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# ARKANSAS HAZARDOUS WASTE MANAGEMENT CODE

September 25, 1987



State of Arkansas

Department of Pollution Control and Ecology

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ARKANSAS HAZARDOUS WASTE MANAGEMENT CODE

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## CHAPTER ONE: TITLE AND PURPOSE

The following rules and regulations of the Arkansas Department of Pollution Control and Ecology, adopted pursuant to the provisions of the Arkansas Hazardous Waste Management Act of 1979 (Act 406 of 1979) 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, as amended, (P.L. 94-580); (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 lieu of the definitions of the following terms set forth in 40 CFR 260.10, 40 CFR 261.3, and 40 CFR 270.2, when used in this Chapter -
- (1) "Act" means the Arkansas Hazardous Waste Management Act of 1979, as amended (Act 406 of 1979, as amended).
  - (2) "Active Portion" means that portion of a facility where treatment, storage, or disposal operations are being or have been conducted after the effective date of provisions of this Code subjecting such facility to regulation, and which is not a closed portion.
  - (3) "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.
  - (4) "Existing Hazardous Waste Management Facility" or "Existing Facility" means a facility which was in operation or for which construction commenced on or before March 14, 1979. A facility has commenced construction if the owner or operator has obtained the federal, state, and local approvals or permits necessary to begin physical construction; and either begun a continuous on site physical construction program or entered into contractual obligations for such a program to be completed within a reasonable time and which cannot be canceled or modified without substantial loss.
  - (5) "Hazardous Waste" means a hazardous waste as defined in 40 CFR 261.3. In addition thereto Polychlorinated Biphenyls, 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.

- (6) "Operator" means an individual or individuals charged with the responsibility of managing or operating a hazardous waste management facility, including the responsibility for assuring that the operation of said facility is in accordance with the provisions of this Hazardous Waste Management Code.
- (7) "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.
- (8) "Person" means an individual, corporation, company, firm, partnership, association, trust, joint stock company, joint venture, state or federal agency or instrumentality, county, city, town, or municipal authority, trust venture or any other legal entity, or combination of entities however organized.
- (9) "Site" means any real property located within the boundary of the State of Arkansas which is, has been subsequent to March 14, 1979, or is contemplated to be used for treatment, storage, disposal, or generation of hazardous wastes.

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

- (1) "CFR" means Code of Federal Regulations.
- (2) "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.
- (3) "Commission" means the Arkansas Commission on Pollution Control and Ecology.
- (4) "Department" or "ADPC&E" means the Arkansas Department of Pollution Control and Ecology.
- (5) "Director" means the Director of the Arkansas Department of Pollution Control and Ecology.
- (6) "Exempted Hazardous Waste" means those small quantity hazardous wastes which are exempted from some of the provisions of the Hazardous Waste Management Code by 40 CFR 261.5 and which are subject to the provisions of Section 9 of this Code.
- (7) "Facility Personnel" means the personnel employed by a hazardous waste management facility and who are responsible for, or who supervise, or who engage in the handling, sorting, mixing, treatment, analyzing, or disposal of hazardous waste and the operation of any equipment of machinery necessary to complete these tasks.
- (8) "Generation" means the act or process which results in the production of waste materials.
- (9) "Hazardous Waste Management" means the systematic control of the generation, collection, source separation, storage, transportation processing, recovery, disposal and treatment of hazardous waste.

- (10) "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.
- (11) "PCB Identification Number" means a unique number assigned by the Arkansas Department of Pollution Control and Ecology to each generator or transporter, and to disposal or storage facilities which handle PCB wastes and not any other hazardous wastes, to be used in lieu of an EPA Identification Number.
- (12) "Permitted Site" means any site used for disposal, treatment or storage of hazardous waste which has a current valid operating permit issued by the Department of Pollution Control and Ecology.
- (13) "Shipper" means any person initiating transportation of hazardous waste. A shipper may include a generator or storage, treatment or disposal facility.
- (14) "Transport" means the movement of wastes from the point of generation to any intermediate points, or to the point of ultimate storage, treatment or disposal.
- (15) "Treatment Facility" means a location at which waste is subject to treatment and may include a facility where waste has been generated.

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

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

### Section 3. Incorporation of Federal Regulations

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

#### Title 40 Code of Federal Regulations -

- (1) Subparts A, B, and C of Part 260; with the exception of the definition of "Act", "Active Portion", "EPA Identification Number", "Existing Hazardous Waste Management Facility", "Hazardous Waste", "Operator" and "Person" set forth in 260.10 (for analogous provisions see Section 2 (a));
- (2) Subparts A, B, C, and D of Part 261;
- (3) Subparts A, B, C, D, and E of Part 262; with the exception of 262.20(e) and 262.44

- (4) Subparts A, B, and C of Part 263;
- (5) Subparts A, B, C, D, E, F, G, H, I, J, K, L, M, N, and O of Part 264 with the following exceptions: 264.312(b) and 264.314 (for analogous provisions see Section 13(a)(5));
- (6) 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: 265.312(b) and 265.314 (for analogous provisions see Section 13(a)(5));
- (7) Subparts C, D, E, F, G of Part 266;
- (8) Subpart B of Part 268;
- (9) Subparts A, B, C, D, E, F, and G of Part 270 with the following exceptions: the definitions of "Hazardous Waste", "Existing Hazardous Waste Management Facility", "Site", "Person", "Permit", and "Operator" set forth in 270.2 (for analogous provisions see Section 2); 270.10(e) (for analogous provisions see Section 12(a)(1)-(6)); 270.12 for analogous provisions see Section 6); 270.51 (no analogous state provisions); 270.70 (for analogous provisions see Section 12(a)(7) and (8)).
- (10) The definition of "PCB" and "PCB's", "PCB items", "PCB-contaminated electrical equipment" set forth in 761.3;
- (11) Subparts A of Part 124 with the following exceptions: 124.1, 124.2, 124.3(b), 124.3(d), 124.3(e), 124.4, 124.5(b), 124.5(e), 124.5(g), 124.6(b), 124.9, 124.10(a)(1)(i), 124.10(a)(1)(iv), 124.10(a)(1)(v), 124.12(e), 124.14, 124.15, 124.16, 124.18, 124.19, and 124.21 (see Regulation No. 8 - Administrative Procedures for analogous provisions as referenced in Section 21 of this Code.

