

US EPA ARCHIVE DOCUMENT

Non HSWA I, II (P) 3/90  
HW A I, II (P) 3/90  
Enclosure 3

**JOINT PERMITTING AGREEMENT**

**BETWEEN**

**THE ARKANSAS DEPARTMENT OF POLLUTION  
CONTROL AND ECOLOGY**

**and**

**THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

**Region 6**

Signed  
by  
RA  
3/15/90

**I. Purpose**

A Joint Permitting Agreement has been entered into by the Arkansas Department of Pollution Control and Ecology (hereinafter referred to as ADPC&E) and the U.S. Environmental Protection Agency Region 6 (EPA) to administer the provisions of the Hazardous and Solid Waste Act Amendments of 1984 (HSWA) in accordance with Section 3006(c)(3), of the Federal Resource Conservation and Recovery Act (RCRA), as amended. The purpose of this document is to establish procedures to coordinate the actions of the ADPC&E and EPA to implement RCRA and the HSWA provisions in a cost effective and expeditious manner, and to satisfy requirements in both State and Federal law. Procedures to be utilized in joint permitting are described in Section III of this document. Additional permitting tasks and responsibilities of ADPC&E and EPA are included as milestones in the RCRA Grant Workplan. Nothing in this agreement shall preclude the EPA or ADPC&E from preparation, notice, and issuance of Federal (HSWA) or State RCRA permits separately from the other agency.

## II. Effect of the Joint Permitting Agreement on Final Authorization

EPA evaluated the State of Arkansas' hazardous waste statutes and regulations and found them to be equivalent to the Federal program developed pursuant to RCRA. Thus, EPA authorized the State of Arkansas' hazardous waste program on January 25, 1985. Although authorized for RCRA, the State of Arkansas is not yet authorized for HSWA. A permit cannot be considered a full RCRA permit unless it contains all of the applicable requirements of HSWA. ADPC&E intends to obtain final authorization to issue all RCRA/HSWA permits and will continue to adopt rules and seek the passage of State Statutes to achieve that goal. Until ADPC&E is fully authorized for all permitting aspects of HSWA, this document delineates the coordination of the Federal HSWA and State RCRA permitting activities. Under this Agreement, ADPC&E agrees to take the lead in the permitting process in preparation for undertaking full responsibilities received on final HSWA authorization. EPA will provide ongoing detailed oversight at facilities in Arkansas as quality assurance checks of ADPC&E's permitting and closure activities. EPA will also be responsible for reviewing and issuing the HSWA permit portions prepared by ADPC&E. Under the Joint Permitting Agreement, ADPC&E and EPA agree to utilize, to the maximum extent possible, existing procedures for permit processing developed pursuant to the Memorandum of Agreement (MOA) in effect between ADPC&E and EPA. This Agreement will minimize disruption of ongoing permitting activities and assure

that reviewed permitting deadlines in the HSWA are met. This Agreement will be reviewed at least annually and updated or revised as necessary upon written agreement by both parties. Upon authorization of the State for any of the provisions of the HSWA, the specifics of this agreement shall be amended to reflect the authorization, as necessary.

### III. Specific Procedures for Permit Processing

Procedures for ADPC&E/EPA coordination in permit processing will continue as specified in the authorization MOA as modified by this section.

- A. ADPC&E shall provide information to notify the regulated universe of the new requirements of HSWA.
- B. ADPC&E shall continue to call in Part B applications and be responsible for the collection of new information which is required as a result of HSWA. In some specific cases it may be necessary for EPA to collect new information required by HSWA. One example would be a case in which EPA was issuing a HSWA permit to a facility separately from ADPC&E. Another example would be a case in which EPA, at the request of ADPC&E, was drafting the HSWA portion of a joint permit. In such cases, EPA shall inform ADPC&E of its information gathering activities.
- C. After receipt of a Part B application, ADPC&E will review

the information for administrative and technical sufficiency. ADPC&E will utilize EPA rules in reviewing facilities for compliance with HSWA provisions. ADPC&E facility managers will coordinate the Part B application reviews and development of the draft permit with EPA facility managers for purposes of establishing a facility's compliance with HSWA requirements.

