

US EPA ARCHIVE DOCUMENT

RCRA I

AG

Signed

5/7/92

STATEMENT OF LEGAL AUTHORITY FOR FINAL
AUTHORIZATION FOR CHANGES TO THE FEDERAL
RCRA PROGRAM FROM JULY 1990 THROUGH
JUNE 1991

I hereby certify, pursuant to my authority as independent counsel for the Arkansas Department of Pollution Control and Ecology, having full authority to represent the Department in court on all matters relating to the Department's environmental programs, 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 and are in addition to the previously certified authorities described in the certifications of legal authority dated July 9, 1984, September 24, 1987, February 24, 1989, December 11, 1990, and May 7, 1992.

This revision statement addresses the State's 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 RCRA Cluster I.

References to "Ark. Code Ann." and "A.C.A." refer to the Arkansas Code of 1987, Annotated, as amended and effective in 1991. References to "ADPC&E Reg. No. 23" refer to the Arkansas Department of Pollution Control and Ecology's (ADPC&E) Regulation Number 23, (Hazardous Waste Management) (formerly titled the Arkansas Hazardous Waste Management Code), amended on December 6, 1991, to adopt all final rules promulgated by EPA through June 30, 1991, and which was effective on January 27, 1992. Dates of enactment and adoption for other statutes or regulations are given when cited.

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:

- (12) Generic delisting of strontium sulfide (CAS No. 1314-96-1), 40 CFR 261.33(e) and Part 261 Appendix

VIII, as amended October 31, 1988 (53 FR 43881) and February 25, 1991, Revision Checklists 57 and 86.

- (17) Listing of one waste (F039), 40 CFR 261.31 and Part 261 Appendix VII, as amended June 1, 1990 [55 FR 22520] and January 31, 1991 [56 FR 3864], Revision Checklists 78 and 83.
- (18) Listing of two wastes (F037 and F038) generated in the separation of oil/water/solids from petroleum refinery process wastewaters and oily cooling wastewaters, 40 CFR 261.31 and Part 261 Appendix VII, as amended November 2, 1990 [55 FR 46354] and December 17, 1990 [55 FR 51707], Revision Checklist 81.
- (19) Listing of three wastes (F032, F034 and F035) from wood preserving operations that use chlorophenolic, creosote and/or inorganic (arsenical and chromium) preservative, 40 CFR 261.31, 261.35 and 261 Appendices III, VII and VIII, as amended December 6, 1990 [55 FR 50450], Revision Checklist 82.
- (20) Administrative stay removing, from the K069 listing, slurries generated from air pollution control devices that are intended to capture acid gases and are not dedicated chiefly to control particulate air emissions, 40 CFR 261.32, as amended May 1, 1991 [56 FR 19951], Revision Checklist 88.
- (21) Redefinition of F037 and F038 listings to exclude 1) sludges from non-contact once-through cooling waters from both listings and 2) floats generated in aggressive biological treatment units from the F038 listing, 40 CFR 261.31 as amended May 13, 1991 [56 FR 21955], Revision Checklist 89.
- (22) Administrative stay of F034 and F035 listings regarding 1) wastewaters that have not come into contact with wastewater and 2) plants that have previously used chlorophenolic formulations, 40 CFR 261.31 as amended June 13, 1991 [56 FR 27332], Revision Checklist 91.

Federal Authority: RCRA §3001(b).

Citation of Laws and Regulations; Date of Enactment and Adoption

ADPC&E Reg. No. 23, § 3a(2)

Remarks of the Legal Counsel

Federal revisions to the list of hazardous wastes at 40 CFR Part 261 have been incorporated by reference; state provisions for these revisions are equivalent to the federal program.

J. State statutes and regulations that:

- (2) remove five conditionally retained mineral processing wastes from the exemption from hazardous waste regulation under the Bevill exclusion, and amend the definitions of "beneficiation" and "designated facility" as indicated in Revision Checklists 71 and 90.

Federal Authority: RCRA §3001(b)(3)(A)(ii); 40 CFR 260.10 and 261.4(b)(7) as amended January 23, 1990 (55 FR 2322) and June 13, 1991 (56 FR 27300).

Citation of Laws and Regulations; Date of Enactment and Adoption

ADPC&E Reg. No. 23 § 3a(2)

Remarks of the Legal Counsel

Federal revisions have been incorporated by reference; State provisions are therefore equivalent to the Federal program.

O. State statutes and regulations extend until January 25, 1993, the compliance date for the Toxicity Characteristic requirements for produced ground water from free phase hydrocarbon recovery operations at certain petroleum industry sites (refineries, marketing terminals, and bulk plants) as indicated in Revision Checklist 80. The extension for infiltration galleries at such operations ends on October 2, 1991.