All as adopted as final rules (including interim final rules' and 'technical amendments' by the U.S. Environmental Protection Agency on or before June 30, 1987.

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

Facility Name & Address	Waste Excluded	Date of FR Notice	Exclusion Status
Chamberlain- Featherlite, Inc., Hot Springs	F019	07/16/86	Permanent
Monroe Auto Equipment, Paragould	F006	11/27/85	Vacuum filtered sludge - Permanent Lagoon sludge - Exclusion Denied

- (c) The Director, annually, 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 the date of their publication as final rules of the U.S. Environmental Protection Agency shall constitute minimum guidelines to the Director in formulating rule making proposals to this Chapter, 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 Management Code and shall be subject to the penalties 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 within 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 water or air pollution within the meaning of the Arkansas Water and Air Pollution Control Act, as amended (Section 82-1901 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 Department specifically finds that the location of such facilities in those areas would not constitute a risk to the public health or environment:
  - (1) an active fault zone;
  - (2) a "regulatory floodway" as adopted by communities participating in the National Flood Program managed by the Federal Emergency Management Administration and the Arkansas Soil and Water Conservation Commission;
  - (3) a 100-year floodplain;
  - (4) a recharge zone of 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 ground-water 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 U.S. Department of Agriculture; or
  - (3) areas in which a stratum of limestone or similar rock of an average thickness of more than 1 meter (3 feet) shall lie within 30 meters (99 feet) of the base of the proposed liner system as described in the application for permit; or
  - (4) areas in which the bottom of the landfill's or impoundment's liner system or 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 conditions.

- (d) No permit shall be issued for a hazardous waste management facility in which the Department shall find that factors or combination of factors including but not confined to subparts (1) and (2) below, would create an unacceptable risk to the public health or safety due to the nature, design and/or operation of the facility described in the permit application:
- (1) the area and configuration of the facility's property is such that the distance between active portions of the facility and the facility's property line is less than 200 feet;
  - (2) the active portions of such facility are located less than 300 feet from the right-of-way for:
    - (i) a public road;
    - (ii) pipelines carrying natural gas, fuel oils, or chemicals, excluding service lines to the facility;
    - (iii) water and wastewater line, other than the service lines to the facility; and
    - (iv) power transmission lines, other than service lines to the facility.
- (e) No permit shall be issued for the construction or operation of a new hazardous waste management facility unless the location of said facility is such that all performance standards set forth in this 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 demonstrate that such modifications do not materially increase that degree of hazards associated with such facility.

Section 6. Availability of Information and Protection of Trade Secrets

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

- (a) Any records, reports, or information contained under this 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 subsection (a) above to clearly mark each page containing such information with the words "CONFIDENTIAL" and to submit an affidavit setting forth the reasons that said person believes that such information is entitled to protection.
- (c) Any document submitted to the Department which contains information for which the claim of confidential information is made shall be submitted in a sealed envelope marked "CONFIDENTIAL" and addressed to the Director. The document shall be submitted in two separate parts. The first part shall contain all information which is not deemed by the person preparing the report as confidential and shall include appropriate cross references to the second part which contains data, words, phrases, paragraphs, or pages and appropriate affidavits containing or relating to information which is claimed to be confidential.
- (d) No information shall be protected as confidential information by the Director unless it is submitted to him in accordance with the provisions of subsection (c) above. No information which is submitted in accordance with the provisions of subsection (c) above shall be afforded protection as confidential information unless the Director finds that such protection is necessary to protect trade secrets and that such protection will not hide from public view the characteristics of waste material and probable effects of the introduction

of such waste or 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 subsection (d) above shall be marked with the term "ACCEPTED" and shall be protected as confidential information. Whenever the Director finds that information which has been submitted as confidential information in accordance with subsection (c) above does not meet the criteria of subsection (d) above, he shall promptly notify the person submitting such information of his findings and shall give that person reasonable opportunity to further justify his contention that the information deserves protection as a trade secret or to further limit the scope of information for which the request for protection is made. If said person fails to satisfactorily demonstrate to the Director that such information in the form presented to him meets the criteria of subsection (d) above, the Director shall mark the information "REJECTED" and promptly return such information to the person submitting such information. Such person shall have 30 days to re-submit the information in acceptable form or appeal the decision of the Director.
- (f) All information which is accepted by the Director as confidential shall be stored in locked filing cabinets and only those personnel of the Department specifically designated by the Director shall have access to the information contained therein. The Director shall not designate any persons to have access to confidential information unless the person requires such access in order to carry out his responsibilities and duties. No person shall disclose any confidential information except in accordance with the provisions of this Section. No copies shall be made other than for internal Department use or for use or transmittal to officers and employees of the United States except with the written permission of the Director and the person submitting the information.

