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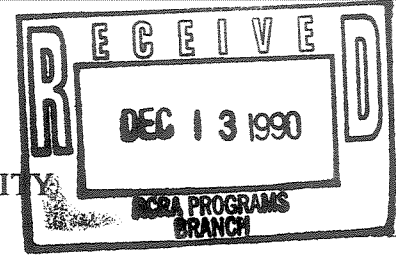


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STATEMENT OF LEGAL AUTHORITY

I hereby certify, pursuant to my authority as Attorney General and in accordance with Section 3006(b) of the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984 (42 USC 6901 et seq.), and 40 CFR 271 that in my opinion the laws of the State of Arkansas provide adequate authority to carry out the revised program set forth in the revised "Program Description" submitted by the Arkansas Department of Pollution Control and Ecology. The specific authorities provided are contained in statutes or regulations lawfully adopted at the time this Statement is signed and which are in effect now, as specified below. These authorities and this certification supplement the previously certified authorities described in my certifications of July 9, 1984, September 24, 1987, and February 24, 1989.

This statement addresses State implementation of revised Federal requirements under the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984, known as HSWA Clusters I and II, and non-HSWA Cluster IV.

References to "Ark. Code Ann." are to the Arkansas Code of 1987, Annotated, as amended in 1989. References to "AHWMC" are to the Arkansas Hazardous Waste Management Code, which was amended on November 17, 1989, to adopt all final rules promulgated by EPA through June 30, 1989, and which was effective on December 21, 1989. The Arkansas Underground Injection Control Code was promulgated on March 24, 1989, and effective on May 4, 1989.

**I. IDENTIFICATION AND LISTING**

A. State statutes and regulations contain lists of hazardous waste which encompass all wastes controlled under the following Federal regulations as indicated in the designated Revision Checklists:

- (3) TDI, DNT and TDA wastes, 40 CFR 261.32 and 261.33(f), as amended October 23, 1985 [50 FR 42936], Revision Checklist 18.
- (4) Spent solvents, 40 CFR 261.31, as amended December 31, 1985 [50 FR 53319] and January 21, 1986 [51 FR 2702], Revision Checklist 20.
- (5) EDB wastes, 40 CFR 261.32, as amended February 13, 1986 [51, FR 5330], Revision Checklist 21.

- (6) Four spent solvents, 40 CFR 261.31 and 261.33(f), as amended February 25, 1986 [51 FR 6541], Revision Checklist 22.
  - (7) Listing of spent pickle liquor from steel finishing operations, 40 CFR 261.32, as amended May 28, 1986 [51 FR 19320] and September 22, 1986 [51 FR 33612], Revision Checklist 26.
  - (8) Listing of commercial chemical products and Appendix VIII constituents, 40 CFR 261.33 and Appendix VIII, as amended August 6, 1986 [51 FR 28296], Revision Checklist 29; as amended July 10, 1987 [52 FR 26012], Revision Checklist 41; and as amended April 22, 1988 [53 FR 13382], Revision Checklist 46.
- 33001 wastes, 40 CFR 261.32, as amended on October 24, 1986 [51 FR 37725], Revision Checklist 33.

[Federal Authority: RCRA §3001(b).]

Citation of Regulations; Date of Enactment and Adoption

AHWMC § 3a

Remarks of the Attorney General

Arkansas controls a universe of hazardous waste equivalent to that covered by 40 CFR Part 261, as amended, including the hazardous components of radioactive mixed waste. The State also regulates the transportation to and disposal of polychlorinated biphenyls (PCBs) in treatment or disposal facilities or commercial storage facilities.

Arkansas statutes define hazardous waste as: "any waste or combination of wastes of a solid, liquid, contained gaseous, or semisolid form which, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may in the judgment of the department: 1) cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or 2) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise improperly managed. Such wastes include, but are not limited to, those which are radioactive, toxic, corrosive, flammable, irritants, or strong sensitizers or those which generate pressure through decomposition, heat, or other means." (A.C.A. § 9-7-203(6)). This definition is narrowed in the Hazardous Waste Management Code as "a hazardous waste as defined in 40 CFR 261.3; in addition to these wastes, polychlorinated biphenyls (PCBs), as defined in 40 CFR 761 (including PCBs, 'PCB items', 'PCB transformers', and 'PCB-contaminated electrical equipment') which are transported to treatment or disposal facilities or to commercial storage facilities, shall be regulated as hazardous waste under the provisions of Section 16 of the Arkansas Hazardous Waste Management Code" (AHWMC § 2a(5)).

Specific definitions and listings of hazardous wastes included in 40 CFR Part 261 are incorporated by reference in the Arkansas Hazardous Waste Management Code, and updated annually as the Code is revised.

The state's statutory definition of a hazardous waste does not require that a hazardous waste first be proved to be a "solid waste" as defined in 40 CFR 261.2. Arkansas thus controls a

hazardous waste universe which is broader in scope than that controlled under the federal RCRA.

B. State statutes and regulations define hazardous waste so as to control the generation, transportation, treatment, storage and disposal of hazardous waste produced by small quantity generators of between 100 and 1000 kilograms month as indicated in Revision Checklist 23 (which supersedes prior amendments by Revision Checklist 17 A) State statutes and regulations also require small quantity generators to certify good faith efforts to minimize waste generation and to select the best available and affordable treatment, storage or disposal alternatives, 40 CFR 262 as amended October 1, 1986 (51 FR 35190), Revision Checklist 32 (see Item IX below).

[Federal Authority: RCRA §3001(d); 40 CFR Parts 260-263 and 270 as amended March 24, 1986 (51 FR 10146), October 1, 1986 (51 FR 35190), and July 19, 1986 (53 FR 27162).]

Citation of Laws and Regulations; Date of Enactment and Adoption

AHWMC § 3a  
AHWMC § 12a  
AHWMC § 16b

*no statutes*

Remarks of the Attorney General

Sections 12a and 16 of the AHWMC require all generators in Arkansas, to include small quantity generators and conditionally-exempt generators, to comply with Federal requirements regarding the storage, shipment, and manifesting of hazardous wastes, and further requires that hazardous wastes may be shipped only to authorized treatment, storage, and disposal facilities within or outside the State for disposal. Arkansas does not recognize any quantity exclusion. The generator must certify upon signing each manifest that he or she is making a good faith effort to minimize the generation of hazardous wastes and select the best available and affordable treatment, storage, or disposal alternative. State provisions, lacking any quantity exclusion, are broader in scope than Federal requirements.

E. State statutes and regulations define hazardous waste so as to not exclude household waste other than those household wastes excluded in 40 CFR 261.4(b)(1), as indicated in Revision Checklist 17 C.

[Federal Authority: RCRA §3001; 40 CFR 261.4(b)(1) as amended November 13, 1984 (49 FR 44980) and July 15, 1985 (50 FR 28702).]

Citation of Laws and Regulations; Date of Enactment and Adoption

AHWMC § 3a(2)

Remarks of the Attorney General

The definition of hazardous waste as defined in the Arkansas Hazardous Waste Management Code is equivalent to that in 40 CFR Part 261.4, with the addition of polychlorinated biphenyls. Therefore, state provisions are broader in scope than Federal requirements.

*no statutes*

### III. MANAGEMENT OF DIOXIN WASTES

A. State statutes and regulations contain the following requirements regarding dioxin wastes as indicated in Revision Checklist 14:

(1) Dioxin wastes are listed and otherwise identified as hazardous wastes so as to encompass all such wastes controlled under 40 CFR 261.5(e), 261.7(b), 261.30(d), 261.31, and 261.33(f).

(2) Special management and permitting standards for facilities managing dioxin wastes and prohibitions applicable to permitted and interim status facilities, as provided in 40 CFR Parts 264, 265, and 270.