- D. If after the administrative and/or technical review, ADPC&E determines that the application is incomplete, it will develop a Notice of Deficiency (NOD) which includes all information requests in order for the applicant to respond with a complete application. ADPC&E will send EPA a copy of the NOD and associated correspondence for any action taken for late or incomplete applications. ADPC&E will send EPA a copy of the applicant's NOD response(s) or require the applicant to provide EPA a copy. The ADPC&E will follow the procedures of the Enforcement MOU for all late or incomplete applications. EPA will work with ADPC&E to obtain sufficient information to prepare a draft permit decision.
- E. If after the administrative and/or technical review ADPC&E determines that the application is administratively complete for all RCRA and HSWA information requirements, ADPC&E will send the completeness determination letter to the applicant with a copy sent to EPA.
1. ADPC&E will develop and EPA will specifically review

permit provisions relating to HSWA. Procedures for draft permit, EPA comment, public notice, hearing and permit issuance are those contained in the existing MOA except as modified by this agreement.

2. Alternatively, under agreement between ADPC&E and EPA, EPA may draft the specific permit provisions of HSWA on a facility specific basis. In this case, EPA will submit the HSWA permit provisions to ADPC&E for inclusion in the initial draft permit. Within 30 days of receipt, ADPC&E shall identify and submit comments on any EPA drafted permit provisions with which it disagrees. All other procedures of the MOA and this JPA shall be followed in the permit decision making process.
- F. Specific procedures for processing and issuing permits are given in Attachment I.
  - G. Specific procedures for processing closure plans are given in Attachment II.
  - H. RCRA Facility Assessment (RFA)  
Unless otherwise noted, a RFA is a prerequisite for any joint RCRA/HSWA permit. A RFA shall identify a release or the likelihood of a release of hazardous waste or hazardous waste constituents from each solid waste management unit (SWMU) at the facility and identify the need, if any, for

further remedial investigations or corrective action. A RFA consists of a preliminary review (PR), visual site inspection (VSI) and sampling visit, as appropriate. RFAs will not normally be required for Research Development and Demonstration (RD & D) permits. RFAs to be done by ADPC&E will be identified in the State's Grant Workplan.

- I. Public notices of application and of hearing will include the following language:

"This notice satisfies the requirements of the Resource Conservation and Recovery Act (RCRA), as amended, 42 U.S.C. 6901 et seq. and 40 CFR 124.10. The draft permit, if issued, will implement the requirements of the Hazardous and Solid Waste Amendments of 1984, amending the Federal Solid Waste Disposal Act, as amended, by RCRA. The Arkansas Department of Pollution Control and Ecology and the U.S. Environmental Protection Agency (EPA) have entered into a joint permitting agreement whereby permits may be issued in the State in accordance with the Arkansas Hazardous Waste Management Code and the Hazardous and Solid Waste Amendments of 1984 (HSWA), until the State hazardous waste program receives interim or final authorization under RCRA to administer the requirements of the HSWA. EPA may

participate in the final formal public session of the public hearing."

- J. EPA Staff may also participate in the informal nonevidentiary phase of ADPC&E hearings. ADPC&E will give public notice of these hearings as joint hearings. ADPC&E will provide the Hearing Officer who will represent the EPA as well as the State. For purposes of the Federal permit, the informal, nonevidentiary phase of the hearing will constitute the public hearing for EPA.
- K. ADPC&E and EPA will coordinate to develop a State permit which implements HSWA and therefore can be separately issued in whole or in part by EPA. ADPC&E will identify permit provisions relating to HSWA in the fact sheet (technical summary). Each HSWA provision in the permit shall be identified as such by an asterisk(\*).
- L. ADPC&E will notify EPA 5 days prior to the publication of any ADPC&E developed notices, press releases, etc., regarding the application or the permit. EPA will provide comments on such publications, if any, within 5 days upon receipt of notice. All publications will describe the EPA/State joint permitting agreement.
- M. ADPC&E will notify EPA 5 days prior to issuance of the final determination on a "state only" permit.
- N. EPA will act on the permit application based on the hearing

record developed. EPA may separately enforce federal permit provisions relating to HSWA subject to the procedures for State-federal cooperation in the authorization MOA and the enforcement MOU.

