

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

324.11525d Landfill care fund; applicability; liability under part 115; cause of action.

Sec. 11525d.

(1) This section applies only to landfills subject to section 11523(1)(b).

(2) The owner or operator of a landfill shall establish and maintain a landfill care fund as specified in this section. A landfill care fund may be established as a trust fund, an escrow account, or a landfill care fund bond and may be used to demonstrate financial assurance for landfills under section 11523a.

(3) The owner or operator of a landfill may increase the amount of the landfill care fund above the amount otherwise required by this section at the owner's or operator's discretion.

(4) The custodian of a landfill care fund trust fund 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. Any interest and earnings on the fund shall be distributed as directed by the owner or operator of the landfill. The custodian may be compensated from the fund for reasonable fees and costs incurred for the custodian's responsibilities as custodian. The custodian of a landfill care fund trust fund or escrow account shall make an accounting to the department within 30 days following the close of each state fiscal year.

(5) The custodian of a landfill care fund trust fund or escrow account shall not disburse any funds to the owner or operator of a landfill for the purposes of the landfill care fund and the issuer or holder of a landfill care fund bond shall not reduce the amount of the bond except upon the prior written approval of the department. However, the custodian shall ensure the filing of all required tax returns for which the landfill care fund is liable and shall disburse funds to pay taxes owed by the landfill care fund, without permission of the department. The owner or operator of the landfill shall provide notice of requests for disbursement from a landfill care fund trust fund or escrow account or reduction of a landfill care fund bond and the department's denials and approvals to the custodian of the landfill care fund trust fund or escrow account or the issuer or holder of the landfill care fund bond. Requests for disbursement from a landfill care fund trust fund or escrow account or a reduction of a landfill care fund bond shall be submitted not more frequently than semiannually. The owner or operator of a landfill may request disbursement of funds from a landfill care fund trust fund or escrow account or a reduction of a landfill care fund bond. The department shall approve the request if the total amount of financial assurance maintained meets the requirements of section 11523a.

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

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

(8) The owner of a landfill shall provide notice to the custodian of the landfill 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 landfill care fund.

(9) This section does not relieve an owner or operator of a landfill of any liability the owner or operator may have under part 115 or as otherwise provided by law.

(10) This section does not create a cause of action at law or in equity against a custodian of a landfill 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 landfill care fund.

(11) A perpetual care fund and any other bond that is utilized by a landfill to demonstrate financial assurance under part 115 and that is in existence on the effective date of the amendatory act that added this section is considered a landfill care fund under this section for purposes of demonstrating compliance with section 11523a until the issuance of a new license for the landfill on or after the date 2 years after the effective date of the amendatory act that added this section. A landfill owner or operator may replace a perpetual care fund or a bond with a landfill care fund that complies with this section at any time without a license modification and without the issuance of a new license. Upon such replacement, the department shall authorize the custodian of a perpetual care fund trust fund or escrow account to disburse the money in the trust fund or escrow account to the owner of the landfill unless an agreement between the owner and operator of the landfill specifies otherwise.

(12) An owner or operator of a landfill that uses a landfill care fund bond to satisfy the requirements of this

section shall also establish a standby trust fund or escrow account. All payments made under the terms of the landfill care fund bond shall be deposited by the custodian directly into the standby trust fund or escrow account in compliance with instructions from the department. The standby trust fund or escrow account shall meet the requirements for a trust fund or escrow account established as a landfill care fund under subsection (2), except that, until the standby trust fund or escrow account is funded pursuant to the requirements of this subsection, annual accountings of the standby trust fund or escrow account are not required.

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

- (a) A landfill care fund that is established as a trust fund or escrow account.
- (b) A standby trust fund or escrow account for a landfill care fund bond.

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Popular Name: Act 451

Popular Name: NREPA

Popular Name: Solid Waste Act