

CHAPTER 23-29.1
MUNICIPAL WASTE LANDFILL RELEASE COMPENSATION FUND

23-29.1-01. Declaration of purpose.

The purpose of this chapter is to establish:

1. A municipal waste landfill release compensation fund; and
2. The eligibility requirements for participation in the fund.

23-29.1-02. Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Actually incurred" means in the case of corrective action expenditures, that the owner, the operator, an insurer of the owner or operator, or a contractor hired by the owner, operator, or insurer has made a payment or that a contractor has expended time and materials.
2. "Corrective action" means an action taken to minimize, contain, eliminate, remediate, mitigate, or clean up a release, including any remedial emergency measures. The term includes the repair of the closure of a municipal waste landfill on which such action occurs.
3. "Department" means the state department of health.
4. "Fund" means the municipal waste landfill release compensation fund.
5. "Operator" means any person in control of, or having responsibility for, the daily operation of a municipal waste landfill under this chapter.
6. "Owner" means any person who holds title to, controls, or possesses an interest in the municipal waste landfill before or after the discontinuation of its use.
7. "Person" means an individual, trust, firm, joint stock company, federal agency, corporation, state municipality, commission, political subdivision, or any interstate body. The term also includes a consortium, a joint venture, a commercial entity, and the United States government.
8. "Release" means any unintentional leaking, emitting, discharging, or escaping of leachate from a municipal waste landfill into the environment occurring after July 1, 1993, but does not include discharges or designed venting allowed under federal or state law or under adopted rules.

23-29.1-03. Administration of fund.

The department shall administer the fund according to this chapter. The department may employ any assistance and staff to administer the fund within the limits of legislative appropriation.

23-29.1-04. Adoption of rules.

The department shall adopt rules regarding its practices and procedures, the form and procedure for applications for compensation from the fund, procedures for investigation of claims, procedures for determining the amount and type of costs eligible for reimbursement from the fund, and procedures for persons to perform services for the fund.

23-29.1-05. Release discovery.

An owner or operator shall notify the department if it has reason to believe that a release has occurred. The department may require corrective action as provided by subsection 10 of section 23-29-04.

23-29.1-06. Owner or operator not identified.

The department may initiate legal action to compel performance of a corrective action if an identified owner or operator fails or refuses to comply with section 23-29.1-05, or the department may engage the services of qualified contractors for performance of a corrective action if an owner or operator cannot be identified.

23-29.1-07. Imminent hazard.

Upon receipt of information that a release has occurred which may present an imminent or substantial endangerment of public health or environmental resources, the department may take such emergency action as it determines necessary to protect the public health or the environmental resources.

23-29.1-08. Duty to take action.

Nothing in this chapter limits any person's duty to take action related to a release. However, payment for corrective actions required as a result of a release is governed by this chapter. Nothing in this chapter limits remediation activities taken or directed by any state or federal agency under other environmental statutes.

23-29.1-09. Providing of information.

Any person whom the department has reason to believe is an owner or operator, or the owner of real property where corrective action is ordered to be taken, or any person who may have information concerning wastes placed into a municipal waste landfill, or any person who may have information concerning a release, if requested by the department, must furnish to the department any information that person has or may reasonably obtain that is relevant to the release.

23-29.1-10. Examination of records.

Any employee of the department may, upon presentation of official credentials:

1. Examine and copy books, papers, records, memoranda, or data which may be related to a release of any person who has a duty to provide information to the department under section 23-29.1-09; and
2. Enter upon public or private property for the purpose of taking action authorized by this section, including obtaining information from any person who has a duty to provide the information under section 23-29.1-09, conducting surveys and investigations, and taking corrective action.

23-29.1-11. Responsibility for cost.

The owner or operator is liable for the cost of corrective action required by the department, including the cost of investigating the releases, and for legal actions of the department regarding the release. This chapter does not create any new cause of action for damages on behalf of third parties against the fund.

23-29.1-12. Liability avoided.

No owner or operator may avoid liability under this chapter or other state environmental law by means of a conveyance of any right, title, or interest in real property or by an indemnification, hold harmless agreement, or similar agreement. However, the provisions of this chapter do not:

1. Prohibit a person who may be liable from entering an agreement by which the person is insured or is a member of a risk retention group, and is thereby indemnified for part or all of the liability;
2. Prohibit the enforcement of an insurance, hold harmless, or indemnification agreement; or
3. Bar a cause of action by a person who may be liable or by an insurer or guarantor, whether by right of subrogation or otherwise.

23-29.1-13. Other remedies.

Nothing in this chapter limits the powers of the department, or precludes the pursuit of any administrative, civil, injunctive, or criminal remedies by the department or any other person. Administrative remedies need not be exhausted in order to proceed under this chapter. The remedies provided by this chapter are in addition to those provided under existing statutory or common law.

23-29.1-14. Revenue to the fund.

