

US EPA ARCHIVE DOCUMENT

**EPA-Approved
Arkansas Regulatory & Statutory Requirements
Applicable to the
Hazardous Waste Management Program**

September, 1993

**EPA APPROVED ARKANSAS STATUTORY REQUIREMENTS
 APPLICABLE TO THE HAZARDOUS WASTE MANAGEMENT PROGRAM
 September, 1993**

**Arkansas Hazardous Waste Management Act, as amended, Act 406 of 1979, as amended,
 Arkansas Code of 1987 Annotated (A.C.A.), 1991 Replacement**

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**ARKANSAS STATUTORY PROVISIONS
TO BE INCORPORATED BY REFERENCE**

Arkansas Hazardous Waste Management Act, as amended, Act 406 of 1979, as amended,
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ARKANSAS
CODE
OF 1987
ANNOTATED

OFFICIAL
EDITION

6

TITLES
7-9

ELECTIONS

ENVIRONMENTAL
LAW

FAMILY
LAW

1991
REPLACEMENT

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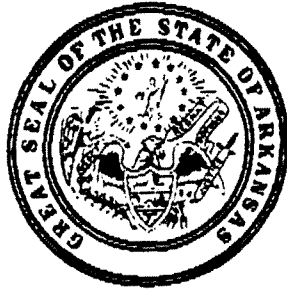
ARKANSAS CODE OF 1987 ANNOTATED

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1991 SUPPLEMENT VOLUME 6

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8-6-1207. Penalties.

Any person who violates the provisions of this subchapter shall be subject to the civil penalties prescribed in § 8-6-204.

History. Acts 1991, No. 1183, § 7.

CHAPTER 7 HAZARDOUS SUBSTANCES

SUBCHAPTER.

2. HAZARDOUS WASTE MANAGEMENT ACT.
4. EMERGENCY RESPONSE FUND ACT.
5. REMEDIAL ACTION TRUST FUND ACT.
8. REGULATED SUBSTANCE STORAGE TANKS.
9. PETROLEUM STORAGE TANK TRUST FUND ACT.
10. PUBLIC EMPLOYEES' CHEMICAL RIGHT TO KNOW ACT.

SUBCHAPTER 2 — HAZARDOUS WASTE MANAGEMENT ACT

SECTION.

- 8-7-204. Criminal, civil, and administrative penalties.
- 8-7-216. Permits — Issuance generally —

SECTION.

- Interim operations.
- 8-7-226. Fees.

~~Effective Dates. Acts 1991, No. 435, § 5: Mar. 11, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Federal Environmental Protection Agency, Region 6, has indicated that the authorization for the hazardous waste management program for the State of Arkansas may be jeopardized for failure to provide court assessment of reasonable attorney fees and other litigation costs reasonably incurred by a substantially prevailing complainant in an action against the state for failure to comply with the Arkansas Freedom of Information Act in cases involving the Resource Conservation and Recovery Act of 1976 or other hazardous waste issues. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."~~

~~Acts 1991, No. 1057, § 9: Apr. 9, 1991. Emergency clause provided: "It is hereby found and determined by the 78th General Assembly that the sanctions imposed by current Arkansas law for environmen-~~

~~tal violations are among the least stringent in the nation. Thus, current law is inadequate to deter environmental violations, and in fact extends an implicit invitation to irresponsible industries. Protection of the environmental integrity of this state is essential to protect the public's health and economic well-being. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."~~

~~Acts 1991, No. 1235, § 5: July 1, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that the effectiveness of this act on July 1, 1991, is essential to the operation of the Hazardous Waste Management Program within the Department of Pollution Control and Ecology and that in the event of an extension of the Regular Session, the delay in the effective date of this act beyond July 1, 1991, could work irreparable harm upon the proper administration and provision of the essential government programs. Therefore, an emergency is hereby declared to exist and this act~~

~~being necessary for the immediate preservation of the public peace, health and safety, shall be in effect from and after July 1, 1991.~~

8-7-204. Criminal, civil, and administrative penalties.

(a) CRIMINAL PENALTIES.

(1)(A) Any person who violates any provision of this subchapter, who commits any unlawful act under it, or who violates any rule, regulation, or order of the commission or department, shall be guilty of a misdemeanor.

(B) Notwithstanding any other provisions of Arkansas law, upon conviction that person shall be subject to imprisonment for not more than one (1) year or a fine of not more than twenty-five thousand dollars (\$25,000), or subject to both such fine and imprisonment. For the purpose of fines only, each day or part of a day during which the violation is continued or repeated shall constitute a separate offense.

(2)(A) It shall be unlawful for a person to:

(i) Violate any provision of this subchapter, commit any unlawful act under it, or violate any rule, regulation, or order of the commission or department, and leave the state or remove his person from the jurisdiction of this state; or

(ii) Purposely or knowingly make any false statement, representation, or certification in any document required to be maintained under this chapter, or falsify, tamper with, or render inaccurate any monitoring device, method, or record required to be maintained under this subchapter.

(B) A person who violates this subdivision (2) shall be guilty of a felony. Notwithstanding any other provisions of Arkansas law, upon conviction that person shall be subject to imprisonment for not more than five (5) years or a fine of not more than fifty thousand dollars (\$50,000), or subject to both such fine and imprisonment. For the purpose of fines only, each day or part of a day during which the violation is continued or repeated shall constitute a separate offense.

(3) Any person who treats, stores, transports, or disposes of any hazardous wastes and purposely, knowingly, or recklessly causes the release of hazardous wastes into the environment in a manner not otherwise permitted by law, or creates a substantial likelihood of endangering human health, animal or plant life, or property, shall be guilty of a felony. Notwithstanding any other provisions of Arkansas law, upon conviction that person shall be subject to imprisonment for not more than ten (10) years or a fine of not more than one hundred thousand dollars (\$100,000), or subject to both such fine and imprisonment. For the purpose of fines only, each day or part of a day during which the violation is continued or repeated shall constitute a separate offense.

(4) Any person who treats, stores, transports, or disposes of any hazardous waste and purposely, knowingly, or recklessly causes the release of hazardous wastes into the environment in a manner not other

~~wise permitted by law, thereby placing another person in imminent danger of death or serious bodily injury, shall be guilty of a felony. Notwithstanding any other provisions of Arkansas law, upon conviction that person shall be subject to imprisonment for not more than twenty (20) years or a fine of not more than two hundred fifty thousand dollars (\$250,000), or subject to both such fine and imprisonment. For the purpose of fines only, each day or part of a day during which the violation is continued or repeated shall constitute a separate offense.~~

(5) Notwithstanding the limits on fines set in subdivisions (1)-(4) above, if a person convicted under any of the above subdivisions has derived pecuniary gains from commission of the offenses, then he may be sentenced to pay a fine not to exceed twice the amount of the pecuniary gain.

(b) CIVIL PENALTIES. The department is authorized to institute a civil action in any court of competent jurisdiction to accomplish any or all of the following:

(1) Restrain any violation of, or compel compliance with, the provisions of this subchapter and of any rules, regulations, orders, permits, or plans issued pursuant thereto;

(2) Affirmatively order that remedial measures be taken as may be necessary or appropriate to implement or effectuate the purposes and intent of this subchapter;

(3) Recover all costs, expenses, and damages to the department and any other agency or subdivision of the state in enforcing or effectuating the provisions of this subchapter, including but not limited to natural resource damages;

(4) Assess civil penalties in an amount not to exceed twenty-five thousand dollars (\$25,000) per day for violations of this subchapter and of any rules, regulations, permits, or plans issued pursuant thereto; or

(5) Recover civil penalties assessed pursuant to subsection (c) of this section.

(c) Any person who violates any provision of this subchapter and regulations, rules, permits, or plans issued pursuant thereto may be assessed an administrative civil penalty not to exceed twenty-five thousand dollars (\$25,000) per violation. Each day of a continuing violation may be deemed a separate violation for purposes of penalty assessment. No civil penalty may be assessed until the person charged with the violation has been given the opportunity for a hearing in accordance with regulations adopted by the commission. All hearings and appeals arising under this subchapter shall be conducted in accordance with the procedures prescribed by §§ 8-4-205, 8-4-212, and 8-4-218—8-4-229. The procedures of this subsection may also be used to recover all costs, expenses, and damages to the department and any other agency or subdivision of the state in enforcing or effectuating the provisions of this subchapter, including but not limited to natural resource damages.

(d) As an alternative to the limits on civil penalties set in subsections (b) and (c) above, if a person found liable in actions brought under

~~any of the above subsections has derived pecuniary gain from commission of the offenses, then he may be ordered to pay a civil penalty equal to the amount of the pecuniary gain.~~

(e)(1) All moneys collected as reimbursement for expenses, costs, and damages to the department shall be deposited in the operating fund of the department.

(2) All moneys collected as civil penalties pursuant to this section shall be deposited in the Emergency Response Fund as provided by § 8-7-410. The director, in his discretion, may accept in-kind services in partial mitigation of cash penalties for projects or programs designed to advance environmental interests, provided however that such services shall not duplicate or augment services already provided by the department through appropriations of the General Assembly.

(3) All moneys collected to cover the costs, expenses, or damages of other agencies or subdivisions of the state, including natural resource damages, shall be distributed to the appropriate governmental entity.

(f) The culpable mental states referenced throughout this section shall have the definitions set out in § 5-2-202.

(g) Solicitation or conspiracy, as defined by subchapters 3 and 4 of chapter 3 of the Arkansas Criminal Code, to commit any criminal act proscribed by this section and §§ 8-4-103, and 8-6-204 shall be punishable as follows:

(1) Any solicitation or conspiracy to commit an offense under this section which is a misdemeanor shall be a misdemeanor subject to fines not to exceed fifteen thousand dollars (\$15,000) per day of violation or imprisonment for more than six (6) months, or both such fine and imprisonment.

(2) Any solicitation or conspiracy to commit an offense under this section which is a felony subject to fines of fifty thousand dollars (\$50,000) per day or imprisonment up to five (5) years shall be a felony subject to fines up to thirty-five thousand dollars (\$35,000) per day or imprisonment up to two (2) years, or both such fine and imprisonment.

(3) Any solicitation or conspiracy to commit an offense under this section which is a felony subject to fines of one hundred thousand dollars (\$100,000) per day or imprisonment up to ten (10) years shall be a felony subject to fines up to seventy-five thousand dollars (\$75,000) per day or imprisonment up to seven (7) years, or both such fine and imprisonment.

(4) Any solicitation or conspiracy to commit an offense under this section which is a felony subject to fines of two hundred fifty thousand dollars (\$250,000) per day or imprisonment up to twenty (20) years shall be a felony subject to fines up to one hundred fifty thousand dollars (\$150,000) per day or imprisonment up to fifteen (15) years, or both such fine and imprisonment.

(h) In cases considering suspension of sentence or probation, efforts or commitments by the defendant to remediate any adverse environmental effects caused by his activities may be considered by the court ~~to be restitution as contemplated by § 5-1-301.~~

~~(i) A business organization, its agents or officers, may be found liable under this section in accordance with the standards set forth in § 5-2-501 et seq., and sentenced to pay fines in accordance with the provisions of § 5-4-201(d) and (e).~~

(j) For the purposes of this subchapter, the court may assess against the State of Arkansas reasonable attorney fees and other litigation costs reasonably incurred in any case under this subchapter in which the complainant has substantially prevailed in an action against the state for failure to comply with the Arkansas Freedom of Information Act, § 25-19-101 et seq.

~~History. Acts 1979, No. 406, § 13; 1983, No. 456, § 1; A.S.A. 1947, § 82-4213; Acts 1989, No. 643, § 3; 1991, No. 435, § 1; 1991, No. 1057, §§ 2, 3.~~

~~Publisher's Notes. Acts 1991, No. 1057, § 1, provided: "The General Assembly finds and determines that the criminal and civil penalties imposed by current law do not accurately reflect the degree of concern which the state places upon its environmental resources. The current criminal penalties for hazardous waste and other violations are among the lowest in the nation. Civil penalties for violations of the state water, air, solid waste and hazardous waste pollution control statutes are set at the minimum neces-~~

~~sary to receive federally delegated programs. In declaring itself "The Natural State," the State of Arkansas demonstrated its commitment to its environmental resources. This commitment must be reflected in its environmental enforcement program. This act shall be liberally construed so as to achieve remedial intent."~~

~~Acts 1991, No. 1057, § 5, is also codified as §§ 8-4-103 f-(i) and 8-6-204 (g)-(j).~~

~~Amendments. The 1991 amendment by No. 435 added (j).~~

~~The 1991 amendment by No. 1057 re-wrote the section.~~

8-7-216. Permits — Issuance generally — Interim operations.

(a) Permits shall be issued under such terms and conditions as the department may prescribe under the provisions of this subchapter and under such terms and conditions as the Arkansas State Highway and Transportation Department may prescribe for the transportation of hazardous wastes.

(b) Facilities required to have a permit under this subchapter or which are operating under the terms of permits issued under the Arkansas Water and Air Pollution Control Act, § 8-4-101 et seq., § 8-4-201 et seq., and § 8-4-301 et seq., or the Arkansas Solid Waste Management Act, § 8-6-201 et seq., as of March 14, 1979, may continue in operation until such time as a permit is issued under this subchapter by the department, provided the owner or operator of such facility has made application on forms provided by the department for such permit by September 14, 1979.

(c)(1) Facilities required to have a permit under this subchapter due to statutory or regulatory changes which occur after March 14, 1979, may continue in operation until such time as a permit is issued under this subchapter, provided that the owner or operator notifies the department of newly regulated activities at the facility within ninety (90) days of the effective date of each statutory or regulatory change and

makes initial permit application within one hundred eighty (180) days of the effective date of such changes on forms provided by the department.

(2) This subsection shall not apply to any facility at which interim operating authority or a final permit has previously been terminated or denied.

(d) Interim operating authority acquired pursuant to subsection (b) or (c) of this section shall terminate for incineration facilities on November 8, 1989, unless the owner or operator applied for final permit determination by November 8, 1986.

(e) Interim operating authority acquired pursuant to subsection (b) or (c) of this section shall terminate for storage and treatment facilities on November 8, 1992, unless the owner or operator applied for final permit determination by November 8, 1988.

(f) Interim operating authority acquired pursuant to subsection (c) of this section for land disposal facilities shall terminate twelve (12) months after the facility first becomes subject to permitting unless the owner or operator certifies compliance with all applicable groundwater monitoring and financial responsibility requirements.

History. Acts 1979, No. 406, § 5: A.S.A. 1947, § 82-4205; Acts 1989, No. 643, § 6; 1991, No. 489, § 1; 1991, No. 786, § 8.

Publisher's Notes. Acts 1991, No. 786, § 37, provided: "The enactment and adoption of this Act shall not repeal, expressly or impliedly, the acts passed at the regular session of the 78th General Assembly. All such acts shall have full effect and, so far as those acts intentionally vary from or conflict with any provision contained in this Act, those acts shall have the effect of subsequent acts and as amending

or repealing the appropriate parts of the Arkansas Code of 1987."

Amendments. The 1991 amendment by No. 489 substituted "1986" for "1988" at the end of (d).

The 1991 amendment by No. 786, in (b), substituted "March 14, 1979" for "the date of the enactment of this Act (March 14, 1979)" following "§ 8-6-201 et seq. as of," "subchapter" for "the provisions of this Act" preceding "by the department," and "by September 14, 1979" for "within six (6) months of enactment of the Act (September 14, 1979)" at the end.

~~8-7-226. Fees.~~

~~(a)(1) The department shall have authority to establish by regulation a schedule of fees to recover the costs of processing permit applications and permit renewal proceedings, on-site inspections and monitoring, the certification of personnel to operate hazardous waste treatment, storage, or disposal facilities, and other activities of department personnel which are reasonably necessary to assure that generators and transporters of hazardous waste and hazardous waste management facilities are complying with the provisions of this subchapter, and which reasonably should be borne by the transporter, generator, or owner or operator of the hazardous waste management facility;~~

~~(2)(A) However, generators of over two thousand two hundred pounds (2200 lbs.) of hazardous waste per month shall not be as~~

~~assessed more than five hundred dollars (\$500) annually pursuant to this subchapter for inspections and monitoring:~~

~~B) Generators of two hundred twenty pounds (220 lbs.) to two thousand two hundred pounds (2200 lbs.) of hazardous waste per month shall not be assessed more than one hundred dollars (\$100) annually pursuant to this subchapter for inspections and monitoring; and~~

~~C) Generators of less than two hundred twenty pounds (220 lbs.) of hazardous waste per month shall be assessed no fees under this subchapter for inspections and monitoring.~~

~~(b) All fees collected pursuant to this section shall be dedicated to enabling the department to receive authorization to administer a hazardous waste management program in Arkansas pursuant to the federal Resource Conservation and Recovery Act of 1979, as amended by the Hazardous and Solid Waste Amendments of 1984.~~

~~(c) [Repealed.]~~

~~History. Acts 1979, No. 406, § 5; A.S.A. 1947, § 52-4205; Acts 1989, No. 643, § 9; 1991, No. 1235, § 1. Amendments. The 1991 amendment repealed (c).~~

SUBCHAPTER 4 — EMERGENCY RESPONSE FUND ACT

SECTION.

~~8-7-415. Recovery of expenditures generally.~~

8-7-415. Recovery of expenditures generally.

(a) Making use of any and all appropriate existing state legal remedies, the Department of Pollution Control and Ecology or the Attorney General shall act to recover the amount expended by the state for any and all response actions from any and all identified responsible parties for each facility or site.

(b) All moneys recovered from responsible parties for expenditures from the fund shall be deposited in the Emergency Response Fund.

~~History. Acts 1985, No. 452, § 7; A.S.A. 1947, § 52-4737; Acts 1991, No. 516, § 2. Amendments. The 1991 amendment inserted "the Department of Pollution Control and Ecology or" in (a).~~

SUBCHAPTER 5 — REMEDIAL ACTION TRUST FUND ACT

SECTION.

