

SENATE BILL No. 404

June 4, 2013, Introduced by Senators BRANDENBURG, SCHUITMAKER, ROBERTSON,
PAPPAGEORGE and MARLEAU and referred to the Committee on Finance.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 11504, 11523, 11523a, 11525, and 11525b (MCL
324.11504, 324.11523, 324.11523a, 324.11525, and 324.11525b),
sections 11504 and 11523 as amended and section 11523a as added by
1996 PA 359, section 11525 as amended by 2003 PA 153, and section
11525b as added by 1996 PA 358.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 11504. (1) "Health officer" means a full-time
2 administrative officer of a certified city, county, or district
3 department of health.

4 (2) "Inert material" means a substance that will not
5 decompose, dissolve, or in any other way form a contaminated
6 leachate upon contact with water, or other liquids determined by

1 the department as likely to be found at the disposal area,
2 percolating through the substance.

3 (3) "Insurance" means insurance that conforms to the
4 requirements of 40 ~~C.F.R.~~ **CFR** 258.74(d) provided by an insurer who
5 has a certificate of authority from the ~~Michigan commissioner~~
6 **DIRECTOR** of insurance **AND FINANCIAL SERVICES** to sell this line of
7 coverage. An applicant for an operating license shall submit
8 evidence of the required coverage by submitting both of the
9 following to the department:

10 (a) A certificate of insurance that uses wording approved by
11 the department.

12 (b) A certified true and complete copy of the insurance
13 policy.

14 (4) "Landfill" means a disposal area that is a sanitary
15 landfill.

16 (5) "Letter of credit" means an irrevocable letter of credit
17 that complies with 40 ~~C.F.R.~~ **CFR** 258.74(c).

18 (6) "Medical waste" means that term as it is defined in ~~part~~
19 ~~138-SECTION 13805~~ of the public health code, ~~Act No. 378 of the~~
20 ~~Public Acts of 1978, being sections 333.13801 to 333.13831 of the~~
21 ~~Michigan Compiled Laws.1978 PA 368, MCL 333.13805.~~

22 (7) "Municipal solid waste incinerator" means an incinerator
23 that is owned or operated by any person, and meets all of the
24 following requirements:

25 (a) The incinerator receives solid waste from off site and
26 burns only household waste from single and multiple dwellings,
27 hotels, motels, and other residential sources, or this household

1 waste together with solid waste from commercial, institutional,
2 municipal, county, or industrial sources that, if disposed of,
3 would not be required to be placed in a disposal facility licensed
4 under part 111.

5 (b) The incinerator has established contractual requirements
6 or other notification or inspection procedures sufficient to ~~assure~~
7 **ENSURE** that the incinerator receives and burns only waste referred
8 to in subdivision (a).

9 (c) The incinerator meets the requirements of this part and
10 the rules promulgated under this part.

11 (d) The incinerator is not an industrial furnace as defined in
12 40 C.F.R.—**CFR** 260.10.

13 (e) The incinerator is not an incinerator that receives and
14 burns only medical waste or only waste produced at 1 or more
15 hospitals.

16 (8) "Municipal solid waste incinerator ash" means the
17 substances remaining after combustion in a municipal solid waste
18 incinerator.

19 (9) "Perpetual care fund" means a perpetual care fund provided
20 for in section 11525.

21 (10) **"PERPETUAL CARE FUND BOND" MEANS A SURETY BOND, AN**
22 **IRREVOCABLE LETTER OF CREDIT, OR A COMBINATION OF THESE INSTRUMENTS**
23 **IN FAVOR OF THE DEPARTMENT BY WHICH A PERPETUAL CARE FUND IS**
24 **ESTABLISHED.**

25 (11) ~~(10)~~—"Trust fund" means a trust fund held by a trustee
26 which has the authority to act as a trustee and whose trust
27 operations are regulated and examined by a federal or state agency.

