

US EPA ARCHIVE DOCUMENT

Non-HOWA I-III

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3/15/89

letter

from
Randall
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to

Allyn Davis
EPA

I. PROGRAM DESCRIPTION

I. Program Description

A. Scope, Structure, Coverage, and Processing of State Program

It is the intention of the Department of Pollution Control and Ecology to administer a Hazardous Waste Program that is equivalent in force and effect to the Federal Program as established by the Resource Conservation and Recovery Act. The State has adopted the EPA Hazardous Waste Regulations of May 19, 1980, as amended. Subsequent regulations promulgated in interim and/or final form through June 30, 1987, have been adopted by reference by the Commission after public hearing. To receive authorization to administer the Federal program, the State is adopting all regulatory requirements through Cluster III. The checklist, beginning on page 3-1, lists the Federal requirements which the State has received final authorization to administer. Other Federal regulations (designated as HSWA regulations) adopted through June 30, 1988 are implemented and enforced at the State level until such time statutory checklist for the additional clusters are developed by EPA, adopted by the State, and approved by EPA through the State program revision process.

Additional revisions of the Code are anticipated in order that the state program will remain substantially equivalent to the Federal Program as federal regulations are amended or modified.

(1) Equivalent and No Less Stringent Programs

(a) Requirements for Identification and Listing - 271.9

The state program controls a universe of hazardous waste identical to 40 CFR Part 261, as amended, including the hazardous waste component of radioactive mixed waste. The State also regulates the transportation of polychlorinated biphenyls to storage or treatment facilities.

The State adopts, by reference, federal regulations dealing with hazardous waste. Whenever the federal regulations are amended, modified, revoked, expanded, supplemented, or otherwise changed, such revocation, expansion, supplement or other change becomes part of the Arkansas Hazardous Waste Management Code after public hearing and adoption by the Commission. (Appendix II, Sec. 3)

(b) Requirement for Generators - 271.10

Generators are subject to the standards, including recordkeeping requirements set forth in 40 CFR 262. Additional requirements and requirements equivalent to Subpart B of 262 are imposed by Section 16 of the Arkansas Hazardous Waste Management Code.

The Arkansas Hazardous Waste Management Code requires persons who transport hazardous waste into the state and out of the state to notify the Arkansas Department of Pollution Control and Ecology.

[]. The Department has established a comprehensive manifest system which should, to the greatest extent possible, allow for a "cradle to grave" tracking of hazardous waste generated or disposed of in the State. This system provides for the interstate and international transport of hazardous waste across the borders of Arkansas. See Appendix I for a detailed description of the Manifest System and a copy of the manifest form.

(c) Requirements for Transporters - 271.11

Transporters are subject to all standards covered by Section 16 of the Arkansas Hazardous Waste Management Code which is equivalent to 40 CFR 263. In addition, hazardous waste transporters must be permitted by both the Arkansas Transportation Commission and the Arkansas Department of Pollution Control and Ecology. A high level of cooperation is maintained between the two agencies to insure that their regulatory activities are non-duplicative.

(d) Requirements for Facilities - 271.12

A strict regulatory scheme has been developed for hazardous waste management facilities. Facilities are subject to all standards, CFR 264 and 265 and additional performance standards set forth in section 13 of the Arkansas Hazardous Waste Management Code. See pages 1-45, 1-118, and 1-126 for detailed checklists for additional standards.

NOTE: The above referenced checklists are contained in the 1985 Final Authorization Document.

In addition to the federally imposed requirements, the Arkansas Hazardous Waste Management Code includes provisions for the following:

- (i) Facility Siting: The general siting criteria for facilities is contained in Section 5 of the Code. It was written with respect to the State's unique physiography. (See also Section 2.E. General Siting Criteria.)
- (ii) Certification of Facility Operators: Section 10 of the Arkansas Hazardous Waste Management Code provides for personnel training and personnel procedures for operators to be approved by the Department. The Department is in the process of planning for certification for facility operators. The Department intend to evaluate the background of facility operators through a committee of in-house staff persons. Arrangements will be made for additional courses to be offered through Southern Arkansas University. (See Appendix II for details. See also Section 2.C.)

(iii) Baseline Health Survey: As a condition of facility permit, prior to operation, the Department may require that new commercial facilities have a survey conducted to establish baseline health data. Such surveys are discussed in detail in Section 14 of the Code.

(e) Requirements for Permitting - 271.13 and 271.14

Permits will be issued to hazardous waste facilities and transporters. Permit guidelines and procedures, which include an appellate review process, have been developed. A fee structure is also set out in Section 11 of the Arkansas Hazardous Waste Management Code. No permits shall be issued by the Department with a term greater than 10 years.

(2) Consistent Program and More Stringent Program

Thus far, Arkansas has adopted, by reference, EPA's regulations which were enacted through June 30, 1988. The Department has established a procedure to accept as interim provisions of the Code all amendments and other changes to the Federal Regulations prior to hearings held to adopt such changes.

Arkansas has adopted, by reference, the EPA regulations found in Parts 260-266, 270, and 124 of Title 40 of the Code of Federal Regulations as well as adopting numerous additional more stringent regulations that meet the specific needs of the State. Federal Regulations not adopted by reference are included as equivalent standards in the Arkansas Hazardous Waste Management Code. A checklist of more stringent regulations may be found on pages 1-45, 1-118, 1-126 and in Section 7, 10, 14, and 15 of the Code. (Appendix II)

NOTE: The checklists referenced above are contained in the 1985 Final Authorization Documents.

(a) Some of the Arkansas Hazardous Waste Management Code's More Stringent Requirements Include the Following:

- New TSD facility siting criteria which are more restrictive than EPA's requirements.
- Qualifications for certification of commercial hazardous waste management facility operators.
- Permit fee system for TSD facilities and transporters.
- Performance standards for TSD facilities in addition to those required by EPA.
- PCB's must be manifested and sent to a Commercial Storage, treatment or disposal facility.

- New TSD facilities may be required to conduct a survey to establish baseline health data.
- TSD ownership disclosure requirements in addition to those required in Part A of EPA Permit Application.
- Transporter permits required by both Department of Pollution Control and Ecology and Transportation Commission.[]
- Mandatory public hearing prior to permit issuance/denial for all commercial TSD's.

Some of these more stringent requirements are discussed in detail below. In addition, please refer to pages 1-45, 1-118, 1-126 and Section 7, 10, 14, and 15 of the Arkansas Hazardous Waste Management Code.

NOTE: The pages referenced above are contained in the 1985 Final Authorization Document.

(b) Exemptions

Arkansas has adopted the regulation of 40 CFR 262.51 which permits farmers to dispose of waste pesticides from their own use, provided the farmer complies with the requirements in 262.51.

Generators of conditionally exempt small quantities of hazardous waste must comply with the requirements found at 40 CFR 261.5 and the additional requirements pertaining to manifesting of waste set forth at Section 16(b) and (c) of the Arkansas Hazardous Waste Management Code.

Arkansas requires that small quantities of hazardous waste (less than 100 kg/month) be treated, stored, or disposed of in one of four ways:

- (1) In a solid waste disposal facility in the State of Arkansas which has been permitted by the Department to store, treat, or dispose of such waste.
- (2) In a hazardous waste management facility in the State of Arkansas which is permitted to store, treat, or dispose of such waste.
- (3) Is shipped pursuant to Section 16(b) of the Arkansas Hazardous Waste Management Code, to an approved facility outside of the State of Arkansas, or
- (4) Is treated or disposed of in an on-site solid waste facility which is permitted in accordance with Act 472 of 1949, as amended, or Act 237 of 1971.

