

US EPA ARCHIVE DOCUMENT

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**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 271****[EPA-R06-RCRA-2010-0307; FRL-9713-3]****Arkansas: Final Authorization of State Hazardous Waste Management Program Revision****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Direct final rule.

**SUMMARY:** Arkansas has applied to the EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements needed to qualify for Final authorization, and is authorizing the State's changes through this immediate final action. The EPA is publishing this rule to authorize the changes without a prior proposal because we believe this action is not controversial and do not expect comments that oppose it. Unless we receive written comments which oppose this authorization during the comment period, the decision to authorize Arkansas' changes to its hazardous waste program will take effect. If we receive comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect, and a separate document in the proposed rules section of this **Federal Register** will serve as a proposal to authorize the changes.

**DATES:** This Final authorization will become effective on October 9, 2012 unless the EPA receives adverse written comment by September 10, 2012. If the EPA receives such comment, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this authorization will not take effect.

**ADDRESSES:** Submit your comments by one of the following methods:

1. **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

2. **Email:** [patterson.alima@epa.gov](mailto:patterson.alima@epa.gov).

3. **Mail:** Alima Patterson, Region 6, Regional Authorization Coordinator, State/Tribal Oversight Section (6PD-O), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733.

4. **Hand Delivery or Courier:** Deliver your comments to Alima Patterson,

Region 6, Regional Authorization Coordinator, State/Tribal Oversight Section (6PD-O), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733.

**Instructions:** Do not submit information that you consider to be CBI or otherwise protected through [regulations.gov](http://www.regulations.gov), or email. The Federal [regulations.gov](http://www.regulations.gov) Web site is an "anonymous access" system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through [regulations.gov](http://www.regulations.gov), your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. You can view and copy Arkansas' application and associated publicly available materials from 8:30 a.m. to 4 p.m. Monday through Friday at the following locations: Arkansas Department of Environmental Quality, 8101 Interstate 30, Little Rock, Arkansas 72219-8913, (501) 682-0876, and EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, phone number (214) 665-8533. Interested persons wanting to examine these documents should make an appointment with the office at least two weeks in advance.

**FOR FURTHER INFORMATION CONTACT:**

Alima Patterson, Region 6, Regional Authorization Coordinator, State/Tribal Oversight Section (6PD-O), Multimedia Planning and Permitting Division, (214) 665-8533, EPA Region 1445 Ross Avenue, Dallas, Texas 75202-2733, and Email address [patterson.alima@epa.gov](mailto:patterson.alima@epa.gov).

**SUPPLEMENTARY INFORMATION:****A. Why are revisions to State programs necessary?**

States which have received Final authorization from the EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program

changes, States must change their programs and ask the EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to the EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 267, 268, 270, 273, and 279.

**B. What decisions have we made in this rule?**

We conclude that Arkansas' application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Arkansas Final authorization to operate its hazardous waste program with the changes described in the authorization application. Arkansas has responsibility for permitting treatment, storage, and disposal facilities within its borders (except in Indian Country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that the EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, the EPA will implement those requirements and prohibitions in Arkansas including issuing permits, until the State is granted authorization to do so.

**C. What is the effect of today's authorization decision?**

The effect of this decision is that a facility in Arkansas subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent Federal requirements in order to comply with RCRA. Arkansas has enforcement responsibilities under its State hazardous waste program for violations of such program, but the EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Do inspections, and require monitoring, tests, analyses, or reports;
- Enforce RCRA requirements and suspend or revoke permits and
- Take enforcement actions after notice to and consultation with the State.

This action does not impose additional requirements on the regulated community because the

regulations for which Arkansas is being authorized by today's action are already effective under State law, and are not changed by today's action.

**D. Why wasn't there a proposed rule before today's rule?**

The EPA did not publish a proposal before today's rule because we view this as a routine program change and do not expect comments that oppose this approval. We are providing an opportunity for public comment now. In addition to this rule, in the proposed rules section of today's **Federal Register** we are publishing a separate document that proposes to authorize the State program changes.