1 A trust fund shall comply with section 11523b.

2 Sec. 11523. (1) The department shall not issue a license to
3 operate a disposal area unless the applicant has filed, as a part
4 of the application for a license, evidence of the following
5 financial assurance:

6 (a) Financial assurance established for a type III landfill or
7 a preexisting unit at a type II landfill and until April 9, 1997,
8 existing and new type II landfills shall be in the form of a bond
9 in an amount equal to \$20,000.00 per acre of licensed landfill
10 within the solid waste boundary. However, the amount of the bond
11 shall not be less than \$20,000.00 or more than \$1,000,000.00. Each
12 bond shall provide assurance for the maintenance of the finished
13 landfill site for a period of 30 years after the landfill or any
14 approved portion is completed. In addition to this bond, a
15 perpetual care fund shall be maintained under section 11525.

16 (b) Financial assurance for a type II landfill ~~which~~**THAT** is
17 an existing unit or a new unit shall be in an amount equal to the
18 cost, in current dollars, of hiring a third party, to conduct
19 closure, postclosure maintenance and monitoring, and if necessary,
20 corrective action. An application for a type II landfill ~~which~~**THAT**
21 is an existing unit or new unit shall demonstrate financial
22 assurance in accordance with section 11523a.

23 (c) Financial assurance established for a solid waste transfer
24 facility, incinerator, processing plant, other solid waste handling
25 or disposal facility, or a combination of these utilized in the
26 disposal of solid waste shall be in the form of a bond in an amount
27 equal to 1/4 of 1% of the construction cost of the facility, but

1 shall not be less than \$4,000.00, and shall be continued in effect
2 for a period of 2 years after the disposal area is closed.

3 (2) The owner or operator of a landfill may post a cash bond
4 with the department instead of other bonding mechanisms to fulfill
5 the remaining financial assurance requirements of this section. ~~A~~
6 ~~minimum amount equal to the remaining financial assurance~~
7 ~~requirement divided by the term of the operating license shall be~~
8 ~~paid to the department prior to licensure. Subsequent payments to~~
9 ~~the department shall be made annually in an amount equal to the~~
10 ~~remaining financial assurance requirement divided by the number of~~
11 ~~years remaining until the operating license expires, until the~~
12 ~~required amount is attained.~~ An owner or operator of a disposal
13 area who elects to post cash as ~~A~~ bond shall accrue interest on
14 that bond at the annual rate of 6%, to be accrued quarterly, except
15 that the interest rate payable to an owner or operator shall not
16 exceed the rate of interest accrued on the state common cash fund
17 for the quarter in which an accrual is determined. Interest shall
18 be paid to the owner or operator upon release of the bond by the
19 department. Any interest greater than 6% shall be deposited in the
20 state treasury to the credit of the general fund and shall be
21 appropriated to the department to be used by the department for
22 administration of this part.

23 (3) An owner or operator of a disposal area that is not a
24 landfill who has accomplished closure in a manner approved by the
25 department and in accordance with this part and the rules
26 promulgated under this part, may request a 50% reduction in the
27 bond during the 2-year period after closure. At the end of the 2-

1 year period, the owner or operator may request that the department
2 terminate the bond. The department shall approve termination of the
3 bond within 60 days ~~of such~~ **AFTER THE** request ~~provided~~ **IS MADE IF**
4 all waste and waste residues have been removed from the disposal
5 area and ~~that~~ closure is certified.

