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Base

ARKANSAS HAZARDOUS WASTE MANAGEMENT CODE

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SOLID AND HAZARDOUS WASTE DIVISION

ARKANSAS DEPARTMENT OF POLLUTION CONTROL AND ECOLOGY
8001 NATIONAL DRIVE
LITTLE ROCK, ARKANSAS 72219

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CHAPTER ONE: TITLE AND PURPOSE

The following rules and regulations of the Department of Pollution Control and Ecology of the State of Arkansas, adopted pursuant to the provisions of the Arkansas Hazardous Waste Management Act of 1979 (Act 406 of 1979) and the Arkansas Resource Reclamation Act of 1979 (Act 1098 of 1979), shall be known as the Hazardous Waste Management Code.

It is the purpose of this Code and it is hereby declared to be the policy of this Department (1) 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; (2) to establish a program of regulation over the generation, storage, transportation, treatment, and disposal of hazardous waste; (3) to assure the safe and adequate management of hazardous wastes within this state; (4) to qualify to adopt, administer, and enforce a hazardous waste program pursuant to the Federal Resource Conservation and Recovery Act (Public Law 94-580 approved October 21, 1976); (5) to afford the people of the State of Arkansas a voice in the permitting of hazardous waste facilities within their respective counties; (6) 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; (7) 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; (8) 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 (9) 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, Arkansas Stats. Ann. {82-4201 et.seq}).

Section 2. Definitions

- (a) In view of the definitions of the following terms set forth in 40 CFR 270.2 and 40 CFR 261.3, when used in this Chapter -
1. "Hazardous Waste" means a hazardous waste as defined in 40 CFR 261.3. In addition thereto Polychlorinated Biphenyls, as defined in 40 CFR 761 (including PCB's, 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 Section 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.
 2. "Manifest" means the form used for identifying the quantity, composition, and the origin, routing and destination of hazardous waste during its transport.
 3. "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 Code.
 4. "Permit" means a written permit issued by the Arkansas Transportation Commission 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.
 5. "Permit by Rule" means those categories of permits for which the public comment requirements of Section 5 (f) of the Act are fulfilled by the public notice and opportunity for comment provided in the promulgation of the provisions of this Chapter relating to permits by rule. The term specifically includes those categories of permits recognized by 40 CFR 270.60 as incorporatd herein and by Section 12 (a) (1), (2), (4), and (5).

6. "Person" means an individual, corporation, company, firm, and partnership, association, trust, joint stock company, joint venture, state, city, town, or municipality or trust venture or any other legal entity, or combination of entities however organized.

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7. "Site" means any real property located within the boundary of the State of Arkansas which is, has been, 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 270.2 (with the exception of the terms defined above in subsection (a)) when used in this Chapter -

1. "Act" means the Arkansas Hazardous Waste Management Act of 1979, Act 406 of 1979.
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 this Code, and which is not a closed portion.
3. "CFR" means Code of Federal Regulations.
4. "Commercial Hazardous Waste Management Facility" means a hazardous waste management facility which does not meet the definition of a non-commercial hazardous waste facility as defined in this section.
5. "Commission" means the Arkansas Commission on Pollution Control and Ecology.
6. "Department" means the Arkansas Department of Pollution Control and Ecology.
7. "Director" means the Director of the Arkansas Department of Pollution Control and Ecology.
8. "EPA Identification Number" means the unique number assigned by the U. S. Environmental Protection Agency and/or the Arkansas Department of Pollution Control and Ecology to each generator, transporter, and to each treatment storage, or disposal facility.

9. "Exempted Hazardous Waste" means hazardous waste which is exempted from the provisions of the Hazardous Waste Management Code pursuant to the provisions of Section 9 of this Code.
10. "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 or machinery necessary to complete these tasks.
11. "Generation" means the act or process which results in the production of waste materials.
12. "Hazardous Waste Management" means the systematic control of the generation, collection, source separation, storage, transportation processing, recovery, disposal and treatment of hazardous waste.
13. "Non-Commercial 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 non-commercial 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.
14. "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.

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

16. "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.

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

18. "Ultimate Controlling Person" means a person who is not controlled by another person.

(c) Other words and phrases used in this Chapter shall have the meaning provided in 40 CFR 270.2.

redundant

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" or "regional administrator" shall be considered references to the Director of 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; and all references elsewhere in this Chapter to any of the following regulations shall constitute a reference to the regulation as herein adopted:

Title 40 Code of Federal Regulations -

1. Subparts A, B, and C of Part 260;
2. Subparts A, B, C, and D of Part 261;
3. Subparts A, C, D, and E only of Part 262 with the exception of 262.21 (Subpart B is not adopted, for analagous provisions; see Section 16 of this Chaper; see Section 13(a)(6) for biennial report);

4. Subparts A,B,C,D,E,F,G,H,I,J,K,L,M,N, and O of Part 264 with the following exceptions: 264.71, 264.72, 264.75, 264.76 (for analogous manifesting provision, see Section 16 of this Chapter; see Section 13(a)(6) for biennial report). 264.312(b), 264.314 (for analogous provisions, see Section 13(a)(5) of this Chapter).
 5. Subparts A,B,C,D,E,F,G,H,I,J,K,L,M,N, O,P,Q, and R of Part 265 with the following exceptions: 265.71, 265.72, 265.75, 275.314 (for analogous provisions, see Section 13(a)(6) for biennial report), 265.312(b), 265.314 (for analogous provisions see Section 13(a)(5) of this Chapter);
 6. Subparts A,B,C,D,E,F, and G of Part 270 with the following exceptions: the definitions of "Hazardous Waste", "Site", "Person", "Manifest", "Permit", "Permit by Rule", "Operator" set forth in 270.2 (for analogous provisions, see Section 2 of this Chapter);
 7. The definition of "PCB" and PCB's", "PCB items", "PCB-contaminated electrical equipment" set forth in 761.3;
 8. 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), 124.4(e), 124.5(g), 124.6(b), 124.9, 124.10(a)(1)(i), 124.10(a)(i)(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 Section 20 of this Code.
- (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 this Chapter:

| Facility Name & Address | Waste Excluded | Date of FR Notice | Exclusion Status |
|-------------------------------------|----------------|-------------------|------------------|
| Monroe Auto Equipment, Paragould | F006 | 12/31/80 | Temporary |
| Whirlpool Corp., Fort Smith | F006 | 08/06/81 | Temporary |
| Bekaert Steel Wire Corporation | K063 | 12/16/80 | Temporary |
| White-Rodgers, Div of Emerson Elec. | F006 | 01/28/83 | Temporary |
| National Rejectors Industries | F006 | 01/28/83 | Temporary |