**E. What happens if the EPA receives comments that oppose this action?**

If the EPA receives comments that oppose this authorization, we will withdraw this rule by publishing a document in the **Federal Register** before the rule becomes effective. The EPA will base any further decision on the authorization of the State program changes on the proposal mentioned in the previous paragraph. We will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time. If we receive comments that oppose only the authorization of a particular change to the State hazardous waste program, we will withdraw only that part of this rule, but the authorization of the program changes that the comments do not oppose will become effective on the date specified in this document. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

**F. For what has Arkansas previously been authorized?**

Arkansas initially received final authorization on January 25, 1985, (50

FR 1513, January 11, 1985) to implement its Base Hazardous Waste Management program. Arkansas received authorization for revisions to its program on January 11, 1985 (50 FR 1513), effective January 25, 1985; March 27, 1990 (55 FR 11192) effective May 29, 1990; September 18, 1991 (56 FR 47153) effective November 18, 1991; October 5, 1992 (57 FR 45721) effective December 4, 1992; October 7, 1994 (59 FR 51115) effective December 21, 1994, April 24, 2002 (67 FR 20038) effective June 24, 2002 and August 15, 2007 (72 FR 45663) effective October 15, 2007. The authorized Arkansas RCRA program was incorporated by reference into the Code of Federal Regulations effective December 13, 1993 (58 FR 52674) and also June 28, 2010 (75 FR 36538) effective August 27, 2010. On December 10, 2010, Arkansas submitted a final complete program revision application seeking authorization of its program revision in accordance with 40 CFR 271.21.

On April 1994, Arkansas Department of Pollution Control and Ecology (ADPC&E), revised its Regulation Number 23 from one of "incorporation by reference" to the adoption and incorporation of a version of the full text of the Federal regulatory language. The specific authorities provided are contained in statutes and regulations lawfully adopted at the time the Independent Counsel signed the certification which are in effect now. The statutory authorities for the State are documented in the Arkansas RCRA Statutory Checklist, dated August 2006. Any differences between the State's provisions and the Federal provisions are noted on the individual revision Checklists. The official State regulations may be found in Arkansas Pollution Control and Ecology Commission Regulation Number 23 (Hazardous Waste Management), adopted on April 25, 2008 and April 23, 2010 effective May 26, 2008 and June 13, 2010

respectfully. The provisions for which the State is seeking authorization are documented in this **Federal Register** document.

The provisions for which the State is seeking authorization are documented in the Rule Revision Checklists 210, 217, 218 and 220, which are portions of RCRA Clusters XV through XIX. Reference to Arkansas Code Annotate (A.C.A) of 1987, Annotated, as amended August 2007. Reference to Arkansas Pollution Control and Ecology Commission (APC&EC) Regulations Number 23, (Hazardous Waste Management) (formerly titled the Arkansas Hazardous Waste Management Code), last amended on April 25, 2008 and April 23, 2010, to adopt all final rules promulgated by EPA through June 30, 2009, and which became effective on May 26, 2008 and June 13, 2010. Dates of enactment and adoption for other statutes or regulations are given when cited.

*What changes are we approving with today's action?*

On December 10, 2010, the State of Arkansas submitted a final complete program application, seeking authorization of their changes in accordance with 40 CFR 271.21. We now make an immediate final decision, subject to receipt of written comments that oppose this action, that the State of Arkansas' hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. The State of Arkansas revisions consist of regulations which specifically govern Federal Hazardous Waste revisions promulgated from June 14, 2005 through December 1, 2008 and through June 30, 2009. The Checklists in these rules are 210, 217, 218 and 220, which are portions of RCRA Clusters XV through XIX are in a chart with this document.

Description of Federal requirement (include checklist number, if relevant)	Federal Register date and page (and/or RCRA statutory authority)	Analogous state authority
1. Standardized permit for RCRA Hazardous Waste Management Facilities. (Checklist 210).	70 FR 53420–53478, September 8, 2005.	Arkansas Code of 1987 Annotated (A.C.A.) Sections 8–7–201 through 8–7–226. Arkansas Pollution Control and Ecology (APC&E) Regulation Number 23, (Hazardous Waste Management) (HWM) Sections 260.10 "Facility", 260.11(c)(1), 260.11(c)(3)(xxvii), 260.11(d)(1), 261.7(a)(1), 267.1, 267.2, 267.3, 267.10–267.18, 267.30–267.36, 267.50–267.58, 267.70–267.76, 267.90, 267.91–267.100, 267.101, 267.110, 267.111, 267.112, 267.113–267.117, 267.140–267.143, 267.144–267.146, 267.147, 267.148–267.151, 267.170–267.177, 267.190.