6 (4) The department may utilize a bond required under this
7 section for the closure and postclosure monitoring and maintenance
8 of a disposal area if the owner or operator fails to comply with
9 the closure and postclosure monitoring and maintenance requirements
10 of this part and the rules promulgated under this part to the
11 extent necessary to correct such violations. ~~following issuance of~~
12 **AT LEAST 7 DAYS BEFORE UTILIZING THE BOND, THE DEPARTMENT SHALL**
13 **ISSUE** a notice of violation or other order ~~by the department which~~
14 **THAT** alleges violation of this part ~~and~~ **OR** rules promulgated under
15 this part and ~~provides 7 days' notice and~~ **PROVIDE AN** opportunity
16 for **A** hearing. **THIS SUBSECTION DOES NOT APPLY TO A PERPETUAL CARE**
17 **FUND BOND.**

18 (5) Under the terms of a surety bond, letter of credit, ~~or~~
19 insurance policy, **OR PERPETUAL CARE FUND BOND**, the issuing
20 institution shall notify both the department and the owner or
21 operator at least 120 days before the expiration date or any
22 cancellation of the bond. If the owner or operator does not extend
23 the effective date of the bond, or establish alternate financial
24 assurance within 90 days after receipt of an expiration or
25 cancellation notice ~~by~~ **FROM** the issuing institution, the department
26 may draw on the bond.

27 (6) The department shall not issue a construction permit or a

1 new license to operate a disposal area to an applicant that is the
2 subject of a bankruptcy action commenced under title 11 of the
3 United States Code, 11 ~~U.S.C.~~ **USC** 101 to ~~1330,~~ **1532**, or any other
4 predecessor or successor statute.

5 (7) A person required under this section to provide financial
6 assurance in the form of a bond for a landfill may request a
7 reduction in the bond based upon the ~~value~~ **AMOUNT** of the perpetual
8 care fund established under section 11525. A person requesting a
9 bond reduction shall do so on a form consistent with this part ~~as~~
10 ~~prepared~~ **AND PROVIDED** by the department. The department shall grant
11 this request unless there are sufficient grounds for denial and
12 those reasons are provided in writing. The department shall grant
13 or deny a request for a reduction of the bond within 60 days after
14 the request is made. If the department grants a request for a
15 reduced bond, the department shall require a bond in an amount such
16 that for type III landfills, and type II landfills ~~which~~ **THAT** are
17 preexisting units, the amount of ~~money in the~~ perpetual care fund
18 plus the amount of the reduced bond equals the maximum amount
19 required in a perpetual care fund in section 11525(2).

20 (8) The department shall release the bond required by this
21 section if the amount ~~in~~ **OF** the perpetual care fund exceeds the
22 amount of the financial assurance required under subsection (1).

23 (9) Prior to closure of a landfill, if money is disbursed from
24 the perpetual care fund, then the department may require a
25 corresponding increase in the amount of bonding required to be
26 provided if necessary to meet the ~~requirement~~ **REQUIREMENTS** of this
27 section.

1 (10) IF AN OWNER OR OPERATOR OF A DISPOSAL AREA FULFILLS THE
2 FINANCIAL ASSURANCE REQUIREMENTS OF THIS PART BY OBTAINING A BOND,
3 INCLUDING, BUT NOT LIMITED TO, A PERPETUAL CARE FUND BOND, AND THE
4 SURETY COMPANY, INSURER, TRUSTEE, BANK, OR FINANCIAL OR OTHER
5 INSTITUTION THAT ISSUED OR HOLDS THE BOND BECOMES THE SUBJECT OF A
6 BANKRUPTCY ACTION OR HAS ITS AUTHORITY TO ISSUE OR HOLD THE BOND OR
7 TO ACT AS AN ESCROW AGENT OR TRUSTEE SUSPENDED OR REVOKED, THE
8 OWNER OR OPERATOR SHALL, WITHIN 60 DAYS AFTER RECEIVING NOTICE OF
9 THAT EVENT, ESTABLISH ALTERNATE FINANCIAL ASSURANCE UNDER THIS
10 PART.

11 Sec. 11523a. (1) Effective April 9, 1997, the department shall
12 not issue a license to operate a type II landfill unless the
13 applicant demonstrates that for any new unit or existing unit at
14 the facility, the combination of the perpetual care fund
15 established under section 11525, bonds **REQUIRED UNDER SECTION**
16 **11523**, and the financial capability of the applicant as evidenced
17 by a financial test, provides financial assurance in an amount not
18 less than that required by this section. An applicant may utilize a
19 financial test for an amount up to, but not exceeding 70% of the
20 closure, postclosure, and corrective action cost estimate.