Hazardous waste treatment, storage, and disposal facilities will be considered to have such permission if it is operating under the provision of Interim Status to accept such categories of wastes or have been issued a permit to accept such wastes.

Solid waste disposal facilities may accept such small quantity waste only in accordance with their permit and the provisions of the Arkansas Solid Waste Management Code.

(c) Certification of Operators

In addition to the requirements found in 40 CFR Parts 264 and 265, Arkansas has adopted more stringent requirements for certification of commercial TSD facility operators and personnel.

Arkansas requires that at least one person, certified by the Department, shall be on duty or on fifteen-minute call at all times while a commercial TSD facility is being operated. In some cases, more than one person may be required to be on duty at all times.

These operators must have the following qualifications:

- Physically capable to perform all tasks.
- Baccalaureate degree in engineering, physical science, health science or related disciplines, or four years of significant demonstrated experience in such fields.
- At least four additional years of experience in management, engineering or in conducting chemical/physical analysis.

- Working familiarity with the principles and requirements relative to industrial hygiene, worker safety, emergency procedures, and environmental protection.
- Basic knowledge of the principles of operation and standard operating procedures for all equipment used in the facility.
- Citizen of the United States, of good moral character with no prior conviction of a felony or a crime of moral turpitude.

(d) Personnel Training

There are also requirements for personnel training in addition to those found in 40 CFR 264.16.

In addition to maintaining records prescribed in 40 CFR 264.16(d), owners and operators of commercial TSD facilities shall:

- Maintain complete updated records of all workers assigned to specific jobs, including name, address, date of starting specific job and date of termination of specific job.
- Maintain a complete previous employment history and a complete job mobility history within the facility for each employee.
- Have their personnel take part in semi-annual review update of their initial training in contingency plan, which has previously been submitted to the Department and approved.
- Have each of their personnel undergo an annual health physical. Spouses shall be offered an annual physical.
- Whenever modification of training is required by modification of permit conditions, owners and operators shall promptly comply.

(e) General Siting Criteria

In addition to the general location standards found in 40 CFR 264.18, Arkansas has adopted more restrictive general siting criteria for new treatment, storage, and disposal (TSD) facilities.

No permit can be issued for a new TSD facility located in an active fault zone, a "regulatory floodway", a 100-year floodplain, a recharge zone of sole source aquifer or a "wetland area" which is inundated or saturated by surface or groundwater.

In addition, no permit can be issued for a hazardous waste landfill or surface impoundment that is located in the following areas:

- High earthquake potential.
- Soil which would be classified as vertisol or as having a subgroup modifier of vertic.
- Stratum of limestone or similar rock of an average thickness of more than three feet shall lie within 99 feet of the base of the proposed liner system. (Limestone has either secondary porosity (solution channels that would allow rapid migration of waste) or the potential for secondary porosity).
- Bottom of the liner system or in-place soil barrier is less than 10 feet above the historical high water table.
- Close to any functioning public or private water supply or livestock water supply.

No permit shall be issued for the construction or operation of a new commercial hazardous waste landfill, if the active portions of the facility are located within one-half mile of any occupied dwelling, church, school, hospital or similarly occupied structure at the time the initial permit application is submitted.

No permit shall be issued for a hazardous waste TSD facility, if: (1) the area and configuration of the facility's property is such that the distance between active portions of the facility and the facility's property line is less than 200 feet; (2) the active portions of the facility are located less than 300 feet from the right-of-way for a public road, pipelines carrying natural gas, fuel oils or chemicals, water and wastewater lines, and power transmission lines.

The Department of Pollution Control and Ecology will consider the instances in which the permit applicant can demonstrate that location of such facilities in the above areas would not constitute a risk to the public health or environment.

And, the above restrictions do not apply to treatment facilities which began operation prior to March 14, 1979, or which had an existing operating permit issued by the Department of Pollution Control and Ecology.

(f) Performance Standards

The following standards apply, in addition to those of 40 CFR 264 and 265, 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 Wastes 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:

- the generator or the disposer can demonstrate to satisfaction of the Director that incineration is not technically feasible;
- it is generally accepted by the scientific community that incineration would not be technically feasible or that incineration would not produce the desired results;

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

The Director may give a waiver to this subsection 13 (a)(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 hazard components of the waste prior to landfilling.

5. No materials in the form of bulk liquids, semi-solids, and sludges may be disposed of in landfills unless such waste is pretreated and/or stabilized into cement-like material. Under no circumstances will municipal refuse be placed in a hazardous waste landfill.

(3) Adequate Enforcement, Notice, and Hearing in the Permit Process

A compliance monitoring program and an enforcement program have been developed. Inspections are an integral element of the State's compliance monitoring program.

The State Program provides for public participation at numerous decision-making points. Specific public hearing requirements pertain to the hazardous waste program. The State Program provides that both the applicant for a hazardous waste management facility and the Department publish notice of permit application in the newspaper having the largest circulation in the county where the facility is planned. The Department shall give 45 days notice of a hearing on such application; and, the hearing shall be held in the county where the facility is proposed. []

During the forty-five-day period between publication of the Department's notice and the hearing date, a copy of the draft permit will be available to the public at the Department and at a public facility (library or school, for example) in the area of the state where the facility is planned.

Consultation and submission of material on program topics by the public can be freely exercised by any citizen during the review process. Department staff and Commissioners will consider all comments and re-evaluate program elements as issues arise.

Another provision of the Arkansas Hazardous Waste Management Code allows the Department director to hold a preliminary hearing on a proposed waste facility in the affected area. This is a discretionary power and should

be exercised prior to the full-scale public hearing with the forty-five-day notice.

Minute Order 80-53 of September 26, 1980, provides for public participation in enforcement actions consistent with 40 CFR 271.128 (f)(2)(ii). A public comment policy, adopted July 24, 1981, establishes procedures for receiving public comment and protocol at hearings and commission meetings.

(4) Ability of the State to Revise Statutes and Regulations

Section 3(C) of the current Arkansas Hazardous Waste Management Code establishes the following procedures to adopt, by reference, amendments and other changes to the Federal Regulations:

The Director, annually after the date of promulgation of any new or revised federal hazardous waste regulations shall conduct rulemaking procedures with reference to this Chapter necessary to maintain a State Hazardous Waste Management Program equivalent to the federal program. Such new or revised federal regulations upon 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.

(5) Availability of Information

Any information made available to the State will be made available to the public to the extent and in the manner authorized by the Arkansas Freedom of Information Act codified at Ark. Code Ann. 25-19-101 to 25-19-107 (Repl. 1979 and Supp. 1985) and by the Freedom of Information Act, 5 U.S.C. Section 552, Section 3007(b) of RCRA and EPA regulations implementing the Freedom of Information Act.

The following Freedom of Information policy was adopted for use by the Department on August 6, 1986:

- (a) All documents not subject to protection or exclusion under the provisions of the FOIA will be available for public review during normal working hours. All provisions of the FOIA will be adhered to.
- (b) Space will be made available for public review of documents.
- (c) Copying will be available to the public on a time available basis. Copies will be made of specifically listed documents only. A person assessing file materials must make a specific listing of each document they wish copied and give to the person assigned to assist them. Forms will be provided to assist in this compilation. In some instances, actual copying may not be available the same day the material is reviewed, however, copying requests will be

processed with daily work loads as quickly as possible.