- (c) The Director, within 180 days after the date of promulgation of any new or revised federal hazardous waste regulations shall conduct rule-making 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 their effective date shall constitute minimum guidelines to the Director in formulating rulemaking proposals to this Chapter but 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 Hazardous Waste Code and shall be punishable as provided in the Arkansas Hazardous Waste Management Act of 1979 (Act 406 of 1979):

- (a) Failure to comply with the provisions of this code with the terms of permits or orders issued hereunder.
- (b) Knowingly to make any false statement, representation, or certification in any application, record, report, plan or other document filed or required to be maintained under this Code, or to falsify, tamper with, or knowingly render inaccurate any monitoring device, testing device, or method required to be maintained under this Code.
- (c) To dispose of hazardous waste at any disposal site or facility with the State of Arkansas other than one for which a permit has been issued by the Department pursuant to this Code.
- (d) To store, collect, transport, treat, or dispose of any hazardous waste contrary to the provisions of this

Code or in such a manner or place as to create or as is likely to be created a public health hazard or to cause within the meaning of the Arkansas Water and Air Pollution Control Act, as amended (Section 92-1901 et. seq., Ark. Stats. Ann.)

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 Commission 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 sole source aquifer designated pursuant to Section 1424 (e) of the Safe Drinking Water Act (PL 93-532);
 - (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 sub-group modifier of vertic by the criteria of the Soil Conservation Service of the United States 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 inplace soil barrier is less than 10 feet above the historically high water table; or where
 - (5) 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 condition.
- (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 and the facility and the facility's property line is less than 200
 - (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 standard set forth in this Code can be met.
- (f) The provisions of this Section 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 the degree of hazard associated with such facility.

Section 6. Confidential Information

- (a) Any records, reports, or information contained under this Code and any permits, permit applications, and related documentation shall be available to the public for inspection and copying; provided, however, that 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 Section (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 Section (c) above. No information which is submitted in accordance with the provisions of Section (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 materials and probable effects of the introduction of such waste or by-products 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 Section (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 Section (c) above does not meet the criteria of Section (d) above, he shall promptly notify the person submitting such information of his finding 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 Section (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 re-submit the information in acceptable form or appeal the decision of the Director to the Commission.
- (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 for internal Department or other use except with the written permission of the Director.

- (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.

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 Section 11 (h) shall not be construed to mean 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 (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 expense 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 by-laws 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 by-laws shall not be in conflict with the provisions of this Code 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 Code and make recommendations. Additionally, the Committee shall review the Code at least once each three years and shall make recommendations for changes deemed appropriate.

Section 9. Exemptions

- (a) Except as otherwise provided in this Section, persons who generate small quantities of hazardous waste as set out in 40 CFR 261.5, are exempted from the reporting and manifesting requirements of this Chapter provided that the hazardous waste:
 - (1) 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 this Section 9;

- (2) 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;
 - (3) is shipped, pursuant to Section 16(t) of this Code, to an approved facility outside the State of Arkansas; or
 - (4) is treated or disposed of in on-site solid waste facilities which are permitted in accordance with Act 472 of 1949, as amended, or Act 237 of 1971.
- (b) The owner or operator of a solid waste disposal facility or of a hazardous waste management facility shall not receive, store, treat, or dispose of hazardous waste, whether or not it has been exempted from the reporting requirements applicable to generators as provided by subsection (a) of this Section, unless such facility has received written permission to store, treat, and/or dispose of hazardous waste from the Department.
 - (c) Whenever the owner or operator of a solid waste disposal facility or of a hazardous waste management facility has reason to believe that the amount of hazardous waste received at said facility from any one person is in excess of the quantities set out in 40 CFR 261.5, said owner or operator shall so inform the Director in writing in accordance with Section 16 (f)(5) of this Code.
 - (d) The owner or operator of any solid waste disposal facility for which a permit has been issued under terms of the Arkansas Solid Waste Management Act and which is accepting for disposal hazardous waste from persons exempted under subsection (a) of this section may continue to accept such waste provided that a request is made for modification of said permit to store, treat, or dispose of hazardous waste within a time period established by the Commission for said facility. Nothing in this subsection (d) shall prevent the Department from prohibiting the disposal of such wastes where the Director finds that such disposal would create adverse public health or environmental impacts.
 - (e) All requests submitted in accordance with the provisions of Section (d) above shall contain such information as the Department may require to determine that the ratio of hazardous waste to non-hazardous waste stored, treated, or disposed in the facility for which the request is submitted in accordance with subsection (d) above is such that the facility can be safely operated under the provisions of

the Arkansas Solid Waste Management Act. Where the the Department finds that the aforesaid ratio and/or the nature, condition, location, or operation of the facility is such that an environmentally safe operation can not be reasonably expected, the Department shall deny the request for modification.

- (f) Where the Department finds that the amount of hazardous waste which is eligible for exemption under subsection (a) of this section exceeds the capacity or capabilities of the disposal facilities owned or operated by the municipality or county, in which such exempted hazardous waste is generated, the Department shall require that said municipality or county develop a plan for collecting, storing, treating, and/or disposing of such hazardous waste which plan shall be expeditiously implemented upon approval by the Department.
- (g) Non-commercial hazardous waste storage facilities on the site where the waste is generated shall be excluded from the siting requirements of this Chapter (although not the location standards of 40 CFR 264.18) except in cases where in the judgement of the Department unusual public risks would be created by the absence of such siting requirements.
- (h) A farmer disposing of waste pesticides from his own use is not required to comply with other requirements of this Chapter so long as he complies with 40 CFR 262.51.