~~8-7-509. Hazardous Substance Remedial Action Trust Fund.~~

SECTION.

~~8-7-514. Recovery of expenditures generally.~~

RESEARCH REFERENCES

Am. Jur. 61A Am. Jur. 2d, Poll. Cont., § 244 et seq., 247 et seq. Kansas Pollution Control and Ecology Department and Commission, 1985 Ark. L. Notes 23.
 Ark. L. Notes, Looney, Handling Administrative Proceedings Before the Ar-

~~8-7-201. Title.~~

~~This subchapter may be cited as the "Arkansas Hazardous Waste Management Act of 1979".~~

~~History: Acts 1979, No. 406, § 1;
 A.S.A. 1947, § 82-4201.~~

CASE NOTES

Cited: *EnSCO, Inc. v. Dumas*, 807 F.2d 743 (8th Cir. 1986).

8-7-202. Purpose.

It is the purpose of this subchapter and it is declared to be the policy of this state to:

- (1) Protect the public health and safety, the health of living organisms, and the environment from the effects of the improper, inadequate, or unsound management of hazardous wastes;
- (2) Establish a program of regulation over the generation, storage, transportation, treatment, and disposal of hazardous wastes;
- (3) Assure the safe and adequate management of hazardous wastes within this state;
- (4) Qualify the Arkansas Department of Pollution Control and Ecology to adopt, administer, and enforce a hazardous waste program pursuant to the federal Resource Conservation and Recovery Act of 1976, as amended; and
- (5) Afford the people of the State of Arkansas a voice in the permitting of hazardous waste facilities within their respective counties.

History. Acts 1979, No. 406, § 2; A.S.A. 1947, § 82-4202; Acts 1989, No. 643, § 1.

Amendments. The 1989 amendment inserted "Arkansas" and "as amended" in (4).

U.S. Code. The federal Resource Conservation and Recovery Act of 1976 referred to in this section is codified as 42 U.S.C. § 6901 et seq.

8-7-203. Definitions.

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

- (1) "Department" means the Arkansas Department of Pollution Control and Ecology;
- (2) "Director" means the Director of the Department of Pollution Control and Ecology;
- (3) "Commission" means the Arkansas Pollution Control and Ecology Commission within the Department of Pollution Control and Ecology;
- (4) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any hazardous waste into or on any land or water in whatever manner so that such hazardous waste, or any constituent thereof, might or might not enter the environment or be emitted into the air, or discharged into any waters including groundwaters;
- (5) "Generation" means the act or process of producing waste materials;
- (6) "Hazardous waste" means any waste or combination of wastes of a solid, liquid, contained gaseous, or semisolid form which, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may in the judgment of the department:
 - (A) Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or
 - (B) Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise improperly managed. Such wastes include, but are not limited to, those which are radioactive, toxic, corrosive, flammable, irritants, or strong sensitizers or those which generate pressure through decomposition, heat, or other means;
- (7) "Hazardous waste management" means the systematic control of the generation, collection, distribution, marketing, source separation, storage, transportation, processing, recovery, disposal, and treatment of hazardous waste;
- (8) "Manifest" means the form used for identifying the quantity, composition, and the origin, routing, and destination of hazardous waste during its transport;
- (9) "Person" means any individual, corporation, company, firm, partnership, association, trust, joint-stock company, state agency, government instrumentality or agency, institution, county, city, town, or municipal authority or trust, venture, or any other legal entity, however organized;
- (10) "Storage" means the containment of hazardous wastes, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of the hazardous wastes. Storage by means of burial

shall be deemed to constitute disposal within the meaning of this subchapter;

11) "Transport" means the movement of wastes from the point of generation to any intermediate points and finally to the point of ultimate storage or disposal;

12) "Treatment" means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize the waste or so as to render the waste less hazardous, safer for transport, amenable to recovery, amenable to storage, amenable to disposal, or reduced in volume;

13) "Facility" means any land and appurtenances, thereon and thereto, used for the treatment, storage, or disposal of hazardous waste;

14) "Treatment facility" means a location at which waste is subjected to treatment and may include a facility where waste has been generated;

15) "Site" means any real property located within the boundary of the State of Arkansas contemplated or later acquired for the purpose of, but not limited to, landfills or other facilities to be used for treatment, storage, disposal, or generation of hazardous wastes.

History. Acts 1979, No. 406, § 3; **Amendments.** The 1989 amendment A.S.A. 1947, § 82-4203; Acts 1989, No. inserted "distribution, marketing" in 7, 643, § 2.

~~8-7-204. Penalties.~~

a) For the purposes of this subchapter, a person shall be guilty of a felony if that person:

1) Knowingly disposes, dumps, or abandons hazardous waste at any site or facility other than one at which such activity is authorized by permit or regulation issued pursuant to this subchapter; or

2) Knowingly violates any condition or requirement of this subchapter or any applicable regulation, permit, or order issued pursuant to this subchapter and which violation thereby directly and proximately causes hazardous waste to be disposed or released into the environment of this state in a manner not authorized by this subchapter or permits and regulations issued pursuant to this subchapter; or

3) Knowingly violates any condition or requirement of this subchapter or any applicable regulation, permit, or order issued pursuant to this subchapter and leaves the state or removes his person from the jurisdiction of this state for the purpose of avoiding civil or criminal prosecution for such violation; or

4) Willfully resists, impedes, or interferes with the director or any authorized employees of the department or law enforcement officers in the performance of duties pursuant to this subchapter; or

5) Knowingly submits materially false information or makes materially false statements to the director or to authorized employees of the

~~department or law enforcement officers with respect to information required to be submitted or reported pursuant to the authority of this subchapter.~~

(b)(1) Upon conviction, that person shall be subject to a fine of not more than ten thousand dollars (\$10,000) or imprisonment for not more than five (5) years, or both such fine and imprisonment;

(2) Each day or part of a day during which the violation is continued or repeated shall constitute a separate offense;

(3) For all other purposes other than disposition, the offense shall be a Class C felony.

(c)(1) Any person who knowingly violates any condition or requirement of this subchapter, or any applicable regulation, permit, or order issued pursuant to this subchapter, and who knows at the time that he thereby directly and proximately places another person in imminent danger of death or serious bodily injury shall be guilty of a felony;

(2) Upon conviction, that person shall be subject to a fine of not more than twenty-five thousand dollars (\$25,000), or imprisonment for not more than twenty (20) years, or both such fine and imprisonment;

(3) Each day or part of a day during which the violation is continued or repeated shall constitute a separate offense;

(4) For all other purposes other than disposition, the offense shall be a Class B felony.

(d) Notwithstanding the limit on fines imposed by subsections (a), (b), or (c) of this section, if a person convicted of an offense specified in subsections (a), (b), or (c) of this section has derived pecuniary gain from commission of the offense, then he may be sentenced to pay a fine not exceeding double the amount of such pecuniary gain.

(e)(1) Any person who violates any provision of this subchapter or the regulations issued pursuant to this subchapter or who violates any condition of a permit issued under this subchapter may:

(A) In accordance with the regulations issued by the commission, be assessed a civil penalty by the commission. Such penalty shall not exceed twenty-five thousand dollars (\$25,000) for each violation. Each day of a continuing violation may be deemed a separate violation for purposes of penalty assessment.

(B) However, no civil penalty may be assessed until the person charged with the violation has been given the opportunity for a hearing on the violation pursuant to §§ 8-4-218, 8-4-219, and 8-4-221.

(C) Appeal of the commission's decision may be taken in accordance with the appellate procedure specified in §§ 8-4-222 — 8-4-229.

(D) Penalties collected pursuant to this subdivision shall be deposited in the Emergency Response Fund, pursuant to § 8-7-410;

(2)(A) In any civil action instituted by the department under this subchapter, be assessed a civil penalty by the court. The penalty shall not exceed twenty-five thousand dollars (\$25,000) for each vio-

~~lation. Each day of a continuing violation may be deemed a separate violation for purposes of penalty assessments.~~

(B) Penalties collected pursuant to this subdivision shall be deposited into the operating fund of the department for use in the administration of this subchapter.

(f)(1) The department is authorized to institute a civil action in any court of competent jurisdiction to restrain any violation of, and to compel compliance with, provisions of this subchapter and of any rules, regulations, orders, or permits issued pursuant thereto.

(2) The department is also authorized to require the taking of such remedial measures as may be necessary or appropriate to implement or effectuate the provisions and purposes of this subchapter or to recover any expenses reasonably incurred by the department in removing, correcting, or terminating any adverse effects resulting therefrom, including the cost of investigation, inspection, or survey establishing the violation or unlawful act and to recover payment to the state for any other expenses of actual damage resulting therefrom and to recover civil penalties assessed pursuant to subsection (e) of this section.

(3) All expenses of the department recovered under this subsection shall be deposited in the operating fund of the department for use in the administration of this subchapter.

History. Acts 1979, No. 406, § 13; 1983, No. 456, § 1; A.S.A. 1947, § 82-4213; Acts 1989, No. 643, § 3. **Amendments.** The 1989 amendment rewrote the section.

CASE NOTES

Cited: United States v. Vertac Chem. Corp., 489 F. Supp. 870 (E.D. Ark. 1980).

8-7-205. Unlawful actions.

It shall be unlawful for any person to:

(1) Violate any provisions of this subchapter or of any rule, regulation, permit, or order adopted or issued under this subchapter;

(2) Knowingly make any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this subchapter or falsify, tamper with, or knowingly render inaccurate any monitoring device or method required to be maintained under this subchapter, or any rules or regulations adopted pursuant thereto;

(3) Dispose of hazardous wastes at any disposal site or facility other than one for which a permit has been issued by the department pursuant to this subchapter;

(4) Store, collect, transport, treat, or dispose of any hazardous waste contrary to the rules, regulations, permits, or orders issued under this subchapter or in such a manner or place as to create or as is likely to be ~~created a public nuisance or a public health hazard or to cause, or is~~

~~likely to cause water or air pollution within the meaning of § 8-4-102 et seq.~~

History. Acts 1979, No. 406, § 12;
A.S.A. 1947, § 82-4212.

CASE NOTES

Escape of Dioxin.

Where the record showed that dioxin was escaping from a plant site in quantities that under an acceptable, but unproved, theory could be considered as teratogenic, mutagenic, fetotoxic, and carcinogenic, there was a reasonable medical concern over the public health, and

therefore the escape of dioxin into a creek and bayou from the plant site constituted an imminent and substantial endangerment to the health of persons and was subject to abatement. *United States v. Vertac Chem. Corp.* 489 F. Supp. 870 (E.D. Ark. 1980).

8-7-206. Private right of action.

Any person adversely affected by a violation of this subchapter or of any rules, regulations, or orders issued pursuant thereto shall have a private right of action for relief against such violation.

History. Acts 1979, No. 406, § 15;
A.S.A. 1947, § 82-4215.

8-7-207. Venue for legal proceedings.

All legal proceedings affecting hazardous waste treatment or hazardous waste disposal facilities in this state shall be brought in the county in which the facility is located.

History. Acts 1979, No. 406, § 16;
A.S.A. 1947, § 82-4216.

8-7-208. Official agency for program and agreements.

(a) The department is designated as the official agency for the state for all purposes of the federal Resource Conservation and Recovery Act of 1976, as amended, and for the purpose of such other state or federal legislation as may be enacted to assist in the management of hazardous wastes.

(b)(1) The General Assembly of this state encourages cooperative activities by the department with other states for the improved management of hazardous wastes and, so far as is practicable, uniform state laws relating to the management of hazardous wastes and compacts between this and other states for the improved management of hazardous wastes.

(2) The department may enter into agreements with the responsible authorities of the United States or of other states, subject to approval by the Governor, relative to policies, methods, means, and procedures to be employed in the management of hazardous wastes not inconsis-

~~tent with the provisions of this subchapter and may carry out such agreements.~~

History. Acts 1979, No. 406, § 10: Conservation and Recovery Act of 1976 referred to in this section is codified as 42 A.S.A. 1947, § 82-4210.
U.S. Code. The federal Resource Conservation and Recovery Act of 1976 referred to in this section is codified as 42 U.S.C. § 6901 et seq.

8-7-209. Powers and duties generally.

- (a) The department shall have the following powers and duties:
- (1) To administer and enforce all laws, rules, and regulations regarding hazardous waste management;
 - (2) To conduct and publish such studies of hazardous waste management in this state as shall be deemed appropriate including, but not limited to:
 - (A) A description of the sources of hazardous waste generated within the state;
 - (B) Information regarding the types and quantities of such waste; and
 - (C) A description of current hazardous waste management practices and costs including treatment, recovery, and disposal;
 - (3) To develop, publish, and implement plans in accordance with the provisions of this subchapter for the safe and effective management of hazardous wastes within this state including, but not limited to:
 - (A) The establishment of criteria for the identification of those locations within the state which are suitable for establishment of hazardous waste treatment or disposal facilities or sites; and
 - (B) Those locations which are not suitable for such purposes;
 - (4) To establish criteria for determination of whether any waste or combination of wastes is hazardous for purposes of this subchapter and to identify and specify wastes or combination of wastes as being hazardous;
 - (5) To adopt, after notice and public hearing, and to promulgate, modify, repeal, and enforce rules and regulations regarding hazardous waste management as may be necessary or appropriate to implement or effectuate the purposes and intent of this subchapter and the powers and duties of the department under it including, but not limited to, rules and regulations for:
 - (A) The containerization and labeling of hazardous wastes, which rules, to the extent practicable, shall be consistent with those issued by the United States Department of Transportation, the United States Environmental Protection Agency, and the Arkansas Transportation Safety Agency;
 - (B) Establishing standards and procedures for the safe operation and maintenance of facilities;
 - (C) Identifying those wastes or combination of wastes which are incompatible and which may not be stored or disposed of together and procedures for preventing the storage, disposal, recovery, or ~~treatment of incompatible wastes together;~~

- ~~(D) The reporting of hazardous waste management activities;~~
- (E) Establishing standards and procedures for the certification of supervisory personnel at hazardous waste treatment or disposal facilities or sites as required under § 8-7-219(3); and
- (F) Establishing a manifest system for the transport of hazardous waste and prohibiting the receipt of hazardous waste at storage, processing, recovery, disposal, or transport facilities or sites without a properly completed manifest;
- (6) To issue, continue in effect, revoke, modify, or deny, under such conditions as it may prescribe, permits for the transportation of hazardous waste and the establishment, construction, operation, or maintenance of hazardous waste treatment, storage, or disposal facilities or sites, as more particularly prescribed by §§ 8-7-215 — 8-7-222;
- (7) To make such investigations and inspections and to hold such hearings, after notice, as it may deem necessary or advisable for the discharge of its duties under this subchapter and to ensure compliance with this subchapter and any orders, rules, and regulations issued pursuant thereto;
- (8) To make, issue, modify, revoke, and enforce orders, after notice and hearing, prohibiting violation of any of the provisions of this subchapter, or of any rules and regulations issued pursuant thereto or any permit issued thereunder, and requiring the taking of such remedial measures as may be necessary or appropriate to implement or effectuate the provisions and purposes of this subchapter;
- (9) To institute proceedings in the name of the department in any court of competent jurisdiction to compel compliance with, and to restrain any violation of the provisions of this subchapter, or any rules, regulations, and orders issued pursuant thereto, or any permit issued thereunder; and require the taking of such remedial measures as may be necessary or appropriate to implement or effectuate the provisions and purposes of this subchapter. In any civil action in which a temporary restraining order, preliminary injunction, or permanent injunction is sought, it shall not be necessary to allege or prove at any stage of the proceeding that irreparable damage will occur should the requested relief not be granted, nor that the remedy at law is inadequate;
- (10) To initiate, conduct, and support research, demonstration projects, and investigations, and coordinate all state agency research programs pertaining to hazardous waste management, and establish technical advisory committees to assist in the development of procedures, standards, criteria, and rules and regulations, the members of which may be reimbursed for travel expenses;
- (11) To establish policies and standards for effective hazardous waste management; and
- (12) To establish standards and procedures for the certification of personnel to operate hazardous waste treatment or disposal facilities or any commercial hazardous waste management facilities.
- (b) In addition to the powers enumerated in subsection (a) of this section, ~~the department shall have and may use in the administration~~

~~and enforcement of this subchapter all of the powers which it has under other laws administered by it, including the Arkansas Water and Air Pollution Control Act, §§ 8-4-101 — 8-4-106, 8-4-201 — 8-4-229, 8-4-301 — 8-4-313, and the Arkansas Solid Waste Management Act, § 8-6-201 et seq.~~

History. Acts 1979, No. 406, § 4; A.S.A. 1947, § 82-4204; Acts 1989, No. 643, § 4.

Amendments. The 1989 amendment substituted "regarding hazardous waste management" for "relating to the generation, storage, treatment, transportation, recovery, and disposal of hazardous wastes" at the end of (a)(1) and for "the collection, generation, storage, transportation, disposal, recovery, and treatment of hazardous wastes" in the introductory language of (a)(5); substituted "Transportation Safety Agency" for "Transportation Commission" at the end of (a)(5)(A); substituted "hazardous waste management activities" for "the generation, storage, transportation, recovery, treatment, or disposal of hazardous wastes" in (a)(5)(D); inserted "transportation of hazardous waste and the" and "storage" in (a)(6); deleted "to" preceding "require" in the first sentence of (a)(9) and preceding "establish" in (a)(10); and added "or any commercial hazardous waste management facilities" at the end of (a)(12).

tation Safety Agency" for "Transportation Commission" at the end of (a)(5)(A); substituted "hazardous waste management activities" for "the generation, storage, transportation, recovery, treatment, or disposal of hazardous wastes" in (a)(5)(D); inserted "transportation of hazardous waste and the" and "storage" in (a)(6); deleted "to" preceding "require" in the first sentence of (a)(9) and preceding "establish" in (a)(10); and added "or any commercial hazardous waste management facilities" at the end of (a)(12).

CASE NOTES

Cited: United States v. Vertac Chem. Corp., 489 F. Supp. 870 (E.D. Ark. 1980).

8-7-210. Existing rules, regulations, etc.