Federal Authority: 5 U.S.C. §§553 and 705; RCRA §3001; 40 CFR 261.4(b)(II) as amended October 5, 1990 (55 FR 40834), February 1, 1991 (56 FR 3978) and April 2, 1991 (56 FR 13406).

Citation of Laws and Regulations; Date of Enactment and Adoption

ADPC&E Reg. No. 23 § 3a(2)

Remarks of the Legal Counsel

Federal revisions have been incorporated by reference; State provisions are therefore equivalent to the Federal program.

P. State statutes and regulations include definitions of oil/water/solids and aggressive biological treatment units and a statement concerning the point of generation for F037 and F038 sludges as indicated in Revision Checklist 81.

Federal Authority: RCRA §3001; 40 CFR 261.31(b), as amended November 2, 1990 (55 FR 46354) and December 17, 1990 (55 FR 51707).

Citation of Laws and Regulations; Date of Enactment and Adoption

ADPC&E Reg. No. 23 § 3a(2)

Remarks of the Legal Counsel

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

Q. State statutes and regulations exclude from being a solid waste spent wood preserving solution that have been used and are reclaimed and reused for their original intended purpose as indicated in Revision Checklist 82.

Federal Authority: RCRA §3001; 40 CFR 261.4(a)(9) as amended December 6, 1990 (55 FR 50450).

Citation of Laws and Regulations; Date of Enactment and Adoption

ADPC&E Reg. No. 23 § 3a(2)

Remarks of the Legal Counsel

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

R. State statutes and regulations which exclude from being hazardous used chlorofluorocarbon (CFC) refrigerants from totally enclosed transfer equipment (including mobile air conditioning systems, mobile refrigeration, and commercial and industrial air conditioning and refrigeration systems) that use chlorofluorocarbons as the heat transfer fluid in the refrigeration cycle, provided the refrigerant is reclaimed for further use as indicated in Revision Checklist 84.

Federal Authority: RCRA §3001; 40 CFR 261.4(b)(12) as amended February 13, 1991 (56 FR 5910).

Citation of Laws and Regulations; Date of Enactment and Adoption

ADPC&E Reg. No. 23 § 3a(2)

Remarks of the Legal Counsel

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

S. State statutes and regulations exclude from being a solid waste coke and coal tar from the iron and steel industry that contains or is produced from decanter tank tar sludge, EPA hazardous waste K087, when used as a fuel as indicated in Revision Checklist 85. The process producing the coke and coal tar from such decanter tank tar sludge in a coke oven is also excluded from regulation.

Federal Authority: RCRA §3001; 40 CFR 261.4(a)(10) as amended February 21, 1991 (56 FR 7134).

Citation of Laws and Regulations; Date of Enactment and Adoption

ADPC&E Reg. No. 23 § 3a(2)

Remarks of the Legal Counsel

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

T. State statutes and regulation which do not exclude residues, derived from the burning or processing of hazardous waste in a boiler or industrial furnace, from the definition of a hazardous waste under 40 CFR 261.4(b)(4), (7) or (8) if the owner or operator meets the requirements of 40 CFR 266.112 as indicated in Revision Checklist 85.

Federal Authority: RCRA §3001; 40 CFR 261.4(b)(4), 261.4(b)(7), 261.4(b)(8) and 266.112 as amended February 21, 1991 (56 FR 7134).

Citation of Laws and Regulations; Date of Enactment and Adoption

ADPC&E Reg. No. 23 § 3a(2)

ADPC&E Reg. No. 23 § 3a(7)

Remarks of the Legal Counsel

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

II. DEFINITION OF SOLID WASTE

A. State statutes and regulations define hazardous wastes and impose management standards so as to control all the hazardous waste controlled under 40 CFR Parts 261, 264, 265, and 266 as indicated in Revision Checklists 13 and 37.

Federal Authority: RCRA §§3001 and 3004; 40 CFR Parts 260, 261, 264, 265, and 266 as amended January 4, 1985 (50 FR 614), April

11, 1985 (50 FR 14216), August 20, 1985 (50 FR 33541), and June 5, 1987 (52 FR 21306).

Citation of Laws and Regulations; Date of Enactment and Adoption

Ark. Code Ann. §8-7-203(6)
ADPC&E Reg. No. 23 § 2a(5)
ADPC&E Reg. No. 23 § 3a(1), (2), (5), (6), and (7)

Remarks of the Legal Counsel

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. § 8-7-203(6)). This definition is narrowed in Regulation No. 23 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 Regulation No. 23" (ADPC&E Reg No. 23 § 2a(5)). In the inclusion of PCB wastes in their definition of hazardous wastes, Arkansas regulations do not allow the exemption at 40 CFR 261.8 for certain PCB wastes.