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

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

- 4 (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 Section (b) below, is on duty, or on 15 minutes call, at all time the facility is being operated. Depending upon the size and complexity of the facility, the Commission 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 as 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 code;
 - (4) have their personnel take part in a semi-annual 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 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

- (a) Any person who applies for a permit for the construction and operation of a hazardous waste management facility shall submit as part of said application a money order or cashiers check payable to the Department for deposit in the State Treasury to cover permit fees for all active portions of the facility as set forth below:
- (1) Commercial Facility:
 - (i) Initial permit application fee - \$5,000
 - (ii) Five-year permit renewal fee - 5,000
 - (iii) Annual permit evaluation fee - 5,000
 - (2) Non-Commercial Facility:
 - (i) Initial permit application fee - \$1,000
 - (ii) Five-year permit renewal fee - 1,000
 - (iii) Annual permit evaluation fee - 1,000
 - (3) Annual renewal fees will not be assessed during the years in which the five-year renewal fees are assessed for commercial and non-commercial facilities.
- (b) Each land farm, or landfill for hazardous waste within a facility identified in subsection (a) above shall be assessed an additional fee for each acre, or part thereof, in the following amounts:
- (1) \$1,000 per year - active portions of land farms which treat or dispose of waste from more than one generator;
 - (2) \$500 per year - active portions of land farms which treat or dispose of waste from only one generator;
 - (3) \$5,000 per year - active portions of commercial landfills;
 - (4) \$1,000 per year - active portions of non-commercial landfills; provided, however, that the Commission may assess rates up to \$5,000 per year for non-commercial landfills which dispose of complex mixture of wastes of different types or wastes which are unusually toxic.
- (c) Each vessel or containment basin which has a capacity in excess of one thousand gallons and which is used within a facility identified in subsection (a) above for storage or containment of hazardous waste shall be assessed an additional fee of one dollar per thousand gallons.

- (d) The provisions of subsections (b) and (c) do not apply to impoundments, basins, or other storage devices which are an integral part of wastewater treatment systems required under state or federal laws.
- (e) Fees for hazardous waste management facilities designed and operated for disposal of explosives and/or chemical agents used for military purposes shall be established by the Commission upon review of the application for permit.
- (f) Permit modification applications 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.
- (g) 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 deposit to the State Treasury.
- (h) As a condition of permit for a hazardous waste management facility, the Commission may require on-site inspections of such frequency and duration as it deems appropriate, provided, however, that the presence of on-site inspectors shall be a mandatory requirement for the first six months operation of any commercial hazardous waste landfill. Prior to the Commission's issuance of permit, the owner or operator of any facility which is subject to the provisions of this subsection shall submit a money order or cashiers check payable to the Department for deposit in the State Treasury 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 for deposit in the State Treasury in the amount of one-fourth the aforesaid estimated annual costs. Any permit conditioned in accordance with the provisions of this section shall be automatically voided after the informal hearing whenever the permittee fails to submit quarterly payments as herein provided. The Commission may authorize the Department to enter into contractual agreement with qualified engineering and testing firms to conduct inspections as described above.
- (i) Whenever the Department incurs a cost in excess of \$100 as a result of investigating any violation of this Code or as a result of responding to and monitoring the effects of, spill of hazardous wastes, including upset conditions within a hazardous waste management facility, 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.

- (j) Fees required under this Section 11 "are for the purposes of recovering the costs of processing permit applications, on-site monitoring and certification of personnel" (Act 406, Section 5(i) and fees collected under this section shall not be refunded should a permit application or a certification be disapproved pursuant to the provisions of this Code. Nothing in this subsection shall prohibit the Department from crediting unused portions of fees from permitted facilities towards future fees.
- (k) The maximum annual amount of fees collected for any hazardous waste management facility pursuant to provisions of subsection (a), (b), (c), (e), (f) and (h) shall not exceed \$10,000 for non-commercial facilities or \$20,000 for commercial facilities, provided, however, that the Commission may require such additional fees to be collected from the owner or operator of a commercial hazardous waste landfill as it deems necessary to compensate the Department for the costs of providing on-site inspectors as required under subsection 11(h).
- (l) A financial assessment of the fee system shall be presented to the Commission annually by the Director.
- (m) Any person who applies for a permit for transportation of hazardous waste within the State of Arkansas shall submit along with the application required in Section 12 of this Code, a money order or cashier's check in the amount of \$100.00 payable to the Department for deposit in the State Treasury to cover permit fees and costs for 5 years.
- (n) Manifest forms required to be used by Section 16 of this Code shall be purchased from the Department for a fee established by the Commission, which fee shall cover the cost of reproducing, distributing, and processing such manifests.
- (o) In addition to the above fees, the cost of mailing, publication of public notices, and other public notification cost incurred by the Department in the processing of a permit application shall be remitted to the Department by the permit applicant. The costs of meeting the notification requirements, as contained in 40 CFR 124.10 and outlined above, shall not exceed actual expenditures by the Department.
- (p) No permit will be issued when indebtedness exists as a result of non-payment of any of the above permit fees for notification charges.