21 (2) An applicant may demonstrate compliance with this section
22 by submitting evidence, with a form consistent with this part ~~as~~
23 ~~prepared~~ **AND PROVIDED** by the department, that the applicant has
24 financial assurance for any existing unit or new unit in an amount
25 equal to or greater than the sum of the following standardized
26 costs:

27 (a) A standard closure cost estimate. The standard closure

1 cost estimate shall be based upon the sum of the following costs in
2 1996 dollars, adjusted for inflation and partial closures, if any,
3 as specified in subsections (4) and (5):

4 (i) A base cost of \$20,000.00 per acre to construct a compacted
5 soil final cover using on-site material.

6 (ii) A supplemental cost of \$20,000.00 per acre, to install a
7 synthetic cover liner, if required by rules under this part.

8 (iii) A supplemental cost of \$5,000.00 per acre, if low
9 permeability soil must be transported from off-site to construct
10 the final cover or if a bentonite geocomposite liner is used ~~in~~
11 ~~lieu~~ **INSTEAD** of low permeability soil in a composite cover.

12 (iv) A supplemental cost of \$5,000.00 per acre, to construct a
13 passive gas collection system in the final cover, unless an active
14 gas collection system has been installed at the facility.

15 (b) A standard postclosure cost estimate. The standard
16 postclosure cost estimate shall be based upon the sum of the
17 following costs, adjusted for inflation as specified in section
18 11525(2):

19 (i) A final cover maintenance cost of \$200.00 per acre per
20 year.

21 (ii) A leachate disposal cost of \$100.00 per acre per year.

22 (iii) A leachate transportation cost of \$1,000.00 per acre per
23 year, if leachate is required to be transported off-site for
24 treatment.

25 (iv) A groundwater monitoring cost of \$1,000.00 per monitoring
26 well per year.

27 (v) A gas monitoring cost of \$100.00 per monitoring point per

1 year, for monitoring points used to detect landfill gas at or
2 beyond the facility property boundary.

3 (c) The corrective action cost estimate, if any. The
4 corrective action cost estimate shall be a detailed written
5 estimate, in current dollars, of the cost of hiring a third party
6 to perform corrective action in accordance with this part.

7 (3) ~~In lieu~~ **INSTEAD** of using some or all of the standardized
8 costs specified in subsection (2), ~~of this section,~~ an applicant
9 may estimate the site specific costs of closure or postclosure
10 maintenance and monitoring. A site specific cost estimate shall be
11 a written estimate, in current dollars, of the cost of hiring a
12 third party to perform the activity. ~~A third party is a party who~~
13 ~~is neither a~~ **FOR THE PURPOSES OF THIS SUBSECTION, A** parent
14 corporation or a subsidiary of the owner or operator **IS NOT A THIRD**
15 **PARTY**. Site specific cost estimates shall be based on the
16 following:

17 (a) For closure, the cost to close the largest area of the
18 landfill ever requiring a final cover at any time during the active
19 life, when the extent and manner of its operation would make
20 closure the most expensive, in accordance with the approved closure
21 plan. The closure cost estimate may not incorporate any salvage
22 value that may be realized by the sale of structures, land,
23 equipment, or other assets associated with the facility at the time
24 of final closure.

25 (b) For postclosure, the cost to conduct postclosure
26 maintenance and monitoring in accordance with the approved
27 postclosure plan for the entire postclosure period.