[Federal Authority: §§3001, 3004; 40 CFR 261, 264, 265 and 270 as amended January 14, 1985 (50 FR 1978).]

#### Citation of Laws and Regulations: Date of Enactment and Adoption

AHWMC § 3a(2), (5), (6), and (9)

AHWMC § 13a(5)

#### Remarks of the Attorney General

State requirements are equivalent to the Federal program.

*no change*

### VI. PAINT FILTER TEST

A. State statutes and regulations require the use of a paint filter test to determine the absence or presence of free liquids in either a containerized or bulk waste as indicated in Revision Checklists 16, 17 F and 25.

[Federal Authority: RCRA §§3004, 3005; 40 CFR Parts 260, 264, 265, and 270 as amended April 30, 1985 (50 FR 18370), July 15, 1985 (50 FR 28702) and May 28, 1986 (51 FR 19176).]

#### Citation of Laws and Regulations: Date of Enactment and Adoption

AHWMC § 3a(1), (5), (6) and (9)

AHWMC § 13a(5)

#### Remarks of the Attorney General

AHWMC § 13a(5) does not allow free liquids to be placed in landfills unless before disposal they have been treated or stabilized into cement-like material. Thus, however their presence or absence is determined, either by paint filter test or otherwise, free liquids are not allowed in landfills in Arkansas. Thus, State requirements are more stringent than the Federal program.

*no change*

VII. NATIONAL UNIFORM MANIFEST SYSTEM AND RECORDKEEPING

A. State statutes and regulations require generators to use the national uniform manifest as indicated in Revision Checklists 5 and 32.

[Federal Authority: RCRA §§2002, 3002, 3003; 40 CFR Parts 260 and 262 as amended March 20, 1980 (49 FR 10490) and October 1, 1986 (51 FR 35190).]

Citation of Laws and Regulations; Date of Enactment and Adoption

AHWMC § 3a (3)  
AHWMC § 16 and § 16c

Remarks of the Attorney General

Arkansas requires that not only generators of more than 100 kg/month, but also small quantity and conditionally exempt generators to manifest all hazardous wastes shipped off-site. Therefore, State requirements are broader in scope than is the Federal program.

*Checked*

B. State statutes and regulations require that generators, of between 100 and 1000 kg/mo of hazardous waste, file an exception report in those instances where the generator does not receive confirmation of delivery of his hazardous waste to the designated facility as indicated in Revision Checklist 42.

[Federal Authority: RCRA §§3001(d) and 3002(a)(5); 40 CFR Parts 262.42 and 262.44 as amended September 23, 1987 (52 FR 35894).]

Citation of Laws and Regulations; Date of Enactment and Adoption

AHWMC § 3a(3)  
AHWMC § 16c(2)

Remarks of the Attorney General

40 CFR Part 262.42 and 262.44 are incorporated by reference. The State has not adopted the exceptions to recordkeeping and reporting requirements for 100-1000 kg/month generators as found in 40 CFR 262.44. Therefore generators of 100-1000 kg/month must comply with the same reporting requirements as required of generators of over 1000 kg/month. Thus, State requirements are broader in scope than Federal requirements.

C. State statutes and regulations require that the following be recorded, as it becomes available, and maintained in the operating record, until facility closure, as indicated in Revision Checklist 45: monitoring, testing or analytical data, corrective action where required by Subpart F and §§264.226, 264.253, 264.254, 264.276, 264.278, 264.280, 264.303, 264.309, 264.347, and 264.602.

[Federal Authority: RCRA §§3004 and 3005; 40 CFR 264.73(b) as amended December 10, 1987 (52 FR 46946).]

Citation of Laws and Regulations; Date of Enactment and Adoption

AHWMC §§ 3a(1), (5), and (9)  
Arkansas Underground Injection Code, § 3(a)

Remarks of the Attorney General

State requirements are equivalent to the Federal program.

**VIII. ANNUAL REPORT**

A. State statutes and regulations contain the following reporting requirements as indicated in Revision Checklists 1 and 30.

(1) The biennial report contains the information indicated in 40 CFR 262.41(a), 264.75 and 265.75. ✓

(2) Facilities must submit groundwater monitoring data annually to the State Director as indicated in 40 CFR 265.94. ✓

[Federal Authority: RCRA §§3002, 3004; 40 CFR 262, 264 and 265 as amended January 28, 1983 (48 FR 3977) and August 8, 1986 (51 FR 28566).]

Citation of Laws and Regulations; Date of Enactment and Adoption

AHWMC § 16d (1)  
AHWMC §§ 3a(5), (6)

Remarks of the Attorney General

Section 16d of the AHWMC sets forth annual hazardous waste reporting requirements analogous to those at 40 CFR Parts 262.41(a), 264.75 and 265.75. Part 265.94 is incorporated by reference at Section 3a(6) and has previously been authorized as part of the State's base program. The State uses the format of the Federal biennial report for its Annual Report. As the ADPC&E requires this report to be submitted by all generators (including small quantity and conditionally exempt) annually, State requirements are more stringent than the Federal program.

**IX. WASTE MINIMIZATION**

A. State statutes and regulations contain the following requirements regarding waste minimization as indicated in Revision Checklists 17 D, 30 and 32 (see Item I B above).

(1) Generators must submit report and manifest certifications regarding efforts taken to minimize the amounts and toxicity of wastes.

[Federal Authority: RCRA §3002(a)(6), (b); 40 CFR 262.41, 264.75 and 265.75 as amended July 15, 1985 (50 FR 28702), August 8, 1986 (51 FR 28556) and October 1, 1986 (51 FR 35190).]

Citation of Laws and Regulations; Date of Enactment and Adoption

AHWMC §§ 3a(3) (5), (6) and (9)  
AHWMC §§ 16b, c, and d  
AHWMC §§ 12a(7) and (8)

*no show*

Remarks of the Attorney General

Anyone who generates a hazardous waste in the State of Arkansas is required to submit an annual report under provisions of AHWMC § 16d, containing a description of the efforts undertaken in the preceding year regarding waste minimization, as well as a description of any change in volume or toxicity of wastes generated as a result of this program. Each individual manifest requires the facility manager to certify that he has established a waste minimization program and is taking necessary efforts to reduce the volume and/or toxicity of the waste generated. State provisions here are more stringent in that annual rather than biennial reporting is required.

✓

(2) RCRA permits for the treatment, storage, or disposal of hazardous waste on the premises where the waste was generated must contain a certification by the permittee regarding efforts taken to minimize the amount and toxicity of the generated wastes.

?

[Federal Authority: RCRA §3005(h); 40 CFR 264.70, 264.73 and 270.30(j)(2) as amended July 15, 1985 (50 FR 28702).]

Citation of Laws and Regulations; Date of Enactment and Adoption

Ark. Code Ann. §§ 8-7-218(b) and (c)  
AHWMC §§ 3a(5) and (9)

Remarks of the Attorney General

State requirements are equivalent to the Federal program.

X. LIQUIDS IN LANDFILLS

A. State statutes and regulations contain the following requirements regarding liquids in landfills as indicated in Revision Checklists 17 F and 25.

(1) Effective May 8, 1985, there is a ban on the placement of bulk or non-containerized liquid hazardous waste or hazardous waste containing free liquids in any landfill pursuant to 40 CFR 264.314 and 265.314 as amended July 15, 1985 and May 28, 1986.

(2) Effective November 8, 1985, there is a ban on the placement of non-hazardous liquids in landfills unless the owner or operator satisfies the criteria set forth in 40 CFR 264.314(e), 265.314(f), as amended July 15, 1985 and May 28, 1986.

(3) For bulk or non-containerized liquid wastes or wastes containing free liquids they may be placed in a landfill prior to May 8, 1985, only if the requirements of 40 CFR 264.314(a) and 265.314(a) are met.