- O. In the case of a joint EPA/State permit, the ADPC&E will issue a final permit decision and forward the entire package, consisting of the final permit, public notice, fact sheet, public comments, transcript or recording of public hearing, and response to comments to EPA. EPA will review and sign appropriate portions of the permit, or comment, within 15 days of receipt. If disputes over the permit conditions arise, the EPA facility manager will initiate dispute resolution on any unresolved dispute. Dispute resolution includes scheduling meetings, or telephone conference calls and an escalation of the issues to appropriate management. Final dispute resolution shall rest with the Regional Administrator of EPA Region 6 and the Director of the ADPC&E. These efforts will follow the procedures outlined in the MOA section entitled "EPA Overview of State Permits", including dispute resolution.
- P. ADPC&E and EPA will continue to share information in accordance with the existing MOA.
- Q. Post Permitting Coordination
  - 1. The APDC&E will review and take appropriate

action concerning reports and notifications required under State authorized RCRA permit conditions.

2. All reports and notifications required under Federal and State authority (HSWA conditions) will be sent from the permittee to both ADPC&E and EPA. The ADPC&E will prepare joint RCRA/HSWA permits to require submission of the report or notification to the Director of the ADPC&E and the Director of the Hazardous Waste Management Division, EPA Region 6 for review and approval.
3. ADPC&E will coordinate the joint review and approval of reports and notifications required under Federal and State authorities (HSWA conditions).
4. After receipt of a report or notification required under State/Federal authority (HSWA requirements), the ADPC&E and EPA facility managers will coordinate the concurrent review of the submission. The ADPC&E will send EPA a draft copy of any notice of deficiency, approval, or conditional approval.
5. EPA will have 15 days to review and provide ADPC&E with any comments or to concur in the ADPC&E decision.
6. ADPC&E will contact EPA regarding any comments with

which it disagrees and attempt to resolve any disputes prior to sending a deficiency or approval letter.

7. ADPC&E will draft a deficiency letter for joint EPA and ADPC&E signature and will forward a copy to EPA. If EPA concurs with the ADPC&E deficiency letter, EPA will not develop or send to the permittee a separate deficiency letter.
8. If a dispute exists over the deficiency letter, EPA's Hazardous Waste Management Division Director and ADPC&E's Director will attempt to resolve the dispute within 15 days. If this effort is unsuccessful the State and EPA will send separate letters which are as consistent as possible.
9. Approval letters will be developed by ADPC&E for signature by both ADPC&E and EPA, and then transmit it to EPA for signature. EPA will sign the approval letter or notify the ADPC&E of any items in dispute within 10 days of receipt of the approval letter. Following EPA signature of the approval letter, EPA will return the approval letter to ADPC&E for signature and mailing to the facility. If a dispute exists over the approval, dispute resolution will proceed per Item 8 above.
10. Any unilateral correspondence by ADPC&E or EPA concerning a HSWA permit requirement shall clearly explain that the EPA or ADPC&E, as appropriate, will

review the submission and may impose requirements or conditions in addition to those of the ADPC&E or EPA, as appropriate.

11. EPA and ADPC&E will verbally notify each other when corrective action oversight visits/inspections are scheduled for jointly-permitted facilities. This will allow joint visits when desired.

Randall Mathis  
Randall Mathis, Director  
Arkansas Department of  
Pollution Control and  
Ecology

3/1/90  
Date

Allyn M. Davis  
Allyn M. Davis, Director  
Hazardous Waste Management  
Division, U.S. Environmental  
Protection Agency Region 6

3/15/90  
Date

## ATTACHMENT I

## STEPS to ISSUANCE of a PERMIT

1. Steps to Perform a Completeness Determination:

ADPC&E will perform Part B permit application completeness reviews for facilities with existing incinerators only, ADPC&E will approve trial burn plans.

for land treatment facilities, ADPC&E will track and evaluate land treatment demonstrations.

