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Arkansas Solid Waste Landfill Post-Closure Trust Fund/Eligibility Updates: Clark McWilliams (Star Valley Consulting) Arkansas Environmental Federation Land Seminar Presentation

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Clark McWilliams undertook a presentation at the Arkansas Environmental Federation ("AEF") Land Seminar titled:

Arkansas Solid Waste Landfill Post-Closure Trust Fund – Eligibility and Updates ("Presentation")

Clark is a principal with Star Valley Consulting.

The Arkansas General Assembly enacted Act 747 in 1991 which established the Landfill Post-Closure Trust Fund ("Trust Fund"). See Ark. Code Ann. 8-6-1001 et seq. The Trust Fund is described by the Arkansas Department of Energy & Environment – Division of Environmental Quality ("DEQ") as a:

... separate form of financial assurance that provides a funding mechanism for performing post-closure corrective action at a closed solid waste landfill that is causing groundwater or some other type of contamination.

DEQ states that the Trust Fund has two purposes:

- Provide for the operators of active facilities to establish financial assurance of 20% of the projected sum total costs for post-closure maintenance, as opposed to 100% of the sum total projected costs
- Provide funding for corrective action in the case of a closed landfill that is causing groundwater contamination or some other type of contamination that poses a hazard to public health or the environment.

Landfill disposal fees generate revenue to support the Trust Fund.

Clark's Presentation addressed topics such as:

- How does it relate/affect you and your clients.
- A little history for a perspective of why.
- A lot of what the Trust Fund is not.

The overview addressed the following topics:

1. Need for Solid Waste Management (federal laws – 1970's and 1980's)

2. Origins of Better Solid Waste Management (sustainability)
3. State's Response to Federal Requirements
4. Trust Fund Eligibility – Broad View
5. Eligibility and Prioritization
6. Changes and Updates

The *Presentation* specifically addressed:

- Trust Fund Origins (Role of the 1984 Resource Conservation and Recovery Act amendments and landfill design standards)
- Reference to Arkansas laws passed in the 1990s to develop and establish relevant regulations
- Design and operational standards
- Design and operational standards were paired with landfill closure and post-closure standards
- Many sites were classified as open dumps or unpermitted landfills
- Trust Fund established to perform corrective action at a site to prevent or abate contamination
- Legislative changes included:
- Appropriation changes
- Funding changes
- Fund use changes
- Impact to solid waste management as a whole
- Description of what does not constitute post-closure care
- Description of federal solid waste regulations at 40 CFR 257 and 258 (location restriction, design and operating, financial assurance, closure and post-closure, etc.)
- Post-closure care for 30 years (municipal waste) after closure
- By late 1990s most landfills have either closed with a shorter post-closure care period because they met the deadline or complied with the new permitting closure and post-closure standards
- Trust Fund is described as:
- Not a fund for routine use
- Primarily for use by DEQ
- Not for sites other than landfills and waste tires
- Not a release of responsibility for owner/operator
- Landfill eligibility criteria are stated to include:
- Previously operated as a landfill
- Certified closed regardless when it ceased operation
- Must not be contiguous to operating unit
- Waste tire facility eligibility criteria addressed
- Discussion of key legislation
- Act 1282 of 2007 (any action over \$50,000 per site at closed landfills had to be prioritized and approved by Arkansas Pollution Control & Ecology Commission ("APC&EC"))
- Act 757 of 2009 (restricted maximum correction action expense to \$2 million per fiscal year)
- Discussion of eligibility and prioritization
- APC&EC approved the prioritization in 2011.
- 145 closed sites with environmental concerns were identified.
- Almost immediately, work began in earnest on corrective action at landfills
- Changes/Updates
- Changes have been made in the availability of the Trust Fund for broader use
- DEQ's Appropriation Act made the Trust Fund available for "closure" at sites owned/operated by solid waste management districts (District had to meet certain criteria)
- Waste tire processing and disposal facilities all owned by solid waste districts

- Act 249 reemphasized the lifting of fund use restrictions by clarifying “nevertheless”
- Act 89 removed the option of DEQ taking civil action against solid waste districts to recover costs for closure or post-closure, but noting there is still an overall caveat in the statute for post-closure care and DEQ may pursue collection and recovery
- Act 1000 raised the \$50,000 prioritization to \$2 million per site and remove the \$2 million maximum limit from the fund

A copy of the slides can be downloaded [here](#).