- (d) Copying and item charges are as follows:
 - a. Each separate page at 20 cents each plus
 - b. Staff time charges for compilation or copying in excess of one (1) hour at employees hourly rate.

- (e) Any questions concerning public documents must be in written form and given to the assistant. These questions will be responded to in writing or by phone as soon as normal work commitments allow.

- (f) Portions of files, or entire files, may not be available for review due to pending litigation against a regulated entity under our responsibilities for enforcement of environmental law and regulations. In the event that file information is withheld from public review under the applicable provisions of the FOIA, every effort will be made to provide this information for public review as soon as its disclosure would not jeopardize pending or ongoing legal actions.

- (g) Files in active use, which would otherwise be available for immediate public review, will be made available for review as quickly as possible but not later than the three day period provided for under the FOIA.

- (h) Items or requests not covered by this policy will be handled on a case by case basis.

B. Multiple State Agency Responsibilities

The Arkansas Department of Pollution and Ecology has a memorandum of agreement with the Arkansas Transportation Commission. This agreement is included, at this point, as part of the authorization application.

In addition, the Department of Pollution Control and Ecology and the Federal Highway Administration have signed a cooperative agreement to enforce the safety and hazardous materials laws and regulations concerning highway transportation. This memorandum of agreement is also included below.

NOTE: The memoranda referenced above are contained in the 1985 Final Authorization Document.

The Arkansas Department of Pollution Control and Ecology (ADPC&E) and the Arkansas Department of Health (ADH) have entered into a Memorandum of Understanding (MOU) regarding the respective duties and coordination of ADPC&E and ADH regarding the regulation of radioactive mixed waste. It is noted that ADPC&E retains sole authority to regulate the hazardous waste component of radioactive mixed waste, the above referenced MOU does not confer any of ADPC&E's authorities to ADH. Therefore, the inclusion of said MOU in this document is intended solely for clarification purposes.

B.3. MOU ADPC&E/ADH

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE ARKANSAS DEPARTMENT OF POLLUTION CONTROL & ECOLOGY
AND
THE ARKANSAS DEPARTMENT OF HEALTH
CONCERNING THE REGULATION AND MANAGEMENT OF RADIOACTIVE MIXED WASTES

The purpose of this Memorandum of Understanding (MOU) is to:

- Delineate the responsibilities of the Arkansas Department of Pollution Control & Ecology (ADPC&E) and the Arkansas Department of Health (ADH) for the regulation and management of wastes that contain RADIOACTIVE WASTE subject to the federal Atomic Energy Act (AEA) of 1954, as amended, 42 U.S.C.S. 2011, et seq., and HAZARDOUS WASTES subject to the federal Resource Conservation and Recovery Act (RCRA) of 1976, as amended, 42 U.S.C.S. 6901, et seq., referred to in this document as "RADIOACTIVE MIXED WASTES," and
- Provide a consistent, integrated, approach to licensing and permitting in order to avoid duplication of efforts in matters concerning radioactive mixed wastes.

As used in this document, "radioactive mixed wastes" may be further interpreted to mean those wastes which contain mixtures of "source," "special nuclear," or "by-product material" (as defined in the AEA) and "hazardous wastes" as defined by the Administrator of the United States Environmental Protection Agency (EPA) under the RCRA and Section 3 of Act 406 of 1979, Section 4 of Act 1098 of 1979, and Section 2 of the Arkansas Hazardous Waste Management Code.

STATUTORY AUTHORITIES

ADPC&E is the state agency with jurisdiction over the management of hazardous waste under the Arkansas Hazardous Waste Management Act [Act 406 of 1979, as amended (Arkansas Code of 1987 Annotated 8-7-201, et seq.)] and the Arkansas Resource Reclamation Act [Act 1098 of 1979, as amended (Arkansas Code Annotated 8-7-301, et seq.)]. Section 4 of Act 406 of 1979 and Section 5 of Act 1098 of 1979 give ADPC&E the authority to develop and administer regulations for the control of hazardous waste, as well as to issue permits to facilities to treat, store or dispose of hazardous waste. The definitions of hazardous waste contained within Act 406 of 1979 and Act 1098 of 1979 include, but are not limited to, radioactive waste.

ADH is the state agency with jurisdiction over licensing or registration of by-product, source, special nuclear materials, or devices or equipment utilizing such materials under the Arkansas Radiation Control Act [Act 8 of 1961, as amended (Arkansas Code of 1987 Annotated 20-21-201, et seq.)]. Section 4 of the Act 19 of 1983 amendment to the Arkansas Radiation Control Act (ACA 20-21-201) gives ADH the authority to formulate, adopt, promulgate, and repeal codes, rules, and regulations which may provide for licensing or registration relating to control, storage, or disposal of sources of ionizing radiation with due regard for compatibility with the regulatory programs of the federal government; and Section 5 of Act 19 of 1983 (ACA 20-21-208) authorizes the ADH to require registration or licensing of other sources of ionizing radiation.

ADH:4889E

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ADPC&E/ADH MOU Concerning Regulation
and Management of Radioactive Mixed Wastes

GENERAL PROVISIONS

- A. Regulation and management of radioactive mixed wastes are subject to the requirements of the ADH and the ADPC&E. This MOU is to provide agreement between ADH and ADPC&E regarding the discharge of the duties and responsibilities under their respective authorities as they pertain to radioactive mixed waste, particularly where those duties might overlap. The ADPC&E and ADH agree that the roles and responsibilities of each agency in the management and regulation of radioactive mixed wastes are as described in this document.
- B. Recognizing that, at the federal level, regulation and disposal of naturally occurring and accelerator-produced radioactive material (NARM) is not subject to the AEA and is not presently addressed by regulations of the EPA, the ADPC&E and the ADH agree that NARM will be regulated in this state as any other radioactive material and that NARM mixed with hazardous waste will be regulated as radioactive mixed waste under the statutory authorities cited above.
- C. Each agency will review and, as necessary, revise its rules, regulations, and procedures to implement this MOU. Areas of inconsistency between the technical requirements of rules promulgated pursuant to AEA and the technical requirements of rules promulgated pursuant to the RCRA shall be identified and resolved by the agencies after consultation with the United States Nuclear Regulatory Commission (NRC) and the United States Environmental Protection Agency (EPA). The ADPC&E shall consult with the ADH with regard to regulation and management of radioactive waste and may not adopt any rules or engage in any management activities that are in conflict with state or federal laws and rules relating to regulation of radioactive materials.
- D. ADPC&E and ADH will notify all applicants that application must be made to both agencies; encourage applicants to attend a pre-application meeting with members of each agency present; and conduct joint hearings, where necessary, on applications for permits or licenses or for proceedings to revoke such operating authorities.
- E. When deemed appropriate by both agencies, the ADPC&E and ADH may jointly enforce permit and license terms and conditions, may hold joint public hearings, and may make joint inspections and cooperate on enforcement actions.
1. Representatives of each agency shall make joint inspections of radioactive mixed waste units whenever the collective expertise of each agency is desirable; however, nothing herein shall preclude either agency from individual enforcement or legal actions.
 - a. ADH's Division of Radiation Control & Emergency Management has trained staff members with the experience and expertise necessary to ensure that proper procedures will be followed to eliminate any radioactive exposure hazard that might be posed to state inspectors during site inspections of radioactive mixed waste units.