[Federal Authority: §3004(c); 40 CFR 264.314, 265.314 and 270.21(h) as amended July 15, 1985 (50 FR 28702) and May 28, 1986 (51 FR 19176).]

Citation of Laws and Regulations; Date of Enactment and Adoption

Ark. Code Ann. §§ 8-7-209(a)(1), and (5), and (b).

Ark. Code Ann. § 8-7-218

AHWMC § 13a(5)

AHWMC §§ 3a(5), (6), and (9)

Remarks of the Attorney General

Authority to regulate hazardous wastes under A.C.A. §§ 8-7-209 and 8-7-308 includes to authority to ban the disposal within the State of such wastes. A.C.A. § 8-7-218 prohibits the permitting of a land disposal (or any other) TSD unless the facility is in compliance with applicable State and Federal statutes and regulations pursuant to RCRA 3005. Pursuant to §§ 8-7-209(a)(5) and 8-7-308(4), AHWMC § 13a(5) prohibits the disposal in Subtitle C landfills of bulk liquids, semi-solids, or sludges, unless this material has been treated or stabilized into a cement-like material. AHWMC § 13a(5)(a) specifically prohibits such disposal of any bulk or free liquids, not only liquid hazardous wastes. Provisions at AHWMC § 13a(5) are equivalent to Federal requirements at 40 CFR 264.314 and 265.314, however Arkansas does not allow the exemptions at 264.314(e) and 265.314(e). Therefore State provisions are more stringent than the Federal requirements.

**XI. GROUND-WATER MONITORING**

A. State statutes and regulations provide that the §3004 groundwater monitoring requirements applicable to surface impoundments, waste piles, land treatment units and landfills shall apply whether or not such units are located above the seasonal high water table, have two liners and a leachate collection system or have liners that are periodically inspected, as indicated in Revision Checklist 17 I.

[Federal Authority: RCRA §3004(p); 40 CFR 264.222, 264.252, 264.253, and 264.302 as amended July 15, 1985 (50 FR 28702).]

Citation of Laws and Regulations; Date of Enactment and Adoption

AHWMC § 3a(5)

Remarks of the Attorney General

State requirements are equivalent to the Federal requirements.

B. State statutes and regulations may allow variances from the ground-water monitoring requirements as provided in §3004(p). However, those variances must be restricted as provided in RCRA §3004(p) as indicated in Revision Checklist 17 I.

[Federal Authority: RCRA §3004(p); 40 CFR 264.90(b) as amended July 15, 1985 (50 FR 28702).]

Citation of Laws and Regulations; Date of Enactment and Adoption

Ark. Code Ann. § 8-7-211  
Ark. Code Ann. § 8-7-218(b)(2)  
AHWMC § 3a(5)  
AHWMC § 12c(3)  
AHWMC § 17a

Remarks of the Attorney General

Ark. Code Ann. § 8-7-211 allows for variances only to the extent that such are allowable under RCRA and the regulations promulgated thereunder. Thus, variances from groundwater monitoring requirements are restricted by RCRA 3004(p) and 40 CFR 264.90(b), which is adopted by reference at AHWMC § 3a(5). Therefore, State requirements are equivalent to the Federal program.

*restricted to one-year used*

C. State statutes and regulations provide that with regard to ground-water monitoring, all land based hazardous waste treatment, storage, and disposal facilities analyze for a specified core list (Part 264, Appendix IX) of chemicals plus those chemicals specified by the Regional Administrator on a site-specific basis as indicated in Revision Checklist 40.

[Federal Authority: RCRA §§1006, 2002(a), 3001, 3004, and 3005; 40 CFR Parts 264.98, 264.99, Appendix IX of 264, and 270.14 as amended July 9, 1987 (52 FR 25942).]

Citation of Laws and Regulations; Date of Enactment and Adoption

AHWMC §§ 3a(5) and (9)

Remarks of the Attorney General

Federal requirements are incorporated by reference; therefore, the State requirements are equivalent to the Federal program.

**XII. BURNING AND BLENDING OF HAZARDOUS WASTES**

A. State statutes and regulations provide the following requirements:

(1) The burning of fuel containing hazardous waste in a cement kiln is prohibited as specified in 40 CFR 266.31 and Revision Checklist 17 J.

[Federal Authority: RCRA §3004(q); 40 CFR 266.31 as amended July 15, 1985 (50 FR 28702).]

Citation of Laws and Regulations; Date of Enactment and Adoption

AHWMC § 3a(7)

Remarks of the Attorney General

Federal requirements at 40 CFR 266.31 are incorporated by reference; therefore, State requirements are equivalent to the Federal Program.

(2) Fuels containing hazardous waste and all persons who produce, distribute and market fuel containing hazardous wastes must be regulated as indicated in Revision Checklists 17 J, 17 K, and 19.

[Federal Authority: RCRA §§3004(q)-(s); 40 CFR 261.31; 266.34 as amended July 15, 1985 (50 FR 28702); November 29, 1985, (50 FR 49164); and November 19, 1986 (51 FR 41900).]

Citation of Laws and Regulations; Date of Enactment and Adoption

AHWMC §§ 3a(2) and (7)

Remarks of the Attorney General

Federal requirements are incorporated by reference; therefore State requirements are equivalent to the Federal Program.

**XIII. CORRECTIVE ACTION**

A. State statutes and regulations contain the following corrective action requirements as indicated in Revision Checklist 17 L:

(1) Corrective action is required for releases of hazardous waste or constituents from any solid waste management unit at a facility seeking a permit, regardless of when the waste was placed in the unit, in all permits issued after November 8, 1984.

[Federal Authority: RCRA §3004(u); 40 CFR 264.90; 264.101; 270.60 as amended July 15, 1985 (50 FR 28702).]

Citation of Laws and Regulations; Date of Enactment and Adoption

Ark. Code Ann. § 8-7-218(b)(2)  
Ark. Code Ann. § 8-7-218(c)  
Ark. Code Ann. § 8-7-508(a)(1)  
Ark. Code Ann. §§ 8-7-209(a)(6) and (8)  
AHWMC §§ 3a(5) and (9)

Remarks of the Attorney General

The State can compel a permit applicant to perform corrective action for releases of hazardous substances, either through a condition of the permit (Ark. Code Ann. § 8-7-209(a)(6) or Ark. Code Ann. § 8-7-508(a)(1)), through a separate enforcement action (Ark. Code Ann. §§ 8-7-209(a)(8) or 8-7-508(a)(1)) or through a combination of permit conditions and an enforcement action.

Ark. Code Ann. § 8-7-218(b)(2) requires that regulations that are promulgated must be no less stringent than equivalent EPA regulations. § 8-7-218(c) prohibits the issue of a permit except under the terms of regulations which conform to the provisions of Section 3005 of RCRA,

Subsection 3005(c) requires compliance with Section 3004, cited as federal authority for this requirement. In addition, the CFR Sections are incorporated by reference in the AHWMC. Thus, State provisions are equivalent to the Federal program.

(2) Corrective action is required beyond a facility's boundary, in accordance with RCRA §3004(v). (States now may impose these requirements through a permit or a corrective action order. Once EPA promulgates the regulations required by RCRA §3004(v), States will need authority to impose corrective action in a permit following the §3004(v) regulations.)

[Federal Authority: RCRA §3004(v)(1).]

Citation of Laws and Regulations; Date of Enactment and Adoption

Ark. Code Ann. § 8-7-218(b)(2)  
Ark. Code Ann. § 8-7-218(c)  
Ark. Code Ann. § 8-7-205(4)  
Ark. Code Ann. §§ 8-7-209(a)(6) and (8)  
Ark. Code Ann. § 8-7-508(a)(1)  
AHWMC § 3a(5)

Remarks of the Attorney General

See the remarks immediately above for the State's authority to compel corrective action through a permit or a corrective action order in accordance with RCRA § 3004(v).