1 (4) The owner or operator of a landfill subject to this
2 section shall, during the active life of the landfill and during
3 the postclosure care period, annually adjust the financial
4 assurance cost estimates and corresponding amount of financial
5 assurance for inflation. Cost estimates shall be adjusted for
6 inflation by multiplying the cost estimate by an inflation factor
7 derived from the most recent **UNITED STATES DEPARTMENT OF THE**
8 **INTERIOR**, bureau of reclamation composite index published by the
9 United States department of commerce or another index that is more
10 representative of the costs of closure and postclosure monitoring
11 and maintenance as determined appropriate by the department. The
12 owner or operator shall document the adjustment on a form
13 consistent with this part as prepared by the department and shall
14 place ~~such~~**THE** documentation in the operating record of the
15 facility.

16 (5) The owner or operator of a landfill subject to this
17 section may request that the department authorize a reduction in
18 the approved cost estimates and corresponding financial assurance
19 for the landfill by submitting a form consistent with this part ~~as~~
20 ~~prepared~~**AND PROVIDED** by the department certifying completion of
21 any of the following activities:

22 (a) Partial closure of the landfill. The current closure cost
23 estimate for partially closed portions of a landfill unit may be
24 reduced by 80%, if the maximum waste slope on the unclosed portions
25 of the unit does not exceed 25%. The percentage of the cost
26 estimate reduction approved by the department for the partially
27 closed portion shall be reduced 1% for every 1% increase in the

1 slope of waste over 25% in the active portion. An owner or operator
2 requesting a reduction in financial assurance for partial closure
3 shall enclose with the request a certification under the seal of a
4 licensed professional engineer that certifies both of the
5 following:

6 (i) ~~A-THAT A~~ portion of the licensed landfill unit has reached
7 final grades and has had a final cover installed in compliance with
8 the approved closure plan and rules promulgated under this part.

9 (ii) The maximum slope of waste in the active portion of the
10 landfill unit at the time of partial closure.

11 (b) Final closure of the landfill. An owner or operator
12 requesting a cost estimate reduction for final closure shall submit
13 a certification under the seal of a licensed professional engineer
14 that closure of that landfill unit has been fully completed in
15 accordance with the approved closure plan for the landfill. Within
16 60 days of receiving a certification under this subsection, the
17 department shall perform a consistency review of the submitted
18 certification ~~. If that review is approved, the department shall~~

19 **AND DO 1 OF THE FOLLOWING:**

20 (i) **APPROVE THE CERTIFICATION AND** notify the owner or operator
21 that he or she may reduce the closure **COST** estimate ~~by 100%. The~~
22 ~~department shall provide within 60 days~~ **TO ZERO.**

23 (ii) **DISAPPROVE THE CERTIFICATION AND PROVIDE** the owner or
24 operator with a detailed written statement of the reasons why the
25 department has determined that closure certification has not been
26 conducted in accordance with this part, the rules promulgated under
27 this part, or an approved closure plan.

1 (c) Postclosure maintenance and monitoring. The owner or
2 operator of a landfill unit who has completed final closure of the
3 unit may request a reduction in the postclosure cost estimate and
4 corresponding financial assurance for 1 year or more of postclosure
5 maintenance and monitoring if the landfill has been monitored and
6 maintained in accordance with the approved postclosure plan. The
7 department shall, within 60 days of receiving a cost estimate
8 reduction request grant written approval or issue a written denial
9 stating the reason for denial. The department shall grant the
10 request and the owner or operator may reduce the postclosure cost
11 estimate to reflect the number of years remaining in the
12 postclosure period unless the department ~~provided in writing~~ **DENIES**
13 **THE REQUEST AND THE WRITTEN DENIAL STATES** that the owner or
14 operator has not performed the specific tasks consistent with this
15 part, rules promulgated under this part, and an approved plan.

16 (6) The owner or operator of a landfill subject to this
17 section may request a reduction in the amount of one or more of the
18 financial assurance mechanisms in place. If the combined value of
19 the remaining financial assurance mechanisms equals the **AMOUNT**
20 ~~required amount under section 11523a,~~ **UNDER THIS SECTION**, the
21 department shall approve the request.

