amount, any interest and earnings shall be distributed as directed by the owner or operator. The agreement governing the operation of the perpetual care fund trust or escrow account shall be executed on a form consistent with this part and provided by the department. The custodian may be compensated from the fund for reasonable fees and costs incurred for his or her responsibilities as custodian. The custodian of a perpetual care fund trust or escrow account shall make an accounting to the department within 30 days following the close of each state fiscal year.

(8) The custodian of a perpetual care fund shall not disburse any funds to the owner or operator of a landfill for the purposes of the perpetual care fund except upon the prior written approval of the department. However, the custodian shall ensure the filing of all required tax returns for which the perpetual care fund is liable and shall disburse funds to pay lawfully due taxes owed by the perpetual care fund without permission of the department. The owner or operator of the landfill shall provide notice of requests for disbursement and denials and approvals to the custodian of the perpetual care fund. Requests for disbursement from a perpetual

care fund shall be submitted not more frequently than semiannually. The owner or operator of a landfill may request disbursement of funds from a perpetual care fund whenever the amount of money in the fund exceeds the maximum required fund amount. The department shall approve the disbursement if the total amount of financial assurance maintained meets the requirements of sections 11523 and 11523a. As used in this subsection, "maximum required fund amount" means:

(a) For those landfills containing only those materials specified in subsection (3), an amount equal to 1/2 of the maximum required fund amount specified in subsection (2).

(b) For all other landfills, an amount equal to the maximum required fund amount specified in subsection (2).

(9) If the owner or operator of a landfill refuses or fails to conduct closure, postclosure monitoring and maintenance, or corrective action as necessary to protect the public health, safety, or welfare, or the environment or fails to request the disbursement of money from a perpetual care fund when necessary to protect the public health, safety, or welfare, or the environment, or fails to pay the solid waste management program administration fee or the surcharge required under section 11525a, then the department may draw on the perpetual care fund and may expend the money for closure, postclosure monitoring and maintenance, and corrective action, as necessary. The department may draw on a perpetual care fund for administrative costs associated with actions taken under this subsection.

(10) Upon approval by the department of a request to terminate financial assurance for a landfill under section 11525b, any money in the perpetual care fund for that landfill shall be disbursed by the custodian to the owner of the landfill unless a contract between the owner and the operator of the landfill provides otherwise.

(11) The owner of a landfill shall provide notice to the custodian of the perpetual care fund for that landfill if there is a change of ownership of the landfill. The custodian shall maintain records of ownership of a landfill during the period of existence of the perpetual care fund.

(12) This section does not relieve an owner or operator of a landfill of any liability that he or she may have under this part or as otherwise provided by law.

(13) This section does not create a cause of action at law or in equity against a custodian of a perpetual care fund other than for errors or omissions related to investments, accountings, disbursements, filings of required tax returns, and maintenance of records required by this section or the applicable perpetual care fund.

(14) As used in this section, "custodian" means the trustee or escrow agent of any of the following:

(a) A perpetual care fund that is established as a trust or escrow account.

(b) A standby trust or escrow account for a perpetual care fund bond.

(15) A perpetual care fund that is established as a trust or escrow account may be replaced with a perpetual care fund that is established as a perpetual care fund bond that complies with this section. Upon such replacement, the director shall authorize the custodian of the trust or escrow account to disburse the money in the trust or escrow account to the owner of the landfill unless a contract between the owner and operator of the landfill specifies otherwise.

(16) An owner or operator of a landfill who uses a perpetual care fund bond to satisfy the requirements of this section shall also establish a standby trust or escrow account. All payments made under the terms of the perpetual care fund bond shall be deposited by the custodian directly into the standby trust or escrow account in accordance with instructions from the director. The standby trust or escrow account must meet the requirements for a trust or escrow account established as a perpetual care fund under subsection (1), except that until the standby trust or escrow account is funded pursuant to the requirements of this subsection, the following are not required:

(a) Payments into the standby trust or escrow account as specified in subsection (2).

(b) Annual accounting valuations as required in subsection (7).

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 359, Imd. Eff. July 1, 1996;—Am. 1996, Act 506, Imd. Eff. Jan. 9, 1997;—Am. 2003, Act 153, Eff. Oct. 1, 2003;—Am. 2013, Act 250, Imd. Eff. Dec. 26, 2013.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act