ADPC&E/ADH MOU Concerning Regulation
and Management of Radioactive Mixed Wastes

- b. ADPC&E has trained staff members with experience and expertise necessary to ensure that proper procedures will be followed to eliminate hazards that might be posed by exposure to hazardous wastes.
- 2. Technical staffs of the ADPC&E and ADH will cooperate so that their highest level of technical expertise will be available to assess environmental impacts and enforce the agencies' mandates. The agencies will also coordinate their technical reviews of materials submitted by applicants to satisfy the regulatory requirements imposed by both agencies.
- F. Each agency will refer to the other agency any complaints received which are the primary responsibility of the other agency.
- G. ADPC&E and ADH will require, pursuant to each agency's respective authorities, financial assurances for closure, post-closure, and corrective action as appropriate for radioactive mixed waste treatment, storage, or disposal facilities.

RESPONSIBILITIES & DUTIES

A. THE ADPC&E SHALL:

- 1. Have primary responsibility for permitting and enforcement activities for the hazardous waste components of radioactive mixed wastes.
- 2. Coordinate with ADH prior to and during the issuance of permits and/or the initiation of enforcement actions as appropriate for situations involving radioactive mixed wastes.
- 3. Evaluate each facility application and/or compliance status relative to provisions of Act 406 of 1979, Act 1098 of 1979 and the Arkansas Hazardous Waste Management Code.
- 4. Ensure that ADPC&E permits governing facilities having radioactive mixed wastes units shall contain provisions that permittees must comply with ADH license requirements, to include ADH requirements for reporting of spills/releases or other incidents involving radioactive materials.
- 5. Maintain a staff of appropriate numbers, training and experience to carry out the responsibilities outlined herein and to prevent occupational hazardous waste exposure hazards to state personnel.

B. THE ADH SHALL:

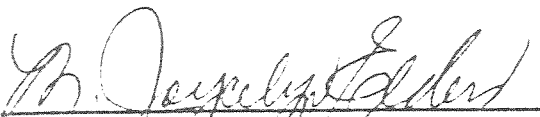
- 1. Have primary responsibility for licensure and enforcement activities for the radioactive components of radioactive mixed wastes.
- 2. Regulate NARM as provided for in the Arkansas State Board of Health's (ASBH) Rules and Regulations for Control of Sources of Ionizing Radiation.

ADPC&E/ADH MOU Concerning Regulation
and Management of Radioactive Mixed Wastes

3. Coordinate with ADPC&E prior to and during the issuance of licenses and/or the initiation of enforcement actions as appropriate for situations involving radioactive mixed wastes.
4. Evaluate each facility application and/or compliance status relative to provisions of Act 8 of 1961, as amended, and the ASBH Rules and Regulations for Control of Sources of Ionizing Radiation.
5. Ensure that ADH licenses governing facilities having radioactive waste units shall contain a provision that licensees must comply with ADPC&E permit requirements, to include ADPC&E requirements for reporting of spills/releases involving hazardous wastes.
6. Maintain a staff of appropriate numbers, training and experience to carry out the responsibilities outlined herein and to ensure that radiological exposure to state personnel adheres to the occupational exposure limits stated in the ASBH Rules and Regulations for Control of Sources of Ionizing Radiation.

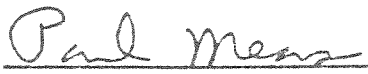
IMPLEMENTATION

- A. This MOU becomes effective on the date of the final signature set forth below and shall continue in effect unless modified by mutual written consent of both agencies or terminated by either agency upon a thirty-day written notice.
- B. This MOU is not intended to limit or restrict in any way the statutory authority or jurisdiction of either agency.
- C. ~~If any provision in this MOU is held to be invalid, the remaining provisions shall not be affected thereby.~~
- D. ADPC&E and ADH representatives shall meet at least annually to discuss changes in this MOU and to encourage increased communication between the agencies.



M. Joycelyn Elders, M.D., Director
Arkansas Department of Health

Date: 10-10-88



Paul Means, Director
Arkansas Department of Pollution
Control & Ecology

Date: 10/17/88

C. State Compliance, Tracking, and Enforcement Program

An effective and efficient compliance monitoring and enforcement program is critical to the success of the State's Hazardous Waste Program. The compliance and monitoring system as outlined in this section is designed to assess and monitor compliance with facility standard and generator and transporter requirements equivalent to:

40 CFR 262, "Standards Applicable to Generators of Hazardous Waste".

40 CFR 263, "Standards Applicable to Transporters".

40 CFR 264 and 265, "Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities," Standards Applicable to Existing Facilities with Interim Status" and, any additional standards imposed by Acts 406, 1098, and the State Hazardous Waste Code.

40 CFR 266, "Standards for the Management of Specific Hazardous Waste and Specific Types of Hazardous Waste Management Facilities.

The Hazardous Waste, the Technical Services and Legal Divisions of the Department are responsible for the numerous activities associated with compliance monitoring and enforcement.

HAZARDOUS WASTE COMPLIANCE ENFORCEMENT PROCEDURES
ARKANSAS DEPARTMENT OF POLLUTION CONTROL AND ECOLOGY

HAZARDOUS WASTE COMPLIANCE AND ENFORCEMENT PROCEDURES
ARKANSAS DEPARTMENT OF POLLUTION CONTROL AND ECOLOGY

1.1 INTRODUCTION AND PURPOSE

These procedures shall be used by Arkansas Department of Pollution Control and Ecology (ADPC&E) personnel to provide for a uniform course of action in compliance and enforcement activities relative to the state hazardous waste program. These procedures are meant to be flexible in that it may be modified should needs and/or resources change. These procedures should also be considered as a companion document to existing State regulations and guidelines.

2.1 Inspection/Investigation Activities

All inspections/investigations shall be conducted in a courteous and professional manner.

2.1.1 Pre-Inspection

Prior to conducting an inspection and investigation the inspector shall become familiar with the facility to be visited. This shall be accomplished by reviewing all pertinent files regarding the facility. Files to be reviewed shall include the "Central Files" maintained by the Records Section, the "working files" maintained by the Technical Branch of the Hazardous Waste Division (HWD) and the Legal Section and the Manifests and Biennial Report files, HWD. Information to be obtained during this Pre-Inspection Review include:

- (a) The name and telephone number of the contact person.
- (b) Wastes identified on the Notification of Hazardous Waste Activity Form.

- (c) Wastes handled as listed on Part A Application or Permit.
- (d) Processes (waste management activities) and Design Capacities.
- (e) Site specific variances.
- (f) Outstanding, uncorrected or recurring violations.
- (g) Items or information unclear from previous reports.
- (h) Status of outstanding enforcement actions.
- (i) Waste shipments, received, treated, stored or disposed.
- (j) Treatment, storage and/or disposal facilities utilized.
- (k) Pertinent regs.

The pre-inspection information shall be recorded on the Pre-Inspection Worksheet (see Appendix E.). The worksheet shall be in the possession of the inspector during the site visit for reference.