(a) All existing rules and regulations of the department not inconsistent with the provisions of this subchapter relating to subjects embraced within this subchapter shall remain in full force and effect until expressly repealed, amended, or superseded by the commission, insofar as the rules and regulations do not conflict with the provisions of this subchapter.

(b) All orders entered, permits granted, and pending legal proceedings instituted by the department relating to subjects embraced within this subchapter shall remain unimpaired and in full force and effect until superseded by actions taken by the department or commission under this subchapter.

(c) No existing civil or criminal remedies, public or private, for any wrongful action shall be excluded or impaired by this subchapter.

(d) The provisions of this subchapter, and the rules and regulations promulgated pursuant to it, shall govern if they conflict with the provisions of the Arkansas Water and Air Pollution Control Act, §§ 8-4-101 — 8-4-106, 8-4-201 — 8-4-229, and 8-4-301 — 8-4-313 or the Arkansas Solid Waste Management Act, § 8-6-201 et seq., or any action taken by the department or commission under these laws.

History. Acts 1979, No. 406, § 15; A.S.A. 1947, § 82-4215.

~~8-7-211. Variances, waivers, or extensions.~~

Where the application of, or compliance with, any rule or regulation issued under this subchapter, in the judgment of the commission, would cause undue or unreasonable hardship to any person and not cause substantially adverse environmental effects, the commission may grant a variance, waiver, or extension to the same extent that such variance, waiver, or extension would be allowable under the federal Resource Conservation and Recovery Act of 1979, as amended, and the regulations promulgated thereunder. In no case shall the duration of any such variance exceed one (1) year. Renewals or extensions may be given only after opportunity for public comment on each such renewal or extension.

History. Acts 1979, No. 406, § 14; A.S.A. 1947, § 82-4214; Acts 1989, No. 643, § 5.

Amendments. The 1989 amendment substituted "grant a variance, waiver, or extension ... regulations promulgated thereunder" for "issue a variance from the rule or regulation" at the end of the first sentence.

U.S. Code. The federal Resource Conservation and Recovery Act of 1979, referred to in this section, probably refers to the federal Resource Conservation and Recovery Act of 1976 which is codified as 42 U.S.C. § 6901 et seq.

8-7-212. Considerations in administration.

(a) In administering the provisions of this subchapter, the department may adopt and give appropriate effect to variations within this state in climate, geology, population density, and such other factors as may be relevant to the management of hazardous wastes, the establishment of standards and permit conditions, and to the siting of permitted facilities.

(b) To the extent practicable, the rules, regulations, and procedures adopted by the department pursuant to this subchapter shall be consistent with other environmentally related rules, regulations, and procedures of the department. In administering the provisions of this subchapter and of all other laws under the administration of the department, the department and commission shall coordinate and expedite the issuance of permits required by an applicant under one (1) or more laws, to the end of eliminating, insofar as practicable, any duplication of unnecessary time and expense to the applicant and the department.

(c) The department shall integrate all provisions of this subchapter with the appropriate provisions of all other laws which grant regulatory authority to the department for purposes of administration and enforcement and shall avoid duplication to the maximum extent practicable.

History. Acts 1979, No. 406, § 6;
A.S.A. 1947, § 82-4206.

~~8-7-213. Procedure generally.~~

The procedure of the department and commission for issuance of rules and regulations, conduct of hearings, notice, power of subpoena, review of action on permits, right of appeal, presumptions, finality of actions, and related matters shall be as provided in §§ 8-4-101 — 8-4-106 and 8-4-201 — 8-4-229 including, but not limited to, §§ 8-4-205, 8-4-210, 8-4-212 — 8-4-214, and 8-4-218 — 8-4-229 if they are not in conflict with the provisions set forth in this subchapter.

History. Acts 1979, No. 406, § 9;
A.S.A. 1947, § 82-4209.

8-7-214. Emergency order for imminent hazard.

(a)(1) Notwithstanding any other provisions of this subchapter, the director, upon finding that the storage, transportation, treatment, or disposal of any waste may present an imminent and substantial hazard to the health of persons or to the environment and that an emergency exists requiring immediate action to protect the public health and welfare, he may, without notice or hearing, issue an order reciting the existence of such an imminent hazard and emergency and requiring that such action be taken as he determines to be necessary to protect the health of such persons or the environment and to meet the emergency.

(2) The order of the director may include, but is not limited to, directing the operator of the treatment or disposal facility or site, or the custodian of the waste, which constitutes the hazard, to take such steps as are necessary to prevent the act or eliminate the practice which constitutes the hazard and, with respect to a facility or site, may order cessation of operation.

(b)(1) Any person to whom the order is directed shall comply with it immediately, but, on written application to the director within ten (10) days of the issuance of the order, that person shall be afforded a hearing before the commission within ten (10) days after receipt of the written request.

(2) On the basis of the hearing, the commission shall continue the order in effect, or shall revoke or modify it.

History. Acts 1979, No. 406, § 8;
A.S.A. 1947, § 82-4206.

CASE NOTES

Cited: United States v. Vertac Chem.
Corp., 480 F. Supp. 870, E.D. Ark. 1980.

8-7-215. Permits — Requirement.

(a) No person shall construct, substantially alter, or operate any hazardous waste treatment or disposal facility or site, nor shall any person store, transport, treat, or dispose of any hazardous waste without first obtaining a permit from the department for the facility, site, or activity.

(b) Persons who construct, substantially alter, or operate a facility which generates hazardous wastes shall be subject to the reporting requirements of this subchapter but shall not be required to obtain a permit under this subchapter unless such person also stores, transports, treats, or disposes of hazardous wastes.

History. Acts 1979, No. 406, § 5;
A.S.A. 1947, § 82-4205.

~~**8-7-216. Permits — Issuance generally — Interim operations.**~~

(a) Permits shall be issued under such terms and conditions as the department may prescribe under the provisions of this subchapter and under such terms and conditions as the Arkansas State Highway and Transportation Department may prescribe for the transportation of hazardous wastes.

(b) Facilities required to have a permit under this subchapter or which are operating under the terms of permits issued under the Arkansas Water and Air Pollution Control Act, § 8-4-101 et seq., or the Arkansas Solid Waste Management Act, § 8-6-201 et seq., as of the date of the enactment of this Act (March 14, 1979), may continue in operation until such time as a permit is issued under the provisions of this Act by the department, provided the owner or operator of such facility has made application on forms provided by the department for such permit within six (6) months of enactment of the Act (September 14, 1979).

(c)(1) Facilities required to have a permit under this subchapter due to statutory or regulatory changes which occur after March 14, 1979, may continue in operation until such time as a permit is issued under this subchapter, provided that the owner or operator notifies the department of newly regulated activities at the facility within ninety (90) days of the effective date of each statutory or regulatory change and makes initial permit application within one hundred eighty (180) days of the effective date of such changes on forms provided by the department.

(2) This subsection shall not apply to any facility at which interim operating authority or a final permit has previously been terminated or denied.

(d) Interim operating authority acquired pursuant to subsection (b) or (c) of this section shall terminate for incineration facilities on November 8, 1989, unless the owner or operator applied for final permit determination by November 8, 1988.

~~(e) Interim operating authority acquired pursuant to subsection (b) or (c) of this section shall terminate for storage and treatment facilities on November 8, 1992, unless the owner or operator applied for final permit determination by November 8, 1988.~~

~~(f) Interim operating authority acquired pursuant to subsection (c) of this section for land disposal facilities shall terminate twelve (12) months after the facility first becomes subject to permitting unless the owner or operator certifies compliance with all applicable groundwater monitoring and financial responsibility requirements.~~

~~History. Acts 1979, No. 406, § 5; Amendments. The 1989 amendment A.S.A. 1947, § 82-4205; Acts 1989, No. 441, added but substituted "Safety Agency" for "Commission" in 4.~~

~~8-7-217. Permits — Notice of hearing.~~

~~No permit shall be issued by the department or commission for any commercial hazardous waste treatment, storage, or disposal facility unless thirty (30) days' advance notice of a hearing has been placed in the largest newspaper published in the county in which a facility or facilities is located or proposed to be located, as well as published in the largest newspaper published in the adjoining counties. If there is no newspaper published in any of the counties so affected, the notice shall be published in the newspaper having the largest circulation in the county.~~

~~History. Acts 1979, No. 406, § 5; A.S.A. 1947, § 82-4205.~~

~~8-7-218. Permits — Compliance with subchapter, state and federal standards, regulations, etc.~~

~~(a) No permits shall be issued by the Arkansas Department of Pollution Control and Ecology for any facility unless the department, after opportunity for public comment, has determined that the facility has been designed and will be operated in such manner that any emission from the facility will comply with the provisions of this subchapter, and all applicable state and federal standards and regulations concerning air and water quality, and that the transfer, handling, and storage of materials within the facility will not cause conditions which would violate state and federal standards concerning worker safety or create unreasonable hazards to the environment or to the health and welfare of the people living and working in or near the facility.~~

~~(b)(1) No permit shall be issued by the department for any commercial disposal or storage facility off the site where the hazardous waste is generated until the department has adopted rules, regulations, standards, and procedures pursuant to § 8-7-209.~~

~~(2) The rules, regulations, standards, procedures, or other requirements adopted and imposed by the department shall not be less strict~~

~~gent than the regulations promulgated or revised by the Environmental Protection Agency pursuant to the federal Resource Conservation and Recovery Act of 1976, as amended.~~

(c) No permit shall be issued for hazardous waste treatment, storage, or disposal facilities except under the terms of regulations of the department which conform to the provisions of § 3005 of the federal Resource Conservation and Recovery Act, as amended.

History. Acts 1979, No. 406, § 5, A.S.A. 1947, § 82-4205; Acts 1989, No. 643, § 7.

Amendments. The 1989 amendment, in (a), inserted "Arkansas" preceding "Department" and deleted "the standards and regulations issued pursuant to this subchapter" preceding "and all applicable state and federal"; added "as amended" at

the end of (b)(2) and (c); and deleted "non-commercial" preceding "hazardous" in (c).

U.S. Code. The federal Resource Conservation and Recovery Act of 1976 appears as 42 U.S.C. § 6901 et seq.

Section 3005 of the federal Resource Conservation and Recovery Act referred to in this section is codified as 42 U.S.C. § 6925.

8-7-219. Permits — Commercial facilities — Terms and conditions.

No permit shall be issued for any commercial hazardous waste treatment, storage, or disposal facility unless that facility meets such terms and conditions as the department may direct including, but not limited to:

(1) Evidence of liability insurance in such amount as the department may determine to be necessary for the protection of the public health and safety and the protection of the environment;

(2) Evidence of financial responsibility in such form and amount as the department may determine to be necessary to insure that, upon abandonment, cessation, or interruption of the operation of the facility, all appropriate measures are taken to prevent present and future damage to the public health and safety and to the environments;

(3) Evidence that the personnel employed at the hazardous waste treatment or disposal facility meet such qualifications as to education and training as the department may determine to be necessary to assure the safe and adequate operation of the facility.

(A) Persons charged with the direct supervision of the operation of any facility must be certified by the department as having such qualifications after a review of the types, properties, and volume of hazardous waste to be treated or disposed of at the facility.

(B) The department may require the recertification of supervisory personnel where there is any significant change in the types or properties of hazardous waste being treated or disposed of in any facility;

(4) Evidence of an appropriate preventive maintenance program, spill prevention plan, safety procedures, and contingency plans which have been developed in consultation with the fire department having jurisdiction and by the mayor or city manager of the municipality or by the county judge of the county in which the facility is to be located;

(5) Evidence that the location of the facility is consistent with the siting criteria established by the department as provided in § 8-7-209(a)(5). The provisions of this subsection shall not apply to treatment facilities which began operation prior to the date of enactment of this act and which have an existing operating permit from the department, or to any subsequent modifications to such facilities, provided that the owner of the facility can demonstrate that the modifications do not materially increase the degree of hazards associated with the facility:

(6) Evidence of such forms of assurance, including full fee ownership of lands, and all mineral rights thereto, to ensure that the owner of any hazardous waste landfill has the legal authority to commit the landfill to perpetual security.

History. Acts 1979, No. 406, § 5; Acts 1979, No. 406, was signed by the A.S.A. 1947, § 82-4205. Governor and became effective on March

Publisher's Notes. In reference to the term "the date of enactment of this act," 14, 1979.

~~8-7-220. Permits — Duration — Renewal.~~

~~(a) Permits shall be issued for a period not to exceed ten (10) years. However, land disposal permits shall be reviewed five (5) years from date of issuance or reissuance and shall be modified as necessary to assure that the facility continues to comply with the currently applicable laws and regulations.~~

~~(b) Permits shall be subject to renewal by the Department of Pollution Control and Ecology upon a showing that the facility has been operated in accordance with the terms of the permit, the rules and regulations applicable to such facility, and compliance with all other provisions of this subchapter.~~

~~(c) Nothing in this section shall preclude a permit from being reviewed and modified at any time during its term.~~

~~**History.** Acts 1979, No. 406, § 5; 1985,
No. 320, § 1; A.S.A. 1947, § 82-4205.~~

8-7-221. Permits — Revocation.

Any permit issued under §§ 8-7-215 — 8-7-220 shall be subject to revocation for failure of the permittee to comply with the terms and conditions of the permit, the rules and regulations of the department applicable thereto, or the provisions of this subchapter.

History. Acts 1979, No. 406, § 5;
A.S.A. 1947, § 82-4205.

~~8-7-222. Permits. Hearing upon denial, revocation, or modification.~~

~~Any person who is denied a permit by the director or who has such permit revoked or modified shall be afforded an opportunity for a hearing by the commission in connection therewith upon written application made within thirty (30) days after service of notice of the denial, revocation, or modification.~~

~~History. Acts 1979, No. 406, § 5.
A.S.A. 1947, § 82-4205.~~

8-7-223. Location of landfill.

No hazardous waste landfill disposal facility off the site of generation shall be located within one-half (1/2) mile of any occupied dwelling unless the applicant shall affirmatively demonstrate and the department shall specifically find that, because of the nature and amounts of the materials to be placed in such facility, a lesser distance will provide adequate margins of safety even under abnormal operating conditions.

History. Acts 1979, No. 406, § 5.
A.S.A. 1947, § 82-4205.

8-7-224. Rules for transporting hazardous waste.

(a) Following notice and public hearing, the Arkansas State Highway and Transportation Department, in consultation with the department, shall issue rules and regulations for the transportation of hazardous wastes. The rules and regulations shall be consistent with applicable rules and regulations issued by the United States Department of Transportation and with any rules, regulations, and standards issued by the department pursuant to this subchapter.

(b) The provisions of this section shall apply equally to those persons transporting hazardous wastes generated by others and to those transporting hazardous wastes they have generated themselves, or combinations thereof.

History. Acts 1979, No. 406, § 7.
A.S.A. 1947, § 82-4207.

8-7-225. Records and examinations.

(a) The owner or operator of any hazardous waste management facility or site shall notify the department as to hazardous waste management activities in accordance with the requirements of this subchapter and regulations, permits, and orders issued under this subchapter, and shall establish and maintain such records, make such reports, install, use, and maintain such monitoring equipment or methods, take such samples, perform such tests, and provide such other information to the department as the director may reasonably require.

~~(b) The department, or any authorized employee or agent thereof, may examine and copy any books, papers, records, or memoranda pertaining to the operation of the facility or site.~~

(c) The department, or any authorized employee or agent thereof, may enter upon any public or private property for the purpose of obtaining information or conducting surveys or investigations necessary or appropriate for the purposes of this subchapter.

(d)(1)(A) Any records, reports, or information obtained under this subchapter and any permits, permit applications, and related documentation shall be available to the public for inspection and copying.

(B) Upon a showing satisfactory to the director that the records, reports, permits, documentation, information, or any part thereof would, if made public, divulge methods or processes entitled to protection as trade secrets, the director shall consider, treat, and protect the records, reports, or information as confidential.

(2)(A) As necessary to carry out the provisions of this subchapter, information afforded confidential treatment may be transmitted under a continuing claim of confidentiality to other officers, or employees of the state or of the United States, if the owner or operator of the facility to which the information pertains is informed of the transmittal and if the information has been acquired by the department under the provisions of this subchapter.

(B) The provisions of this subdivision shall not be construed to limit the department's authority to release confidential information during emergency situations.

(3) Any violation of this subsection shall be unlawful and constitute a misdemeanor.

History. Acts 1979, No. 406, § 11: substituted "hazardous waste management facility" for "permitted facility" and
1983, No. 809, § 1: ~~ASA~~ 1947, § 82-4211; Acts 1989, No. 647, § 8. inserted "notify the department ... and
Amendments. The 1989 amendment shall" in (a).

8-7-226. Fees.

(a)(1) The department shall have authority to establish by regulation a schedule of fees to recover the costs of processing permit applications and permit renewal proceedings, on-site inspections and monitoring, the certification of personnel to operate hazardous waste treatment, storage, or disposal facilities, and other activities of department personnel which are reasonably necessary to assure that generators and transporters of hazardous waste and hazardous waste management facilities are complying with the provisions of this subchapter, and which reasonably should be borne by the transporter, generator, or owner or operator of the hazardous waste management facility;

(2)(A) However, generators of over two thousand two hundred pounds (2200 lbs.) of hazardous waste per month shall not be assessed more than five hundred dollars (\$500) annually pursuant to this subchapter for inspections and monitoring.

~~(B) Generators of two hundred twenty pounds (220 lbs.) to two thousand two hundred pounds (2200 lbs.) of hazardous waste per month shall not be assessed more than one hundred dollars (\$100) annually pursuant to this subchapter for inspections and monitoring; and~~

~~(C) Generators of less than two hundred twenty pounds (220 lbs.) of hazardous waste per month shall be assessed no fees under this subchapter for inspections and monitoring;~~

~~(b) All fees collected pursuant to this section shall be dedicated to enabling the department to receive authorization to administer a hazardous waste management program in Arkansas pursuant to the federal Resource Conservation and Recovery Act of 1979, as amended by the Hazardous and Solid Waste Amendments of 1984.~~

~~(c) The authority to assess fees pursuant to this section shall terminate on October 1, 1991, unless the department has received authorization for all available components of the program by that date from the United States Environmental Protection Agency.~~

History. Acts 1979, No. 406, § 5; A.S.A. 1947, § 82-4205; Acts 1989, No. 643, § 9.