Section 12. Permit Procedures - Permits by Rule

In addition to the provisions of 40 CFR 124 and 40 CFR 270 which are incorporated by reference in Section 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) (1) Facilities 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 or Code, provided that the owner or operator of such facility made application on forms provided by the Department for such permit on or before September 14, 1979. This operating authority constitutes a Permit by Rule.
- (2) All non-commercial hazardous waste management facilities in existence on November 19, 1980, including those which have failed to comply with the requirement of Paragraph (1) to submit an application on forms provided by the Department by September 14, 1979, who have attained interim status as set forth in 40 CFR 270.70 - 270.73 by virtue of a proper submission of a Part A application to EPA and/or the Department as applicable, are granted an Interim Permit by Rule of the Commission as of the date of attainment by interim status. The Interim Permit by Rule is conditional upon compliance with all applicable provisions of this Chapter and Code.
- (3) All hazardous waste management facilities in existence on November 19, 1980, who complied with the requirement of Paragraph (1) to submit an application on forms provided by the Department by September 14, 1979, who have failed to attain interim status as set forth in 40 CFR 270.70 - 270.73 by failing to properly submit a Part A Application to EPA and/or the Department, as applicable, hereby have their Permit by Rule under Paragraph (1) above revoked as of the date the submission of the Part A should have been made and their application shall be deemed by the Department, and such facilities as of the Part A should have been submitted shall have no operating authority hereunder, except as provided in Paragraph (4) or (5) below.
- (4) Notwithstanding the foregoing paragraphs, all hazardous waste management facilities which first became subject to compliance with this Code and Chapter subsequent to November 19, 1980, and therefore did not submit a Part A Application or by November 19, 1980, because of revisions to this Code and Chapter but who thereafter attained interim status by

proper submission of a Part A application to EPA and/or the Department when required as applicable, are granted an Interim Permit by Rule of the Commission as of the date of attainment of interim status. The Interim Permit by Rule is conditional upon compliance with applicable provisions of this Chapter and Code.

- (5) Notwithstanding the foregoing paragraphs, non-commercial hazardous waste management facilities who have failed to comply with Paragraphs (1), (2), or (4) may, by an administrative order issued by the Department requiring such facilities to comply with all applicable provisions of this Chapter and Code according to a schedule set forth therein, be deemed to have attained interim status thereby and are granted an Interim Permit by Rule of the Commission as of the date of issuance of such administrative order. The Interim Permit of Rule is conditional upon compliance with all provisions of the administrative order and the provisions of this Chapter and Code.
- (6) 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 Code.
- (7) 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.
- (8) The contingency plan required under 40 CFR 270.21 shall include evidence that such plan had 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.
- (9) 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.
- (10) The owner of a commercial hazardous waste disposal facility shall provide long-term financial responsibility as the Commission 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 Commission.

- (11) Financial instruments shall be designed to provide, upon failure of the permittee to comply with the provisions of this Code, the Department access to funds for the purpose and in the amount necessary to meet required closure procedures.
 - (12) 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.
 - (13) In conformance with Section 5 of this Chapter, Part A of the application for commercial 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.
 - (14) A permit may not be transferred, issued or modified except with the approval of the Commission, provided, however, emergency authorization may be issued by the Director in accordance with the provisions of 40 CFR 270.61 - 270.63.
- (b) No permit shall be issued for the construction, modification or operation of a hazardous waste management facility unless the Commission 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 Code including those provisions of 40 CFR 124, 40 CFR 264, CFR 265, and 40 CFR 267 incorporated herein. The Commission may establish additional requirements as conditions of permit where it deems

such conditions necessary to protect the public health and the environment including the requirements for performance bonds in the amount and in the form that the Commission may deem appropriate.

- (c) The Department may grant variances in accordance with the provisions of Section 14 of the Arkansas Hazardous Waste Management Act of 1979, provided that said variances shall not provide terms less stringent than those set by the federal regulations incorporated herein or, as to such federal regulations as are not incorporated herein, terms less stringent than provisions of this Chapter and Code analogous to such federal regulations.
- (d) 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 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 largest circulation published in each adjoining county. If there is no newspaper published in any of the counties so effected the notice shall be published in the newspaper(s) having the largest circulation in such county or counties. The notice shall contain:
 - (1) the name, title, and address of the applicant;
 - (2) the location of the facility, including a description of its boundaries; and
 - (3) 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.
- (e) 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 Code.
- (f) 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 (1) that the permit applicant will have an opportunity to make a satisfactory showing (as provided in Section 6 of this Code) 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.

- (g) The Director shall determine whether or not an application for permit is complete and should notify the applicant in writing of such determination within 60 days of receipt for existing facilities, and 30 days of receipt for new facilities of such application. The application shall not be considered as submitted to the Director until it is in complete form.
- (h) No permit shall be issued for a commercial hazardous waste management facility unless a public hearing is held in accordance with the provisions of subsection j below. No permit for non-commercial 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 non-commercial hazardous waste management facility is filed within the forty-five day comment period, no permit shall be issued unless a public hearing is held in accordance with the provisions of subsection j below. The Department within 270 days (two hundred seventy days) of the date that said application is deemed complete in accordance with subsection (g) above, shall either issue or deny a permit; provided that, where mutual agreement between the Director and the applicant, and provided further that the Department may grant an extension to the limits provided herein. Nothing in this subsection shall prohibit an applicant from withdrawing his application or from requesting a longer period of consideration.
- (i) Prior to drafting the permit for any hazardous waste management facility, the Department may hold a preliminary hearing, for informational 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 days notice in the newspaper having the largest circulation in the county in which the facility is, or is proposed to be located, and in 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.
- (j) A 45 day notice of public hearing on the draft permit shall be given in the manner described in subsection (i) above. The notice shall provide:

- (1) the time, date, and location of the hearing;
 - (2) the purpose of the hearing;
 - (3) the name and address of the applicant and the location where the facility, is or is proposed to be, located;
 - (4) the tentative recommendation of the Department;
 - (5) the location(s) where copies of the application, the Department's recommendations and all supporting documentation can be reviewed by the public; and
 - (6) procedures for submitting public comments into the hearing record.
- (k) The public hearing required under subsection (j) 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.
- (l) Any person who applies for a permit for the transportation of hazardous waste within the State of Arkansas shall submit an application on forms prescribed by the Department. No permit shall be issued by the Department unless the applicant for said permit shall have first received a permit from the Arkansas Transportation Commission.
- (m) 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.
- (n) Any permit issued pursuant to this Code shall be for a term not to exceed 5 years.