Ark. Code Ann. § 8-7-508(a)(1) allows the State to issue orders to "require that such remedial actions be taken as are necessary to investigate, control, prevent, abate, treat, or contain any releases or threatened releases of hazardous substances from the site." Such releases or threatened releases may migrate beyond a facility's boundary. In addition, permit conditions or enforcement actions may be used to correct unlawful actions specified in Ark. Code Ann. § 8-7-205(4), which makes illegal the storage, collection, transport-ation, treatment, or disposal of hazardous waste "in such a manner or place as to create or as is likely to be created a public nuisance or a public health hazard or to cause, or is likely to cause, water or air pollution..." No distinction is made between the State's ability to order corrective action on-site and its ability to do so off-site. State corrective action authority covers hazardous substances, rather than only hazardous wastes and hazardous constituents as prescribed by federal law. Thus, state provisions are broader in scope than the Federal program.

(3) Corrective action is required beyond a facility's boundary in accordance with §3004(v) for all landfills, surface impoundments and waste pile units (including any new units, replacements of existing units or lateral expansions of existing units) which receive hazardous waste after July 26, 1982.

[Federal Authority: RCRA §3004(v)(2).]

Citation of Laws and Regulations; Date of Enactment and Adoption

Ark. Code Ann. § 8-7-218(b)(2)  
Ark. Code Ann. § 8-7-218(c)  
Ark. Code Ann. § 8-7-508(a)(1)  
Ark. Code Ann. §§ 8-7-209(a) ; and (8)

Remarks of the Attorney General

See the remarks immediately above.

(4) There is evidence of financial responsibility for corrective action on- and off-site.

[Federal Authority: RCRA §§3004(a)(6); (u); 40 CFR 264.90; 264.101 as amended July 15, 1985 (50 FR 28702).]

Citation of Laws and Regulations; Date of Enactment and Adoption

Ark. Code Ann. § 8-7-209(a)(6)

Ark. Code Ann. §§ 8-7-218(b) and (c)

Ark. Code Ann. § 8-7-219

Ark. Code Ann. § 8-7-502

Ark. Code Ann. § 8-7-503(12)

Ark. Code Ann. § 8-7-506

AHWMC § 3a(5)

AHWMC § 12b(4)

*? hearing?*

Remarks of the Attorney General

State law does not distinguish between corrective action on-site and corrective action off-site. Financial responsibility is required for corrective action wherever it is needed. State provisions are equivalent to the Federal program.

B. State statutes and regulations provide for additional information and engineering feasibility plan requirements regarding groundwater contamination detected at the time of Part B permit application as indicated in Checklist 38.

[Federal Authority: RCRA §§3004, 3005; 40 CFR 270.14 as amended June 22, 1987 (52 FR 23447) and September 9, 1987 (52 FR 33936).]

Citation of Laws and Regulations; Date of Enactment and Adoption

AHWMC § 3a(9)

Remarks of the Attorney General

Federal requirements are incorporated by reference, therefore, State provisions are equivalent to the Federal program.

C. State statutes and regulations require owners and operators of facilities seeking permits to provide descriptive information on the solid waste management units themselves and all available information pertaining to any releases from the units as indicated in Revision Checklist 44 A.

[Federal Authority: RCRA §3004(u); 40 CFR 270.14 as amended December 1, 1987 (52 FR 45788).]

Citation of Laws and Regulations; Date of Enactment and Adoption

AHWMC § 3a(9)

Remarks of the Attorney General

Federal requirements are incorporated by reference, therefore, State provisions are equivalent to the Federal program.

D. State statutes and regulations require that owners and operators of hazardous waste treatment, storage and disposal facilities (including permit-by-rule facilities subject to 264.101) to institute corrective action beyond the facility boundary to protect human health and the environment, unless the owner/operator is denied access to adjacent lands despite the owner/operator's best efforts, as indicated in Revision Checklist 44 B.

[Federal Authority: RCRA §3004(v); 40 CFR 264.100(e) and 264.101(c), as amended December 1, 1987 (52 FR 45788).]

Citation of Laws and Regulations; Date of Enactment and Adoption

Ark. Code Ann. § 8-7-218(b)(2)  
Ark. Code Ann. § 8-7-218(c)  
Ark. Code Ann. § 8-7-209(a)(8)  
AHWMC § 3a(5)

Remarks of the Attorney General

See remarks under XIII A(2) above for the State's authority to require corrective action off-site. 40 CFR 244.100(e) and 264.101(c) are incorporated by reference in the AHWMC. Thus, State provisions are equivalent to the Federal program.

E. State statutes and regulations contain the following corrective action requirements for injection wells as indicated in Revision Checklist 44 C.

(1) Hazardous waste injection wells now operating under RCRA interim status may retain interim status after issuance of a UIC permit. Until a RCRA permit or a RCRA "rider" to a UIC permit, which addresses Section 3004(u) corrective action, is issued, the well must comply with applicable interim status requirements imposed by §265.430, Parts 144.146 and 147, and any UIC permit requirements.

[Federal Authority: RCRA §3004(u); 40 CFR 144.1(h) as amended December 1, 1987 (52 FR 45788).]

Citation of Laws and Regulations; Date of Enactment and Adoption

AHWMC §§ 3a(5), (6), and (9)  
Arkansas Underground Injection Control Code § 3(A)

Remarks of the Attorney General

State provisions are equivalent to the Federal program.

(2) As part of the UIC permit process, available information regarding operating history and condition of the injection well must be submitted as well as any available information on known releases from the well or injection zone.

[Federal Authority: RCRA §3004(u); 40 CFR 144.31(g) as amended December 1, 1987 (52 ER 45788).]

Citation of Laws and Regulations; Date of Enactment and Adoption

AHWMC § 3a(9)  
Arkansas Underground Injection Control Code § 3(A)

Remarks of the Attorney General

State provisions are equivalent to the Federal program.

(3) UIC facility owners/operators must submit certain information related to corrective action with their UIC applications.

[Federal Authority: RCRA §3004(u); 40 CFR 270.60(b)(3) as amended December 1, 1987 (52 ER 45788).]

Citation of Laws and Regulations; Date of Enactment and Adoption

AHWMC § 3a(9)  
Arkansas Underground Injection Control Code § 3(A)

Remarks of the Attorney General

State provisions are equivalent to the Federal program.

F. State statutes and regulations require that miscellaneous units comply with regulations (Subpart F) regarding releases from solid waste management units when necessary to comply with §264.601 through 264.603 as indicated in Revision Checklist 45.

[Federal Authority: RCRA §3004(u); 40 CFR 264.90(d) as amended December 10, 1987 (52 ER 46946).]

Citation of Laws and Regulations; Date of Enactment and Adoption

Ark. Code Ann. § 8-7-218  
AHWMC §§ 3a(1), (5), and (9)

Remarks of the Attorney General

Federal requirements are incorporated by reference; therefore, State provisions are equivalent to the Federal program.

#### XIV. HAZARDOUS WASTE EXPORTS

A. State statutes and regulations require generators and transporters of hazardous waste destined for export outside the United States to comply with standards equivalent to those as indicated in Revision Checklists 17 R and 31.

[Federal Authority: RCRA §3017; 40 CFR 262.50 as amended July 15, 1985 (50 FR 28702), and August 8, 1986 (51 FR 28664).]