Description of Federal requirement (include checklist number, if relevant)	Federal Register date and page (and/or RCRA statutory authority)	Analogous state authority
Checklist 210 Cond .....	70 FR 53420–53478, September 8, 2005.	267.191–267.204, 267.1100–267.1108, 270.1(b) Introductory paragraph, 270.1(b)(1)–(2), 270.2 “Permit”, 270.2 “Standardized Permit”, 270.10(a) introductory paragraph, 270.10(a)(1)–(6), 270.10(h) introductory paragraph, 270.10(h)(1)–(2), 270.40(b), 270.41 introductory paragraph, 270.41(b)(3), 270.51(e)(1), 270.51(e)(1)(i)–(iii), 270.51(e)(2), 270.67 introductory paragraph, 270.67(a)–(b), 270.250–270.275, 270.280, 270.290, 270.300, 270.305, 270.310, 270.315 and 270.320, as amended April 25, 2008, effective May 26, 2008.
2. NESHAP: Final Standards for Hazardous Waste Combustors (Phase I Final Replacement Standards and phase II) Amendments. (Checklist 217).	73 FR 18970–18984 April 8, 2008.	Arkansas Code of 1987 Annotated (A.C.A.) Sections 8–7–201 through 8–7–226. Arkansas Pollution Control and Ecology (APC&E) Regulation Number 23, (Hazardous Waste Management) (HWM) Sections 264.340, 264.340(b)(1), 264.340(b)(3), 264.340(b)(5), and 266.100(b)(3)(ii), as amended April 23, 2010, effective June 13, 2010.
3. F019 Exemption for Wastewater Treatment Sludges from Auto Manufacturing Zinc Phosphating Processes. (Checklist 218).	73 FR 31756–31769.	Arkansas Code of 1987 Annotated (A.C.A.) Sections 8–7–201 through 8–7–226. Arkansas Pollution Control and Ecology (APC&E) Regulation Number 23, (Hazardous Waste Management) (HWM) Sections 261.31(a)/Table, 261.31, 261.31, 261.31(b)(4), and 261.31(b)(4)(i)–(ii), as amended April 23, 2010, effective June 13, 2010.
4. Academic Laboratories Generator Standards. (Checklist 220).	73 FR 72912–72960 December 1, 2008.	Arkansas Code of 1987 Annotated (A.C.A.) Sections 8–7–201 through 8–7–226. Arkansas Pollution Control and Ecology (APC&E) Regulation Number 23, (Hazardous Waste Management) (HWM) Sections 261.5(c)(6)–(7), 262.10(l)(1)–(2), 262 Subpart K, 262.200, 262.200 “Central accumulation area”, 262.200 “College/University”, 262.200 “Eligible academic entity”, 262.200 “Formal written affiliation agreement”, 262.200 “Laboratory”, 262.200 “Laboratory clean-out”, 262.200 “Laboratory worker”, 262.200 “Non-profit research institute”, 262.200 “Reactive acutely hazardous unwanted material”, 262.200 “Trained professional”,
Checklist 220 Continues .....	73 FR 72912–72960 December 1, 2008.	262.200 “Unwanted material”, 262.200 “Working container”, 262.201 heading, 262.201(a)–(b), 262.202 heading, 262.202(a)–(b), 262.203 heading, 262.203(a), 262.203(b) introductory paragraph, 262.203(b)(1)–(b)(11), 262.203(c)–(e), 262.204(a), 262.204(b) introductory paragraph, 262.204(b)(1)–(11), 262.204(c), 262.205 heading, 262.205, 262.206 heading, 262.206 introductory paragraph, 262.206(a), 262.206(a)(1), 262.206(a)(1)(i)–(ii), 262.206(a)(1)(ii)(A)–(B), 262.206(a)(2), 262.206(a)(2)(i)–(ii), 262.206(a)(2)(ii)(A)–(C), 262.206(b) introductory paragraph, 262.206(b)(1),
Checklist 220 Continues .....	73 FR 72912–72960 December 1, 2008.	262.206(b)(2)–(3), 262.206(b)(3)(i)–(iii), 262.206(b)(3)(iii)(A)–(B), 262.207 heading, 262.207 introductory paragraph, 262.207(a)–(b), 262.207(b)(1)–(5), 262.207(c) introductory paragraph, 262.207(c)(1)–(4), 262.207(d), 262.207(d)(1)–(2), 262.208 heading, 262.208(a), 262.208(a)(1)–(2), 262.208(b)–(d), 262.208(d)(1), 262.208(d)(1)(i)–(ii), 262.208(d)(2), 262.209 heading, 262.209 introductory paragraph, 262.209(a)(1)–(3), 262.209(b), 262.210 heading, 262.210 introductory paragraph, 262.210(a), 262.210(b) introductory paragraph, 262.210(b)(1)–(3), 262.210(c)–(e), 262.211 heading, 262.211 introductory paragraph,
Checklist 220 Continues .....	73 FR 72912–72960 December 1, 2008.	262.211(a)–(b), 262.211(c)–(e), 262.211(e)(1)–(4), 262.212 heading, 262.212 introductory paragraph, 262.212(a)–(e), 262.212(e)(1)–(4), 262.213 heading, 262.213(a), 262.213(a)(1)–(4), 262.213(b), 262.213(b)(1)–(2), 262.214 introductory paragraph, 262.214(a), 262.214(a)(1), 262.214(a)(1)(i)–(ii), 262.214(a)(2), 262.214(b) introductory paragraph, 262.214(b)(1)–(4), 262.214(b)(4)(i)–(ii), 262.214(b)(4)(ii)(A)–(B), 262.214(b)(5)–(6), 262.214(b)(6)(i)–(ii), 262.214(b)(7), 262.214(b)(7)(i)–(iv), 262.214(c)–(d), 262.215 heading, 262.215(a)–(b), 262.216 heading, 262.216 introductory paragraph, 262.216(a)–(b), as amended April 23, 2010, effective June 13, 2010.