Amendments. The 1989 amendment rewrote the section.

U.S. Code. The federal Resource Conservation and Recovery Act of 1979, referred to in this section, probably refers to the federal Resource Conservation and Recovery Act of 1976 which is codified as 42 U.S.C. § 6901 et seq.

The Hazardous and Solid Waste Amendments of 1984, referred to in this section, are codified as 42 U.S.C. §§ 6901, 6902, 6905, 6912, 6915-6917, 6921-6931, 6973, 6935-6939, 6939a, 6941, 6943-6945, 6948, 6949a, 6956, 6962, 6972, 6973, 6976, 6979a, 6979b, 6982, 6984, 6991, and 6991a-6991i.

SUBCHAPTER 3 — RESOURCE RECLAMATION ACT

SECTION.

8-7-301. Title.

8-7-302. Legislative findings.

8-7-303. Policy and purpose.

8-7-304. Definitions.

8-7-305. Exception to provisions.

SECTION.

8-7-306. Penalties.

8-7-307. Unlawful actions — Acts or omissions of third parties.

8-7-308. Powers and duties generally.

8-7-309. Appeals.

Effective Dates. Acts 1985, No. 922, § 7: Apr. 15, 1985. Emergency clause provided: "It has been found and it is hereby declared by the General Assembly that inequalities now exist in the regulation of hazardous waste management in this state as a result of current provisions of Act 1098 of 1979 (§ 8-7-301 et seq.), and that said provisions jeopardize the federal delegation of authority necessary to operate a state hazardous waste management

program in lieu of a federal program, thereby threatening the orderly development of the state's resources in a manner which will protect the health and welfare of the people of the State of Arkansas. Therefore, an emergency is declared to exist, and this act, being necessary for the preservation of the public health, safety and welfare, shall take effect and be in force from the date of its approval."

RESEARCH REFERENCES

~~Ark. I. Notes, Looney, Handling Ad- department and Commission, 1988 Ark. I
ministrative Proceedings Before the Ar- Notes 23.
kansas Pollution Control and Ecology De-~~

8-7-301. Title.

This subchapter may be cited as the "Arkansas Resource Declamation Act of 1979".

History. Acts 1979, No. 1098, § 1;
A.S.A. 1947, § 82-4217.

8-7-302. Legislative findings.

The General Assembly of this state finds and it is declared that:

(1) The disposal of hazardous wastes, although currently necessary for certain forms of hazardous wastes, represents an inefficient use of natural resources and may present long-term threats to the environment and to the public health and safety;

(2) Technically and economically feasible treatment methods are becoming increasingly available and offer the advantages of complete destruction of these wastes or the recovery and reclamation of some, if not all, constituents of these wastes;

(3) In addition to the recovery or reclamation of natural resources, treatment of hazardous wastes reduces the volume of hazardous wastes which must be disposed of and thereby reduces the associated threats to the environment and to the public health and safety;

(4) Interstate cooperation is necessary to assure that the volume of hazardous wastes which must be disposed of within the state is reduced through a comprehensive program which encourages and, where appropriate, requires the treatment of hazardous wastes; and

(5) The Hazardous Waste Management Act of 1979, § 8-7-201 et seq., authorizes the department to encourage the development of interstate agreements for the management of hazardous wastes and to enter into such agreements, with the concurrence of the Governor.

History. Acts 1979, No. 1098, § 2;
A.S.A. 1947, § 82-4218.

8-7-303. Policy and purpose.

The General Assembly declares that it is the policy of this state and the purpose of this subchapter to:

(1) Establish a statewide program designed to protect society and the environment from the risks and burdens associated with the continuing practice of disposing of those forms of hazardous wastes which could otherwise be treated;

~~(2) Encourage the development and utilization of techniques which result in the recovery, reclamation, and conservation of resources of the state, including the reclamation and conservation or safeguarding of abandoned hazardous waste disposal sites;~~

(3) Encourage interstate cooperation and interstate agreements which would provide a requisite balance of disposal and treatment facilities among the states and which would reduce the amount of hazardous wastes disposed of in the state, irrespective of the origin of these wastes; and

(4) Coordinate the administration of this subchapter with the administration of §§ 8-7-201 — 8-7-226, so as to further the purposes of both this subchapter and §§ 8-7-201 — 8-7-226.

History. Acts 1979, No. 1098, § 3;
1985, No. 922, § 1; A.S.A. 1947,
§ 82-4219.

8-7-304. Definitions.

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

(1) "Commission" means the Arkansas Pollution Control and Ecology Commission within the department;

(2) "Department" means the Department of Pollution Control and Ecology;

(3) "Director" means the Director of the Department of Pollution Control and Ecology;

(4) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any hazardous waste into or on any land or water in whatever manner so that the hazardous waste or any constituent thereof might or might not enter the environment or be emitted into the air or discharged into any water including groundwaters;

(5) "Facility" means any land and appurtenances thereon and thereto used for the treatment, storage, or disposal of hazardous waste;

(6) "Generation" means the act or process of producing waste materials;

(7) "Hazardous waste" means any waste or combination of wastes of a solid, liquid, contained gaseous, or semisolid form which, because of its quantity, concentration, or physical, chemical, or infectious characteristics may, in the judgment of the department:

(A) Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

(B) Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of or otherwise improperly managed. Such wastes include, but are not limited to, those which are radioactive, toxic, corrosive, flammable, irritants, strong sensitizers, or which generate pressure through decomposition, heat, or other means;

~~(8) "Hazardous waste management" means the systematic control of the generation, collection, source separation, storage, transportation, processing, recovery, disposal, and treatment of hazardous waste;~~

~~(9) "Manifest" means the form used for identifying the quantity, composition, and the origin, routing, and destination of hazardous waste during its transport;~~

~~(10) "Owners, operators, or other responsible parties" means and includes:~~

~~(A) Any person owning or operating a site or facility; or~~

~~(B) In the case of any inactive or abandoned facility or site, any person who owned, operated, or otherwise controlled the activities at the site or facility during the time that the site or facility was used to manage hazardous wastes;~~

~~(11) "Person" means any individual, corporation, company, firm, partnership, association, trust, joint-stock company, state agency, government instrumentality or agency, institution, county, city, town, or municipal authority or trust, venture, or any other legal entity, however organized;~~

~~(12) "Storage" means the containment of hazardous wastes, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of such hazardous wastes. However, storage by means of burial shall be deemed to constitute disposal within the meaning of this subchapter;~~

~~(13) "Transport" means the movement of wastes from the point of generation to any intermediate points and finally to the point of ultimate storage or disposal;~~

~~(14) "Treatment" means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste, so as to neutralize such waste or so as to render such waste less hazardous, safer for transport, amenable to recovery, amenable to storage, amenable to disposal, or reduced in volume;~~

~~(15) "Treatment facility" means a location at which waste is subjected to treatment and may include a facility where waste has been generated;~~

~~(16) "Site" means any real property located within the boundary of the State of Arkansas contemplated or later acquired for the purpose of, but not limited to, landfills or other facilities to be used for treatment, storage, disposal, or generation of hazardous wastes.~~

~~History. Acts 1979, No. 1098, § 4;
1985, No. 922, § 2; A.S.A. 1947,
§ 82-4220.~~

~~8-7-305. Exception to provisions.~~

This subchapter does not apply to an industrial waste treatment facility that discharges into a publicly owned treatment works, if the industrial waste treatment facility and publicly owned treatment works comply with the Arkansas Water and Air Pollution Control Act, §§ 8-4-101 — 8-4-106, 8-4-201 — 8-4-229, and 8-4-301 — 8-4-313.

History. Acts 1979, No. 1098, § 8;
A.S.A. 1947, § 82-4224.

8-7-306. Penalties.

(a) Any person who commits any unlawful act shall be guilty of a misdemeanor and upon conviction shall be subject to criminal penalties consisting of imprisonment for not more than one (1) year or a fine of not more than ten thousand dollars (\$10,000) or by both such fine and imprisonment. Each day or part of a day during which the violation is continued or repeated shall constitute a separate offense.

(b) Any person who violates any provision of this subchapter or the regulations issued pursuant to this subchapter or who violates any condition of a permit issued under this subchapter may, pursuant to administrative procedures and civil penalty regulations of the commission, be assessed a civil penalty by the commission. The penalty shall not exceed twenty-five thousand dollars (\$25,000) for each violation. Each day of a continuing violation may be deemed as a separate violation for purposes of penalty assessments. However, no civil penalty may be assessed until the person charged with the violation has been given the opportunity for a hearing on such violation pursuant to §§ 8-4-218, 8-4-219, and 8-4-221.

History. Acts 1979, No. 1098, § 7;
1985, No. 922, § 5; A.S.A. 1947,
§ 82-4223.

8-7-307. Unlawful actions — Acts or omissions of third parties.

(a) It shall be unlawful for any person:

(1) To violate any provision of this subchapter or of any rule, regulation, permit, or order issued under this subchapter;

(2) To transport hazardous wastes into or out of the state except as provided by regulations established by the department pursuant to the provisions of this subchapter;

(3) To dispose of hazardous wastes in the state except as provided by regulations established by the department pursuant to this subchapter.

(b) No person shall be liable for any violation of any provision of this subchapter or of any rule, regulation, permit, or order issued under this subchapter, which was caused solely by the acts or omissions of a third party.

~~History. Acts 1979, No. 1098, § 6; Amendments. The 1989 amendment 1985, No. 922, § 4; A.S.A. 1947, added (b), § 82-4222; Acts 1989, No. 260, § 6.~~

RESEARCH REFERENCES

UALR L.J. Survey. Water and Environmental Law. 12 UALR L.J. 665.

8-7-308. Powers and duties generally.

The department shall have the following powers and duties:

(1) To enter into such agreements or compacts, between one (1) or more states or with the federal government, as may be necessary and appropriate to effectuate a program consistent with the purposes of this subchapter, if these agreements or compacts first receive the approval of the Governor;

(2) To adopt such regulations as may be necessary and appropriate to enforce within the state the terms of any interstate agreement or compact developed pursuant to the provisions of this subchapter;

(3) To promote the purposes of this subchapter and to effectuate and implement interstate agreements by imposing reasonable conditions on permits issued under this subchapter and §§ 8-7-201 — 8-7-226, and the regulations promulgated under this subchapter and those sections;

(4) To prohibit, by regulation or by condition of permit, the disposal of any hazardous wastes within the state unless the owner or custodian of the wastes can demonstrate to the reasonable satisfaction of the director that it is technically or economically infeasible for the wastes to be treated;

(5) To issue, continue in effect, revoke, modify, or deny, under such terms as it or the General Assembly may prescribe, permits for the establishment, construction, operation, or maintenance of hazardous waste treatment or disposal facilities;

(6) To adopt and enforce regulations which would require the owners, operators, or other responsible parties of inactive or abandoned disposal sites to undertake such actions as are reasonable to prevent environmental contamination;

(7) To receive federal and private funds for the purpose of securing or reclaiming abandoned hazardous waste disposal sites in an environmentally safe manner; and

(8) To encourage and to participate in studies, projects, and agreements for the purpose of identifying and evaluating improvements in hazardous waste treatment and disposal techniques.

~~History. Acts 1979, No. 1098, § 5; 1985, No. 922, § 3; A.S.A. 1947, § 82-4221.~~

~~8-7-309. Appeals.~~

Appeal of the commission's decision may be taken in accordance with the appellate procedure specified in §§ 8-4-222 — 8-4-229.

History. Acts 1979, No. 1098, § 7; 1985, No. 922, § 5; A.S.A. 1947, § 82-4223.

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- 8-7-402. Legislative intent.
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- 8-7-408. Response authority of director generally — Permits.
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- 8-7-410. Emergency Response Fund.
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- 8-7-412. Furnishing of information.
- 8-7-413. Liability of responsible parties.
- 8-7-414. Apportionment of costs and expenditures.
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- 8-7-416. Recovery of expenditures — Limitations.
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- 8-7-418. Punitive damages.
- 8-7-419. Appeals.
- 8-7-420. Liability for injuries, etc. — Exceptions.

Cross References. Emergency services, § 12-75-101 et seq.

Effective Dates. Acts 1985, No. 452, § 14: Mar. 20, 1985. Emergency clause provided: "It has been found and is declared by the General Assembly of Arkansas that a great need exists to provide funding for state government response to release of hazardous substances into the environment of the state that threaten the public health and welfare. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety, shall take effect and be in force from the date of its approval."

Acts 1988 (3rd Ex. Sess.), No. 15, § 4:

Feb. 9, 1988. Emergency clause provided: "It is hereby found and determined by the General Assembly that FHLMC (Freddie Mac) has indicated that loans in Arkansas may be jeopardized due to lien provisions contained in the Emergency Response Fund Act; that this matter needs immediate clarification in order to insure that monies are available to the people of Arkansas for economic development. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

UALR L.J. Survey, Water and Environmental Law, 12 UALR L.J. 665.

**EPA APPROVED ARKANSAS REGULATORY REQUIREMENTS
 APPLICABLE TO THE HAZARDOUS WASTE MANAGEMENT PROGRAM
 September, 1993**

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ADPC&E Regulation No. 23

HAZARDOUS WASTE MANAGEMENT



December 6, 1991

State of Arkansas
Department of Pollution Control and Ecology

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(HAZARDOUS WASTE MANAGEMENT)

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CHAPTER ONE: TITLE AND PURPOSE

The following rules and regulations of the Arkansas Department of Pollution Control and Ecology, adopted pursuant to the provisions of the Arkansas Hazardous Waste Management Act of 1979 (Act 406 of 1979, as amended, Arkansas Code Annotated (A.C.A.) §§ 8-7-201 et seq.), and the Arkansas Resource Reclamation Act of 1979 (Act 1098 of 1979, as amended, Arkansas Code Annotated (A.C.A.) §§ 8-7-301 et seq.), shall be known as ADPC&E Regulation No. 23, (Hazardous Waste Management).

It is the purpose of this Regulation and it is hereby declared to be the policy of this Department:

- o to protect the public health and safety, the health of living organisms, and the environment from the effects of improper, inadequate, or unsound management of hazardous wastes;
- o to establish a program of regulation over the generation, storage, transportation, treatment, and disposal of hazardous waste;
- o to assure the safe and adequate management of hazardous wastes within this state;
- o to qualify to adopt, administer, and enforce a hazardous waste program pursuant to the Federal Resource Conservation and Recovery Act, as amended, (P.L. 94-580);
- o to afford the people of the State of Arkansas a voice in the permitting of hazardous waste facilities within their respective counties;
- o to establish a statewide program designed to protect society and the environment from the risks and burdens associated with the continued practice of disposing of those forms of hazardous waste which could otherwise be treated;
- o to encourage the development and utilization of techniques which result in the recovery, reclamation and conservation of resources of the State, including the reclamation and conservation or safeguarding of abandoned hazardous waste disposal sites;
- o to encourage interstate cooperation and interstate agreements which would provide a requisite balance of disposal and treatment facilities among the states and which would reduce the amount of hazardous waste disposed of in the state, irrespective of the origin of such wastes; and
- o to promote economic growth with environmental concern by establishing a program to assist industries in finding environmentally sound methods of disposing of hazardous waste.

CHAPTER TWO: REGULATIONS PROMULGATED UNDER THE ARKANSAS HAZARDOUS WASTE MANAGEMENT ACT FOR ADMINISTRATION OF THE STATE RCRA PROGRAM

~~Section 1. Authority.~~

~~The regulations under this Chapter are promulgated pursuant to the Arkansas Hazardous Waste Management Act, as amended (Act 406 of 1979, as amended, A.C.A. §§ 8-7-201 et seq.)~~

Section 2. Definitions.

a. In lieu of the definitions of the following terms set forth in 40 CFR 260.10, 40 CFR 261.3, and 40 CFR 270.2, when used in this Chapter:

(1) "Act" means the Arkansas Hazardous Waste Management Act of 1979, as amended (Act 406 of 1979, as amended).

(2) "Active Portion" means that portion of a facility where treatment, storage, or disposal operations are being or have been conducted after the effective date of provisions of this Regulation subjecting such facility to regulation, and which is not a closed portion.

(3) "EPA Identification Number" means the unique number assigned by the Arkansas Department of Pollution Control and Ecology to each generator, transporter, and to each treatment, storage, or disposal facility.

(4) "Existing Hazardous Waste Management Facility" or "Existing Facility" means a facility which was in operation or for which construction commenced on or before March 14, 1979. A facility has commenced construction if the owner or operator has obtained the federal, state, and local approvals or permits necessary to begin physical construction; and either begun a continuous on site physical construction program or entered into contractual obligations for such a program to be completed within a reasonable time and which cannot be canceled or modified without substantial loss.

(5) "Hazardous Waste" means a hazardous waste as defined in 40 CFR 261.3. ~~In addition thereto polychlorinated biphenyls (PCBs), as defined in 40 CFR 761 (including PCBs, "PCB items", PCB transformers, and PCB contaminated electrical equipment) which are transported to treatment or disposal facilities or to commercial storage facilities, shall be regulated as hazardous waste under the provisions of § 16 of this Chapter and shall be processed in hazardous waste management facilities which comply with the provisions of this Chapter or the provisions of 40 CFR 761, whichever are the most stringent.~~

(6) "Operator" means an individual or individuals charged with the responsibility of managing or operating a hazardous waste management facility, including the responsibility for assuring that the operation of said facility is in accordance with the provisions of this Hazardous Waste Management Regulation.

(7) "Permit" means a written permit issued by the Arkansas Highway and Transportation Department authorizing a person to transport hazardous waste (Hazardous Waste Transportation Permit), or a written permit issued by the Arkansas Department of Pollution Control and Ecology authorizing the establishment, construction, operation, and/or maintenance of hazardous waste treatment, disposal, or storage facility or site, or authorizing the transportation of hazardous waste.