22 (7) An owner or operator requesting that the department
23 approve a financial assurance reduction ~~for performance of the~~
24 ~~activities specified in subsection (5) or due to excess financial~~
25 ~~assurance specified in subsection~~ **UNDER SUBSECTION (5) OR (6)** shall
26 do so on a form consistent with this part ~~as prepared~~ **AND PROVIDED**
27 by the department. The department shall grant written approval or,

1 within 60 days of receiving a financial assurance reduction
2 request, issue a written denial stating the reason for the denial.

3 Sec. 11525. (1) The owner or operator of a landfill shall
4 establish and maintain a perpetual care fund for a period of 30
5 years after final closure of the landfill as specified in this
6 section. A perpetual care fund may be established as a trust, ~~or an~~
7 escrow account, **OR A PERPETUAL CARE FUND BOND** and may be used to
8 demonstrate financial assurance for type II landfills under section
9 11523 and section 11523a.

10 (2) Except as otherwise provided in this section, the owner or
11 operator of a landfill shall ~~deposit into~~ **INCREASE THE AMOUNT OF**
12 his or her perpetual care fund 75 cents for each ton or portion of
13 a ton or 25 cents for each cubic yard or portion of a cubic yard of
14 solid waste that is disposed of in the landfill after June 17, 1990
15 ~~. The deposits shall be made not less than semiannually until the~~
16 fund reaches the maximum required fund amount. As of July 1, 1996,
17 the maximum required fund amount is \$1,156,000.00. This amount
18 shall be annually adjusted for inflation and rounded to the nearest
19 thousand. The department shall adjust the maximum required fund
20 amount for inflation annually by multiplying the amount by an
21 inflation factor derived from the most recent bureau of reclamation
22 composite index published by the United States department of
23 commerce or another index more representative of the costs of
24 closure and postclosure monitoring and maintenance as determined
25 appropriate by the department. **INCREASES TO THE AMOUNT OF A**
26 **PERPETUAL CARE FUND REQUIRED UNDER THIS SUBSECTION SHALL BE**
27 **CALCULATED BASED ON SOLID WASTE DISPOSED OF IN THE LANDFILL AS OF**

1 THE END OF THE STATE FISCAL YEAR AND SHALL BE MADE WITHIN 30 DAYS
2 AFTER THE END OF EACH STATE FISCAL YEAR.

3 (3) The owner or operator of a landfill that is used for the
4 disposal of the following materials shall ~~deposit into~~ **INCREASE THE**
5 **AMOUNT OF** the perpetual care fund 7.5 cents for each ton or cubic
6 yard or portion of a ton or cubic yard of the following materials
7 that are disposed of in the landfill after June 17, 1990:

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

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

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

21 (4) The owner or operator of a landfill that is used only for
22 the disposal of a mixture of 2 or more of the materials described
23 in subsection (3)(a) to (c) or in which a mixture of 2 or more of
24 these materials are permanently segregated shall ~~deposit into~~
25 **INCREASE THE AMOUNT OF** the perpetual care fund 7.5 cents for each
26 ton or cubic yard or portion of a ton or cubic yard of these
27 materials that are disposed of in the landfill after July 1, 1996.

1 (5) ~~Money is not required to be deposited into~~ **THE AMOUNT OF** a
2 perpetual care fund **IS NOT REQUIRED TO BE INCREASED** for materials
3 that are regulated under part 631.

4 (6) The owner or operator of a landfill may ~~contribute~~
5 ~~additional amounts into~~ **INCREASE THE AMOUNT OF** the perpetual care
6 fund **ABOVE THE AMOUNT OTHERWISE REQUIRED BY THIS SECTION** at his or
7 her discretion.