##### Citation of Laws and Regulations; Date of Enactment and Adoption

AHWMC §§ 3a(2), (3) and (4)  
AHWMC § 16

##### Remarks of the Attorney General

Federal requirements are incorporated by reference in 19 C.F.R. § 3. In addition, AHWMC § 16 provides additional requirements for the transportation of hazardous waste in Arkansas. State provisions cover the transportation of PCB's, so the State requirements are broader in scope in that respect. The State program is more stringent than the Federal in that reporting is required annually rather than biennially and in that the State did not adopt 40 CFR 262.20(e), which provides an exemption from manifesting for 100-1000 kg/month generators with a contractual arrangement with a recycling TSD. Section 16 applies to "transportation in Arkansas", regardless of the shipment's origin or destination; thus it is applicable to hazardous waste exports. Arkansas has not adopted the Farmer Exemption at 40 CFR 262.70 at this time, and is therefore more stringent in this instance.

#### XV. STANDARDS FOR FACILITIES

A. State statutes and regulations prohibit the land disposal of hazardous waste prohibited under 40 CFR Parts 264 and 265 as indicated in Revision Checklist 17 E. Land disposal includes, but is not limited to, placement in landfills, surface impoundments, waste piles, deep injection wells, land treatment facilities, salt dome and bed formations and underground mines or caves. Deep injection well means a well used for the underground injection of hazardous wastes other than a well to which §7010(a) of RCRA applies.

[Federal Authority: RCRA §§3004(b)-(q); 40 CFR 264.18, 265.18 as amended July 15, 1985 (50 FR 28702).]

##### Citation of Laws and Regulations; Date of Enactment and Adoption

Ark. Code Ann. §§ 8-7-209(a)(1), (3), (5), (6), (11), and (b).  
Ark. Code Ann. § 8-7-218  
AHWMC §§ 3a(5) and (6)  
AHWMC § 13a(5)

Remarks of the Attorney General

The Federal requirements are incorporated by reference. In addition, AHWMC § 13a(5) prohibits the landfilling of liquids, including liquid hazardous wastes. State requirements are broader in scope than the Federal program.

B. Effective on November 8, 1984 State statutes and regulations prohibit the placement of any non-containerized or bulk liquid hazardous waste in any salt dome or salt bed formation any underground mine or cave except as provided in §264.18(c) and §265.18(c) as indicated in Revision Checklist 17 E. Furthermore, State statutes and regulations prohibit the placement of any other hazardous waste in such formations until a permit is issued. ✓

[Federal Authority: RCRA §3004(b); 40 CFR 264.18 and 265.18 as amended July 15, 1985 (50 FR 28702); 40 CFR 264.600 et seq., December 10, 1987 (52 FR 46946).]

Citation of Laws and Regulations; Date of Enactment and Adoption

AHWMC §§ 3a(5) and (6)

Remarks of the Attorney General

Federal requirements are incorporated by reference; therefore, State provisions are equivalent to the Federal program.

C. State statutes and regulations prohibit the use of waste oil or other materials contaminated with hazardous wastes (except ignitable wastes) as a dust suppressant as indicated in Revision Checklist 17 G.

*no help*

[Federal Authority: RCRA §3004(1); 40 CFR 266.23 as amended July 15, 1985 (50 FR 28702).]

Citation of Laws and Regulations; Date of Enactment and Adoption

AHWMC § 3a(7)

Remarks of the Attorney General

Federal requirements are incorporated by reference; therefore State provisions are equivalent to the Federal program.

D. State statutes and regulations allow direct action by third parties against the insurer or guarantor of an owner/operator's financial responsibilities if an owner/operator is in bankruptcy reorganization or arrangement or where (with reasonable diligence) jurisdiction in any State or Federal Court cannot be obtained over an owner/operator likely to be solvent at time of judgment.

*assess now*

[Federal Authority: RCRA §3004(t).]

Citation of Laws and Regulations; Date of Enactment and Adoption

Ark. Code Ann. § 8-7-218(b)(2)  
Ark. Code Ann. § 8-7-218(c)

Remarks of the Attorney General

State provisions are equivalent to the Federal program.

G. State statutes and regulations require compliance with closure/ post-closure and financial responsibility requirements applicable to owners and operators of hazardous waste treatment, storage and disposal facilities, as indicated in Revision Checklists 24, 36, and 45. ✓

[Federal Authority: RCRA §§3004 and 3005; 40 CFR 260, 264, 265, and 270 as amended May 2, 1986 (51 FR 16422), March 19, 1987 (52 FR 8704) and December 10, 1987 (52 FR 46946).]

Citation of Laws and Regulations; Date of Enactment and Adoption

Ark. Code Ann. § 8-7-218  
Ark. Code Ann. § 8-7-219(2)  
AHWMC §§ 3a(5), (6), and (9)  
AHWMC § 12b(4)

Remarks of the Attorney General

State provisions are equivalent to the Federal program.

H. State statutes and regulations allow qualified companies that treat, store or dispose of hazardous waste to use a corporate guarantee to satisfy liability assurance requirements as indicated in Revision Checklists 27 and 43. ✓

[Federal Authority: RCRA §§2002, 3004, and 3005; 40 CFR 264.147, 264.151, and 265.147 as amended July 11, 1986 (51 FR 25350) and November 18, 1987 (52 FR 44314).]

Citation of Laws and Regulations; Date of Enactment and Adoption

AHWMC §§ 3a(5) and (6)

Remarks of the Attorney General

Federal requirements are incorporated by reference; therefore, State provisions are equivalent to the Federal program.

I. State statutes and regulations require companies that generate, treat or store hazardous waste in tanks to comply with tank standards equivalent to those indicated in Revision Checklists 28.

[Federal Authority: RCRA §§1006, 2002, 3001 - 3007, 3010, 3014, 3017 - 3019 and 7004; 40 CFR 260, 261, 262, 264, 265, and 270 as amended July 14, 1986 (51 FR 25422), August 15, 1986 (51 FR 29430) and September 2, 1988 (53 FR 34079).]

Citation of Laws and Regulations; Date of Enactment and Adoption

AHWMC §§ 3a(1), (2), (3), (5), (6), and (9)

Remarks of the Attorney General

Federal requirements are incorporated by reference; therefore, State provisions are equivalent to the Federal program.

J. State statutes and regulations require environmental performance standards; monitoring, testing, analytical data, inspection, response and reporting procedures; and post-closure care for miscellaneous units as indicated in Revision Checklist 45.

[Federal Authority: RCRA §§3004 and 3005; 40 CFR 264.600, 264.601, 264.602, and 264.603 as amended December 10, 1987 (52 FR 46946).]

Citation of Laws and Regulations; Date of Enactment and Adoption

AHWMC §§ 3a (1), (5), and (9)

Remarks of the Attorney General

Federal requirements are incorporated by reference; therefore State provisions are equivalent to the Federal program.

**XVI. REQUIREMENTS FOR PERMITS**

A. State statutes and regulations allow a facility (1) to construct an approved TSCA facility for burning PCBs without first obtaining a RCRA permit and (2) to subsequently apply for a RCRA permit in accordance with Revision Checklist 17 M.

[Federal Authority: RCRA §3005(a); 40 CFR 270.10(f)(3) as amended July 15, 1985 (50 FR 28702).]

Citation of Laws and Regulations; Date of Enactment and Adoption

Ark. Code Ann. § 8-7-211  
AHWMC § 3a(9)

Remarks of the Attorney General

Federal requirements are incorporated by reference; therefore State provisions are equivalent to the Federal program.

B. State statutes and regulations require review of land disposal permits every five years and modification of such permits as necessary to assure compliance with the requirements in Parts 124, 260 through 266, and 270, as indicated in Revision Checklist 17 N.

[Federal Authority: RCRA §3005(c)(3); 40 CFR 270.41(a)(6), 270.50(d) as amended July 15, 1985 (50 FR 28702).]

Citation of Laws and Regulations; Date of Enactment and Adoption

Ark. Code Ann. § 8-7-220  
AHWMC § 3a(9)

Remarks of the Attorney General

Federal requirements are incorporated by reference; therefore State provisions are equivalent to the Federal program.

C. State statutes and regulations require permits to contain any conditions necessary to protect human health and the environment in addition to any conditions required by regulations as indicated in Revision Checklist 17 O.