2.1.2 Site Visit

During site visits the inspector shall make a visual inspection of the hazardous waste generation and waste management locations. The inspector shall also conduct a visual inspection of the process areas and grounds surrounding the manufacturing building(s) and/or waste management areas. The purpose of the "walk through" is to verify:

- (a) Physical compliance with waste management requirements.
- (b) Proper/accurate identification of all hazardous waste generated and/or handled.
- (c) Volumes of wastes generated and/or handled.

The inspector shall also review all pertinent records and plans required to be kept at the facility. If the inspector feels that a more detailed review is warranted than can be conducted at the facility, a copy of the particular item shall be obtained from the facility for later review.

The inspectors shall follow proper safety precautions during the course of conducting inspections or field investigations, including any site specific requirements which may be requested by

the facility.

Upon request by the facility, the inspector will conduct an "exit interview" to inform the facility of the findings of the inspection. The inspector shall stress that any discussions of findings are preliminary and that a thorough review of the information gathered during the inspection will be conducted and the results documented and transmitted to the facility in writing at a later date.

2.1.3 Field Notes

Each inspector shall record all notes taken during the course of an investigation/inspection in a bound field notebook with sequentially numbered pages. The field notes are the basis for writing the reports; therefore the entries should be dated, legible and accurate and must contain only facts and observations. The notations must be objective, factual and free of personal feelings or conjecture. The notes must be of sufficient detail to recreate the events at the facility during the report writing or subsequent testimony, if necessary.

The notebook will also be used to document photographs and samples taken during a site visit as described in sections 2.1.4 and 2.1.5 below. The notebook should remain in the possession of the inspector or in a secure location at all times.

2.1.4 Photographs

Photographs taken during the course of an investigation or inspection shall be attached to the report. The following information shall be documented on back of the photo or the photo permanently affixed to a sheet of paper and the information

recorded adjacent to the photo:

- (a) facility name and location
- (b) brief description of the subject of the photo (e.g., leaking drums, storage area, spill etc.)
- (c) direction of photo (e.g., facing northeast)
- (d) date and time
- (e) weather conditions
- (f) photographer (signature)
- (g) witness (if any).

A photo log shall be maintained in the inspector's field notebook. The photo log will contain the information referenced above plus any observations pertinent to the scene, i.e., location relative to identifiable landmarks, colors or odors noticed, etc. Each photo should contain an object for scale reference (e.g., ruler, notebook). Aperture setting and shutter speeds are not required to be entered into the photo log for photos taken within the normal automatic expose range. The use of special lenses, filters or other image enhancement techniques must be noted in the log.

Negatives will be maintained in a separate file in the HWD office. The file will be established by CSN/EPA Identification number. Each set of negatives will be filed by the above numbering scheme as well as chronologically. Negatives will be retained for a minimum of three (3) years unless there is ongoing enforcement action, in which case they will be retained for at least three (3) years following the resolution of the enforcement case.

2.1.5 Samples

The procedures for sampling are detailed in the Quality Assurance Plan for Hazardous Waste which is updated periodically as per the annual workplan negotiated with EPA, additional sampling guidance is found in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, in EPA publication SW-846. The

sampling procedures include Pre-sampling preparation, Sample collection, Sample Shipment and Transfer of Custody (Chain of Custody). It is imperative that these procedures be strictly followed in order to maintain accurate, reliable data and to preserve the admissibility of analytical results into evidence as needed.

Information relative to sample collection must be recorded in the bound field notebook. The sample locations should be specific enough to locate the sample collection point during subsequent site visits. The following information must be recorded in the field notebook:

- (a) facility/site name and location
- (b) date and time
- (c) sample collection (station) location (should use direction and distance descriptions to identifiable landmarks when possible)
- (d) sample collector(s) (sample team)
- (e) preservative used
- (f) sample equipment used
- (g) observations - e.g., description of noticeable odors, colors, vegetation distress, proximity to leaking drums, etc.
- (h) sketch map depicting sampling location and number sequence.

Items (a) through (e) must also be recorded on the sample identification tag as per the sampling procedures detailed in the Quality Assurance Plan for Hazardous Waste.

Notations should also be made in the field notebook regarding weather conditions which might effect the sample results, e.g., recent heavy rains, extreme temperatures, etc. Samples split with the facility should be recorded. Details and results of field measurements, e.g., pH and conductivity should also be entered into the notebook.

2.1.6 Post Inspection

Post inspection activities include review of all field notes, photographs, sample results and other evidence gathered during the site visit. The inspector shall compare the facts gathered during the site visit with the information gathered during the pre-inspection review. If necessary, the inspector shall re-review specific documents (i.e., manifests, biennial reports, Part A applications, permits, etc.) in order to properly classify any violations discovered. If more information is required to make a compliance determination, the inspector should request that information pursuant to the Arkansas Hazardous Waste Management Act. After all pertinent information has been reviewed and documented, a final report shall be prepared by the inspector.

3.1 Violation Classification and Enforcement Response

After the inspection or investigation report has been prepared, the inspector, with consultation with the Hazardous Waste Inspector Supervisor, will determine the nature, extent and classification of the violations.

The "RCRA Enforcement Response Policy" and the "RCRA Enforcement Priority Classification Scheme" will be used as guidelines for assigning the violation class.

Documentation of all communications and actions taken by the inspector or other case development worker is essential in developing an enforcement case against a violator. Utilize the appropriate forms to record the following:

- (a) inspection/investigations
- (b) telephone calls
- (c) meeting notes
- (d) complaints
- (e) correspondence.

Advice and/or actions by case development workers must be limited to the scope of the individuals position. Legal and technical information requests must be referred to the appropriate Branch for response.

The HW Inspector Supervisor, with consultation of the Enforcement Branch Manager, shall determine the appropriate enforcement response in accordance with established enforcement procedures. There are generally three (3) levels of enforcement. First level enforcement is generally taken by the inspector and is in the form of a compliance letter. Second level actions are those actions which result in the issuance of a formal Administrative Order. Second level actions will normally be initiated by the Enforcement Branch Manager in accordance with established enforcement procedures. The Legal Section shall handle the initiation and implementation of all third level enforcement responses. Third level actions consists of judicial filings.

3.2 First Level Enforcement

3.2.1 Inspection/Investigation Reports

ADPC&E will perform routine inspections as agreed to in the annual workplans negotiated with EPA. The criteria for selecting the handlers to be inspected is outlined in the RCRA Compliance/Enforcement Strategy, RCRA Implementation Plan (RIP), and/or the annual workplans. Investigations will be conducted as information becomes available to ADPC&E of the existence of

violations of the hazardous waste regulations as identified through citizen complaints and other agency or interdepartmental referrals.

The inspector shall prepare a report following all investigations and inspections. The report should be documented on the appropriate forms, as applicable, but must include:

- (a) contact/participant names, addresses and phone numbers
- (b) description of exact location of facility
- (c) statement of observations made
- (d) statement of facts
- (e) reference to photographs taken (see 2.4)
- (f) description of samples taken (see 2.5)
- (g) inspection forms (if applicable)
- (h) date of investigation or inspection.

Reports should be written so that a person unfamiliar with the site is able to understand the waste generation and waste management activities of the site. Sites under an Administrative Order or a Compliance Schedule or in the process of closure must have a progress report in the Narrative Section of the inspection report outlining the status of the facility in relation to the requirements of the Order or plan.

All reports are to be finalized within two (2) weeks of the on-site inspection, any exceptions must be cleared through the HW Inspector Supervisor. The inspector is responsible for making sure the reports are complete and accurate and that all appropriate checklists are attached. The inspector shall also be responsible for transmitting a copy of the report along with the appropriate letter (see Appendices) to the facility after review by the HW Inspector Supervisor.