ADPC&E will issue a NOD with warning letter as necessary.

ADPC&E will complete the review of the amended Part B application.

ADPC&E will issue an administrative order in accordance with the enforcement MOU, after completing review of the amended application and finding it still incomplete, or will begin procedures to deny a permit, as appropriate.

. Steps to complete the Public Notice and draft permit:

ADPC&E will perform technical review of the permit application;

ADPC&E will develop and submit a preliminary draft joint permit to EPA for comment; (Permits will be drafted based on State requirements and will be consistent with EPA regulations.)

ADPC&E will submit copies of the complete Part B application, the fact sheet and the draft public notice to EPA at the same time as the preliminary draft permit is submitted if they have not been previously submitted;

EPA will provide comments on the preliminary draft permit within 30 days of receipt; if EPA fails to provide ADPC&E with written comments within 30 days of receipt of the draft permit, ADPC&E may proceed with public notice procedures;

EPA may, in exceptional cases, request an extension of the comment period; ADPC&E will grant such extensions as appropriate within the constraints of permitting schedules;

Within 30 days of receipt of EPA's comments, ADPC&E will respond to those comments with which it disagrees;

ADPC&E will submit a copy of the final draft permit and

official public notice to EPA;

ADPC&E will update HWDMS and RCRIS accordingly.

3. Steps to Complete the Final Determination:

ADPC&E will develop a responsiveness summary for all significant comments received during the public comment period for each permit decision. ADPC&E will provide EPA copies of the final determination, response to comments and public notice.

EPA will review and sign appropriate portions of the permit, or comment, within 15 days of receipt. The EPA facility manager shall initiate dispute resolution on any unresolved dispute. Dispute resolution includes scheduling meetings, or telephone conference calls, and an escalation of the issues to appropriate management. Final dispute resolution shall rest with the Regional Administrator at EPA Region 6 and the Director of the ADPC&E.

ADPC&E will update HWDMS and RCRIS accordingly.

## ATTACHMENT II

## STEPS TO APPROVAL OF A CLOSURE PLAN

1. General Criteria

ADPC&E will ensure that closing facilities have adequate ground-water monitoring systems and operate them properly. ADPC&E will ensure that provisions of the closure and post-closure plans are enforced. The ADPC&E and EPA will determine whether a release has occurred from any SWMU (both regulated and unregulated units), and will take correction action as necessary. ADPC&E will grant "clean closure" only if the facility demonstrates that an acceptable level of cleanup is achieved for all contaminated RCRA sources, soils and groundwater (i.e., treat to background levels, meet the Safe Drinking Water Act maximum contaminant levels, or receive approval for an alternate concentration limit).

ADPC&E will adhere to the timeframes as stated at 40 CFR 265.112(d)(4) for the review and approval of submitted closure plans (including partial closure and post-closure plans) for interim status facilities. ADPC&E will ensure that the facility is inspected and the closure certification is reviewed and approved before releasing the financial mechanism.

Specific Steps to Approve A Closure Plan

Within 5 days of a request from EPA, ADPC&E will submit a copy of any closure plan received;

EPA may review and submit comments to ADPC&E on the adequacy of the closure plan within 30 days of receipt or during the comment period;

ADPC&E will review closure plans and obtain information necessary to approve closure plans;

ADPC&E will issue notice of intent to approve the closure plan (Public notice will be given for partial closures);

ADPC&E will submit a copy of the public notice to EPA within 5 days of publication;

ADPC&E will respond to all significant comments received during the comment period;

ADPC&E will issue formal approval of closure plans and will submit a copy of the approved closure plan to EPA, upon request;

ADPC&E will update HWDMS and RCRIS accordingly.