Section 13. Performance Standards

- (a) In addition to these provisions of 40 CFR 264, 265, 267 and 270 incorporated herein and the other provisions of this Chapter and Code and with respect to subsection (a)(6) hereof, in view of the provisions of 40 CFR 262.41, 264.75 and 265.75, 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 Commission 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 Commission 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 in such a manner that any emissions from the facility will comply with the provisions of the Arkansas Hazardous Waste Management Act of 1979, the provisions of this Code 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 Manufacturer's 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:

- (i) the generator or the disposer can demonstrate to the satisfaction of the Director that incineration is not technically feasible;
- (ii) it is generally accepted by the scientific community that incineration would not be

technically feasible for that incineration would not produce the desired results;

- (iii) incineration would not appreciably reduce the degree of hazard; or
- (iv) 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 Code:
 - (a) Bulk liquids, semi-solids, and sludges unless, before disposal, such waste is treated or stabilized into cement-like material.
 - (b) Containers holding free liquids unless all free-standing 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 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.
- (6) All generators who ship hazardous waste off-site and all owners or operators of hazardous waste management facilities must prepare and submit a biennial report to the Department by March 1 of each even numbered year. The biennial report must be submitted on a form approved or designated by the Department. A generator who treats, stores, or disposes of hazardous waste on-site must submit both a generator activity report and a facility activity report. The report must cover facility activities or generator activities, as applicable, during the previous calendar year and must include:
 - (a) For generators and facilities, EPA Identification Number and name and address of the facility or of the generator, as applicable.

- (b) For generators and facilities, the calendar year covered by the report.
- (c) For generators, the EP Identification Number, name, and address for each off-site treatment, storage, or disposal facility to which waste was shipped during the year; for exported shipments, the report must give the name and address of the foreign facility.
- (d) For generators, a description, EPA hazardous waste number (from 40 CFR Part 261, Subparts C or D), DOT hazard class and quantity of each hazardous waste shipped off-site. This information must be listed by EPA Identification Number of each off-site facility to which waste was shipped.
- (e) For off-site facilities, EPA Identification Number of each hazardous waste generator from which the facility received hazardous waste during the year; for imported shipments, the report must give the name and address of the foreign generator;
- (f) For facilities, a description of the quantity of each hazardous waste the facility received during the year. For off-site facilities, this information must be listed by EPA Identification Number of each generator;
- (g) For facilities, the method of treatment, storage, or disposal for each hazardous waste;
- (h) For facilities, monitoring data under 40 CFR 264 Subpart F or 40 CFR 265 Subpart F as appropriate;
- (i) For facilities, the most recent closure cost estimated under 264.142 or 265.142 as applicable, and for disposal facilities, the most recent post-closure cost estimate under 264.144 or 265.144 as applicable; and
- (j) For generators and facilities, such other information specified on the approved form; and
- (k) The certification signed by the owner or operator of the facility or his authorized representative or by the generator or his authorized representative as applicable.

Section 14. Health Monitoring and Hazard Identification

In addition to the requirements of 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 contaminated 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 Section 11(i) of this Code 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 inter-relationships 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 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 by the ownership or control of voting securities, indicate the 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 of 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:
 - (i) name and business address;
 - (ii) 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;
 - (iii) 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
 - (iv) 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:
 - (i) the principal executive office address;
 - (ii) the principal business of the person;

- (iii) 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
 - (iv) 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:
- (i) administrative proceedings of government agency or authority concerning environmental violations;
 - (ii) proceeding which may have a material effect upon the solvency of the ultimate holding company, including, but not necessarily limited to, bankruptcy, and receivership; and
 - (iii) criminal proceedings.
- (6) the permit applicant shall disclose on an annual basis any changes in the information requested under subsection (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 10 days of becoming such owner 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 of 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

In addition to the requirements of 40 CFR 262, Subparts A, C, D, (except 262.41), and E; and in addition to the requirements of 40 CFR 264.73, 264.74, 264.77, 265.73, 265.74, and 265.77; and in view of the requirements of 40 CFR 262, Subpart B, 264.71, 264.72, 264.76, 265.71, 265.72, and 265.76 the following provisions shall apply: {Note: the biennial report provisions of this Chapter and Code analogous to 40 CFR 262.41, 264.75, and 265.75 are found in Section 13(a)(6)}

- (a) Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator or shipper must:
 1. package or otherwise containerize the waste in accordance with applicable U.S. Department of Transportation regulations.
 2. label each package and/or container in accordance with U.S. Department of Transportation regulations.
 3. mark each package and/or container in accordance with U.S. Department of Transportation.
 4. offer the initial transporter the appropriate placards according to U.S. Department of Transportation regulations.
 5. prepare a manifest in accordance with this Code, rules of the Arkansas Transportation Commission, and EPA regulations before permitting transport of the waste off-site.
 6. include an alternate treatment, storage, disposal facility on the manifest prior to shipment.

7. ascertain, prior to release of the hazardous waste to the transporter for shipment, that the designated and alternate facility to which the shipment is to be made are permitted to accept the waste to be shipped.
8. ascertain, prior to shipment off-site, that the transporter is permitted by both the Arkansas Transportation Commission and this Department, in addition to any other permit required by these regulations, the regulations of the Arkansas Transportation Commission, and the EPA.
9. contact the designated facility, by telephone or other form of communication, giving notice of the nature and extent of the hazardous waste shipment proposed to be made to the designated facility, and receiving authorization from the designated facility for the shipment to be made.
10. obtain an EPA identification number unless an exemption or exclusion applies.
11. for generators and transporters of exclusively PCB material, this Department may issue a state PCB identification number which may be used in lieu of an EPA identification number.
12. every person who releases hazardous waste to a hazardous waste transporter, every person who accepts hazardous waste from a transporter, and every hazardous waste transporter shall retain a copy of the manifest as a record of all hazardous waste transactions for a period of three (3) years, and such reports shall be made available at reasonable times for inspection and photo-copying by this Department.
13. No person shall cause or permit the transportation of hazardous waste into the State of Arkansas unless the following provisions are met:
 - A. No person shall cause or permit hazardous waste to be transported into the State of Arkansas for purposes of disposal except where such waste is to be disposed of in a facility permitted under this Code, and where the facility's permit specifically authorizes the disposal of said waste.
 - B. No person shall cause or permit hazardous waste to be transported into the State of Arkansas for purposes of disposal, or for purposes of storage in a

commercial PCB storage facility, without first having received written authority from the Department of Pollution Control and Ecology.