(8) "Person" means an individual, corporation, company, firm, partnership, association, trust, joint stock company, joint venture, state or federal agency or instrumentality, county, city, town, or municipal authority; trust venture or any other legal entity, or combination of entities however organized.

(9) "Site" means any real property located within the boundary of the State of Arkansas which is, has been subsequent to March 14, 1979, or is contemplated to be used for treatment, storage, disposal, or generation of hazardous wastes.

b. In addition to the definitions found in 40 CFR 260.10, 40 CFR 261.3, and 40 CFR 270.2 (with the exception of the terms defined above in subsection (a)) when used in this Chapter:

(1) "CFR" means the Code of Federal Regulations.

(2) "Commercial Hazardous Waste Management Facility" means a hazardous waste management facility which does not meet the definition of a noncommercial hazardous waste facility as defined in this section.

(3) "Commission" means the Arkansas Commission on Pollution Control and Ecology.

(4) "Department" or "ADPC&E" means the Arkansas Department of Pollution Control and Ecology.

(5) "Director" means the Director of the Arkansas Department of Pollution Control and Ecology.

(6) "Exempted Hazardous Waste" means those small quantity hazardous wastes which are exempted from some of the provisions of the Hazardous Waste Management Regulation by 40 CFR 261.5 and which are subject to the provisions of § 9 of this Regulation.

(7) "Facility Personnel" means the personnel employed by a hazardous waste management facility and who are responsible for, or who supervise, or who engage in the handling, sorting, mixing, treatment, analyzing, or disposal of hazardous waste and the operation of any equipment of machinery necessary to complete these tasks.

(8) "Generation" means the act or process which results in the production of waste materials.

(9) "Hazardous Waste Management" means the systematic control of the generation, collection, distribution, marketing, source separation, storage, transportation, processing, recovery, disposal and treatment of hazardous waste.

(10) "Noncommercial Hazardous Waste Facility" means a hazardous waste management facility which is constructed and operated to store, treat, and/or dispose of hazardous waste which has been generated by the owners or operators of said facility and which storage, treatment or disposal is not undertaken for profit. A noncommercial hazardous waste facility may accept, at cost or profit, hazardous waste which has been generated by persons other than the owners or operators of said facility, provided that the total amount of such wastes does not exceed 5 (five) percent of facility's annual operating capacity and provided that the permit for said facility authorizes the acceptance of such waste for storage, treatment, and/or disposal.

~~(11) "PCB Identification Number" means a unique number assigned by the Arkansas Department of Pollution Control and Ecology to each generator or transporter, and to disposal or storage facilities which handle PCB wastes and not any other hazardous wastes, to be used in lieu of an EPA Identification Number.~~

(12) "Permitted Site" means any site used for disposal, treatment or storage of hazardous waste which has a current valid operating permit issued by the Department of Pollution Control and Ecology.

(13) "Shipper" means any person initiating transportation of hazardous waste. A shipper may include a generator or storage, treatment or disposal facility.

(14) "Transport" means the movement of wastes from the point of generation to any intermediate points, or to the point of ultimate storage, treatment or disposal.

(15) "Treatment Facility" means a location at which waste is subject to treatment and may include a facility where waste has been generated.

(16) "Ultimate Controlling Person" means a person who is not controlled by another person.

c. Other words or phrases used in this Regulation shall have the meaning provided in 40 CFR 260.10, 40 CFR 261.3, and 40 CFR 270.2.

Section 3. Incorporation of Federal Regulations

a. The following regulations promulgated by the U.S. Environmental Protection Agency are hereby adopted as provisions of this Chapter as though set forth herein line for line and word for word with the exception that all references therein to "Administrator", "Regional Administrator", "Director", or "State Director" shall be considered references to the "Director of the Arkansas Department of Pollution Control and Ecology"; and all references to the "U.S. Environmental Protection Agency" or "EPA" shall be considered references to the "Arkansas Department of Pollution Control and Ecology". All references elsewhere in this Chapter to any of the following regulations shall constitute a reference to the regulation as herein adopted; and provided that the effective date of provisions adopted herein by reference as provisions of this Regulation shall be the date such provisions are specified as being effective by the Commission in its rulemaking and the effective date of the federal regulations adopted herein shall have no bearing on the effective date of any provisions of this Regulation.

Title 40 Code of Federal Regulations -

(1) Subparts A, B, C, and Appendix I of Part 260; with the exception of the definition of "Act", "Active Portion", "EPA Identification Number", "Existing Hazardous Waste Management Facility", "Hazardous Waste", "Operator", and "Person" set forth in 260.10 (for analogous provisions see § 2a);

(2) Subparts A, B, C, D, and Appendices I, II, III, VII, VIII, and X of Part 261; with the exception of 261.8;

(3) Subparts A, B, C, D, E, F, and G of Part 262; with the exception of 262.20(e), 262.41 and 262.44 (for analogous provisions see § 16);

(4) Subparts A, B, and C of Part 263;

(5) Subparts A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, W, X, AA, BB, and Appendices I, IV, V and IX of Part 264 with the following exceptions: 264.75, 264.312(b) and 264.314 (a), (b), (d), and (e) (for analogous provisions see § 13a(5) and § 16);

(6) Subparts A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, W, AA, BB, and Appendices I, III, IV, and V of Part 265 with the following exceptions: 265.75, 265.312(b) and 265.314 (a), (b), (c), and (e) (for analogous provisions see §§ 13a(5) and 16);

(7) Subparts C, E, F, G, and H and Appendices I, II, III, IV, V, VI, VII, and VIII of Part 266;

(8) Subparts A, B, C, D, E, and Appendices I, II, III, IV, V, VI, VII, VIII, and IX of Part 268, with the following exceptions: 268.5, 268.6, 268.42(b), and 268.44 (no analogous provisions);

(9) Subparts A, B, C, D, E, F, and G of Part 270 with the following exceptions: the definitions of "Hazardous Waste", "Existing Hazardous Waste Management Facility", "Site", "Person", "Permit", and "Operator" set forth in 270.2 (for analogous provisions see § 2); 270.10(e) (for analogous provisions see § 12a(1)-(6)); 270.12 (for analogous provisions see § 6); 270.51 (no analogous state provisions); 270.70 (for analogous provisions see § 12a(7) and (8)).

~~(10) The definition of "PCB" and "PCBs", "PCB items", "PCB-contaminated electrical equipment" set forth in 40 CFR 761.3;~~

(11) Subparts A of Part 124 with the following exceptions: 124.1, 124.2, 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)(iv), 124.10(a)(1)(v), 124.12(e), 124.14, 124.15, 124.16, 124.18, 124.19, and 124.21 (see Regulation No. 8 - Administrative Procedures for analogous provisions as referenced in § 12 of this Regulation.)

(12) All as adopted as final rules (including "interim final rules" and "technical amendments") published by the U.S. Environmental Protection Agency on or before June 30, 1991.

~~b. In addition the following temporary or final waste exclusions resulting from petitions filed with EPA under 40 CFR 260.22 (petitions to amend Part 261 to exclude a waste produced at a particular facility) are hereby adopted as provisions of this Chapter:~~

Facility Name & Address	Waste Excluded	Date of FR Notice	Exclusion Status
Chamberlain-Featherlite, Inc., Hot Springs	F019	07/16/86	Permanent.
Monroe Auto Equipment Paragould	F006	11/27/85	Vacuum filtered sludge - Permanent; Lagoon sludge - Exclusion denied.
Waterloo Industries, Pocahontas	F006	07/17/86	Wastewater treatment sludges generated from electroplating operations after dewatering - Permanent.
U.S. EPA Combustion Research Facility, Jefferson	F020	06/28/89	Scrubber water generated during the incineration of still bottom waste from the Vertac Superfund Site, Jacksonville. Final exclusion.
Arkansas Department of Pollution Control and Ecology	F020, F023	08/24/90	Kiln ash, cyclone ash, and calcium chloride salts from incineration of F020 and F023 residues from production of 2,4,5-T and 2,4-D at Vertac Superfund Site, Jacksonville, generated after August 24, 1990. Final exclusion.

~~c. The Director, annually, after the date of promulgation of any new or revised federal hazardous waste regulations shall conduct rulemaking procedures with reference to this Chapter necessary to maintain a State Hazardous Waste Management Program equivalent to the federal program. Such new or revised federal regulations upon the date of their publication as final rules of the U.S. Environmental Protection Agency shall constitute minimum guidelines to the Director in formulating rule making proposals to this Chapter, and shall not be construed to limit or interfere with the adoption of provisions more stringent than federal regulations.~~

~~Section 4. Violations.~~

Any of the following acts shall be considered a violation of this Regulation and shall be subject to the penalties provided in the Arkansas Hazardous Waste Management Act of 1979 (Act 406 of 1979, as amended):

- a. Failure to comply with the provisions of this Regulation or with the terms of permits or orders issued hereunder.
- b. To purposely or knowingly make any false statement, representation, or certification in any application, record, report, plan or other document filed or required to be maintained under this Regulation, or to falsify, tamper with, or knowingly render inaccurate any monitoring device, testing device, or method required to be maintained under this Regulation.
- c. To dispose of hazardous waste at any disposal site or facility within the state of Arkansas other than one for which a permit has been issued by the Department pursuant to this Regulation.
- d. To engage in hazardous waste management contrary to the provisions of this Regulation or in such a manner or place as to create or as is likely to be created a public health hazard or to cause water or air pollution within the meaning of the Arkansas Water and Air Pollution Control Act, as amended (A.C.A. §§ 8-4-201 et seq.)

Section 5. Siting Criteria.

In addition to the location standards of 40 CFR 264.18 the following provisions shall be complied with:

a. No permit shall be issued for a new hazardous waste management facility in which the factor or combination of factors, set forth in subparts (1), (2), (3), (4), and (5) below exist except where the applicant can affirmatively demonstrate and the Department specifically finds that the location of such facilities in those areas would not constitute a risk to the public health or environment:

- (1) An active fault zone;
- (2) A "regulatory floodway" as adopted by communities participating in the National Flood Program managed by the Federal Emergency Management Administration and the Arkansas Soil and Water Conservation Commission;
- (3) A 100-year floodplain;
- (4) A recharge zone of a sole source aquifer designated pursuant to § 1424 (e) of the Safe Drinking Water Act (PL93-532);
- (5) "Wetland areas" which are inundated or saturated by surface water or groundwater at a frequency and duration to support, and under normal circumstances to support or would support vegetation typically adapted for life in saturated soil conditions;

b. No permit shall be issued for a hazardous waste landfill facility or surface impoundment if such facility is located in any area in which the Department shall find that a geologic or pedologic factor, or combination of factors, including but not confined to those enumerated in subparts (1), (2), (3), (4), and (5) below, would create any unacceptable risk to the public health or safety due to the nature, design, and/or operation of the facility described in the permit application:

- (1) Areas of high earthquake potential; or

(2) Areas having a soil which would be classified as vertisol or as having a subgroup modifier of vertic by the criteria of the Soil Conservation Service of the U.S. Department of Agriculture; or

(3) Areas in which a stratum of limestone or similar rock of an average thickness of more than 1 meter (3 feet) shall lie within 30 meters (99 feet) of the base of the proposed liner system as described in the application for permit; or

(4) Areas in which the bottom of the landfill's or impoundment's liner system or in-place soil barrier is less than 10 feet above the historically high water table; or

(5) Where the proximity of a functioning private or public water supply in relationship to any active portion of the facility would constitute an unacceptable risk to the public health or safety.

c. No permit shall be issued for the construction or operation of a new commercial hazardous waste landfill if the active portions of such facility are located within one half (1/2) mile of any occupied dwelling, church, school, hospital, or similarly occupied structure at the time the initial permit application is submitted to the Department by the applicant unless the nature and amounts of hazardous wastes are limited by conditions of permit in such a manner that the applicant can affirmatively demonstrate and the Department finds that a lesser distance will provide adequate margins of safety even under abnormal operating conditions.

d. No permit shall be issued for a hazardous waste management facility in which the Department shall find that factors or combination of factors, including but not confined to subparts (1) and (2) below, would create an unacceptable risk to the public health or safety due to the nature, design and/or operation of the facility described in the permit application.

(1) The area and configuration of the facility's property is such that the distance between active portions of the facility and the facility's property line is less than 200 feet;

(2) The active portions of such facility are located less than 300 feet from the right-of-way for:

(a) a public road;

(b) pipelines carrying natural gas, fuel oils, or chemicals, excluding service lines to the facility;

(c) water and wastewater line, other than the service lines to the facility; and

(d) power transmission lines, other than service lines to the facility.

e. No permit shall be issued for the construction or operation of a new hazardous waste management facility unless the location of said facility is such that all performance standards set forth in this Regulation can be met.

f. The provisions of this § 5 shall not apply to treatment facilities which began operation prior to the date of enactment of the Act which have an existing operating permit from the Department, or to any subsequent modifications to such facilities, provided that the owner of such facility demonstrates that such modifications do not materially increase that degree of hazards associated with such facility.

Section 6. Availability of Information and Protection of Trade and Business Secrets.

In lieu of the provisions of 40 CFR 270.12 the following provisions shall apply:

~~a. Any records, reports, or information contained under this Regulation and any permits, permit applications, and related documentation shall be available to the public for inspection and copying. However, upon a satisfactory showing to the Director that such records, reports, permits, documentation, or information, or any part thereof would, if made public, divulge methods or processes entitled to protection as trade secrets, the Director shall consider, treat and protect such records as confidential.~~

b. It shall be the responsibility of the person claiming any information as confidential under the provisions of subsection a above to clearly mark each page containing such information with the words "CONFIDENTIAL" and to submit an affidavit setting forth the reasons that said person believes that such information is entitled to protection.

c. Any document submitted to the Department which contains information for which the claim of confidential information is made shall be submitted in a sealed envelope marked "CONFIDENTIAL" and addressed to the Director. The document shall be submitted in two separate parts. The first part shall contain all information which is not deemed by the person preparing the report as confidential and shall include appropriate cross references to the second part which contains data, words, phrases, paragraphs, or pages and appropriate affidavits containing or relating to information which is claimed to be confidential.

~~d. No information shall be protected as confidential information by the Director unless it is submitted to him in accordance with the provisions of subsection (c) above. No information which is submitted in accordance with the provisions of subsection (c) above shall be afforded protection as confidential information unless the Director finds that such protection is necessary to protect trade secrets and that such protection will not hide from public view the characteristics of waste material and probable effects of the introduction of such waste or byproducts into the environment as a result of the operation of a hazardous waste management facility. The person who submits information claimed as confidential shall receive written notice from the Director as to whether the information has been accepted as confidential or not.~~

~~e. All information which meets the tests of subsection (d) above shall be marked with the term "ACCEPTED" and shall be protected as confidential information. Whenever the Director finds that information which has been submitted as confidential information in accordance with subsection (c) above does not meet the criteria of subsection (d) above, he shall promptly notify the person submitting such information of his findings and shall give that person reasonable opportunity to further justify his contention that the information deserves protection as a trade secret or to further limit the scope of information for which the request for protection is made. If said person fails to satisfactorily demonstrate to the Director that such information in the form presented to him meets the criteria of subsection (d) above, the Director shall mark the information "REJECTED" and promptly return such information to the person submitting such information. Such person shall have 30 days to resubmit the information in acceptable form or appeal the decision of the Director.~~

~~f. All information which is accepted by the Director as confidential shall be stored in locked filing cabinets and only those personnel of the Department specifically designated by the Director shall have access to the information contained therein. The Director shall not designate any persons to have access to confidential information unless the person requires such access in order to carry out his responsibilities and duties. No person shall~~

~~disclose any confidential information except in accordance with the provisions of this Section. No copies shall be made other than for internal Department use or for use or transmittal to officers and employees of the United States except with the written permission of the Director and the person submitting the information.~~

g. The person(s) designated by the Director to maintain confidential files as herein provided shall maintain a log showing the persons who have had access to the confidential files and the dates of such access.

h. As necessary to carry out the provisions of the Arkansas Hazardous Waste Management Act, any confidential information acquired by the Department under the provisions of said act may be transmitted to other offices, employees, or authorized representatives of the state or United States provided that the owner or operator of the facility to which such information pertains is informed of such transmittal and provided that such transmittal is made under a continuing restriction of confidentiality.

i. Nothing contained herein shall be construed so as to restrict the release of relevant confidential information during situations declared to be emergencies by the Director or his designee.

j. Claims of confidentiality for the name and address of any permit applicant or permittee will be denied.

k. If a request for any records, documents or information acquired or maintained by ADPC&E pursuant to the Arkansas Hazardous Waste Management Act and/or this Regulation is denied by the Director a notice shall be sent to the requestor stating the basis of the denial and informing the requestor that:

1) He may appeal immediately from such denial to an appropriate Circuit Court pursuant to the Arkansas Freedom of Information Act; or,

2) He may request judicial review within thirty (30) days of receipt of the notice by filing a notice of appeal with the Secretary of the Arkansas Commission on Pollution Control and Ecology and proceeding further pursuant to A.C.A. § 8-4-222.

l. If a request for records, documents or information is denied, the Director will send the notice required by subsection (k) within twenty (20) days of receipt of the request.

m. If the Director fails to produce requested records, documents or information and fails to send the notice required by subsection (k), such failure shall constitute final agency action giving the requestor the right to judicial review under A.C.A. § 8-4-222 in addition to any rights of review under the Arkansas Freedom of Information Act.

Section 7. Conflict of Interest.

a. No employee of the Department shall have a financial interest in any hazardous waste management facility or in any commercial enterprise engaged in the transportation, treatment or disposal of hazardous waste or in any business which furnished real property, plans, labor, material or equipment to hazardous waste management facilities. For purposes of this Section, financial interest of an employee of the Department shall extend to that employee's husband or wife if said husband or wife is a stockholder, an officer or a management official of a commercial entity engaged in any of the activities listed above.

b. Payment by the owner or operator of a hazardous waste management facility to the Department pursuant to the provisions of § 11g shall not be construed to mean that the Department personnel serving as on site inspectors have

~~financial interest in such facility.~~

c. Those persons serving on the Hazardous Waste Technical Advisory Committee are not deemed to be employees of the Department by virtue of that service.