- (g) The person(s) designated by the Director to maintain confidential files as herein provided shall maintain a log showing the persons who have had access to the confidential files and the dates of such access.
- (h) As necessary to carry out the provisions of the Arkansas Hazardous Waste Management Act, any confidential information acquired by the Department under the provisions of said act may be transmitted to other offices, employees, or authorized representatives of the state or United States provided that the owner or operator of the facility to which such information pertains is informed of such transmittal and provided that such transmittal is made under a continuing restriction of confidentiality.
- (i) Nothing contained herein shall be construed so as to restrict the release of relevant confidential information during situations declared to be emergencies by the Director or his designee.
- (j) Claims of confidentiality for the name and address of any permit applicant or permittee will be denied.
- (k) If a request for any records, documents or information acquired or maintained by ADPC&E pursuant to the Arkansas Hazardous Waste Management Act and/or this Code is denied by the Director a notice shall be sent to the requestor stating the basis of the denial and informing the requestor that (1) he may appeal immediately from such denial to an appropriate Circuit Court pursuant to the Arkansas Freedom of Information Act; or (2) he may request judicial review within thirty (30) days of receipt of the notice by filing a notice of appeal with the Secretary of the Arkansas Commission on Pollution Control and Ecology and proceeding further pursuant to Ark. Stat. Ann. § 82-1906 Subdivision 3.
- (l) If a request for records, documents or information is denied, the Director will send the notice required by subsection (k) within twenty (20) days of receipt of the request.
- (m) If the Director fails to produce requested records, documents or information and fails to send the notice required by subsection (k), such failure shall constitute final agency action giving the requestor the right to judicial review under Ark. Stat. Ann. § 82-1906 in addition to any rights of review under the Arkansas Freedom of Information Act.

## Section 7. Conflict of Interest

- (a) No employee of the Department shall have a financial interest in any hazardous waste management facility or in any commercial enterprise engaged in the transportation, treatment or disposal of hazardous waste or in any business which furnished real property, plans, labor, material or equipment to hazardous waste management facilities. For purposes of this Section, financial interest of an employee of the Department shall extend to that employee's husband or wife if said husband or wife is a stockholder, an officer or a management official of a commercial entity engaged in any of the activities listed above.
- (b) Payment by the owner or operator of a hazardous waste management facility to the Department pursuant to the provisions of Section 11 (g) 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 twenty (20) members nominated by the Director and approved by the Commission. Members shall be nominated upon the basis of their education, training and/or responsibilities in the fields of biology, geology, chemistry, education, engineering, public health, industrial hygiene, transportation, industry agriculture, hazardous waste management, solid waste management, or other related areas.
- (b) The members of said Committee shall serve without compensation but may be reimbursed for travel 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 that Code at least once each three years and shall make recommendations for changes deemed appropriate.

Section 9. Generators of Small Quantities of Hazardous Waste"  
(Less than 100 kg/mo) - Handling and Disposal

- (a) Generators of conditionally exempt small quantities of hazardous waste shall comply with the requirements of 40 CFR 261.5 as adopted in Section 3 and the requirements of Section 16 (b) and (c).
- (b) The disposal of small quantity hazardous waste which is allowed pursuant to 40 CFR 261.5 to be stored, treated and disposed in a facility that is permitted, licensed, or registered by a state to manage municipal or industrial solid waste must comply with the following additional requirements to be disposed of in Arkansas:
  - (1) it is disposed of in a solid waste disposal facility in the State of Arkansas which has been permitted by the Department to dispose of such waste in accordance with the provisions of the Arkansas Solid Waste Management Code; or
  - (2) it is shipped to a hazardous waste management facility in the State of Arkansas which is permitted by the Department to store, treat or dispose of such waste; or
  - (3) it is shipped, pursuant to Section 16(b) and (c) of this Code, to an approved facility outside the State of Arkansas; or
  - (4) it 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.

- (c) Solid waste disposal facilities may accept wastes subject to the provisions of 9(b) of this Section only in accordance with their permit and the provisions of the Arkansas Solid Waste Management Code.

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:

- (a) No commercial hazardous waste management facility shall be caused or permitted to operate unless at least one person certified by the Department in accordance with the provisions of subsection (b) below, is on duty, or on 15 minutes call, at all times the facility is being operated. Depending upon the size and complexity of the facility, the Department may require, as a condition of permit, one or more certified operators to be on duty at all times the facility is in operation.
- (b) No person shall be certified by the Department at being qualified to serve as an operator of a commercial hazardous waste management facility unless the person is found to have the following qualifications:
  - (1) is physically capable of performing all tasks reasonably expected of supervisory personnel;
  - (2) has a baccalaureate degree in engineering, physical science, health sciences, or related disciplines or four years of significant demonstrated experience in such fields;
  - (3) has at least four additional years experience in management, engineering or in conducting chemical/physical analysis;
  - (4) has a working familiarity with the principles and requirements relative to industrial hygiene, worker safety, emergency procedures and environmental protection as such principles and requirements relate to the nature of the

hazardous waste managed at the facility in which said person is to have, or does have, supervisory responsibility and as such principles and requirements relate to the type storage, treatment and/or disposal in such facility;

- (5) has a basic knowledge of the principles of operation and standard operating procedures for all equipment used in the facility in which said person is to have, or has, supervisory responsibility; and
  - (6) is a citizen of the United States, of good moral character with no prior conviction of a felony or a crime of moral turpitude.
- (c) No employee of a hazardous waste management facility shall be assigned the duties of transferring, handling, sorting, mixing, treating or disposing of hazardous waste unless that employee meets the requirements set out in 40 CFR 264.16 (a), (b) and (c).
- (d) No employee of a commercial hazardous waste management facility shall be assigned the duties of transferring, handling, sorting, mixing, treating or disposing of hazardous waste unless that employee has demonstrated his/her capabilities of:
- (1) reading and comprehending label instructions, operational procedures, contingency plans and regulatory directives;
  - (2) understanding the basic nature of the materials which he/she is assigned to transfer, handle, sort, mix, treat or dispose relative to the material's reactivity, toxicity, explosiveness and flammability; and
  - (3) operating all equipment which he is assigned to operate, including personal safety and emergency equipment.
- (e) The owner or operator of a hazardous waste management facility must maintain the records required in 40 CFR 264.16(d).