[Federal Authority: RCRA §3005(c)(3); 40 CFR 270.32(b) as amended July 15, 1985 (50 FR 28702).]

Citation of Laws and Regulations; Date of Enactment and Adoption

AHWMC § 3a(9)  
AHWMC § 14

Remarks of the Attorney General

Federal requirements at 40 CFR 270.41 and 270.50 are incorporated by reference. As an additional condition of the permit, ADPC&E may require the facility to conduct a local health survey to establish background health data prior to issuance of the operating permit. State provisions are therefore more stringent than the Federal program.

D. State statutes and regulations require that:

(1) For land disposal facilities granted interim status prior to 11/8/84, interim status terminates 11/8/85; unless a Part B application and certification of compliance with applicable groundwater monitoring and financial responsibility requirements are submitted by 11/8/85, as indicated in Revision Checklist 17 P.

[Federal Authority: RCRA §3005(e); 40 CFR 270.73(c) as amended July 15, 1985 (50 FR 28702).]

Citation of Laws and Regulations; Date of Enactment and Adoption

Ark. Code Ann. § 8-7-216(c)  
AHWMC § 3a(9)

AHWMC §§ 12a(1-8)

Remarks of the Attorney General

The State's cutoff date for qualifying as an existing facility for obtaining interim status is earlier than the Federal provision. This issue was resolved for the State's 1985 final authorization. The components of interim status relating to this Revision Application, as supported by AHWMC 12a(1-8), are equivalent to the Federal requirements.

(2) For land disposal facilities in existence on the effective date of statutory or regulatory changes under HSWA that render the facility subject to the requirement to have a permit and which is granted interim status, interim status terminates 12 months after the date the facility first becomes subject to such permit requirement unless a Part B application and certification of compliance with applicable groundwater monitoring and financial responsibility requirements are submitted by that date as indicated in Revision Checklist 17 P.

[Federal Authority: RCRA §3005(e); 40 CFR 270.73(d) as amended July 15, 1985 (50 FR 28702).]

Citation of Laws and Regulations; Date of Enactment and Adoption

Ark. Code Ann. §§ 8-7-216(c) and (f)  
AHWMC § 3a(9)

Remarks of the Attorney General

Federal requirements are incorporated by reference; therefore, State provisions are equivalent to the Federal program.

(3) Interim status terminates for incinerator facilities by 11/8/89 unless the owner/operator submits a Part B application by 11/8/86 as indicated in Revision Checklist 17 P.

[Federal Authority: RCRA §3005(c)(2)(C); 40 CFR 270.73(e) as amended July 15, 1985 (50 FR 28702).]

Citation of Laws and Regulations; Date of Enactment and Adoption

Ark. Code Ann. § 8-7-216(d)  
AHWMC § 3a(9)

Remarks of the Attorney General

Federal requirements have been incorporated by reference; therefore State provisions are equivalent to the Federal program. Legislation has been passed and approved to change a typographical error at Ark. Code Ann. 8-7-216(d), so that the correct date, November 8, 1986, rather than November 8, 1988 appears as the final permit application date for interim operating authority for incineration facilities.

(4) Interim status terminates for any facility other than a land disposal or an incineration facility by 11/8/92 unless the owner/operator submits a Part B application by 11/8/88 as indicated in Revision Checklist 17 P.

[Federal Authority: RCRA §3005(c)(2)(C); 40 CFR 270.73(f) as amended July 15, 1985 (50 FR 28702).]

Citation of Laws and Regulations; Date of Enactment and Adoption

Ark. Code Ann. § 8-7-216(e)  
AHWMC § 3a(9)

Remarks of the Attorney General

Federal requirements are incorporated by reference; therefore, State provisions are equivalent to the Federal program.

E. State statutes and regulations allow facilities to qualify for interim status if they (1) are in existence on the effective date of statutory or regulatory changes that render the facility subject to the requirement to have a permit and (2) comply with §270.70(a) as indicated in Revision Checklist 17 P.

[Federal Authority: RCRA §3005(e); 40 CFR 270.70(a) as amended July 15, 1985 (50 FR 28702).]

Citation of Laws and Regulations; Date of Enactment and Adoption

Ark. Code Ann. § 8-7-216(b)  
AHWMC § 3a(9)  
AHWMC §§ 12a(7) and (8)

Remarks of the Attorney General

Federal requirements are incorporated by reference; therefore State provisions are equivalent to the Federal program.

F. State statutes and regulations provide that facilities may not qualify for interim status under the State's analogue to Section 3005(e) if they were previously denied a Section 3005(c) permit or if authority to operate the facility has been terminated as indicated in Revision Checklist 17 P.

[Federal Authority: RCRA §3005(c)(3); 40 CFR 270.70(c) as amended July 15, 1985 (50 FR 28702).]

Citation of Laws and Regulations; Date of Enactment and Adoption

Ark. Code Ann. § 8-7-216(c)  
AHWMC § 3a(9)  
AHWMC §§ 12a(7) and (8)

Remarks of the Attorney General

Federal requirements are incorporated by reference; therefore, State provisions are equivalent to the Federal program.

G. State statutes and regulations allow the issuance of a one-year research development, and demonstration permit (renewable 3 times) for any hazardous waste treatment facility which proposes an innovative and experimental hazardous waste treatment technology or process not yet regulated as indicated in Revision Checklist 17 Q. If adopted, however, the State must require the facility to meet RCRA's financial responsibility and public participation requirements and retain authority to terminate experimental activity if necessary to protect health or the environment.

[Federal Authority: RCRA §3005(g); 40 CFR 270.65 as amended July 15, 1985 (50 FR 28702)]

Citation of Laws and Regulations; Date of Enactment and Adoption

AHWMC § 3a(9)

Remarks of the Attorney General

Federal requirements are incorporated by reference; therefore, State provisions are equivalent to the Federal program.

H. State statutes and regulations require landfills, surface impoundments, land treatment units, and waste piles that received waste after July 26, 1982 and which qualify for interim status to comply with the groundwater monitoring, unsaturated zone monitoring, and corrective action requirements applicable to new units at the time of permitting as indicated in Revision Checklist 17 L.

[Federal Authority: RCRA §3005(i); 40 CFR 264.90(a) as amended July 15, 1985 (50 FR 28702).]

Citation of Laws and Regulations; Date of Enactment and Adoption

AHWMC §§ 3a(5) and (9)

Remarks of the Attorney General

Federal requirements are incorporated by reference; therefore, State provisions are equivalent to the Federal program.

I. State statutes and regulations require:

(1) Surface impoundments in existence on November 8, 1984 [or subsequently becoming subject to RCRA pursuant to §3005(j)(6)(A) or (B)] to comply with the double liner, leachate collection, and groundwater monitoring requirements applicable to new units by November 8, 1988 [or the date specified in §3005(j)(6)(A) or (B)] or to stop treating, receiving,

or storing hazardous waste, unless the surface impoundment qualifies for a special exemption under §3005(j).

[Federal Authority: RCRA §3005(j)(6)(A).]

Citation of Laws and Regulations; Date of Enactment and Adoption

Ark. Code Ann. § 8-7-218  
AHWMC §§ 3a(5) and (6)

Remarks of the Attorney General

Federal requirements are incorporated by reference; therefore, State provisions are equivalent to the Federal program.

(2) Surface impoundments are to comply with the double liner, leachate collection and ground-water monitoring requirements if the Agency allows a hazardous waste prohibited from land disposal under §3004(d), (e) or (g) to be placed in such impoundments.

[Federal Authority: RCRA § 3005(j)(11).]

Citation of Laws and Regulations; Date of Enactment and Adoption

Ark. Code Ann. § 8-7-218(c)  
AHWMC §§ 3a(5) and (6)

Remarks of the Attorney General

Federal requirements are incorporated by reference; therefore, State provisions are equivalent to the Federal program.