Section 8. Hazardous Waste Technical Advisory Committee.

a. A technical advisory committee, to be known as the "Arkansas Hazardous Waste Technical Advisory Committee" is hereby established, which committee shall be comprised of not less than ten (10) and not more than twenty (20) members nominated by the Director and approved by the Commission. Members shall be nominated upon the basis of their education, training and/or responsibilities in the fields of biology, geology, chemistry, education, engineering, public health, industrial hygiene, transportation, industry agriculture, hazardous waste management, solid waste management, or other related areas.

b. The members of said Committee shall serve without compensation, but may be reimbursed for travel expenses for meetings authorized by the Director.

c. The duties of the Hazardous Waste Technical Advisory Committee shall be to assist and advise the Department in the development of procedures, standards, criteria, and rules and regulations.

d. The Hazardous Waste Technical Advisory Committee shall establish its own rules and bylaws for the accomplishment of the duties and functions set out herein and for other such duties as are approved by the Commission, provided that such rules and bylaws shall not be in conflict with the provisions of this Regulation and the laws of Arkansas.

e. The Director shall be furnished copies of minutes of all meetings.

f. The Technical Advisory Committee may review any proposed changes in the Regulation and make recommendations. Additionally, the Committee shall review that Regulation at least once each three years and shall make recommendations ~~for changes deemed appropriate.~~

Section 9. Handling and Disposal Requirements for Conditionally Exempt Small Quantity Generators.

a. Generators of conditionally exempt small quantities of hazardous waste shall comply with the requirements of 40 CFR 261.5 as adopted in § 3 and the requirements of § 16 c(5) and (8).

b. The disposal of small quantity hazardous waste which is allowed pursuant to 40 CFR 261.5 to be stored, treated and disposed in a facility that is permitted, licensed, or registered by a state to manage municipal or industrial solid waste must comply with the following additional requirements to be disposed of in Arkansas:

(1) It is disposed of in a solid waste disposal facility in the State of Arkansas which has been permitted by the Department to dispose of such waste in accordance with the provisions of the ADPC&E Regulation No. 22 (Solid Waste Management); or

(2) It is shipped to a hazardous waste management facility in the State of Arkansas which is permitted by the Department to store, treat or dispose of such waste; or

(3) It is shipped to an approved facility outside the State of Arkansas;
or

(4) It is treated or disposed of in onsite solid waste facilities which are permitted in accordance with the Arkansas Water and Air Pollution Control Act (Act 472 of 1949, as amended), or the Arkansas Solid Waste Management Act (Act 237 of 1971, as amended).

c. Solid waste disposal facilities may accept wastes subject to the provisions of 9b of this Section only in accordance with their permit and the provisions of Regulation No. 22 (Solid Waste Management).

Section 10. Certification of Operators: Personnel Training and Procedures.

In addition to the requirements of 40 CFR 264.15, 264.16, and 265.55 the following provisions shall be complied with:

a. No commercial hazardous waste management facility shall be caused or permitted to operate unless at least one person certified by the Department in accordance with the provisions of subsection (b) below, is on duty, or on 15 minutes call, at all times the facility is being operated. Depending upon the size and complexity of the facility, the Department may require, as a condition of permit, one or more certified operators to be on duty at all times the facility is in operation.

b. No person shall be certified by the Department at being qualified to serve as an operator of a commercial hazardous waste management facility unless the person is found to have the following qualifications:

(1) Is physically capable of performing all tasks reasonably expected of supervisory personnel;

(2) Has a baccalaureate degree in engineering, physical science, health sciences, or related disciplines or four years of significant demonstrated experience in such fields;

(3) Has at least four additional years experience in management, engineering, or in conducting chemical/physical analysis;

(4) Has a working familiarity with the principles and requirements relative to industrial hygiene, worker safety, emergency procedures and environmental protection as such principles and requirements relate to the nature of the hazardous waste managed at the facility in which said person is to have, or does have, supervisory responsibility and as such principles and requirements relate to the type storage, treatment and/or disposal in such facility;

(5) Has a basic knowledge of the principles of operation and standard operating procedures for all equipment used in the facility in which said person is to have, or has, supervisory responsibility; and

(6) Is a citizen of the United States, of good moral character with no prior conviction of a felony or a crime of moral turpitude.

c. No employee of a hazardous waste management facility shall be assigned the duties of transferring, handling, sorting, mixing, treating or disposing of hazardous waste unless that employee meets the requirements set out in 40 CFR 264.16 (a), (b) and (c).

d. No employee of a commercial hazardous waste management facility shall be assigned the duties of transferring, handling, sorting, mixing, treating or disposing of hazardous waste unless that employee has demonstrated his/her capabilities of:

(1) Reading and comprehending label instructions, operational procedures, contingency plans and regulatory directives;

(2) Understanding the basic nature of the materials which he/she is assigned to transfer, handle, sort, mix, treat or dispose relative to the material's reactivity, toxicity, explosiveness and flammability; and

(3) Operating all equipment which he is assigned to operate, including personal safety and emergency equipment.

e. The owner or operator of a hazardous waste management facility must maintain the records required in 40 CFR 264.16(d).

f. Owners and/or operators of commercial hazardous waste management facilities shall:

(1) Maintain complete updated records of all workers assigned to a specific job including name, address, date of starting specific job and date of termination of specific job;

(2) Maintain a complete previous employment history and a complete job mobility history within the facility kept for each employee;

(3) Have their personnel trained in contingency procedures as prescribed in the facility's contingency plan, which plan has been submitted and approved pursuant to this Regulation;

(4) Have their personnel take part in a semiannual review and update of their initial training in contingency procedures and other hazardous waste management procedures relevant to those operations at which they are employed; and

(5) Have each of their personnel undergo an annual health physical and said personnel's spouses shall be offered an annual health physical, the specifics of which are deemed appropriate by the Department, including health histories, reproductive history and health histories of all offspring, with records of each of these physicals available to the Department upon request with the written consent of the individual. Consent will be given on a waiver form approved by the Department written in such a fashion as to allow dissemination of information to the Department or to authorized representatives designated in writing by the Department.

g. The owner or operator of a hazardous waste management facility shall promptly modify the training required of its employees whenever required to do so upon the direction of the Department or whenever modification in training is required as a condition of permit; provided, however, that preliminary training, approved by the Department, will have been completed prior to commencement of operation of a new hazardous waste management facility or prior to commencement of an operation in an existing facility for which a permit has been issued or modified.

~~Section 11. Fees and Costs.~~

Permit Fees

a. Any person who applies for a permit for the construction, operation, and/or post closure care of a hazardous waste management facility or unit shall submit as part of said application a money order or cashier's check payable to the Department to cover permit fees in accordance with the following schedule(s):

(1) Permits for Construction/Operation - Commercial Facility:

(a) Initial permit application fee - \$20,000 plus waste management activity fee (subsection b).

~~(b) Unsolicited application amendment fee (during application review process) - \$500.~~

(c) Permit renewal fee - Initial application fee plus waste management activity fee (subsection b).

(d) Annual permit evaluation fee - \$10,000 plus waste management activity fee (subsection b).

(2) Permits for Construction/Operation - Noncommercial Facility:

(a) Initial permit application fee - \$5,000 plus waste management activity fee (subsection b).

(b) Unsolicited application amendment fee (during application review process) - \$500.

(c) Permit renewal fee - Initial application fee plus waste management activity fee (subsection b).

(d) Annual permit evaluation fee - \$2,500 plus waste management activity fee (subsection b).

(3) Permits for Post Closure Care Only - Commercial Facility:

(a) Initial permit fee - \$2,500.

(b) Unsolicited application amendment fee (during application review process) - \$250.

(c) Permit renewal fee - \$2,500.

(d) Annual permit evaluation fee - \$1,250.

(4) Permits for Post Closure Care Only - Noncommercial Facility:

(a) Initial permit fee - \$1,000.

(b) Unsolicited application amendment fee (during application review process) - \$100.

(c) Permit renewal fee - \$1,000.

(d) Annual permit evaluation fee - \$500.

(4) Annual permit evaluation fees will not be assessed during the years in which permit renewal fees are assessed for commercial and noncommercial facilities.

b. Each hazardous waste management facility or unit in which hazardous wastes are treated, stored or disposed will be assessed an additional fee (unless said fees are specifically excluded in subsections (c) and (d) below) for the type of waste management activity(ies) being conducted, in accordance with the schedule listed below. Fees addressed by this section shall be assessed and collected with the initial permit application fee, the permit renewal fee, and annual permit evaluation fee and are based on the permitted maximum design capacities (including accumulated solids, where applicable), unless specified otherwise:

(1) Container Storage.

(a) Commercial - \$2.00/100 gallons (or equivalent volume)

(b) Noncommercial - \$1.00/100 gallons (or equivalent volume).

(2) Tank Treatment and/or Storage.

(a) Commercial - \$2.00/1000 gallons (or equivalent volume)

~~(b) Noncommercial - \$1.00/1000 gallons (or equivalent volume).~~

~~(3) Waste Pile Storage and/or Disposal~~

- (a) Commercial - \$0.25/cubic yard (or equivalent volume)
- (b) Noncommercial - \$0.13/cubic yard (or equivalent volume).

(4) Surface Impoundment Treatment, Storage, and/or Disposal.

- (a) Commercial - \$5.00/1000 gallons (or equivalent volume).
- (b) Noncommercial - \$2.00/1000 gallons (or equivalent volume).

(5) Land Treatment/Land Farm Treatment or Disposal.

- (a) Commercial - \$5000/acre.
- (b) Noncommercial - \$2500/acre. (Fee based on active portion only.)

(6) Landfill Disposal.

- (a) Commercial - \$500/acre feet.
- (b) Noncommercial - \$250/acre feet. (Fee based on active portion only.)

(7) Incineration, Boilers, Industrial Furnaces, and other Thermal Treatment (excluding Open Burning/Detonation of Waste Explosives).

- (a) Commercial - \$500/ton/hr.
- (b) Noncommercial - \$250/ton/hr. (Fee based on waste feed rate.)

(8) Open Burning/Detonation of Waste Explosives.

- (a) Commercial - \$0.20/lb./hr.
- (b) Noncommercial - \$0.10/lb./hr.

(9) Other Physical, Chemical, or Biological Treatment (not otherwise addressed in (1) - (8) above).

- (a) Commercial - \$5.00/100 gallons/day (or equivalent volume).
- (b) Noncommercial - \$2.50/100 gallons/day (or equivalent volume).

c. The provisions of subsection (b) do not apply to impoundments, tanks or other storage devices which are an integral part of wastewater treatment systems required to have a NPDES discharge permit.

d. Underground Injection Control (UIC) facilities which are subject to permitting for corrective action under 40 CFR 264.101 and 40 CFR 270.60, but not otherwise subject to permitting as a hazardous waste management facility, shall submit a money order or cashiers check payable to the Department as set forth below:

(1) Commercial facility.

- (a) Initial application fee - \$25,000.
- (b) Permit renewal fee - \$10,000.
- (c) Annual permit evaluation fee - \$2,500.

(2) Noncommercial facility.

- (a) Initial application fee - \$10,000.
- (b) Permit renewal fee - \$5,000.
- (c) Annual permit evaluation fee - \$1,500.

e. Permit modification applications, other than minor modifications as defined in 40 CFR 270.42, must be accompanied by a money order or cashiers check payable to the Department. The fee shall be 50% of the initial permit application fee as set forth in subsection (a). ~~If additional waste management activities are applied for or operating capacities increased, an~~

~~additional waste management fee shall be calculated from subsection (b) and added to the modification fee total.~~

~~f. The maximum annual amount of fees collected for any hazardous waste management facility permit pursuant to provisions of subsections (a), (b), (d), and (e) shall not exceed \$30,000 for noncommercial facilities or \$60,000 for commercial facilities, provided, however, that the Department may require such additional fees to be collected from the owner or operator of a commercial hazardous waste management facility as it deems necessary to compensate it for costs of providing on-site inspectors under subsection (g).~~

~~g. In addition to fees required by subsections (a)-(e) any facility which as a condition of its permit is required to have on-site inspectors shall, prior to the Department's issuance of permit, submit a money order or cashiers check payable to the Department in the amount of one fourth the estimated annual cost to the Department of maintaining such inspectors and shall submit quarterly thereafter a money order or cashiers check payable to the Department in the amount of one fourth the aforesaid estimated annual costs. The Department may enter into contractual agreement with qualified engineering and testing firms to conduct inspections as described above.~~

~~h. Any person who applies for an annual permit to transport hazardous waste within the State of Arkansas shall submit along with the application required in § 12 of this Regulation, a money order or cashiers check in the amount of \$200 payable to the Department to cover annual permit fees and costs.~~

Hazardous Waste Facility Operator Fees

~~i. Any person who applies to the Department for certification as an operator of a commercial hazardous waste management facility shall submit as part of that application a money order or cashiers check of \$100 payable to the Department for initial application and \$25 annually thereafter for renewal of the certification. Nonpayment of the renewal fee within thirty (30) days of the anniversary date of issuance will cause automatic termination of the certification.~~

Closure Plan Fees

~~j. Any person who submits a closure plan (partial or final) shall submit as part of said plan a money order or cashiers check payable to the Department to cover closure plan fees as set forth below. The fees associated with this subsection are not applicable to closure plans submitted as part of an application (Part B permit application) for an operational permit.~~

~~(1) Container Storage Areas and Tank Units:~~

~~(a) Initial Fee~~

- ~~(1) Commercial Facility - \$1500/unit.
(2) Noncommercial Facility - \$1250/unit.~~

~~(b) Modification Fee~~

- ~~(1) Commercial Facility - \$750/unit.
(2) Noncommercial Facility - \$625/unit.~~

~~(2) Incinerators, Boilers, Industrial Furnaces, and other Thermal Treatment Units.~~

~~(a) Initial Fee~~

- ~~(1) Commercial Facility - \$3000/unit.
(2) Noncommercial Facility - \$1500/unit.~~

~~(b) Modification Fee~~

- (1) Commercial Facility - \$1500/unit.
 - (2) Noncommercial Facility - \$750/unit.
- (3) Waste Pile, Land Treatment, Surface Impoundment, and Landfill Units:
- (a) Initial Fee
 - (1) Commercial Facility - \$7000/unit.
 - (2) Noncommercial Facility - \$3500/unit.
 - (b) Modification Fee
 - (1) Commercial Facility - \$3500/unit.
 - (2) Noncommercial Facility - \$1750/unit.
- (4) Open Burning/Open Detonation Units:
- (a) Initial Fee
 - (1) Commercial Facility - \$7000/unit.
 - (2) Noncommercial Facility - \$3500/unit.
 - (b) Modification Fee
 - (1) Commercial Facility - \$3500/unit.
 - (2) Noncommercial Facility - \$1750/unit.
- (5) Other Treatment Units:
- (a) Initial Fee
 - (1) Commercial Facility - \$7000/unit.
 - (2) Noncommercial Facility - \$3500/unit.
 - (b) Modification Fee
 - (1) Commercial Facility - \$3500/unit.
 - (2) Noncommercial Facility - \$1750/unit.

k. The maximum initial closure plan fee collected pursuant to subsection (j) shall not exceed \$5,000 for noncommercial facilities or \$10,000 for commercial facilities. A modification fee is not applicable if an amendment to the closure plan is made necessary due to changes in regulations which become effective subsequent to submissions of the closure plan for approval.

Monitoring/Inspection Fees

1. All treatment, storage, and disposal facilities (TSDF) shall be charged an annual monitoring/inspection fee as set forth below:

- (1) Commercial treatment, storage or disposal facilities - \$1,500.
- (2) Noncommercial treatment or disposal facilities - \$1,000.
- (3) Noncommercial storage facilities - \$750.

Each TSDF shall submit a money order or cashiers check payable to the Department by January 1 of each calendar year beginning January 1, 1990, and annually thereafter.

~~m. All generators of 250,000 pounds or more of hazardous waste per year shall be charged an annual monitoring/inspection fee of \$500. Each generator shall submit a money order or cashiers check payable to the Department by January 1 of each calendar year beginning January 1, 1990, and annually thereafter.~~

n. All generators of 26,401 to 249,999 pound of hazardous waste per year shall be charged an annual monitoring/inspection fee of \$250. Each generator shall submit a money order or cashiers check payable to the Department by January 1 of each calendar year beginning January 1, 1990, and annually thereafter.

o. All small quantity generators (persons generating 220 pounds to 2200 pounds per month of hazardous waste) shall be charged an annual monitoring/inspection fee of \$100. Each small quantity generator shall submit a money order or cashiers check payable to the Department by January 1 of each calendar year beginning January 1, 1990, and annually thereafter.

p. The fees associated with subsections (l), (m), (n) and (o) shall be in addition to any fees specified elsewhere in this § 11. Monitoring and inspection fees are billed according to the reported waste generation or activity in the last annual reporting cycle (e.g., fees for 1992 would be based upon 1990 waste generation or activity, the most current annual report on file at the time invoices are prepared).