8 (7) The custodian of a perpetual care fund shall be a bank or
9 other financial institution that has the authority to act as a
10 custodian and whose account operations are regulated and examined
11 by a federal or state agency. Until the perpetual care fund reaches
12 the maximum required fund amount, the custodian of a perpetual care
13 fund shall credit **ANY** interest and earnings of the perpetual care
14 fund to the perpetual care fund. ~~However, upon the direction of the~~
15 ~~owner or operator, the custodian may utilize the interest and~~
16 ~~earnings of the perpetual care fund to pay the solid waste~~
17 ~~management program administration fee or the surcharge required by~~
18 ~~section 11525a for the landfill for which the perpetual care fund~~
19 ~~was established.~~ After the perpetual care fund reaches the maximum
20 required fund amount, **ANY** interest and earnings shall be
21 distributed as directed by the owner or operator. The agreement
22 governing the operation of the perpetual care fund shall be
23 executed on a form consistent with this part ~~as prepared~~ **AND**
24 **PROVIDED** by the department. The custodian may be compensated from
25 the fund for reasonable fees and costs incurred for his or her
26 responsibilities as custodian. ~~The~~ **NOT MORE THAN 60 DAYS AFTER THE**
27 **END OF EACH STATE FISCAL YEAR, THE** custodian of a perpetual care

1 fund **ESTABLISHED AS A TRUST OR ESCROW ACCOUNT** shall ~~annually make~~
2 an accounting to the department ~~within 30 days following~~ **OF THE**
3 **PERPETUAL CARE FUND AS OF** the close of the state fiscal year.

4 (8) The custodian of a perpetual care fund shall not disburse
5 any funds to the owner or operator of a landfill for the purposes
6 of the perpetual care fund except upon the prior written approval
7 of the department. However, the custodian shall ensure the filing
8 of all required tax returns for which the perpetual care fund is
9 liable and shall disburse funds to pay lawfully due taxes owed by
10 the perpetual care fund without permission of the department. ~~and~~
11 ~~may disburse interest and earnings of the perpetual care fund to~~
12 ~~pay the solid waste management program administration fee or the~~
13 ~~surcharge required by section 11525a as provided in subsection (7).~~

14 The owner or operator of the landfill shall provide notice of
15 requests for disbursement and denials and approvals to the
16 custodian of the perpetual care fund. Requests for disbursement
17 from a perpetual care fund shall be submitted not more frequently
18 than semiannually. The owner or operator of a landfill may request
19 disbursement of funds from a perpetual care fund whenever the
20 amount of money in the fund exceeds the maximum required fund
21 amount. The department shall approve the disbursement ~~provided IF~~
22 the total amount of financial assurance maintained meets the
23 requirements of sections 11523 and 11523a. As used in this
24 subsection, "maximum required fund amount" means:

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

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

3 (9) If the owner or operator of a landfill refuses or fails to
4 conduct closure, postclosure monitoring and maintenance, or
5 corrective action as necessary to protect the public health,
6 safety, or welfare, or the environment or fails to request the
7 disbursement of money from a perpetual care fund when necessary to
8 protect the public health, safety, or welfare, or the environment,
9 or fails to pay the solid waste management program administration
10 fee or the surcharge required under section 11525a, then the
11 department may ~~require the disbursement of money from~~ **DRAW ON** the
12 perpetual care fund and may expend the money for closure,
13 postclosure monitoring and maintenance, and corrective action, as
14 necessary. The department may ~~assess~~ **DRAW ON** a perpetual care fund
15 for administrative costs associated with actions taken under this
16 subsection.

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

23 (11) The owner of a landfill shall provide notice to the
24 custodian of the perpetual care fund for that landfill if there is
25 a change of ownership of the landfill. The custodian shall maintain
26 records of ownership of a landfill during the ~~time in which a~~
27 **PERIOD OF EXISTENCE OF THE** perpetual care fund. ~~is established.~~

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

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

10 (14) As used in this section, "custodian" means the trustee or
11 escrow agent of a perpetual care fund **THAT IS ESTABLISHED AS A**
12 **TRUST OR ESCROW ACCOUNT, OR THE ISSUING INSTITUTION OF A PERPETUAL**
13 **CARE FUND BOND.**