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

- (1) maintain complete updated records of all workers assigned to a specific job including name, address, date of starting specific job and date of termination of specific job;
- (2) maintain a complete previous employment history and a complete job mobility history within the facility kept for each employee;
- (3) have their personnel trained in contingency procedures as prescribed in the facility's contingency plan, which plan has been submitted and approved pursuant to this 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 so upon the direction of the Department or whenever modification in training is required as a condition of permit; provided, however, that preliminary training, approved by the Department, will have been completed prior to commencement of operation of a new hazardous waste management facility or prior to commencement of an operation in an existing facility for which a permit has been issued or modified.

#### Section 11. Fees and Costs

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

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

- (i) Initial permit application fee - \$20,000 plus waste management activity fee (subsection b)
- (ii) Unsolicited application amendment fee (during application review process) - \$500
- (iii) Permit renewal fee - Initial application fee plus waste management activity fee (subsection b)
- (iv) Annual permit evaluation fee - \$10,000 plus waste management activity fee (subsection b)

(2) Permits for Construction/Operation -  
Non-Commercial Facility:

- (i) Initial permit application fee - \$5,000 plus waste management activity fee (subsection b)
- (ii) Unsolicited application amendment fee (during application review process) - \$500
- (iii) Permit renewal fee - Initial application fee plus waste management activity fee (subsection b)

- (iv) Annual permit evaluation fee - \$2,500 plus waste management activity fee (subsection b)
- (3) Permits for Post-Closure Care Only - Commercial Facility:
  - (i) Initial permit fee - \$2,500
  - (ii) Unsolicited application amendment fee (during application review process) - \$250
  - (iii) Permit renewal fee - \$2,500
  - (iv) Annual permit evaluation fee - \$1,250
- (4) Permits for Post-Closure Care Only - Non-Commercial Facility:
  - (i) Initial permit fee - \$1,000
  - (ii) Unsolicited application amendment fee (during application review process) - \$100
  - (iii) Permit renewal fee - \$1,000
  - (iv) Annual permit evaluation fee - \$500
- (5) Annual permit evaluation fees will not be assessed during the years in which permit renewal fees are assessed for commercial and non-commercial facilities.
- (b) Each hazardous waste management facility or unit in which hazardous wastes are treated, stored or disposed will be assessed an additional fee (unless said fees are specifically excluded in subsections (c) and (d) below) for the type of waste management activity(ies) being conducted, in accordance with the schedule(s) listed below. Fees addressed by this section shall be assessed and collected with the initial permit application fee, the permit renewal fee, and annual permit evaluation fee and are based on the permitted maximum design capacities (including accumulated solids, where applicable), unless specified otherwise:
  - (1) Container Storage
    - (i) Commercial - \$2.00/100 gallons (or equivalent volume)
    - (ii) Non-Commercial - \$1.00/100 gallons (or equivalent volume)

- (2) Tank Treatment and/or Storage
  - (i) Commercial - \$2.00/1000 gallons (or equivalent volume)
  - (ii) Non-Commercial - \$1.00/1000 gallons (or equivalent volume)
- (3) Waste Pile Storage and/or Disposal
  - (i) Commercial - \$0.25/cubic yard (or equivalent volume)
  - (ii) Non-Commercial - \$0.13/cubic yard (or equivalent volume)
- (4) Surface Impoundment Treatment, Storage, and/or Disposal
  - (i) Commercial - \$5.00/1000 gallons (or equivalent volume)
  - (ii) Non-Commercial - \$2.00/1000 gallons (or equivalent volume)
- (5) Land Treatment/Land Farm Treatment or Disposal
  - (i) Commercial - \$5000/acre
  - (ii) Non-Commercial - \$2500/acre (fee based on active portion only)
- (6) Landfill Disposal
  - (i) Commercial - \$500/acre feet
  - (ii) Non-Commercial - \$250/acre feet (fee based on active portion only)
- (7) Incineration and other Thermal Treatment (excluding Open Burning/Detonation of Waste Explosives)
  - (i) Commercial - \$500/ton/hr.
  - (ii) Non-Commercial - \$250/ton/hr. (fee based on waste feed rate)
- (8) Open-Burning/Detonation of Waste Explosives
  - (i) Commercial - \$0.20/lb./hr.
  - (ii) Non-Commercial - \$0.10/lb./hr.
- (9) Other Physical, Chemical, or Biological Treatment (not otherwise addressed in (1) - (8) above)

- (i) Commercial - \$5.00/100  
gallons/day (or equivalent  
volume)
- (ii) Non-Commercial - \$2.50/100  
gallons/day (or equivalent  
volume)