Revenue from the following sources must be deposited in the state treasury and credited to the fund:

1. Any premium fee collected under section 23-29.1-16;
2. Any money recovered by the fund under section 23-29.1-21, and any money paid under an agreement, stipulation, or settlement;
3. Any interest attributable to investment of money in the fund; and
4. Any money received by the department in the form of gifts, grants, reimbursements, or appropriations from any source intended to be used for the purposes of the fund.

23-29.1-15. Eligibility.

1. Any owner or operator of an active disposal unit which continues disposal of municipal waste after October 9, 1993, at a municipal waste landfill site, or of a new disposal unit subsequently allowed by permit, as provided by chapter 23-29, shall participate in the fund for that unit provided:
 - a. The disposal unit is designed, constructed, operated, and closed to comply with federal and state statutes and adopted rules in effect as of October 9, 1993;
 - b. The owner or operator has notified the board of the local solid waste management district and the board has acknowledged and approved the municipal waste landfill site to comply with chapter 23-29; and
 - c. The owner or operator pays the annual premium fee under section 23-29.1-16 during the duration of operation of the landfill site, except as provided by section 23-29.1-23.
2. An owner or operator who does not comply with this section or with section 23-29.1-16 is ineligible for reimbursement of claims for corrective action.

23-29.1-16. Premium fee.

1. Any owner or operator of a municipal waste landfill site who is eligible and participates in the fund shall:
 - a. Notify the department, on forms to be made available by the department, of its intent to participate in the fund by February 1, 1994, for active disposal units at landfill sites or at the time of application for permit, as provided by chapter 23-29, for new disposal units, whichever date is later;
 - b. Demonstrate that the disposal unit and the landfill site comply with applicable laws and rules; and
 - c. Pay an annual premium fee of one dollar per ton [907.18 kilograms] or thirty-three cents per cubic yard [0.76 cubic meter] for all solid waste disposed at the landfill site during the premium fee period.
2. The premium fee is payable annually by January thirtieth for a premium fee period corresponding to the previous calendar year, with the first period inclusive of the nine months ending December 31, 1994.
3. The premium fees collected under this section must be paid to the department for deposit in the state treasury for credit to the fund.

23-29.1-17. Reimbursement for corrective action.

The department shall reimburse an eligible owner or operator, as provided by section 23-29.1-15, for the costs of corrective action, including the investigation, which are greater than one hundred thousand dollars. A reimbursement may not be made unless the department determines that:

1. At the time the release was discovered the owner or operator and the landfill site were in compliance with applicable federal and state statutes and adopted rules, including rules relating to financial responsibility;
2. The department was given notice of the release as required by this chapter and other applicable federal and state statutes;

3. The release occurred from the active disposal unit or a new disposal unit pursuant to section 23-29.1-15;
4. The owner or operator has paid the first one hundred thousand dollars of cost of corrective action; and
5. The owner or operator, to the extent possible, fully cooperated with the department in responding to the release.

23-29.1-18. Application for reimbursement.

Any eligible owner or operator who has undertaken corrective action in response to a release, the time of release being unknown, may apply to the department for partial or full reimbursement under sections 23-29.1-04 and 23-29.1-17. An owner or operator may be reimbursed only for releases discovered and reported after April 1, 1994.

23-29.1-19. Department to determine costs.

A reimbursement may not be made from the fund until the department has determined that the costs for which reimbursement is requested were actually incurred and were reasonable. A reimbursement may be made to only one person for a release.

23-29.1-20. Liability of responsible person.

The right to apply for reimbursement and the receipt of reimbursement does not limit the liability of an owner or operator for damages or costs as a result of a release.

23-29.1-21. Recovery of expenses.

Any reasonable and necessary expenses incurred by the fund as provided by sections 23-29.1-06, 23-29.1-07, 23-29.1-10, and 23-29.1-11 in taking corrective action, including costs of investigating a release, and in taking legal actions may be recovered in a civil action in district court brought by the department against the owner or operator. The certification of expenses by an approved agent of the fund is prima facie evidence that the expenses are reasonable and necessary. Any expenses that are recovered under this section must be deposited in the fund.

23-29.1-22. Coordination of benefits.

If an eligible owner or operator has financial assurance that provides coverage for corrective action, the department shall pay the share of the covered loss or damage for which the fund is responsible. The share that must be paid from the fund is equal to the proportion that the applicable limit of coverage under the fund bears to the limits of all financial assurance on the same basis.

23-29.1-23. Fund ceiling.

When the fund balance exceeds fifteen million dollars, the department shall suspend collection of the premium fee. When the fund balance becomes less than five million dollars through appropriations authorized by this chapter, the department shall resume collection of the fee.

23-29.1-24. Fund appropriation.

Money in the fund is appropriated to the department as a standing and continuing appropriation for the purposes of this chapter.