3.2.2 Compliance Letters

Following completion of inspection reports the inspector shall prepare a letter noting either (a) compliance or (b) non-compliance. The completed inspection report and letter shall be submitted to the HW Inspector Supervisor for review prior to transmittal to the facility.

A Compliance Letter will be the first letter a facility receives regarding a particular violation. The letter will follow the prescribed form (see Appendix B: Compliance Letter). The letter will contain, at a minimum, the following:

- (a) Date the inspection/investigation was performed.
- (b) Authority to conduct the inspection/investigation.
- (c) Summary of violations discovered.
- (d) Citation that violations are unlawful acts.
- (e) Requirement to correct violations.
- (f) The time frame to achieve compliance.
- (g) Requirement for facility notification of returning to compliance and statement of actions taken.
- (h) Legal consequences for failure to comply.

The time given in the Compliance Letter for a facility to correct violation shall not exceed thirty (30) days. If the corrective actions will take longer than thirty (30) days to complete, the facility shall be required to submit a compliance schedule within the thirty (30) day time frame. The compliance schedule shall be subject to review and approval by the Enforcement Branch Manager.

The HW Inspector shall be responsible for transmitting a copy of the report along with the Compliance letter to the facility. The original report and a copy of the letter shall be placed in the facility file.

3.2.3 Extensions

If a facility requests more than thirty (30) days for submission of a compliance schedule, an extension may be granted with the concurrence of the Enforcement Branch Manager.

If the request for an extension to come into compliance exceeds an additional thirty (30) days, the extension may be granted for cause shown with the concurrence of the Division Chief.

In all cases where the total time for coming into compliance, including the time required to submit a schedule, will exceed six (6) months, the case shall be referred to the Enforcement Branch Manager for handling.

3.2.4 Warning Letters

If the facility does not respond to the Compliance Letter or sends a negative response a second letter is transmitted to the facility. The second letter will be known as a Warning Letter. The letter shall be sent Certified Mail/Return Receipt Requested and will follow the prescribed form (see Appendix C: Warning Letter). Warning Letters will contain, at the minimum, the following:

- (a) The date of the Compliance Letter.
- (b) Summary of actions required by the Compliance Letter.
- (c) Statement of enclosure of a copy of the Compliance Letter.
- (d) Requirement to respond within ten (10) days.
- (e) Legal consequences for failure to comply.

3.3 Second Level Enforcement

The Enforcement Branch Manager shall initiate second level actions by preparing a case development memorandum through the Division Chief to the Deputy Director. The case development memo shall

contain a summary of the history of the facility including all facts, violations, and mitigating circumstances pertinent to the case. The memo shall also include recommendations regarding corrective action requirements, penalty assessment, and the form of the action (i.e., initiation of administrative, civil, or criminal enforcement action). The recommendation for the form of the action shall be consistent with the Enforcement Memorandum of Understanding.

The Deputy Director shall decide whether to refer the case to the Director for the assignment of an attorney and the initiation of formal enforcement or assignment to the Enforcement Branch Manager of the Hazardous Waste Division for further information gathering, analysis or preparation of a Consent Administrative Order. Formal enforcement action may consist of the initiation of administrative procedures under ADPC&E Regulation No. 8 to obtain an Administrative Order assessing penalties and requiring remedial actions, or it could consist of a civil lawsuit or a criminal proceeding.

3.4 Follow-up Activities

On-site follow-up inspections are required for all non-administrative (paperwork) violations. The HW Inspector Supervisor shall determine the need for an immediate follow-up inspection in the case of non-administrative violations, taking into consideration the type of and potential for contamination of the environment and threat to public safety likely to be caused by the violation. The results of an on-site follow-up inspection shall be documented and addressed in accordance with the following scenarios:

- Facility returned to compliance.

Inspector prepares memo to HW Inspector Supervisor and facility file addressing the status of the required compliance activity. Inspector transmits letter to the facility (after Supervisor review and approval) noting the facility is in compliance (see Appendix D Follow-up Letter)

- Facility achieved partial compliance.

Inspector prepares memo to the HW Inspector Supervisor noting compliance achieved and status of remaining items in non-compliance.

If substantial corrective action has been taken an extension may be granted for cause shown and in accordance with Section 3.2.2. The facility must request such extension in writing including a progress report of actions taken, justification for the requested extension and any necessary supporting data. Requests for extensions shall be handled in accordance with Section 3.2.2.

- Facility has not made substantial progress towards compliance.

Inspector prepares memo to the Enforcement Branch Manager (through the HW Inspector Supervisor) noting the extent of the continued violations and any new violations/information. The memo shall be accompanied by all necessary file information. The Enforcement Branch Manager shall review the information for possible enforcement escalation in accordance with established enforcement procedures.

4.1 Confidentiality

Persons lodging complaints should be advised that if they do not wish to be known they should not leave their name, address or telephone number. They should also be advised that their name and all other related information may be deemed public information under the Freedom of Information Act. If they wish to be recorded as the complainant or if they want the status of the Department's investigation and follow-ups sent to them their name and address must be given.

Any and all information obtained during the course of an inspection/investigation shall be deemed public information and as such subject to placement in our general files. Exceptions to this shall only be made when information is submitted to and accepted by the Department in accordance with Section 6 of the Arkansas Hazardous Waste Management Code. It should be noted that any confidential information in the possession of the Department

obtained in accordance with the Arkansas Hazardous Waste Management Act and Code may be transmitted to the EPA under the claim of continuing confidentiality.

5.1 Work Assignments

All complaints and investigation requests received by the HWD shall be referred to the HW Inspector Supervisor who shall, upon consultation with the Enforcement Branch Manager, assign an inspector for response. The HW Inspector Supervisor (or Enforcement Branch Manager) will schedule all inspections, investigations and requests for assistance. There are two exceptions: A direct request for assistance by the Director or Deputy Director where immediate response is necessary for an emergency situation or if the request is made by the Emergency Response Coordinator (or On-Call Duty Officer) in accordance with the Emergency Operations Plan.

Inspectors who receive direct requests as described above shall notify their Supervisor or the Enforcement Branch Manager prior to responding, where possible, or as soon as possible after responding.

6.1 Hazardous Waste Data Management System (HWDMS)

In order to maintain current information concerning the compliance of permitted and regulated facilities, insure timely responses and resolutions of compliance problems, and track compliance actions of the Department, the HWDMS will be utilized.

The HW Inspector Supervisor shall pull a list of all pending, unresolved compliance matters from HWDMS at least monthly and provide each inspector with a copy as a reminder of on-going

compliance matters and up coming deadlines he/she is responsible for tracking. Any discrepancies noted from a review of the available print-outs shall be followed up by the inspector.

Each inspector shall complete the necessary data entry forms and give them to the HWDMS data input personnel on or before the 5th of each month for all activities taken during the preceeding month. Completion of the data input forms shall be in accordance with instructions provided at the beginning of each fiscal year and subsequent training provided.

7.1 Coordination of Technical and Legal Staffs in Commencement of Formal Enforcement Actions

When the Hazardous Waste Division staff identifies a violator for whom a formal enforcement response - e.g., Administrative Order, Civil Lawsuit, Criminal Charge - is warranted, the responsible inspector compiles the relevant information. A recommendation for formal enforcement action generated by the Enforcement Branch Manager in a memorandum goes through the Division Chief to the Deputy Director. With the Director's concurrence the case is routed to the Legal Division.