- (c) The provisions of subsection (b) do not apply to impoundments, tanks or other storage devices which are an integral part of wastewater treatment systems required to have an NPDES discharge permit.
- (d) Underground Injection Control (UIC) facilities which are subject to permitting for corrective action under 40 CFR 264.101 and 40 CFR 270.60, but not otherwise subject to permitting as a hazardous waste management facility, shall submit a money order or cashier's check payable to the Department as set forth below:
  - (1) Commercial facility
    - (i) Initial application fee - \$25,000
    - (ii) Permit renewal fee - \$10,000
    - (iii) Annual permit evaluation fee - \$2,500
  - (2) Non-Commercial facility
    - (i) Initial application fee - \$10,000
    - (ii) Permit renewal fee - \$5,000
    - (iii) Annual permit evaluation fee - \$1,500
- (e) Permit modification applications, other than minor modifications as defined in 40 CFR 270.42, must be accompanied by a money order or cashier's check payable to the Department. The fee shall be 50% of the initial permit application fee as set forth in subsection (a). If additional waste management activities are applied for or operating capacities increased, an additional waste management fee shall be calculated from subsection (b) and added to the modification fee total.
- (f) The maximum annual amount of fees collected for any hazardous waste management facility permit pursuant to provisions of subsections (a), (b), (d), and (e) shall not exceed \$30,000 for non-commercial facilities or \$60,000 for commercial facilities, provided, however, that the Department may require such additional fees to be collected from the owner or operator of a commercial hazardous waste management facility as it deems necessary to compensate it for costs of providing on-site inspectors under subsection g.

- (g) In addition to fees required by subsections (a)-(e) any facility which as a condition of its permit is required to have on site inspectors shall, prior to the Department's issuance of permit, submit a money order or cashiers check payable to the Department in the amount of one-fourth the estimated annual cost to the Department of maintaining such inspectors and shall submit quarterly thereafter a money order or cashiers check payable to the Department in the amount of one-fourth the aforesaid estimated annual costs. The Department may enter into contractual agreement with qualified engineering and testing firms to conduct inspections as described above.
- (h) Any person who applies to the Department for certification as an operator of a commercial hazardous waste management facility shall submit as part of that application a money order or cashiers check of \$100 payable to the Department for initial application and \$25 annually thereafter for renewal of the certification. Non-payment of the renewal fee within thirty (30) days of the anniversary date of issuance will cause automatic termination of the certification.
- (i) Any person who submits a closure plan (partial or final) shall submit as part of said plan a money order or cashiers check payable to the Department to cover closure plan fees as set forth below. The fees associated with this subsection are not applicable to closure plans submitted as part of an application (Part B permit application) for an operational permit.

(1) Container Storage Areas and Tank Units:

- (i) Initial Fee
  - (a) Commercial Facility - \$1500/unit
  - (b) Non-Commercial Facility - \$1250/unit
- (ii) Modification Fee
  - (a) Commercial Facility - \$750/unit
  - (b) Non-Commercial Facility - \$625/unit

(2) Incinerator, and other Thermal Treatment Units

- (i) Initial Fee
  - (a) Commercial Facility - \$3000/unit
  - (b) Non-Commercial Facility - \$1500/unit
- (ii) Modification Fee
  - (a) Commercial Facility - \$1500/unit
  - (b) Non-Commercial Facility - \$750/unit

(3) Waste Pile, Land Treatment, Surface Impoundment, and Landfill Units:

- (i) Initial Fee
  - (a) Commercial Facility - \$7000/unit
  - (b) Non-Commercial Facility - \$3500/unit
- (ii) Modification Fee
  - (a) Commercial Facility - \$3500/unit
  - (b) Non-Commercial Facility - \$1750/unit

(j) The maximum closure plan fee collected pursuant to subsection (i) shall not exceed \$5000 for non-commercial facilities or \$10,000 for commercial facilities.

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

- (l) 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 cashiers check in the amount of \$250 payable to the Department to cover permit fees and costs for five (5) years.
- (m) Manifest forms to be used by Section 16 of this Code shall be purchased from the Department for a fee of \$2.00 per manifest, for the purpose of offsetting the cost of reproducing, distributing and processing such manifests.
- (n) Fees collected under this Section shall not be refunded should a permit application or certification be disapproved pursuant to the provisions of this Code or voluntarily withdrawn by the applicant. Nothing in this subsection shall prohibit the Department from crediting unused portions of fees from permitted facilities towards future fees.
- (o) All fees pursuant to this Section 11 are due and payable in accordance with each subsection. A late fee of ten (10) percent of the total fee shall be charged for any fees unpaid after forty-five (45) days of the due date. No permit will be issued when indebtedness exists as a result of non-payment of any of the above fees. Continued refusal to pay the required fees after a reasonable notice shall constitute a violation of this Code and shall be grounds for legal action by the Department, which may include permit revocation.
- (p) A financial assessment of the fee system shall be presented to the Commission annually by the Director.

## Section 12. Permits 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) Existing Facilities

- (1) Facilities in existence on March 14, 1979, which are required to have a permit under the Act may continue in operation until such time as a permit is issued or denied under this Chapter and Code, provided that the owner or operator of such facility made application to the Department on the initial state application form on or before September 4, 1979; and provided that such facilities also comply with the other provisions of this Section and the provisions of 40 CFR 270.10 and 270.71-73 which are adopted by reference in Section 3.
- (2) Owners and operators of hazardous waste management facilities, in existence as of the effective date of provisions adopted in this Code which first subject them to compliance with the standards of this Code and 40 CFR 265, must submit Part A of their permit application to the Department no later than (i) six months after the date of publication of regulations in this Code which first require them to comply with the standards set forth in this Code and 40 CFR Part 265, or (ii) thirty days after the date they first become subject to the standards set forth in this Code and 40 CFR Part 265, whichever first occurs.
- (3) The Director may extend the date by which owners and operators of specific classes of existing hazardous waste management facilities must submit their initial state application and/or Part A of their permit application if he finds that (i) there has been substantial confusion as to whether the owners and operators of such facilities were required to file a permit application and (ii) such confusion is attributed to ambiguities in 40 CFR Parts 260, 261 or 265.