Miscellaneous Fees and Costs

q. Whenever the Department incurs an expense as a result of investigating any violation of this Regulation or as a result of responding to and monitoring the effects of, spills of hazardous waste, including upset conditions within a hazardous waste management facility or other location which generates or handles hazardous waste, the Director may require the person responsible for such violation, spill or upset condition to submit a money order or cashiers check to the Department associated with the Department's response, investigations and monitoring activities. The charges associated with this subsection (q) shall be in addition to any fees specified elsewhere in this § 11.

r. Arkansas Hazardous Waste Manifest forms to be used by § 16 of this Regulation shall be purchased from the Department for a fee of \$2.00 per manifest, for the purpose of offsetting the cost of reproducing, distributing and processing such manifests.

s. Fees collected under this Section shall not be refunded should a permit application or certification be disapproved pursuant to the provisions of this Regulation or voluntarily withdrawn by the applicant. Nothing in this subsection shall prohibit the Department from crediting unused portions of fees from permitted facilities toward future fees.

t. All fees pursuant to this § 11 are due and payable in accordance with each subsection. A late fee of ten (10) percent of the total fee shall be charged for any fees unpaid after forty five (45) days from the billing date. No permit will be issued when indebtedness exists as a result of nonpayment of any of the above fees. Continued refusal to pay the required fees after a reasonable notice shall constitute a violation of this Regulation and shall be grounds for legal action by the Department, which may include permit revocation.

u. A financial assessment of the fee system shall be presented to the Commission annually by the Director.

v. Fees and costs associated with the public participation proceedings regarding permit applications or permit decisions shall be borne by the permit applicant. Such costs shall include, but are not limited to, charges ~~for third parties such as publication fees, rental charges for hearing halls,~~

~~professional charges for recording and transcription, and similar expenses associated with the public participation proceedings.~~

Section 12. Permits Procedure - Permits by Rule.

In addition to the provisions of 40 CFR 124 and 40 CFR 270 which are incorporated by reference in § 3 of this Chapter and in addition to the other provisions of this Chapter, the Act, and the other requirements imposed by law and regulations applicable thereto, the following provisions apply:

a. Existing Facilities:

(1) Facilities in existence on March 14, 1979, which are required to have a permit under the Act may continue in operation until such time as a permit is issued or denied under this Chapter and Regulation, provided that the owner or operator of such facility made application to the Department on the initial state application form on or before September 4, 1979; and provided that such facilities also comply with the other provisions of this Section and the provisions of 40 CFR 270.10 and 270.71-73 which are adopted by reference in § 3.

(2) Owners and operators of hazardous waste management facilities, in existence as of the effective date of provisions adopted in this Regulation which first subject them to compliance with the standards of this Regulation and 40 CFR 265, must submit Part A of their permit application to the Department no later than (i) six months after the date of publication of regulations in this Regulation which first require them to comply with the standards set forth in this Regulation and 40 CFR Part 265, or (ii) thirty days after the date they first become subject to the standards set forth in this Regulation and 40 CFR Part 265, whichever first occurs.

(3) The Director may extend the date by which owners and operators of specific classes of existing hazardous waste management facilities must submit their initial state application and/or Part A of their permit application if he finds that 1) there has been substantial confusion as to whether the owners and operators of such facilities were required to file a permit application; and 2) such confusion is attributed to ambiguities in 40 CFR Parts 260, 261 or 265.

(4) The Director may by Administrative Order issued under the Act, this Regulation, and Regulation No. 8, extend the date by which the owner or operator of an existing hazardous waste management facility must submit the initial state application and/or Part A of their permit application.

(5) The Director may require submission of Part B from any facility at any time. Any owner or operator shall be allowed at least six months from the date of request to submit Part B of the application. Any owner or operator of an existing hazardous waste management facility may voluntarily submit Part B of the application at any time.

(6) Failure to furnish a requested Part B application on time, or to furnish in full the information required by the Part B application, is grounds for termination of interim status.

(7) Any person who owns or operates an existing hazardous waste management facility shall have interim status and shall be treated as having been issued a permit to the extent he or she has complied with the requirements of Act 406 of 1979, as amended § 5(c) and paragraph (1) through (5) above, and § 3010(a) of RCRA.

(8) If the Department determines that a Part A application is deficient it may notify the owner or operator that he or she is not entitled to interim status. The owner or operator will then be subject to enforcement for operating without a permit.

(9) Nothing in this Section shall be construed to allow commercial hazardous waste landfill facilities to store, treat, bury, dispose or otherwise process hazardous waste without first obtaining a permit from the Department under this Chapter and Regulation.

b. Permit Applications - General.

(1) For each hazardous waste described in response to the requirements of 40 CFR 270.13(i), the application shall include the name and location of the generator of the wastes.

(2) The contingency plan required under 40 CFR 270.14 shall include evidence that such plan has been developed in consultation with the fire department having jurisdiction and by the Mayor or City Manager of the municipality or by the County Judge of the county in which the facility is to be located.

(3) The procedures required under the provisions of 40 CFR 270.14(b) shall include a full description of all laboratory equipment, sampling procedures and analytical procedures which would be employed to identify, segregate or locate hazardous waste within the facility.

(4) The owner of a hazardous waste disposal facility shall provide long term financial responsibility as the Department may deem appropriate, taking into account the nature of the facility and the nature of waste stored, treated or disposed of in such facility. The financial responsibility required under this paragraph shall provide funds for claims arising out of injury to persons and property from the release or escape of hazardous waste to the environment during sudden or accidental occurrences and shall provide for reimbursement of expenses incurred by the Department or the State of Arkansas for cleanup or maintenance, monitoring or such other activities as may be necessary. The financial responsibilities required hereunder shall be for such period as determined by the Department.

(5) The owner or operator of a hazardous waste disposal facility shall provide contracts, agreements and such other documentation as may be required to demonstrate to the Director's reasonable satisfaction that the waste which is proposed to be disposed of is waste which results from the treatment of waste to the full extent of known technology and economics or is waste for which there is no technically and economically feasible means of treatment available.

(6) Part A of the application for hazardous waste landfills shall contain evidence of such forms of assurance including full fee ownership of lands and all mineral rights thereto, to ensure that the owner of the landfill for which application is made has the legal authority to commit lands used for the landfill to perpetual security and that said owner has made such legally binding arrangements as necessary to protect the integrity of the surface and subsurface area of the landfill in perpetuity.

~~(7) Any person who submits an application for a hazardous waste management facility permit to the Department shall give notice to the public by publishing a notice in the newspaper having the largest circulation published in the county in which the facility is, or is proposed to be located, as well as publishing a notice in the newspaper having the largest circulation published in each adjoining county. If there is no newspaper published in any of the counties so affected the notice shall be published in the newspaper(s) having the largest circulation in such county or counties. The notice shall contain:~~

~~(a) The name, title and address of the applicant;~~

~~(b) The location of the facility, including a description of its boundaries;~~

~~(c) The nature of the facility (storage, treatment or disposal) and brief description of how waste is to be stored, treated or disposed of at the facility; and~~

~~(d) The type of hazardous wastes to be managed at the facility.~~

c. Permit Issuance.

~~(1) A permit may not be transferred, issued or modified except with the approval of the Department, provided, however, emergency authorization may be issued by the Director in accordance with the provisions of 40 CFR 270.61 - 270.63.~~

(2) No permit shall be issued for the construction, modification or operation of a hazardous waste management facility unless the Department finds, after public hearings as provided herein, that said construction, modification or operation is, or will be, in compliance with the provisions of this Chapter and Regulation including those provisions of 40 CFR 124, 40 CFR 264, 40 CFR 265, and 40 CFR 267 and 40 CFR 270, incorporated herein. The Department may establish additional requirements as conditions of permit where it deems such conditions necessary to protect the public health and the environment.

(3) The Department may grant variances in accordance with the provisions of A.C.A. § 8-7-211, provided that said variances shall not provide terms less stringent than those set by the federal regulations incorporated in § 3 of this Regulation or, as to such federal regulations as are not incorporated therein, terms less stringent than provisions of this Chapter and Regulation analogous to such federal regulations.

(4) Upon receipt of an application for permit for a hazardous waste management facility, the Director shall cause the permit to be processed in accordance with the applicable procedures of 40 CFR 124, Subpart A incorporated herein and in accordance with the provisions of this Regulation.

(5) The Director may authorize qualified persons interested in a pending application to enter upon the proposed site and make such relevant surveys and tests as the Director authorizes, under such conditions as required by the Director and upon sufficient notice to the applicant. All results of surveys or tests will be provided to both the Department and the permit applicant and all costs of surveys or tests will be borne by the party or parties requesting them. The Director will further insure that the permit applicant will have an opportunity to make a satisfactory showing (as provided in § 6 of this Regulation) that certain information which could meet criteria for being treated as confidential will not be collected by or disclosed to any individual other than authorized personnel of the Department.

(6) No permit shall be issued for a commercial hazardous waste management facility unless a public hearing is held in accordance with the provisions of subparagraph (9) below. No permit for noncommercial hazardous waste management facilities shall be issued unless the Department first gives a 45 day opportunity for public comment as provided in 40 CFR 124.10. Where written objection to the issuance of a permit for a noncommercial hazardous waste management facility is filed within the 45 day comment period, no permit shall be issued unless a public hearing is held in accordance with the provisions of subparagraph (9) below.

(7) Prior to drafting the permit for any hazardous waste management facility, the Department may hold a preliminary hearing, for information purposes, in the area in which the facility is, or is to be located. The hearing may be held by giving no less than ten (10) days notice in the newspaper having the largest circulation in the county in which the facility is, or is proposed to be located and the newspaper having the largest circulation in each adjoining county. ~~The notice shall provide: 1) the time,~~

~~date and location of the hearing; 2) the purpose of the hearing; and 3) the location(s) where the application and all supporting information is available for public review.~~

(8) A 45 day notice of public hearing on the draft permit shall be given in the manner described in subparagraph (7) above. The notice shall provide:

- (a) The time, date and location of the hearing;
- (b) The purpose of the hearing;
- (c) The name and address of the applicant and the location where the facility is, or is proposed to be located;
- (d) The tentative recommendation of the Department;
- (e) The location(s) where copies of the application, the Department's recommendations and all supporting documentation can be reviewed by the public;
- (f) Procedures for submitting public comments into the hearing record.

(9) The public hearing required under subparagraph (8) above shall be in the area where the facility is or is proposed to be located. A record of hearing shall be made and retained as part of the administrative record of ~~each application for review by the Commission.~~

(10) Any person who applies for a permit for transportation of hazardous waste within the State of Arkansas shall submit an application on forms as prescribed by the Department. This permit is renewable annually.

(a) Persons transporting hazardous wastes by highway shall also comply with the permitting, and other requirements, of the Arkansas Highway and Transportation Department. No permit shall be issued by ADPC&E unless the applicant for said permit shall have first received a permit from the Arkansas Highway and Transportation Department and provided a copy of said permit to ADPC&E.

(b) Persons transporting hazardous waste by water, rail, or air shall comply with applicable state and federal rules and regulations governing such transportation in addition to the requirements of this Regulation.

(11) In addition to the requirement of 40 CFR 265.119, a permittee shall submit to the Department, as part of the annual permit review process, a plat of any landfill disposal area in which waste has been deposited. Such plat shall clearly delineate the location of all wastes and its type, referenced to established benchmarks.

~~d. Upon receipt of federal Hazardous and Solid Waste Act ("HSWA") authorization for the Arkansas Department of Pollution Control and Ecology's Hazardous Waste Management Program, the Department shall be authorized to and shall enforce the HSWA provisions imposed by the Environmental Protection Agency in hazardous waste permits that were issued before the HSWA authorization was granted. ADPC&E, jointly with EPA, will notify permitted facilities in writing of the specific provisions which will become the state agency's responsibility as a result of the additional authorization and of the effective date of the changeover. This notification will serve as an addendum to the permit. Permits pending at the time of authorization will be modified to properly identify specific provisions for which the Department has primary responsibility.~~

~~c. Disclosure Statements. Pursuant to the provisions of Act 454 of 1991 (A.C.A. 8-1-106), all applicants for a RCRA treatment, storage, or disposal permit for a hazardous waste management facility or a hazardous waste transporter permit shall submit a disclosure statement with their permit application. The submission of a disclosure statement is mandatory; no application can be considered complete without it. The disclosure statement shall be an original, written statement by the applicant which contains:~~

~~(1) The full name, business address, and social security number of the applicant and all affiliated persons;~~

~~(2) The full name and business address of any legal entity in which the applicant holds a debt or equity interest of five percent (5%) or more, or which is a parent company or subsidiary of the applicant, and a description of the ongoing organizational relationships as they may impact the applicant's operations in Arkansas;~~

~~(3) A description of the experience and credentials of the applicant, including any past or present permits, licenses, certifications, or operational authorizations relating to environmental regulation;~~

~~(4) A listing and explanation of any civil or criminal enforcement actions by governmental agencies involving environmental protection laws against the applicant or any affiliated person within the ten years immediately preceding the filing of the application, to include administrative enforcement actions or consent orders resulting in the imposition of sanctions, permit or license revocations or denials issued by any state or federal authority, any actions that have resulted in a finding or a settlement of a violation, and any similar action pending;~~

~~(5) A listing of any federal environmental agency and any other environmental enforcement agency that has or has had regulatory responsibility over the applicant; and~~

~~(6) Any other additional information the Director may require which relates to the competency, reliability, or responsibility of the applicant and any affiliated person.~~

~~(7) If the applicant is a publicly held company required to file periodic reports under the Securities and Exchange Act of 1934, or a wholly-owned subsidiary of a publicly-held company, he may submit, in lieu of a disclosure statement, a copy of the most recent annual and quarterly reports required by the Securities and Exchange Commission. The applicant shall also submit any other information required by the Director which relates to the competency, reliability, or responsibility of the applicant and any affiliated person.~~

Section 13. Performance Standards

a. In addition to the provisions of 40 CFR 264, 265, and 270 incorporated herein and the other provisions of this Chapter and Regulation, the following standards apply to hazardous waste management facilities:

(1) The capacity of hazardous waste storage facilities associated with a treatment facility shall not exceed a volume equal to ninety times the permitted daily processing rate of the treatment process, unless 1) the Department shall find that a lesser volume is required to provide adequate protection of public health and safety; or 2) the applicant shall affirmatively demonstrate and the Department finds that such a restriction shall unduly inhibit the use of the most acceptable method or methods available for treatment.

(2) The requirements of subsection (a) (1) of this section shall not apply to wastewater treatment facilities which are designed and operated to

meet state and federal water pollution control regulations.

(3) Each facility shall be designed to operate and shall be operated in such a manner that emissions from the facility will comply with the provisions of the Arkansas Hazardous Waste Management Act of 1979, as amended, the provisions of this Regulation and all applicable state and federal standards concerning air and water quality and that the transfer, handling and storage of materials will not violate state and federal standards concerning worker safety or create unreasonable hazards to the environment or to the health and welfare of the people living and working in or near such facility; and

(4) When it is technically feasible that destruction of the waste can be accomplished by incineration utilizing currently available technology, no acutely hazardous waste shall be disposed of in landfills in the State of Arkansas unless the applicant can demonstrate that the waste is not included in Class I high hazard materials as defined in the Chemical Manufacturers Association's "A System for Management of Hazardous Waste by Degree of Hazard Under Subtitle "C" of RCRA" dated July 30, 1979 or as revised or amended thereto after approval by the Commission.

Incineration will be deemed technically feasible by the Director for destruction of all acutely hazardous materials for which disposal in landfills is not allowed unless:

1) the generator or the disposer can demonstrate to the satisfaction of the Director that incineration is not technically feasible;

2) it is generally accepted by the scientific community that incineration would not be technically feasible or that incineration would not produce the desired results;

3) incineration would not appreciably reduce the degree of hazard; or the toxicity of the waste results primarily from inorganic materials which are not destroyed by incineration.

The Director may give a waiver to this paragraph (4) if it can be demonstrated to his satisfaction that a process other than incineration is available and will be used that would destroy or permanently immobilize the hazardous components of the waste prior to landfilling.

(5) The following materials shall not be disposed of in landfills permitted under this Chapter and Regulation:

(a) Bulk liquids, semisolids and sludges unless, before disposal, such waste is treated or stabilized into cement-like material.

(b) Containers holding free liquids unless all freestanding liquid has been removed or treated or stabilized into cement-like material; or the container is very small, such as an ampule, or is a lab pack as defined in 40 CFR 264.316 or 265.316, as applicable and is disposed of in accordance with 264.316 or 265.316 as applicable.

(c) Municipal refuse which is not hazardous waste.

(d) Ignitable wastes in containers, unless all free liquids therein have been removed or treated and stabilized into cement-like material.

Section 14. Health Monitoring and Hazard Identification

In addition to the requirements to 40 CFR Part 264, 265 and 270 incorporated herein the following provisions shall be complied with:

~~a. Prior to the operation of a new commercial hazardous waste management facility, the Department may request that the appropriate health agency have a survey conducted, at reasonable cost, to establish baseline health data. Such survey shall:~~

~~(1) Be conducted by a person approved by both the Department and the health agency;~~

~~(2) Investigate the prevalence of those health conditions deemed appropriate by the Department in consultation with the Arkansas Department of Health and other health agencies;~~

~~(3) Be completed among a statistically representative portion of the population located within an area defined as likely to be impacted on the basis of information describing the type of facility, nature of the operation, type of waste managed and proximity to major water sources or other likely vehicles for dissemination in the environment.~~

b. Whenever the Department finds that there exists a reasonable probability that emissions from any hazardous waste management facility are related to disease etiology, it shall have conducted pertinent epidemiologic investigations in order to ascertain early identification of unknown health hazards and to effect the appropriate corrective intervention. Such investigation shall be subject to the provisions of § 11k of this Regulation and limited to reasonable cost.

Section 15. Ownership Disclosure for Commercial Waste Facilities

In addition to the requirement of 40 CFR Part 264, 265 and 270 incorporated herein the following provisions shall be complied with:

a. The following information shall be submitted along with Part A of any permit application for a commercial hazardous waste management facility.

(1) If the permit applicant is not an individual, the nature of its business operations shall be stated for the past five years or for such lesser period as such person and any predecessors thereof shall have been in existence.

(2) A chart or listing clearly presenting the identities of the interrelationships among the applicant and all affiliates of the applicant shall be furnished. No affiliate need to be identified if its total assets are equal to or less than 1/2 of 1% total assets of the ultimate controlling person affiliated with the applicant. Such a chart should indicate or list the percentage voting securities of each such person which is owned or controlled by the applicant or by any other person. If control of any person is maintained other than basis of such control. As to each person specified in such chart or listing indicate the type of organization (e.g., corporation, trust, partnership) and the state or other jurisdiction or domicile.