(C) No person shall cause or permit the transportation of hazardous waste into the State of Arkansas without first reporting to the Department of Pollution Control the following information:

- (a) the nature of the waste
- (b) the amount of waste
- (c) the origin of the waste
- (d) the transporter of the waste
- (e) the destination of the waste
- (f) an estimated shipping date

(D) These reporting requirements must be made in writing at least 24 hours prior to shipment.

(E) Changes in these notification requirements must be made in writing prior to shipment unless otherwise agreed to by this Department.

14. No person shall cause a permit the transportation of hazardous waste out of the State of Arkansas unless the following provisions are met:

A. No person shall cause or permit the transportation of hazardous waste out of the State of Arkansas without first reporting to the Department of Pollution Control and Ecology the information as listed in 13 (C), (D), and (E) above.

B. No person shall cause or permit hazardous waste to be transported out of the State of Arkansas for purposes of disposal without first having received written authority from the Department of Pollution Control and Ecology. Such authority shall be conditioned upon the presentation of evidence that the destination state is agreeable to the disposal of such waste within its borders.

15. These pre-notification requirements shall be accomplished in a form designated by the Department, at the frequency prescribed by the Department, unless otherwise agreed by this Department.

16. Shipments of Polychlorinated Biphenyls must be manifested for purposes of transportation, disposal, or storage to a commercial PCB facility. All manifesting and transportation regulations as defined by this Code, the Department of Transportation, and EPA apply to these shipments.

17. If the shipper of the hazardous waste shipment has not received a signed copy of the manifest for the shipment from the primary treatment/storage/disposal facility, or alternate treatment/storage/disposal facility, within thirty-five (35) days of the date of receipt of the waste by the initial transporter, the shipper shall contact the transporter and/or the designated facility to determine the status of the shipment and the manifest. If, within forty-five (45) days of date of acceptance by the transporter, the shipper has not received a final signed copy of the manifest from the designated facility, the shipper must file an Exception Report with the Arkansas Department of Pollution Control and Ecology. The Exception Report must consist of a copy of the manifest as signed by the transporter upon receipt of the shipment from the shipper, and a cover letter to the Department stating the shipper's efforts to locate the shipment and the remaining copies of the manifest, and the result of those efforts. If a facility other than the primary or alternative designated facility returns the manifest acknowledging final receipt of the shipment, an Exception Report must be filed by the shipper outlining the reasons for delivery of the shipment to such undesignated facility. In the event of a shipment which originates in the State of Arkansas, to a facility in another state in which the manifest has not been returned to the generator within the time limit set forth above, the Department will upon receipt of the Exception Report, notify its counterpart agency in the state in which the facility is located and where the shipment may have been delivered, or to the EPA in the event that the facility is located in a state which is not authorized by EPA to administer the Resource Conservation and Recovery Act Program, of the fact that the manifest has not been completed.

18. If this Department fails to receive the copy of a manifest showing the signature and date of acceptance by the treatment/storage/disposal facility within the forty-five days, the shipper/generator must provide an Exception Report for the shipment involved. It is the generator/shipper's responsibility to arrange for the required copy to be provided to this Department within the stated time limits.

19. If the final copy of a manifest indicates a bulk weight that is ten (10) percent more or less than the bulk weight indicated on the initial copy, a discrepancy report is required from the generator. If the item count (number of containers) varies by any amount, a discrepancy report is required from the generator. Any discrepancies in weight must be accounted for by the generator.
- (b) No generator or shipper shall offer for transportation any hazardous waste unless accompanied by a completed manifest as herein provided. The manifest must contain all the following information:
- (1) a manifest document number, which shall be issued by this Department if the destination point is in Arkansas.
 - (2) the generator's name, complete mailing address, telephone number, EPA identification number, if applicable, and/or Department identification, if applicable.
 - (3) the transporter's name, address, telephone number, EPA identification number and the transportation permit numbers from both the Arkansas Transportation Commission and this Department.
 - (4) the treatment/storage/disposal facility name, address, telephone number, and EPA identification number.
 - (5) the alternate treatment/storage/disposal facility name, address, telephone number, and EPA identification number.
 - (6) the description of the waste (e.g. proper shipping name) required by regulations of the U. S. Department of Transportation in 49 CFR 172.101, 172.202, and 172.203.
 - (7) the proper EPA waste code as defined in 40 CFR 261.
 - (8) the total quantity of each hazardous waste by units of gross weight, and the type and number of containers as loaded into or onto the transport vehicle.
 - (9) provide emergency response information on the manifest, including the name and telephone number of the contact person.

- (10) a generator certification must appear on the manifest in accordance with uniform national manifest regulations.
- (11) manifests shall consist of at least the number of copies which will provide the generator, each transporter, and the owner or operator of the designated facility with one copy of each of the manifest for their records, and one copy to be returned to the generator by the designated facility owner or operator after completion of the shipment.
- (12) the generator must provide one copy to the Department of Pollution Control and Ecology within two (2) days of shipment.
- (13) the generator must also arrange contractually or otherwise to provide a final copy, showing the signature and date of acceptance by the treatment/storage/disposal facility, to this Department within forty-five days of acceptance of the shipment by the transporter.
- (14) All Arkansas generators shall submit biennial reports to this Department by March 1 of every even year as provided in Section 13(a)(6) of this Code.