- (4) The Director may by Administrative Order issued under the Act, this Code and Regulation No. 8, extend the date by which the owner or operator of an existing hazardous waste management facility must submit the initial state application and/or Part A of their permit application.
- (5) The Director may require submission of Part B from any facility at any time. Any owner or operator shall be allowed at least six months from the date of request to submit Part B of the application. Any owner or operator of an existing hazardous waste management facility may voluntarily submit Part B of the application at any time.
- (6) Failure to furnish a requested Part B application on time, or to furnish in full the information required by the Part B application, is grounds for termination of interim status.
- (7) Any person who owns or operates an existing hazardous waste management facility shall have interim status and shall be treated as having been issued a permit to the extent he or she has complied with the requirements of Ark. Stat. Ann. § 82-4205(c) and paragraph (1) through (5) above, and Section 3010(a) of RCRA.
- (8) If the Department determines that a Part A application is deficient it may notify the owner or operator that he or she is not entitled to interim status. The owner or operator will then be subject to enforcement for operating without a permit.
- (9) Nothing in this Section shall be construed to allow commercial hazardous waste landfill facilities to store, treat, bury, dispose or otherwise process hazardous waste without first obtaining a permit from the Department under this Chapter and Code.

(b) Permit Applications - General

- (1) For each hazardous waste described in response to the requirements of 40 CFR 270.13(i), the application shall include the name and location of the generator of the wastes.
- (2) The contingency plan required under 40 CFR 270.14 shall include evidence that such plan 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.
- (3) The procedures required under the provisions of 40 CFR 270.14(b) shall include a full description of all laboratory equipment, sampling procedures and analytical procedures which would be employed to identify, segregate or locate hazardous waste within the facility.
- (4) The owner of a 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 Department.

- (5) The owner or operator of a hazardous waste disposal facility shall provide contracts, agreements and such other documentation as may be required to demonstrate to the Director's reasonable satisfaction that the waste which is proposed to be disposed of is waste which results from the treatment of waste to the full extent of known technology and economics or is waste for which there is no technically and economically feasible means of treatment available.
- (6) Part A of the application for 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.
- (7) Any person who submits an application for a hazardous waste management facility permit to the Department shall give notice to the public by publishing a notice in the newspaper having the largest circulation published in the county in which the facility is, or is proposed to be located, as well as publishing a notice in the newspaper having the largest circulation published in each adjoining county. If there is no newspaper published in any of the counties so affected the notice shall be published in the newspaper(s) having the largest circulation in such county or counties. The notice shall contain:
  - (i) the name, title and address of the applicant;
  - (ii) the location of the facility, including a description of its boundaries; and

(iii) 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.

(c) Permit Issuance

- (1) A permit may not be transferred, issued or modified except with the approval of the Department, provided, however, emergency authorization may be issued by the Director in accordance with the provisions of 40 CFR 270.61 - 270.63.
- (2) No permit shall be issued for the construction, modification or operation of a hazardous waste management facility unless the Department finds, after public hearings as provided herein, that said construction, modification or operation is, or will be, in compliance with the provisions of this Chapter and Code including those provisions of 40 CFR 124, 40 CFR 264, 40 CFR 265, and 40 CFR 267 and 40 CFR 270, incorporated herein. The Department may establish additional requirements as conditions of permit where it deems such conditions necessary to protect the public health and the environment.
- (3) The Department may grant variances in accordance with the provisions of 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 in Section 3 or, as to such federal regulations as are not incorporated therein, terms less stringent than provisions of this Chapter and Code analogous to such federal regulations.
- (4) Upon receipt of an application for permit for a hazardous waste management facility, the Director shall cause the permit to be processed in accordance with the applicable procedures of 40 CFR 124, Subpart A incorporated herein and in accordance with the provisions of this Code.

- (5) The Director may authorize qualified persons interested in a pending application to enter upon the proposed site and make such relevant surveys and tests as the Director authorizes, under such conditions as required by the Director and upon sufficient notice to the applicant. All results of surveys or tests will be provided to both the Department and the permit applicant and all costs of surveys or tests will be borne by the party or parties requesting them. The Director will further insure that the permit applicant will have an opportunity to make a satisfactory showing (as provided in 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.
- (6) No permit shall be issued for a commercial hazardous waste management facility unless a public hearing is held in accordance with the provisions of subparagraph (9) below. No permit for 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 45 day comment period, no permit shall be issued unless a public hearing is held in accordance with the provisions of subparagraph (9) below.
- (7) Prior to drafting the permit for any hazardous waste management facility, the Department may hold a preliminary hearing, for information purposes, in the area in which the facility is, or is to be located. The hearing may be held by giving no less than ten (10) days notice in the newspaper having the largest circulation in the county in which the facility is, or is proposed to

be located and the newspaper having the largest circulation in each adjoining county. The notice shall provide: (1) the time, date and location of the hearing; (2) the purpose of the hearing; and (3) the location(s) where the application and all supporting information is available for public review.

- (8) A 45 day notice of public hearing on the draft permit shall be given in the manner described in subparagraph (7) above. The notice shall provide:
  - (i) the time, date and location of the hearing;
  - (ii) the purpose of the hearing;
  - (iii) the name and address of the applicant and the location where the facility is, or is proposed to be located;
  - (iv) the tentative recommendation of the Department;
  - (v) the location(s) where copies of the application, the Department's recommendations and all supporting documentation can be reviewed by the public; and
  - (vi) procedures for submitting public comments into the hearing record.
- (9) The public hearing required under subparagraph (8) above shall be in the area where the facility is or is proposed to be located. A record of hearing shall be made and retained as part of the administrative record of each application for review by the Commission.
- (10) Any person who applies for a permit for 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.