(3) State the following with respect to 1) the permit application if he or she is an individual or 2) all individuals who are directors, executive officers or owners of 10% or more of the voting securities of the permit applicant if the applicant is not an individual:

(a) Name and business address;

(b) Present principal business activity, occupation or employment position and office held and the name, principal business and address of any corporation or other organization in which such employment is carried on;

(c) Material occupations, positions, offices or employment during the last five years, giving the starting and ending dates of each and the name,

principal business and address of any business, corporation, position, office or employment carried on; and

(d) Whether or not such individual has ever been convicted in a criminal proceeding (excluding minor traffic violations) during the last 10 years and, if so, giving the date, nature of conviction, name and location of court, and penalty imposed or other disposition of the case.

(4) The following additional information shall be furnished concerning the ultimate controlling person if different from the applicant:

(a) The principal executive office address;

(b) The principal business of the person;

(c) The name and address of any person who holds or owns 10% or more of any class of voting security, the class of such security, the number of shares held of record or known to be owned and the percentage of class so held or owned; and

(d) With respect to directors and executive officers of the ultimate controlling person, the individual's name and address, his principal occupation and all offices and positions held during the previous five years and any conviction of crimes other than minor traffic violations during the past ten years.

(5) The permit applicant shall provide a brief description of any litigation or administrative proceeding of the following types, either pending or concluded within the preceding year, to which the applicant (and the ultimate controlling person, if different from the applicant) or any of its directors or executive officers was a party or of which the property of any such person is or was the subject; the names of the parties and the court or agency in which such litigation or proceeding is or was pending shall be given:

(a) Administrative or judicial proceedings of any state or federal agency or authority concerning environmental violations;

(b) Proceedings which may have a material effect upon the solvency of the ultimate holding company, including, but not necessarily limited to, bankruptcy and receivership; and

(c) Criminal proceedings.

(6) The permit applicant shall disclose on an annual basis any changes in the information requested under subsections a(2), (3), (4) and (5) of this Section.

b. Every person who becomes the owner of 10% or more of any voting security of a permittee or the ultimate controlling person subsequent to the issuance of a permit shall report within ten (10) days of becoming such owner or controlling person the information required under a(3).

c. In addition to the requirements of 40 CFR 270.14, a change of the ultimate controlling authority from one ultimate controlling person to another is deemed a transfer of permit subject to the prior approval of the Department. An application requesting such approval must contain at least the following information:

(1) A description of the nature, source and amount of funds or other considerations to be used in affecting the merger or other acquisitions of control;

(2) The number and percentage or shares of the voting securities which the acquiring person plans to acquire and the terms of the offer, request,

invitation, agreement or acquisition; and

(3) All information required under subsection (a) of this Section concerning the acquiring person.

Section 16. Hazardous Waste Transportation and Reporting

In addition to the provisions of 40 CFR 262, 263, 264 Subpart E, and 265 Subpart E which are adopted by reference in § 3, the following provisions apply to the transportation of hazardous wastes in Arkansas:

~~a. Requirements for the Transportation of PCBs:~~

In addition to the hazardous waste determination set forth in 262.11 a person who generates a solid waste must also determine if the waste constitutes "PCBs", "PCB items", "PCB transformers", or "PCB contaminated electrical equipment" as those terms are defined in 40 CFR 761.2. Such wastes are hazardous wastes as per § 2a(5) of this Regulation, and generators of such wastes must comply with the following:

(1) Each generator or transporter of PCB wastes as determined in subsection (a) who has not otherwise obtained an EPA identification number pursuant to 262.12 may not transport or offer for transportation PCB wastes without having received a "PCB identification number" from ADPC&E;

(2) 40 CFR Part 262 Subparts A, B, C, D, and E (except 262.12, and 262.41) as adopted by reference in § 3 (except that PCB generators are exempted from the waste minimization statement);

(3) 40 CFR Part 263 Subpart A, B, and C as adopted by reference in § 3;

(4) 40 CFR Part 264 Subpart E only, except 264.75 as adopted by reference in § 3;

(5) 40 CFR Part 265 Subpart E only, except 265.75 as adopted by reference in § 3;

~~(6) All the provisions of subsections (b), (c), and (d) of this § 16.~~

b. Transportation of Waste from Generators of over 100 kgs per month:

In addition to the hazardous waste determination set forth in 40 CFR 262.11 a person who generates any hazardous waste which is part of a total quantity of hazardous waste greater than 100 kilograms during a calendar month shall comply with all state and federal manifesting and transportation requirements and the provisions of subsection 'c' except that a small quantity generator must notify this Department of hazardous waste activity in order to obtain an EPA identification number.

c. Additional Requirements for the Transportation of Hazardous Wastes in Arkansas (Including PCBs and Wastes from Generators of over 100 kgs per month):

(1) The following items shall be completed as State manifest reporting requirements: (the following instructions refer to items A-K on the hazardous waste manifest report form (Arkansas/EPA Form No. 8700-22) and are to be completed for all inter- and intrastate shipments of hazardous waste):

(a) ITEM B: If an EPA identification number is not required, enter the PCB identification number or Arkansas provisional EPA identification number assigned by ADPC&E.

(b) ITEMS C and E: The Transportation Permit numbers issued by the Arkansas Highway and Transportation Department and the ADPC&E.

- (c) ITEMS D and F: The phone number of the transporter.
- (d) ITEM H: The phone number of the designated facility.
- (e) ITEM I: The EPA Waste Code, ~~for the letters "PCB" for PCB shipments.~~
- (f) ITEM J: The name, address and I.D. number of an alternate treatment, storage or disposal facility (if any).
- (g) ITEM K: Emergency response contact (individual's name and telephone number).

(2) For rail transportation, the first and last rail transporter delivering the shipment must sign and date the manifest or continuation sheet in the appropriate space on the manifest.

(3) Each generator in Arkansas must:

(a) Provide the Department a final copy of each manifest within 10 days of the end of the month in which the generator received its final copy from the treatment, storage or disposal facility (TSDF).

(b) For each manifest that shows a weight difference of more than 10% between the initial and final weights attach documentation which shows that the weight variance has been resolved between the generator and the TSDF. Documentation should be submitted to the Department with the manifest required in paragraph c(3)(a) of this subsection.

(c) Provide a discrepancy report to the Department containing the information required by 40 CFR 265.72 for those shipments to an out-of-state TSDF involving significant discrepancies as defined by 40 CFR 265.72.

(4) Each person in Arkansas who accepts wastes for the purpose of treating, storage or disposing must:

(a) Provide the Department a final copy of each manifest within 10 days of the end of the month in which the shipment was received.

(b) For each manifest identified in paragraph c(3)(a) of this subsection that shows a weight difference of more than 10% between the initial and final weights attach documentation which shows that the weight variance has been resolved between the TSDF and the generator. Documentation should be submitted to the Department with the manifest copy required in (c)(3)(i) of this subsection.

(5) In addition to the requirements for immediate action in the event of a discharge during transportation required by 40 CFR 263.30 as adopted by reference in § 3, an air, rail, highway or water transporter who has discharged hazardous waste in the State of Arkansas shall also take the following actions:

(a) Give immediate notice to the Arkansas State Police and to the principal office or designated contact for the transporter.

(b) Submit a copy of the written report required by 49 CFR 171.16 and 263.30(c)(2) to ADPC&E simultaneously with its submission to the federal Department of Transportation.

(6) All persons who transport hazardous waste in or through any part of the State of Arkansas shall first obtain permits for such activity. Such permits shall be applied for annually in the form and manner required by § 12c(10).

(7) Any generator who ships any hazardous waste to any location in Arkansas for storage, treatment, or disposal must obtain a Manifest form from ADPC&E and use only such Manifests as are issued by ADPC&E for such shipments.

(8) In addition to all of the requirements hereof, all transportation of hazardous wastes in Arkansas shall comply with all applicable state and federal rules and regulations governing such transportation.

(9) Generators may not assign hazardous wastes to unpermitted transporters; and TSDFs may not accept hazardous wastes from unpermitted transporters without specific authorization from this Department.

(10) A generator may not ship a hazardous waste to a TSDF unless the TSDF has a valid permit, or has interim status, or is specifically approved to receive such a waste. A generator may not list a nonapproved TSDF as the alternate TSDF when manifesting. If a RCRA facility, the alternate TSDF must have a valid RCRA permit or interim status to receive such waste.

(11) A TSDF may not accept hazardous waste without a generator EPA or PCB number on the manifest, unless specific prior authorization has been obtained from this Department.

(12) Exports of Hazardous Wastes.

(a) Generators, transporters, or TSD facilities intending to ship hazardous wastes outside the United States must comply with Federal requirements detailed at 40 CFR 262.53, 262.54(g) and (i), 262.56, 262.57, 263.20(g)(4), 264.12(a), 265.55, incorporated by reference in this Regulation. At these citations, references to "EPA", "EPA Administrator", "Regional Administrator", and "U.S. Customs Official" remain unchanged, and are not replaced by the title of the State counterpart.

(b) A copy of all export notifications and manifests must be submitted to the Department.

d. Annual Reports.

(1) Any person who generates hazardous waste ~~(including PCBs and PCB-contaminated waste)~~ in the State of Arkansas must prepare and submit a single copy of an Annual Report to the Director by March 1 of each year. The Annual Report must be submitted on forms furnished by the Department and, must cover generator activities during the previous calendar year, and must include, at a minimum, the following information: (except for small quantity generators of between 100-1000 kg. a month who must comply with subsection d(1)(a)-(e) and (h).

(a) The EPA identification number, name, and address of the generator;

(b) The calendar year covered by the report;

(c) The EPA identification number, name, and address for each offsite treatment, storage, or disposal facility in the United States to which waste was shipped during the year;

(d) The name and EPA identification number of each transporter used during the reporting year for shipments to a treatment, storage, or disposal facility within the United States;

(e) A description, EPA hazardous waste number (From 40 CFR Part 261, Subpart C or D ~~or "PCBs"~~), DOT hazard class, and quantity of each hazardous waste generated on-site and either accumulated, treated, stored, or disposed of on-site or shipped offsite to a treatment, storage or disposal facility. This information must also list the EPA identification number of each such offsite facility to which waste was shipped;

(f) A description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated;

(g) A description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for years prior to 1984.

(h) A statement signed by the generator or authorized representative certifying that the report is true, accurate, and correct.

(2) The owner or operator of a treatment, storage or disposal facility must prepare and submit a single copy of an Annual Report to the Director by March 1, of each year. The Annual report must be submitted on forms furnished by the Department. The report must cover facility activities during the previous calendar year and must include, at a minimum, the following information:

(a) The EPA identification number, name and address of the facility;

(b) The calendar year covered by the report;

(c) For offsite facilities, the EPA identification number of each hazardous waste generator from which the facility received a hazardous waste during the year;

(d) For imported shipments, the report must give the name and address of the foreign generator;

(e) A description and the quantity of each hazardous waste the facility received during the year. For offsite facilities, this information must be listed by EPA identification number of each generator.

(f) The method of treatment, storage, or disposal for each hazardous waste;

(g) The most recent closure cost estimate under 40 CFR 264.14 or 265.14, and, for disposal facilities, the most recent post closure cost estimate under 40 CFR 264.144 or 265.144;

(h) A statement signed by the owner or operator of the facility or his authorized representative certifying that the report is true, accurate, and correct.

(3) The owner or operator of a land disposal facility must, in addition to the requirement of (2) above, submit monitoring data under 40 CFR 265.94(a)(2) (ii) and (iii), and (b)(2), where required.

(4) Generators and Treatment, Storage or Disposal facilities required to submit Annual Reports pursuant to this subsection d shall retain a copy of said reports for a period of at least three (3) years from the due date of the report. The retention period for Annual Reports is automatically extended during the course of unresolved enforcement actions.

e. Generators of hazardous wastes newly characterized as TC Toxic using the Toxicity Characteristic Leaching Procedure (TCLP) (40 CFR 261.24) must notify this Department using EPA Form 8700-12 and obtain an EPA identification number. Generators who have previously notified this Department of hazardous waste activity and currently have an EPA identification number, but now determine that they produce a TC toxic waste must submit an amendment EPA Form 8700-12 to this Department notifying that they generate TC toxic wastes in addition to other hazardous wastes previously reported.

~~Section 17. Effect of Federal Regulations~~

a. Any regulations adopted by the Department shall not be less stringent than the regulations promulgated or revised by the United States Environmental Protection Agency pursuant to the Federal Resource Conservation and Recovery Act of 1976, as amended.

b. Where the Department issues variances pursuant to A.C.A. 8-7-211, such variances shall not provide terms less stringent than those set by federal regulations incorporated by reference in this Regulation or less stringent than those for which analogous provisions have been adopted herein.

c. Nothing in this Section shall prohibit the Department from imposing any rule, regulation, standard, procedure or permit condition which is more stringent than federal regulations, when such rule, standard, procedure or permit condition is required as a part of this Regulation or the Act or when the Department finds such stringency is necessary to protect the public health or the environment.

CHAPTER THREE: REGULATIONS PROMULGATED UNDER ACT 1098 OF 1979

Section 18. Authority

The regulations under this Chapter are promulgated pursuant to the Arkansas Resource Reclamation Act of 1979 (Act 1098 of 1979; A.C.A. 8-7-301 et seq.)

Section 19. Definitions.

In addition to the definition set forth in § 2, all of which apply to this Chapter, the following terms when used in this Chapter shall mean:

a. "Interstate Agreement or Compacts" means any agreement or agreements between the State of Arkansas and another state or states or the federal government, which is entered into with the approval of the Governor in order to carry out the purposes of the Arkansas Resource Reclamation Act (Act 1098 of 1979, as amended).

b. "Memorandum of Agreement" means the agreement between the U.S. Environmental Protection Agency, as the authorized agent of the federal government, and the Arkansas Department of Pollution Control and Ecology, as the authorized agent of the Governor, for ADPC&E to operate a state hazardous waste program pursuant to the federal Resource Conservation and Recovery Act in Arkansas in lieu of the federal government and in accordance with state laws and regulations which are equivalent to the federal program.

Section 20. State EPA Memorandum of Agreement

a. The Memorandum of Agreement (MOA) effectuates the purposes set forth in Act 1098 of 1979, as amended for interstate agreements or compacts.

b. Upon execution of the MOA all purposes of Act 1098 of 1979, as amended will be fulfilled with respect to the transportation and disposal of hazardous waste and no other agreements or compacts with respect thereto shall be entered into during the life of the MOA.

CHAPTER FOUR: REGULATIONS PROMULGATED UNDER ACT 479 OF 1985

Section 21. Authority

The regulations under this Chapter are promulgated pursuant to the Remedial Action Trust Fund Act of 1985 (Act 479 of 1985, as amended, A.C.A. 8-7-501)

~~(et seq.)~~

Section 22. (Reserved)

Section 23. Fees on the Generation of Hazardous Waste

a. On or before April 1 of each year:

(1) Every person who generated hazardous wastes in Arkansas during the preceding calendar year; and every person who accepted for treatment, storage, or disposal in Arkansas during the preceding calendar year hazardous wastes generated outside the State shall report the total amount of such hazardous wastes generated or accepted to the Director on forms prescribed by the Department.

(2) Every person required to report wastes pursuant to subsection (a) above shall be assessed a fee, based upon the combined total of such wastes, to be paid to the Department on or before July 1 of each year. These fees shall be calculated and paid according to the following schedule:

Category	Pounds Generated	Annual Fee
1	0 to 29,999	0
2	30,000 to 99,999	\$750.00
3	100,000 to 199,999	\$1,500.00
4	200,000 to 299,999	\$3,000.00
5	300,000 to 399,999	\$5,000.00
6	400,000 to 499,999	\$7,500.00
7	500,000 and above	\$10,000.00

Section 24. (Reserved)

Section 25. (Reserved)

CHAPTER FIVE: OTHER PROVISIONS

Section 26. Penalty Policy and Administrative Procedures.

The provisions of Department of Pollution Control and Ecology Regulation No. 7, "Civil Penalties", and Regulation No. 8, "Administrative Procedures" apply to this Regulation.

Section 27. Severability.

If any provision of this Regulation or the application thereof is held invalid, such invalidity shall not effect other provisions of this Regulation which can be given effect without the invalid provision or application and to this end the provisions of this Regulation are declared to be severable.

Section 28. Effective Date.

These regulations and any amendments or revision thereof are effective 20 days after filing the regulations or any amendment or revision thereof with the Secretary of State¹, except as specifically provided below:

¹ Pursuant to Minute Order No. 91-61, adopted by the Arkansas Commission on Pollution Control and Ecology on December 6, 1991, and filed with the Secretary of State on January 7, 1992, the effective date of revisions to this regulation is January 27, 1992.

~~(1) The effective date for the listing of spent potliner from Primary Aluminum Reduction (EPA waste code K088) shall be July 1, 1990.~~

ARKANSAS DEPARTMENT OF POLLUTION CONTROL & ECOLOGY

LOCATION - SUBJECT 1991 Revisions
Hazardous Waste Code

MINUTE ORDER NO. 91-61

PAGE 1 OF 1

Pursuant to Public Notice and Hearing, and after consideration of all comments received, the Commission of Pollution Control and Ecology hereby adopts changes to the Arkansas Hazardous Waste Management Code, Chapter Two Sections 3, 11, 12, and 16. These changes reflect amendments made to the proposed rule in response to public comments received as documented in the Responsiveness Summary.

BY ORDER OF THE POLLUTION CONTROL AND ECOLOGY COMMISSION

BY: [Signature]
CHAIRMAN

ATTEST:

[Signature]
RANDALL MATHIS, DIRECTOR

APPROVED: [Signature]
BILL CLINTON, GOVERNOR

COMMISSIONERS

[Signatures]

[Signature]
CHAIRMAN

92 JAN - 7 PM 4: 25
AR. PROTECTION DIV.

SUBMITTED BY: Mike Bates DATE PASSED: 12/06/91