**H. Where are the revised State rules different from the Federal rules?**

The State of Arkansas regulations that are more stringent and broader in scope than the Federal regulations are listed in the State’s Program description submitted with the application to be authorized dated December 28, 2010. On Checklist 210 Standardized Permit for RCRA Hazardous Waste Management Facilities, ADEQ has not incorporated by reference the public participation provisions at 40 CFR 124.1–2, 124.3(b), 124.3(d), 124.3(e), 124.4, 124.5(b), 124.5(e), 124.5(g), 124.6(b), 124.9, 124.10(a)(1)(i),

124.10(a)(1)(v), 124.12(e), 124.14–16, 124.18, 124.19, and 124.21. However, the State has been previously authorized for equivalent provisions pursuant to APC&EC Regulation No. 8 (Administrative Procedures and corresponding State provisions at Regulation No. 23 section 270.7). These references treat standardized permits in the same manner as any other permit issued by the Department.

**I. Who handles permits after the authorization takes effect?**

The State of Arkansas will issue permits for all the provisions for which it is authorized and will administer the

permits it issues. The EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization. We will not issue any more new permits or new portions of permits for the provisions listed in the Table in this document after the effective date of this authorization. The EPA will continue to implement and issue permits for HSWA requirements for which ADEQ is not yet authorized.

**J. How does today's action affect Indian Country (18 U.S.C. 1151) in Arkansas?**

The State of Arkansas Hazardous Program is not being authorized to operate in Indian Country.

**K. What is codification and is the EPA codifying Arkansas' hazardous waste program as authorized in this rule?**

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the CFR. We do this by referencing the authorized State rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart E for this authorization of Arkansas' program changes until a later date. In this authorization application the EPA is not codifying the rules documented in this **Federal Register** notice.

**I. Administrative Requirements**

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. The reference to Executive Order 13563 (73 FR 3821, January 21, 2011) is also exempt from review under Executive orders 12866 (56 FR 51735, October 4, 1993). This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes preexisting requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). For the same reason, this action also does not

significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA 3006(b), the EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for the EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has complied with Executive Order

12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the Executive Order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This action will be effective October 9, 2012.

**List of Subjects in 40 CFR Part 271**

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

**Authority:** This action is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: July 10, 2012.

**Samuel Coleman,**

*Acting Regional Administrator, Region 6.*

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