The assigned attorney and the Enforcement Branch Manager will jointly draft the appropriate document to initiate the action to be approved by the Deputy Director and Director before being presented to the violating facility. Both Division personnel will be involved in the negotiation of the final Order, with any negotiated settlement having the concurrence of both the Legal and Hazardous Waste Divisions.

When a draft is agreed to and signed by the violator, it is presented to the Director upon recommendation of the Hazardous

Waste Division, Legal Division and Deputy Director. Once issued the Order is transferred to the Hazardous Waste Division for compliance tracking.

APPENDIX A

SAMPLE LETTER NOTING COMPLIANCE AFTER INITIAL INSPECTION

DATE

XXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXX

DEAR _____ :

RE: _____

On (date), I performed a routine Compliance Evaluation Inspection at your facility pursuant to the Arkansas Hazardous Waste Management Act (Act 406) of 1979, as amended and the regulations promulgated pursuant thereto. This inspection did not reveal any instances of non-compliance with Act 406 or the regulations.

If I can be of assistance in the future, please feel free to contact me.

SINCERELY,

XXXXXXXXXXXXXXXXXXXXXXXXXXXX
HAZARDOUS WASTE INSPECTOR
HAZARDOUS WASTE DIVISION

XXX:XXX

APPENDIX B

SAMPLE COMPLIANCE LETTER

DATE

XXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXX

DEAR _____ :

RE: _____

On (date), I performed a routine Compliance Evaluation Inspection of your facility pursuant to the Arkansas Hazardous Waste Management Act (Act 406) of 1979, as amended and the Arkansas Hazardous Waste Management Code (Code). The inspection revealed that you are not in compliance with the (requirements of permit No. _____ (regulations) (and/or law). The violations discovered are summarized in this letter and documented in the enclosed inspection report:

1. (Briefly describe violation, regulatory cite and summary of corrective action needed) e.g., Containers of ignitable waste within 50 feet of the property line - 40 CFR 265.176, as adopted by reference in Section 3 of the Code. At least 50 foot buffer must be established between all ignitable wastes and the property line.

You should immediately undertake to correct the violation(s) noted above. You must submit a written report stating the corrective actions taken (and provide copies of XYZ documents as proof of compliance,) on or before (date) (not to exceed 30 days). (You must submit a plan and time schedule for correcting the violations on or before (date) (not to exceed 30 days).).

The above cited violations are considered unlawful acts according to Section 12 of Act 406 and as such are subject to the penalties of Section 13 of Act 406. Failure to comply may result in the escalation of enforcement actions including the assessment of civil penalties.

If you should have any questions regarding this matter, please do not hesitate to contact me.

SINCERELY,

XXXXXXXXXXXXXXXXXXXXXXXXXXXX
HAZARDOUS WASTE INSPECTOR
hazardous waste division

XXX:XXX

ENCLOSURE

APPENDIX C

SAMPLE WARNING LETTER

CERTIFIED MAIL #
RETURN RECEIPT REQUESTED

DATE

XXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXX

DEAR _____ :

RE: _____

On (date), I wrote you regarding an (investigation/inspection) performed at your facility on (date). A copy of the letter is enclosed for your review. You will note that the letter required immediate action to be taken to correct the violations. Additionally, (you were to advise me in writing on or before (date) that the violations had been corrected) (you were to submit plans and a schedule for implementing those plans on or before (date)). To date I have not received a reply.

Please be advised that you have ten (10) days from receipt of this letter to contact me regarding this matter. Failure to do so will result in this case being referred to the Enforcement Branch Manager for consideration of escalated enforcement proceedings. These actions may include the assessment of civil penalties (permit revocation) (interim status termination). Your immediate attention to this matter is required.

SINCERELY,

XXXXXXXXXXXXXXXXXXXXXXXXXXXX
HAZARDOUS WASTE INSPECTOR
HAZARDOUS WASTE DIVISION

XXX:XXX

CC: ENFORCEMENT BRANCH MANAGER

ENCLOSURE

APPENDIX D

SAMPLE LETTER NOTING COMPLIANCE AFTER FOLLOW-UP

DATE

XXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXX

DEAR _____ :

RE: _____

I (performed a follow-up inspection at your facility on date) (reviewed the information which you submitted on date). The (inspection)(review) revealed that the violation(s) noted during the inspection of (initial inspection date) have been corrected.

If I may be of assistance in the future, please contact me.

SINCERELY,

XXXXXXXXXXXXXXXXXXXXXXXXXXXX
HAZARDOUS WASTE INSPECTOR
HAZARDOUS WASTE DIVISION

XXX:XXX

APPENDIX E

RCRA PRE-INSPECTION WORKSHEET

FACILITY NAME: _____ EPA ID # _____

I. REVIEW NOTIFICATION FORM (IF NOT AVAILABLE, CONTACT EPA AT (214)767-2916, FOR COPY):

1. LIST OF CONTACT NAME AND PHONE NUMBER: _____

2. LIST WASTE(S) HANDLED: _____

II. REVIEW PART A (OR PERMIT):

1. LIST WASTE(S) HANDLED: _____

2. LIST PROCESSES, WITH DESIGN CAPACITIES: _____

3. LIST SITE SPECIFIC CONDITIONS/VARIANCES: _____

III. REVIEW INSPECTION FILE:

1. NOTE PREVIOUS PROBLEM AREAS/UNCORRECTED VIOLATIONS: _____

2. NOTE ITEMS UNCLEAR IN PREVIOUS REPORTS: _____

IV. REVIEW LEGAL FILE; CHECK FOR PRESENCE OF:

1. OPEN ADMINISTRATIVE ORDER: _____

2. OPEN LEGAL ACTIONS: _____

V. REVIEW MANIFEST FILE:

1. LIST ANY WASTE(S) NOT LISTED ABOVE: _____

2. LIST TSD'S UTILIZED: _____

3. NOTE ANY CONTINUING PROBLEMS/VIOLATIONS _____

VI. REVIEW BIENNIAL REPORT FILE:

1. LIST TYPE(S) OF WASTE HANDLED (COMPARE TO I, II, AND V ABOVE): _____

2. LIST TSD'S UTILIZED (COMPARE TO V ABOVE): _____

3. FOR TSD'S, LIST HANDLING CODES (COMPARE TO II ABOVE): _____

VII. REVIEW TYPE OF MANUFACTURING PROCESSES/ON-SITE ACTIVITIES:

VIII. PERTINENT REGULATIONS:

D. Permitting Procedures

Permitting procedures for the Hazardous Waste Division have been patterned after the procedures contained in 40 CFR Part 270. The complete permit application for a hazardous waste management (RCRA) facility includes both Parts A and B as defined in 40 CFR 270.13, 270.14-270.29, and the Arkansas Hazardous Waste Management (HWM) Code. Part A consist of EPA Forms 1 and 3 of the consolidated Permit Application Forms and accompanying information as described in 40 CFR 270.13. There is no prepared application form for Part B; however, information required to be submitted in Part B is described in detail in 40 CFR 270.14 through 270.29. The respective facility standards can be found in 40 CFR Part 264. Additional requirements and standards for both commercial and non-commercial facilities, as defined in the HWM Code, can be found in Section 5, 10, and 12, through 15 of the HWM Code. Due to the nature of their operation, commercial hazardous waste management facilities must meet several more stringent permitting standards than corresponding non-commercial summarize the permitting requirements and standards. These checklists are provided to the applicant for use in preparing a complete permit application.