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

### Section 13. Performance Standards.

- (a) In addition to the provisions of 40 CFR 264, 265, and 270 incorporated herein and the other provisions of this Chapter and Code, the following standards apply to hazardous waste management facilities:
  - (1) the capacity of hazardous waste storage facilities associated with a treatment facility shall not exceed a volume equal to ninety times the permitted daily processing rate of the treatment process; unless (1) the Department shall find that a lesser volume is required to provide adequate protection of public health and safety or (2) the applicant shall affirmatively demonstrate and the Department finds that such a restriction shall unduly inhibit the use of the most acceptable method or methods available for treatment;
  - (2) the requirements of subsection (a) (1) of this section shall not apply to wastewater treatment facilities which are designed and operated to meet state and federal water pollution control regulations;
  - (3) each facility shall be designed to operate in such a manner that 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 Manufacturers Association's "A System for Management of Hazardous Waste by Degree of Hazard Under Subtitle "C" of RCRA" dated July 30, 1979 or as revised or amended thereto after approval by the Commission.

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

- (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 or 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:

- (i) Bulk liquids, semi-solids and sludges unless, before disposal, such waste is treated or stabilized into cement-like material.
- (ii) Containers holding free liquids unless all freestanding liquid has been removed or treated or stabilized into cement-like material; or the container is very small, such as an ampule, or is a lab pack as defined in 264.316 or 265.316, as applicable and is disposed of in accordance with 264.316 or 265.316 as applicable.
- (iii) Municipal refuse which is not hazardous waste.
- (iv) Ignitable wastes in containers unless all free liquids therein have been removed or treated and stabilized into cement-like material.

#### Section 14. Health Monitoring and Hazard Identification

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

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

Such survey shall:

- (1) be conducted by a person approved by both the Department and the health agency;
- (2) investigate the prevalence of those health conditions deemed appropriate by the Department in consultation with the Arkansas Department of Health and other health agencies;

- (3) be completed among a statistically representative portion of the population located within an area defined as likely to be impacted on the basis of information describing the type of facility, nature of the operation, type of waste managed and proximity to major water sources or other likely vehicles for dissemination in the environment.
- (b) Whenever the Department finds that there exists a reasonable probability that emissions from any hazardous waste management facility are related to disease etiology, it shall have conducted pertinent epidemiologic investigations in order to ascertain early identification of unknown health hazards and to effect the appropriate corrective intervention. Such investigation shall be subject to the provisions of Section 11 (k) 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 a chart should indicate or list the percentage voting securities of each such person which is owned or controlled

by the applicant or by any other person. If control of any person is maintained other than basis of such control. As to each person specified in such chart or listing indicate the type of organization (e.g., corporation, trust, partnership) and the state or other jurisdiction or domicile.

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

(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 the owner 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 or judicial proceedings of any state or federal 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 ten (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 or shares of the voting securities which the acquiring person plans to acquire and the terms of the offer, request, invitation, agreement or acquisition; and
  - (3) all information required under subsection (a) of this Section concerning the acquiring person.

#### Section 16. Hazardous Waste Transportation

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

##### (a) REQUIREMENTS FOR THE TRANSPORTATION OF PCB'S:

In addition to the hazardous waste determination set forth in 262.11 a person who generates a solid waste must also determine if the waste constitutes "PCBs", "PCB items", "PCB transformers", or "PCB contaminated electrical equipment" as those terms are defined in 40 CFR 761.2. Such waste is a hazardous waste for purposes of transportation in the State of Arkansas and must comply with the following:

- (1) each generator or transporter of PCB wastes as determined in subsection (a) who has not otherwise obtained an EPA identification number pursuant to 262.12 must not transport or offer for transportation PCB wastes without having received a "PCB identification number" from ADPC&E;
  - (2) 40 CFR Part 262 Subparts A, B, C, D, and E except 262.12, and 262.41 as adopted by reference in Section 3, except that PCB generators are exempt from the waste minimization statement;
  - (3) 40 CFR Part 263 Subpart A, B, and C as adopted by reference in Section 3;
  - (4) 40 CFR Part 264 Subpart E only, except 264.75 as adopted by reference in Section 3;
  - (5) 40 CFR Part 265 Subpart E only, except 265.75 as adopted by reference in Section 3;
  - (6) all the provisions of subsections (b) and (c) of this Section 16.
- (b) TRANSPORTATION OF WASTE FROM GENERATORS OF OVER 100 KGS A MONTH:

In addition to the hazardous waste determination set forth in 40 CFR 262.11 a person who generates any hazardous waste which is part of a total quantity of hazardous waste greater than 100 kilograms during a calendar month shall comply with all state and federal manifesting and transportation requirements and the provisions of subsection (c) below as well as all provisions of 40 CFR 261.5 as adopted by reference in Section 3, except that a small quantity generator must notify EPA of hazardous waste activity in order to obtain an EPA identification number.