(c) The generator/shipper shall:

- (1) obtain a manifest form or State Document Number from the Department of Pollution Control and Ecology for use in Arkansas.
- (2) If the shipment originates in Arkansas, but is destined for another state, then that state's manifest may be used. However, the generator is still required to comply with Section 16 of this Code and with all other applicable regulations from the Department of Transportation, the EPA, and this Department.
- (3) This Department maintains the authority to issue sequential document numbers and to require that manifest forms obtained from other sources other than this Department match Department printed forms in size, content, and number of copies in each form. All applicable regulations of manifesting and transportation will remain in effect for these forms. A fee may be charged for each document number issued.
- (4) The shipper/generator shall require, contractually or otherwise, a facility located in another state to which the waste is to be delivered, to complete and return the correct manifest copies to the generator and this Department in accordance with the facility operator requirements of this regulation. Exception Report to be provided by the generator shall be required for each manifest copy

that is not received by both the generator and this Department within the time limits as set forth in this regulation.

- (5) The shipper/generator shall understand that the shipper/generator is responsible for the correct manifesting and transportation of the hazardous waste, including proper completion of the manifest and use of transporters who are permitted by the Arkansas Transportation Commission and this Department, and for providing the correct copies to this Department within the time limits as set forth in this regulation.
- (6) The shipper/generator shall fully complete the manifest according to these regulations and sign a certification on the manifest by hand stating that the information contained in the manifest is true, accurate, and complete.
- (7) Shall obtain on the manifest document the handwritten signature of the initial transporter and date of the acceptance by the transporter.
- (8) Shall retain a copy for his records.
- (9) Forward by regular United States mail with sufficient postage one copy of the manifest signed by the generator and the initial transporter as provided in this Section to the Arkansas Department Pollution Control and Ecology within two (2) working days from the date of release of the hazardous waste described on the manifest to the initial transporter.
- (10) Release to the transporter the original and remaining copies of the manifest, which shall thereafter accompany the hazardous waste shipment to its destination, provided that the requirements of this paragraph do not apply to rail or water (bulk shipment) transporters if:
 - A. the hazardous waste is delivered by rail or water to a designated facility.
 - B. the waste is shipped in bulk rather than in individual containers or packages.
 - C. a shipping paper containing all information required on the manifest excluding EPA numbers and generators certification accompanies the hazardous waste.
 - D. the transporter obtains the date and handwritten signature of the owner or operator of the designated facility on either the manifest or the shipping paper.

- E. the person delivering the hazardous waste to the initial rail or water transporter obtains the date of delivery and signature of the rail or water transporter on the manifest or shipping paper and forwards it by mail to the Arkansas Department of Pollution Control and Ecology within two (2) working days thereafter.
 - F. a copy of the shipping paper or manifest is retained by each rail or water transporter.
- (d) The transporter shall:
- (1) not transport hazardous waste from a generator or other shipper unless the transporter has first obtained a permit from both this Department and the Arkansas Transportation Commission, in addition to any other permit or license required by law.
 - (2) not accept a hazardous waste for shipment without the generator's EPA identification number unless the generator qualifies as an exempt generator. For generators and transporters of PCB material only, a PCB identification number will be issued by this Department and used in lieu of an EPA identification number.
 - (3) not accept hazardous waste from a generator or other shipper unless it is accompanied by a manifest prepared and signed by the shipper/generator in accordance with these regulations.
 - (4) retain all remaining copies of the manifest received by it from the shipper/generator with the hazardous waste shipment.
 - (5) deliver hazardous waste shipments only to:
 - (A) facilities which are permitted to receive and store, treat, or dispose of such shipments under the laws of the State of Arkansas and the regulations of the Arkansas Department of Pollution Control and Ecology, or in the event such disposal facility is located, within another state, under the laws and regulations of the state within which said facility is located, and under the laws of the United States of America and the regulations of the United States Environmental Protection Agency; or

- (B) a subsequent transporter of the shipment who is authorized by the U.S. Department of Transportation and the EPA to transport the shipment. If any part of the shipment by subsequent transporter is to be in the State of Arkansas, then the subsequent transporter must also be authorized by permit to transport hazardous waste in Arkansas by both the Arkansas Transportation Commission and this Department.
- (6) obtain the signature on the manifest of an authorized representative of the facility or any subsequent transporter who may receive the hazardous waste shipment for further transport, acknowledging receipt of said shipment from the original transporter.
- (7) deliver three (3) copies of the manifest to the facility which is to accept delivery of the hazardous waste. After obtaining the signature of an authorized representative of the facility on the manifest as provided in this Section, the transporter shall retain one copy of the manifest in its records as evidence of delivery to a permitted facility.
- (8) Transporters who transport hazardous waste out of the United States must:
 - (A) indicate on the manifest the date the hazardous waste left the United States and the name and address of the facility to which the waste was delivered.
 - (B) sign the manifest and retain one copy.
 - (C) return a signed copy of the manifest to the shipper and a copy to the Department of Pollution Control and Ecology.
- (9) The transporter must deliver the entire quantity of hazardous waste which he has accepted from the shipper or transporter to:
 - (A) the designated facility listed on the manifest.
 - (B) the alternate designated facility, if the hazardous waste cannot be delivered to the designated facility because emergency prevents delivery.

- (C) the next designated transporter.
 - (D) the place outside the United States designated by the generator.
- (10) If the hazardous waste cannot be delivered in accordance with subparagraphs (9)(A) or (9)(B) above, the transporter must contact the shipper for further directions and must revise the manifest according to the shipper/generator instructions.
- (11) Such revisions by the transporter must be reported to this Department by the generator in writing.
- (12) No transporter shall transfer any hazardous waste received by it for transport into a tank or container other than one to be used in the transportation of the waste without first obtaining a storage facility permit pursuant to these regulations.
- (13) No transporter shall permit the transportation of incompatible waste in any one vehicle.
- (14) In the event of a discharge of hazardous waste during transportation:
- (A) the transporter must immediately contact the National Response Center, the Arkansas State Police, and the principal office of the carrier, and take appropriate action to protect the public health and safety of the environment.
 - (B) the Arkansas State Police will immediately notify the Office of Emergency Services who will contact the Arkansas Transportation Commission officials and officials of the Arkansas Department of Pollution Control and Ecology.
 - (C) if a discharge of hazardous waste occurs during transportation and a Federal or State official, acting within the scope of his official responsibilities, determines that immediate removal of the waste is necessary to protect human health or the environment, that official may authorize the removal of the waste by transporters who do not have an EPA identification number or a hazardous waste transportation permit, provided that no

or insufficient number of, authorized transporters are available. A provisional EPA identification number will be issued to unpermitted transporters for one time use only if an unpermitted transporter is used.