14 (15) **A TRUST OR ESCROW ACCOUNT ESTABLISHED AS A PERPETUAL CARE**
15 **FUND MAY BE REPLACED WITH A PERPETUAL CARE FUND BOND THAT COMPLIES**
16 **WITH THIS SECTION AND, UPON SUCH REPLACEMENT, THE DIRECTOR SHALL**
17 **AUTHORIZE THE CUSTODIAN OF THE TRUST OR ESCROW ACCOUNT TO DISBURSE**
18 **THE MONEY IN THE TRUST OR ESCROW ACCOUNT TO THE OWNER OF THE**
19 **LANDFILL UNLESS A CONTRACT BETWEEN THE OWNER AND OPERATOR OF THE**
20 **LANDFILL SPECIFIES OTHERWISE.**

21 (16) **AN OWNER OR OPERATOR OF A LANDFILL WHO USES A PERPETUAL**
22 **CARE FUND BOND TO SATISFY THE REQUIREMENTS OF THIS SECTION SHALL**
23 **ALSO ESTABLISH A STANDBY TRUST. ALL PAYMENTS MADE UNDER THE TERMS**
24 **OF THE PERPETUAL CARE FUND BOND SHALL BE DEPOSITED BY THE CUSTODIAN**
25 **DIRECTLY INTO THE STANDBY TRUST IN ACCORDANCE WITH INSTRUCTIONS**
26 **FROM THE DIRECTOR. THE STANDBY TRUST MUST MEET THE REQUIREMENTS FOR**
27 **A TRUST ESTABLISHED AS A PERPETUAL CARE FUND UNDER SUBSECTION (1),**

1 EXCEPT THAT UNTIL THE STANDBY TRUST IS FUNDED PURSUANT TO THE
2 REQUIREMENTS OF THIS SUBSECTION, THE FOLLOWING ARE NOT REQUIRED:

3 (A) PAYMENTS INTO THE STANDBY TRUST AS SPECIFIED IN SUBSECTION
4 (2).

5 (B) ANNUAL ACCOUNTING VALUATIONS AS REQUIRED IN SUBSECTION
6 (7).

7 Sec. 11525b. (1) The owner or operator of a disposal area
8 shall provide continuous financial assurance coverage until
9 released from these requirements by the department under the
10 provisions of this part.

11 (2) The owner or operator of a landfill who has completed
12 postclosure maintenance and monitoring of the landfill in
13 accordance with this part, rules promulgated under this part, and
14 approved postclosure plan may request that financial assurance
15 required by sections 11523 and 11523a be terminated. A person
16 requesting termination of bonding and financial assurance shall
17 submit to the department a statement that the landfill has been
18 monitored and maintained in accordance with this part, rules
19 promulgated under this part, and **THE** approved postclosure plan for
20 the postclosure period specified in section 11523 and shall certify
21 that the landfill is not subject to corrective action under section
22 11515. Within 60 days of receiving a statement under this
23 subsection, the department shall perform a consistency review of
24 the submitted statement ~~, and if approved, shall~~ **AND DO 1 OF THE**
25 **FOLLOWING:**

26 (A) **APPROVE THE STATEMENT**, notify the owner or operator that
27 he or she is no longer required to maintain financial assurance,

1 ~~shall~~ return or release all financial assurance mechanisms, and,
2 ~~shall~~ **IF THE PERPETUAL CARE FUND IS ESTABLISHED AS A TRUST OR**
3 **ESCROW ACCOUNT,** notify the custodian of the perpetual care fund
4 that money from the fund shall be disbursed as provided in section
5 11525(10). ~~The department shall provide within 60 days~~

6 **(B) DISAPPROVE THE STATEMENT AND PROVIDE** the owner or operator
7 with a detailed written statement of the reasons why the department
8 has determined that postclosure maintenance and monitoring and
9 corrective action, if any, have not been conducted in accordance
10 with this part, the rules promulgated under this part, or an
11 approved postclosure plan.