- (c) ADDITIONAL REQUIREMENTS FOR THE TRANSPORTATION OF HAZARDOUS WASTES IN ARKANSAS (INCLUDING PCB'S AND WASTES FROM GENERATORS OF OVER 100 KGS PER MONTH):

- (1) The following items shall be completed as State manifest reporting requirements: (the following instructions refer to items A-K on the Uniform Hazardous Waste Manifest):

- (i) ITEM B: If an EPA identification number is not required the PCB identification number assigned by ADPC&E.
  - (ii) ITEMS C & E: The Transportation Permit numbers issued by the Arkansas Transportation Commission and the ADPC&E.
  - (iii) ITEMS D & F: The phone number of the transporter.
  - (iv) ITEM H: The phone number of the designated facility.
  - (v) ITEM I: The EPA Waste Code or the letters "PCB" for PCB shipments.
  - (vi) ITEM J: The name, address and I.D. number of an alternate treatment, storage or disposal facility (if any).
  - (vii) ITEM K: Emergency response contact (individual's name and telephone number).
- (2) Each generator in Arkansas must:

- (i) provide the Department a final copy of each manifest within 10 days of the end of the month in which the generator received its final copy from the treatment, storage or disposal facility (T.S.D.F.).
- (ii) for each manifest that shows a weight difference of more than 10% between the initial and final weights, attach documentation which shows that the weight variance has been resolved between the generator and the T.S.D.F. This documentation will remain with the generator's copy of the manifest and should not be submitted to the Department with the manifest required in (c)(2)(i) of this subsection.

- (iii) provide a discrepancy report to the Department containing the information required by 40 CFR 265.72 for those shipments to an out-of-state T.S.D.F. involving significant discrepancies as defined by 40 CFR 265.72.
- (3) Each person in Arkansas who accepts wastes for the purpose of treating, storage or disposing must:
- (i) provide the Department a final copy of each manifest with 10 days of the end of the month in which the shipment was received.
  - (ii) for each manifest identified in (c)(3)(i) of this subsection that shows a weight difference of more than 10% between the initial and final weights attach documentation which shows that the weight variance has been resolved between the T.S.D.F. and the generator. This documentation will remain with the T.S.D.F.'s copy of the manifest and should not be submitted to the Department with the manifest copy required in (c)(3)(i) of this subsection.
- (4) In addition to the requirements for immediate action in the event of a discharge during transportation required by 40 CFR 263.30 as adopted by reference in Section 3, an air, rail, highway or water transporter who has discharged hazardous waste in the State of Arkansas shall also take the following actions:
- (i) give immediate notice to the Arkansas State Police and to the principal office or designated of the transporter.
  - (ii) submit a copy of the written report required by 49 CFR 171.16 and 263.30(c)(2) to ADPC&E simultaneously with its submission to the federal Department of Transportation.

- (5) All persons who transport hazardous waste in or through any part of the State of Arkansas shall first obtain permits for such activity from the Arkansas Transportation Commission and from ADPC&E. Such permits shall be applied for in the form and manner required by Section 12(c)(10)).
- (6) Any generator who ships any hazardous waste to any location in Arkansas for storage, treatment, or disposal must obtain a Manifest from ADPC&E and use only such Manifests as issued by ADPC&E for such shipments.
- (7) In addition to all of the requirements hereof, all transportation of hazardous wastes in Arkansas shall conform to the regulations of the Arkansas Transportation Commission.
- (8) Generators may not assign hazardous wastes to unpermitted transporters and T.S.D.F.'s may not accept hazardous wastes from unpermitted transporters without authorization from this Department.
- (9) A generator may not ship a hazardous waste to a T.S.D.F. unless the T.S.D.F. has a permit or has interim status or is approved to receive such a waste. A generator may not list a non-approved T.S.D.F. as the alternate T.S.D.F. when manifesting. If a RCRA facility, the alternate T.S.D.F. must have a permit or interim status to receive such waste.
- (10) A T.S.D.F. may not accept hazardous waste without a generator EPA or PCB number on the manifest unless prior authorization has been obtained from this Department.

#### Section 17. Effect of Federal Regulations

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

- (b) Where the Department issues variances pursuant to 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. Authority:

The regulations under this Chapter are promulgated pursuant to the Arkansas Resource Reclamation Act of 1979 (Act 1098 of 1979; Ark. Stat. Ann. §§ 82-4217 - 82-4224).

### Section 19. 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 20. State/EPA Memorandum 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: REGULATIONS PROMULGATED UNDER ACT 479 OF 1985

Section 21. Authority:

The regulations under this Chapter are promulgated pursuant to the Remedial Action Trust Fund Act of 1985 (Act 479 of 1985, as amended, Ark. Stat. Ann. § 82-4712 et. seq.).

Section 22. (Reserved)

Section 23. Fees on the Generation of Hazardous Wastes

(a) On or before April 1 of each year:

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

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

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

Section 24: (Reserved)

Section 25: (Reserved)

## CHAPTER FIVE: OTHER PROVISIONS

### Section 26. Penalty Policy and Administrative Procedure

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

### Section 27. 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 28. Effective Date

These regulations and any amendments or revision thereof is effective 20 days after filing the regulations or any amendment or revision thereof with the Secretary of State.

MINUTE ORDER NO. 87-21

PAGE 1 OF 1

Pursuant to public notice and hearing and after consideration of all comments received, the Commission on Pollution Control and Ecology hereby adopts, as revisions to the Arkansas Hazardous Waste Management Code, the attached revised Table of Contents, Sections 3, 5, 10, 11, 12, and 16, Chapter Four, and Section 23.

Promulgated this 25th day of September, 1987.

BY ORDER OF THE COMMISSION ON POLLUTION CONTROL AND ECOLOGY

BY: [Signature]  
Chairman

ATTEST:

Paul N. Meas  
Director

APPROVED:

Bill Clinton  
Governor

COMMISSIONERS

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CHAIRMAN

SUBMITTED BY: Mike Bates DATE PASSED: 9-25-87