- D. an air, rail, highway, or water transporter who discharged hazardous waste must also give notice as required by subsection (a), and
- E. a transporter must contain, clean up, neutralize, and/or remove hazardous waste discharge that occurs during transportation or take such actions that may be required or approved by Federal, State, or local officials so that hazardous waste discharge no longer represents a hazard to human health or the environment. A written report of discharge must be submitted by the transporter to the U. S. Department of Transportation and to the Arkansas Department of Pollution Control and Ecology within ten (10) days following the date of discharge.

(15) For those shipments that pass through Arkansas and do not have a generation nor destination point in Arkansas, the transporter is still required to comply with all other applicable rules and regulations of the Department of Transportation, the EPA, and this Department, including the necessity for hazardous waste transportation permits.

(e) The treatment/storage/disposal facility shall:

- (1) not accept shipments of hazardous waste from transporters who are not permitted by both this Department and the Arkansas Transportation Commission, unless such acceptance is authorized by this Department.
- (2) acknowledge receipt, by authorized representative, of the delivery to it of the hazardous waste shipment by signing all copies of the manifest tendered to it by the final transporter, and return to the transporter one (1) copy of the manifest after signature.
- (3) not accept waste which is manifested without a generator EPA identification number where an EPA identification number is required, unless such acceptance is authorized by this Department. In the case of PCB's for disposal, a PCB identifi-

cation number issued by the Department may be used in lieu of the EPA number.

- (4) submit by the 10th of the month following the reporting month or at such other intervals as may from time to time be provided by the Department, a copy of each completed, signed manifest received by it during the preceding month to the Arkansas Department of Pollution Control and Ecology regardless of the state or origin of shipment of waste shown on the manifest.
- (5) return the original copy of each completed, signed manifest to the shipper of the hazardous waste shipment within ten (10) days after receipt of the shipment by the facility.
- (6) provide manifest forms approved by the Department whenever possible, to shippers originating shipment from other states to the facilities located in the State of Arkansas. If the shipment originated from a shipper in another state, the facility shall require, contractually or otherwise, a shipper in another state to use the Arkansas manifest form approved by the Department, and in any event, to comply with the requirements of this Section.
- (7) not accept for treatment, storage, or disposal hazardous waste from an off-site source without an accompanying manifest or shipping paper, or which is not identical in nature or quantity to the waste described in the accompanying manifest unless the following conditions are met:
 - (A) the permit for the facility issued by the Department authorizes the facility to accept the type of waste which is not manifested.
 - (B) in the event that the quantity of such manifested waste from any one source exceeds in the aggregate the minimum amount provided in Section (9(A) of this Chapter, then the owner or operator of the facility must prepare and submit a report to the Director, within fifteen (15) days after receiving such waste, which must include the following information:

- (C) the EPA and/or Department identification number, name and address of the facility.
 - (D) the date the facility received the waste.
 - (E) the EPA and/or Department identification number, name and address of the generator.
 - (F) the EPA and/or Department identification number, and address of the generator.
 - (G) a description and the quantity of each unmanifested hazardous waste received.
 - (H) the method of treatment, storage, or disposal for each hazardous waste.
 - (I) a brief explanation of why the waste was unmanifested, if known.
 - (J) a certification as to the accuracy of the information signed by the owner or operator of the facility or his authorized representative.
 - (K) the report form prescribed by the EPA in 40 CFR 264.76 may be used by the facility in making the report to the Director.
- (8) If the primary treatment/storage/disposal facility, or the alternate treatment/storage/disposal facility fails to forward a signed and dated copy to the shipper/generator within 35 days, the shipper/generator must contact the transporter and/or designated facility to determine the status of the waste. If, within 45 days of date of acceptance of the transporter, the shipper has not received the signed and dated copy of the manifest from the designated facility, the shipper/generator must file an Exception Report with this Department. The Exception Report should contain a cover letter stating what efforts the shipper/generator has taken to locate the waste, and a copy of the manifest.
- (9) Submit biennial reports to this Department by March 1 of every even year as provided in Section 13(a)(6) of this Code.

Section 17. Effect of Federal Regulations

- (a) Any regulations adopted by the Department shall not be less stringent than the regulations promulgation 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 Section 14 of the Act, such variances shall not provide terms less stringent than those set by federal regulations incorporated by reference in this Chapter and Code 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 Code 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. Definitions:

In addition to the definition set forth in Section 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).
- (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 19. State/EPA Memorandum of Agreement

- (a) The Memorandum of Agreement (MOA) effectuates the purposes set forth in Act 1098 of 1979 for interstate agreements or compacts.
- (b) Upon execution of the MOA all purposes of Act 1098 of 1979 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: OTHER PROVISIONS

Section 20. Penalty Policy and Administrative Procedure

The provisions of Regulation No. 7 - Civil Penalties and Regulation No. 8 - Administrative Procedures apply to this Code.

Section 21. Severability

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

Section 22. Effectiveness

The effective date of these regulations shall be the date of promulgation by the Commission.

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The effective date of these regulations shall be the date of promulgation by the Commission.

PROMULGATED THIS 27TH DAY OF JULY, 1984
BY ORDER OF THE COMMISSION ON POLLUTION CONTROL & ECOLOGY

BY _____
CHAIRMAN

ATTEST:

PHYLLIS GARNETT, PH.D.
DIRECTOR

APPROVED:

BILL CLINTON, GOVERNOR
STATE OF ARKANSAS