Prior to final technical review of a permit application, the application must be deemed to be complete. In order to facilitate this review, it is required that all applications for permits include both Part A and B, as described above, and any supplemental information required by the HWM Code, unless Part A has been previously submitted/updated for Interim Status and is unchanged. If changes have been made or are proposed to be made in the operation of the facility, then a revised Part A must be submitted as part of the permit application. In addition, the permit application fee required by Section 11 of the HWM Code should accompany the permit application.

The Department's hazardous waste permits staff will review each application for completeness of information submitted, including the permit fee. Upon completion of this review, the applicant will be notified if any additional information is required.

When all information is present, and the required application fee is paid, the reviewing engineer will conduct a detailed technical review of the application. Additional information will be requested from the facility as necessary to fully determine the technical standards of the facility operations. Upon completion, the engineer will prepare a draft permit (or notice of intent to be forwarded to the Department Permits Review Committee for comment. Following approval by the Committee, a public notice will be issued announcing the draft permit and setting a forty-five (45) day public comment period. If significant public interest if forthcoming, the Director may schedule a public hearing to receive comments from the public as provided in the Arkansas HWM Code, Section 12(c). The draft permit and any supporting documentation will be available for public scrutiny at one or more of the many depositories throughout the state offices in Little Rock, Arkansas.

Upon completion of the 45-day period for public comment, including a hearing, if one is held, the permit will be finalized and submitted to the Director for final permit action, i.e., issuance or denial. Any appeal to the permit decision will be to the Commission on Pollution Control and Ecology in accordance with the provisions of Regulation No. 8 and the Arkansas Water and Air Pollution Control Act (Act 472 of 1949, as amended), Ark. Stats. 82-1901 et. seq.

In order to minimize confusion among permittees and applicants for permits due to overlapping and/or duplicative regulatory requirements, and to promote a smooth transition from federal to state control of hazardous waste management in the state, Arkansas elected to adopt, by reference, in Section 3 of the HWM Code, applicable federal regulations as promulgated in 40 CFR 270, 271, 124, and 260 - 265. In those few instances where the State has more stringent requirements, the specific federal regulation was excluded from adoption and so indicated in Section 3 of the HWM Code. Consequently, specific permitting procedures and requirements contained in 40 CFR Part 70, including any "unique" permitting procedures, are currently in effect in Arkansas, and are described in detail in the following federal regulations:

SUBJECT	REGULATORY CITATION
Transfer of Permit	270.40
Major Modifications or Revocation and Re-issuance of Permits	270.41
Minor Modifications of Permits	270.42
Termination by Rule	270.32
Permits by Rule	270.60
Emergency Permits	270.61
Hazardous Waste Incinerator Permits	270.62
Permits for Land Treatment Demonstrations using Field Tests or Laboratory Analyses	270.63
Qualifying for Interim Status	270.70
Operation During Interim Status	270.71
Changes During Interim Status	270.72
Termination of Interim status	270.73

The flow chart following depicts the major procedural steps followed from the time of permit application to final permit action, accompanied by a brief description of each step in the process.

The State intends to use Part B application completeness checklists provided by EPA, as well as the Part A and Part B Supplemental Checklists which incorporate more stringent requirements of the Arkansas HWM Code and the Wright-Pierce Report.

As part of an integrated management strategy for the protection of Arkansas' groundwater resources, the Department contracted with the Wright-Pierce Engineers, of Topsham, Maine, to prepare guidelines for siting permitted and unpermitted landfills in the State, including hazardous, industrial, and municipal waste landfills.

Using the available information to the maximum extent possible, Wright-Pierce compiled and developed criteria for the determination of the relative groundwater pollution potential of selected sources of contamination. Potential sources of contamination include the following:

- a. Permitted and unpermitted landfills, including hazardous waste, industrial waste, and municipal waste landfills.
- b. Impoundments (industrial waste and agricultural waste).
- c. Municipal and industrial wastewater treatment facilities.
- d. Land Application Systems.

The Wright-Pierce report addresses pertinent siting and design criteria for the various types of facilities including hazardous waste landfills. The Department has been instructed by the Commission on Pollution Control and Ecology to use the hazardous waste landfill criteria contained in the Wright-Pierce report as guidelines for evaluating commercial hazardous waste landfills.

The latest revisions of the checklists which are used in the Department's permitting program are included in this program description.

PERSON/OFFICE
RESPONSIBLE

ACTION

DATE
ACCOMPLISHED

DIVISION

SECRETARY

1

1. Date application received
2. Date Logged In
3. Designated Project No. _____,
CSN _____
4. File established
5. Letter of acknowledgement sent to
applicant

TECHNICAL
BRANCH
MANAGER

2

1. Assigned _____ as project
engineer

PERMIT
ENGINEER

3

1. Reviews application for completeness
2. Forwards discrepancy list to
secretary

DIVISION
SECRETARY

4

1. Sends applicant notice of deficiency,
if applicable
2. Receives supplemental information from
applicant; forwards to project engineer

PERMIT
ENGINEER

5

1. Reviews supplemental information and
makes determination of completeness
2. APPLICATION DEEMED TO BE COMPLETE
3. Contacts applicant for additional
technical information as required

DIVISION
SECRETARY

6

1. Sends letter of completeness to
applicant

PERMIT
ENGINEER

7

1. Prepares draft permit, or notice of
intent to deny, as applicable, and
fact sheet

2. Forwards draft permit, fact sheet, etc. to secretary for typing _____

DIVISION
SECRETARY
8

1. Types draft permit and fact sheet _____
2. Forwards to Technical Branch Manager _____

TECHNICAL
BRANCH
MANAGER
9

1. Reviews draft permit and fact sheet for adequacy of form, content and conditions _____
2. Forwards to Permits Review Committee _____

PERMITS
REVIEW
COMMITTEE
10

1. Reviews application, draft permit, fact sheet, and support documentation _____
2. Forwards comments/recommendations to project engineer _____

PERMIT
ENGINEER
11

1. Modifies draft permit, if required _____

TECHNICAL
BRANCH
MANAGER
12

1. Reviews draft permit for adequacy of form, content and conditions _____
2. Forwards draft permit and fact sheet to Division Chief _____

DIVISION
CHIEF
13

1. Reviews fact sheet and draft permit for concurrence _____
2. Forwards fact sheet and draft permit to Communications Branch _____

COMMUNICATI
BRANCH
14

1. Prepares and issues Public Notice in accordance with 40 CFR 124.10 _____
2. Receives all comments from interested parties _____
3. Conducts Public Hearing, if one is required _____
4. Forwards public comments to permit engineer _____

PERMIT
ENGINEER
15

1. Prepares final permit _____
2. Prepares Response to Comments _____
3. Forwards to Technical Branch Manager _____

TECHNICAL
BRANCH
MANAGER
16

1. Reviews responses for completeness and clarity _____
2. Checks Final Permit for consistency in standards and format. _____
3. Forwards to Division Chief _____

DIVISION
CHIEF
17

1. Reviews permit for final presentation to Director _____

DIRECTOR
18

1. Approves/disapproves permit _____