(3) State statutes and regulations may allow variances from the above requirements as provided in RCRA §3005(j)(2-9) and (13). However, the availability of such variances must be restricted as provided in RCRA §3005(j).

[Federal Authority: RCRA §3005(j)(2-9).]

Citation of Laws and Regulations; Date of Enactment and Adoption

Ark. Code Ann. § 8-7-211  
AHWMC §§ 17 and 12c(3)

Remarks of the Attorney General

State provisions are equivalent to the Federal program.

K. State statutes and regulations allow the permit granting agency to initiate modifications to a permit without first receiving a request from the permittee, in cases where statutory changes or new or amended regulatory standards or judicial decisions affect the basis of the permit as indicated in Revision Checklist 44 D.

[Federal Authority: RCRA §3005(c); 40 CFR 270.41(a)(3) as amended December 1, 1987 (52 FR 45788).]

Citation of Laws and Regulations; Date of Enactment and Adoption

AHWMC § 3a(9)

Remarks of the Attorney General

Federal requirements are incorporated by reference; therefore State provisions are equivalent to the Federal program.

L. State statutes and regulations require that permittees must comply with new requirements imposed by the land disposal restrictions promulgated under Part 268 even when there are contrary permit conditions, as indicated in Revision Checklist 44 E.

[Federal Authority: RCRA §3006(g); 40 CFR 270.4(a) as amended December 1, 1987 (52 FR 45788).]

Citation of Laws and Regulations; Date of Enactment and Adoption

AHWMC § 3a(9)

Remarks of the Attorney General

Federal requirements are incorporated by reference; therefore, State provisions are equivalent to the Federal program.

M. State statutes and regulations require information from permit applicants concerning permit conditions necessary to protect human health and the environment as indicated in Revision Checklist 44 F.

[Federal Authority: RCRA §3005(c); 40 CFR 270.10 as amended December 1, 1987 (52 FR 45788).]

Citation of Laws and Regulations; Date of Enactment and Adoption

AHWMC § 3a(9)

AHWMC § 14

Remarks of the Attorney General

Federal requirements at 40 CFR 270.10 are incorporated by reference; State provisions are equivalent to the Federal program. In addition, the State has the authority to require an applicant to conduct a local health survey to establish background health data prior to the issuance of the permit. Therefore, State provisions are more stringent than the Federal program.



Remarks of the Attorney General

Federal requirements are incorporated by reference; therefore State provisions are equivalent to the Federal requirement.

B. State statutes and regulation require that:

(1) New units, expansions, and replacement units at interim status landfills and surface impoundments and permitted landfills and surface impoundments meet the requirements for double liners and leachate collection systems applicable to new permitted landfills and surface impoundments in 40 CFR 264.221 and 264.301 and 265.221 and 265.301 as indicated in Revision Checklist 17 H.

(2) Facilities which comply in good faith need not retrofit at permit issuance unless the liner is leaking as provided in §§264.221(d), 264.301(d), 265.221 and 265.301(d) as indicated in Revision Checklist 17 H.

(3) Variances from the above requirements are optional. However, the availability of such variances is restricted as provided in §§264.221(d) and (e), 265.221(c) and (d), and 265.301(c) and (d) as indicated in Revision Checklist 17 H.

[Federal Authority: RCRA §3015(b); 40 CFR 264.221, 265.221 and 265.301 as amended July 15, 1985 (50 FR 28702).]

Citation of Laws and Regulations; Date of Enactment and Adoption

AHWMC §§ 3a(5) and (6)

Remarks of the Attorney General

Federal requirements are incorporated by reference; therefore, State provisions are equivalent to the Federal requirement.

**XVIII. EXPOSURE ASSESSMENTS**

A. State laws and regulations require permit applicants for landfills or surface impoundments to submit exposure information as indicated in Revision Checklist 17 S.

[Federal Authority: RCRA §3019(a); 40 CFR 270.10(j) as amended July 15, 1985 (50 FR 28702).]

Citation of Laws and Regulations; Date of Enactment and Adoption

AHWMC § 3a(9)

Remarks of the Attorney General

Federal requirements are incorporated by reference; therefore, State provisions are equivalent to the Federal program.

B. State laws and regulations allow the State to make assessment information available to the Agency for Toxic Substances and Disease Registry. (See CERCLA §104(i).]

[Federal Authority: RCRA §3019(b).]

Citation of Laws and Regulations; Date of Enactment and Adoption

Ark. Code Ann. §§ 8-7-209(a)(2) and (10)

Remarks of the Attorney General

State provisions are equivalent to the Federal program.

**XIX. AVAILABILITY OF INFORMATION**

A. State statutes and regulations provide that:

(1) All records shall be available to the public unless they are exempt from the disclosure requirements of the Federal FOIA, 5 U.S.C. 552;

(2) All nonexempt records will be available to the public upon request regardless of whether any justification or need for such records has been shown by the requestor;

(3) The same types of records would be available to the public from the State as would be available from EPA; and,

(4) Information is provided to the public in substantially the same manner as EPA as indicated in 40 CFR Part 2 and the Revision Checklist in Appendix N of the revised SAM.

(5) The State statutes and regulations protect Confidential Business Information (CBI) to the same degree as indicated in 40 CFR 2 and the Revision Checklist in Appendix N of the revised SAM.

[Federal Authority: RCRA §3006(f); 40 CFR §271.17(c).]

Citation of Laws and Regulations; Date of Enactment and Adoption

Ark. Code Ann. § 25-19-103(1)

Ark. Code Ann. § 25-19-105

Ark. Code Ann. § 25-19-107

Ark. Code Ann. § 8-4-222

Ark. Code Ann. § 8-4-223

Ark. Code Ann. § 8-4-226

Ark. Code Ann. § 8-4-227

Ark. Code Ann. §§ 8-7-204(b) and (g) (Act 435 of 1991, enacted and effective

3/11/91)

Ark. Code Ann. § 8-7-225(d)

Ark. Code Ann. § 4-75-601(4)

AHWMC § 6

MOA, U.S. EPA Region VI/ADPC&E

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## Remarks of the Attorney General

All state records shall be available to the public unless they are exempt from the disclosure requirements of Ark. Code Ann. §§ 25-19-101 to 25-19-107, which provide fewer exemptions than the Federal FOIA, 5 U.S.C. §552. Arkansas does not exempt matters established by Executive order to be kept secret in the interest of national defense or foreign policy as provided by 5 U.S.C. §552(b)(1)(a) and (b), nor does the State FOIA exempt all inter-agency or intra-agency memoranda or letters as provided at 5 U.S.C. §552(b)(5). Ark. Code Ann. § 25-19-105(7) does exempt unpublished memoranda, working papers, and correspondence of the Governor, legislators, Supreme Court Justices, and the Attorney General. Ark. Code Ann. 25-19-105(7) relates to executive privilege, as does 5 U.S.C. 552(b)(5). The Arkansas exemption is narrower and more restrictive in scope than the broad Federal exemption. Furthermore, the Arkansas exemptions, with rare exceptions, do not lie within the scope of information normally provided by EPA pursuant to RCRA. Thus, the State FOIA, Ark. Code Ann. §§ 25-19-101 to 25-19-107, provides fewer exemptions than the Federal FOIA, 5 U.S.C. §552, as described above.

State authorities which provide for public availability of information regarding facilities and sites for the treatment, storage, and disposal of hazardous wastes in substantially the same manner as EPA is distributed across several titles of the Arkansas statutes and regulations. The Arkansas Freedom of Information Act, codified at Ark. Code Ann. §§ 25-19-101 to 25-19-107 (Repl. 1979 and Supp. 1987) contains the basic provisions. Ark. Code Ann § 25-19-103 describes a scope of records subject to request no more restrictive than that defined by 40 CFR 2.100(b).

Under the Arkansas FOIA, "all records maintained in public offices or by public employees within the scope of their employment shall be presumed to be public records." (Ark. Code Ann. § 25-19-103 (Supp. 1987)) The burden is placed on the agency to demonstrate that any record meets one of the exceptions specified in the Act. Except for records which the law allows or requires to be closed, "all public records shall be open to inspection and copying by any citizen of the State of Arkansas during the regular business hours of the custodian of the records." (Ark. Code Ann. § 25-19-105 (Repl 1979)) No written request is required in order to have access to public records. Records are open upon request at any time during business hours. Only if the specific record requested is in use or in storage can the agency refuse access upon request, even so the record must be provided within three (3) days unless the record is subject to protection. (Ark. Code Ann. § 25-19-105) Policy for copying information is detailed in the Memorandum of Agreement between EPA Region 6 and ADPC&E, as well as in ADPC&E Regulation No. 8. The Department will make copies of specified records for the requesting individual, or the individual may make his own copies using Department or rented copiers at reduced cost. 40 CFR 2.104(b) is thus satisfied.

The Arkansas FOIA authorizes the release of information to "citizens of the State of Arkansas". This has been defined as a resident of, or one who normally does business within the State. A nonresident of Arkansas or a business which does not normally trade in the State may have a State resident to act as his agent or obtain the information on his behalf. If a nonresident does not choose to have an agent act on his behalf, he may make his request pursuant to Ark. Code Ann. § 8-7-225(d), which requires that any records, reports, or information obtained under the Arkansas Hazardous Waste Management Act shall be available to the public (no restriction) for inspection and copying. Any such Department record, which is equivalent to the type of information available from EPA under the Federal FOIA, is available to

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the general public, without restriction, under this provision without reliance on the State FOIA. Arkansas provisions are therefore equivalent, though not identical, to Federal provisions.

The Hazardous Waste Management Act provides for the recoupment of attorney's fees from the State should a plaintiff substantially prevail in a lawsuit for violation of the Arkansas Freedom of Information Act in relation to providing information pursuant to implementation of the State RCRA program and the Hazardous Waste Management Act. Arkansas provisions are again therefore equivalent, though not identical, to Federal provisions.

← WAW and here

XX. BURNING OF WASTE FUEL AND USED OIL FUEL IN BOILERS AND INDUSTRIAL FURNACES

A. State statutes and regulations contain the following requirements regarding the burning of waste fuel and used oil fuel for energy recovery in boilers and industrial furnaces as indicated in Revision Checklist 19:

(1) Waste fuels and used oil fuels are identified as solid wastes so as to encompass all such wastes controlled under 40 CFR 261.3, 261.5 and 261.6.

(2) Special management standards for generators, transporters, marketers and burners of hazardous waste and used oil burned for energy, as provided in 40 CFR 264.340, 265.340, 266.30-35 and 266.40-45.

[Federal Authority: RCRA §§3001, 3004, 3014(a); 40 CFR 261, 264, 265 and 266 as amended November 29, 1985 (50 FR 49164), November 19, 1986 (51 FR 41900) and April 13, 1987 (52 FR 11819).]

Citation of Laws and Regulations; Date of Enactment and Adoption

Ark. Code Ann. §§ 8-7-203(6) and (7) *w/v?*  
AHWMC § 2a(5)  
AHWMC §§ 3a(2), (5), (6), and (7)

Remarks of the Attorney General

The State definition of "hazardous wastes" at A.C.A. § 8-7-203(6) and § 2a(5) of the Code encompasses all wastes controlled under 40 CFR 261.3, 261.5 and 261.6. Federal requirements at 40 CFR 264.340, 265.340, 266.30-35 and 266.40-45 are incorporated by reference. Therefore, State provisions are equivalent to the Federal program.

B. State statutes and regulations provide the authority to obtain criminal penalties for violations of the waste fuel and used oil fuel requirements, as provided in 40 CFR 266.40-45.

[Federal Authority: RCRA §§3006(h), 3008(d), 3014; 40 CFR 271.16.]

Citation of Laws and Regulations; Date of Enactment and Adoption

Ark. Code Ann. § 8-7-204  
AHWMC § 4

AHWMC § 3a(7)

Remarks of the Attorney General

Federal requirements at 40 CFR 271.16 and 40 CFR 266.40-45 are incorporated by reference. State provisions are equivalent to the Federal program.

**XXI. LAND DISPOSAL RESTRICTIONS**

A. State statutes and regulations provide for the restrictions of the land disposal of certain spent solvents and dioxin-containing hazardous wastes as indicated in Revision Checklists 34 and 39.

[Federal Authority: §3004(d)-(k) and (m); 40 CFR 260, 261, 262, 263, 264, 265, 268 and 270 as amended on November 7, 1986 (51 FR 40572), June 4, 1987 (52 FR 21010), July 8, 1987 (52 FR 25760), and August 17, 1988 (53 FR 31138).]

Citation of Laws and Regulations: Date of Enactment and Adoption

Ark. Code Ann. § 8-7-205(3).

Ark. Code Ann. §§ 8-7-209(a)(1), (3), (5), (6), (11), and (b).

Ark. Code Ann. § 8-7-215

Ark. Code Ann. § 8-7-216

Ark. Code Ann. § 8-7-218

Ark. Code Ann. § 8-7-303

Ark. Code Ann. § 8-7-308(4)

AHWMC § 13a(5)

AHWMC §§ 3a(5) and (6)

*polychlorinated biphenyls? Part 270*  
*applicable in some states*

Remarks of the Attorney General

The Federal requirements are incorporated by reference. In addition, AHWMC § 13a(5) prohibits the landfilling of free liquids, including liquid hazardous wastes. State requirements are more stringent than the Federal program. (See remarks under Section X, Liquids in Landfills.)

*good!*

B. State statutes and regulations for restricting the disposal of certain California list wastes, including liquid hazardous waste containing polychlorinated biphenyls (PCBs) above specified concentrations, and hazardous waste containing halogenated organic compounds (HOCs) above specified concentrations as indicated in Revision Checklist 39.

[Federal Authority: RCRA §3004(d)-(k) and (m); 40 CFR 262, 264, 265, 268 and 270 as amended on July 8, 1987 (52 FR 25760), October 27, 1987 (52 FR 41295) and August 17, 1988 (53 FR 31138).]

Citation of Laws and Regulations: Date of Enactment and Adoption

Ark. Code Ann. § 8-7-205(3)

Ark. Code Ann. §§ 8-7-209(a)(1), (3), (5), (6), (11), and (b).

Ark. Code Ann. § 8-7-215

Ark. Code Ann. § 8-7-216  
Ark. Code Ann. § 8-7-218  
AHWMC § 13a(5)  
AHWMC §§ 3a (3), (5), (6), (8), and (9)

Remarks of the Attorney General

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See remarks immediately above.

**XXII. MEMORANDUM OF AGREEMENT (MOA)**

State statutes and regulations provide authority for the State to enter into the Memorandum of Agreement as set forth in the Program Description, including the authority to carry out the Agreement. No applicable State statute requires the procedures agreed to in the MOA to be promulgated as a rule in order to be binding.

Citation of Laws and Regulations: Date of Enactment and Adoption

Ark. Code Ann. §8-7-208(b)(2)

Ark. Code Ann. §8-7-308(1)

AHWMC §20

Seal of Office



Ron Fields  
Attorney General  
State of Arkansas

12-11-90

Date

I, Diana Wilson Vaughn, Executive Assistant to the Attorney General, certify that the above and foregoing was read and executed by Ron Fields, Attorney General of Arkansas.

Witness this 11th day of December, 1990.



Diana Wilson Vaughn  
Executive Assistant