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.

Arkansas has incorporated the federal definition of a "solid waste" at 40 CFR 261.2 by reference in Regulation No. 23. However, 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

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

B. State statutes and regulations include as solid waste secondary material fed to a halogen acid furnace that exhibit characteristic of a hazardous waste or are listed as a hazard waste in 40 CFR 261, Subparts C and D as indicated in Revisic Checklist 85.

Federal Authority: RCRA §3001; 40 CFR Parts 261.2(d)(2) as amended February 21, 1991 (56 FR 7134).

Citation of Laws and Regulations; Date of Enactment and Adoption

ADPC&E Reg. No. 23 § 3a(2)

Remarks of the Legal Counsel

Federal revisions have been incorporated by reference; State provisions are therefore equivalent to the Federal program.

XV. STANDARDS FOR FACILITIES

L. State statutes and regulations require new and existing hazardous waste treatment, storage or disposal facilities to control organic air emissions from process vents and equipment leaks as indicated in Revision Checklists 79 and 87.

Federal Authority: RCRA §§1006, 2002, 3001-3007, 3010, 3014 and 7004; 40 CFR Parts 261, 264, 265 and 270 as amended June 21, 1990 (55 FR 25454) and April 26, 1991 (56 FR 19290).

Citation of Laws and Regulations; Date of Enactment and Adoption

ADPC&E Reg. No. 23 §§ 3a(2), (5), (6), and (9)

Remarks of the Legal Counsel

Federal revisions have been incorporated by reference; State provisions are therefore equivalent to the Federal program.

M. State statutes and regulations contain design, operating, inspection and closure requirements for drip pads and associated tanks, sumps and other devices used to assist in the collection of treated wood drippage as indicated in Revision Checklist 82.

Federal Authority: RCRA §§2002(a) and 3001(b)&(e)(1); 40 CFR 262.34(a)(2), 264.190, 264.570, 264.571, 264.572, 264.573,

264.574, 264.575, 265.190, 265.440, 265.441, 265.442, 265.443, 265.444, and 265.445 as amended December 6, 1990 (55 FR 50450).

Citation of Laws and Regulations; Date of Enactment and Adoption

ADPC&E Reg. No. 23 §§ 3a(3), (5), and (6)

Remarks of the Legal Counsel

Federal revisions have been incorporated by reference; State provisions are therefore equivalent to the Federal program.

N. State statutes and regulations contain an administrative stay for the requirement that new drip pads be impermeable as indicated in Revision Checklist 91.

Federal Authority: RCRA §§2002(a) and 3001(b)&(e)(1); 40 CFR 264.572(a)(4), and 265.443(a)(4) as amended June 13, 1991 (56 FR 27332).

Citation of Laws and Regulations; Date of Enactment and Adoption

ADPC&E Reg. No. 23 §§ 3a(5) and (6)

Remarks of the Legal Counsel

Federal revisions have been incorporated by reference; State provisions are therefore equivalent to the Federal program.

XVI. REQUIREMENTS FOR PERMITS

W. State statutes and regulations contain Special Part B information requirements for drip pads as indicated in Revision Checklist 82. ✓

Federal Authority: RCRA §§2002(a) and 3001(b)&(e)(I); 40 CFR 270.22 as amended December 6, 1990 (55 FR 50450).

Citation of Laws and Regulations; Date of Enactment and Adoption

ADPC&E Reg. No. 23 § 3a(9)

Remarks of the Legal Counsel

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

X. State statutes and regulations include permitting requirements for boilers and industrial furnaces burning hazardous waste as indicated in Revision Checklist 85.

Federal Authority: RCRA §§1006, 2002, 3001 through 3007; 40 CFR 270.22, 270.42(g), 270.42 Appendix I, 270.66, 270.72(a)(6)&(b)(7) and 270.73(f)&(g) as amended February 21, 1991 (56 FR 7134).

Citation of Laws and Regulations; Date of Enactment and Adoption

ADPC&E Reg. No. 23 § 3a(9)

Remarks of the Legal Counsel

Federal provisions have been incorporated by reference; State provisions are therefore equivalent to the Federal program. See also the discussion at paragraph XX.C below for the state's authority to require and enforce these permit conditions.

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

C. State statutes and regulations include control standards for emissions of toxic organic compounds, toxic metals, hydrogen chloride, chlorine gas and particulate matter from boilers and industrial furnaces burning hazardous waste, and require owners and operators of such facilities to comply with the general facility standards applicable to hazardous waste treatment, storage and disposal facilities, as indicated in Revision Checklist 85. Hazardous waste storage units at regulated burners are subject to 40 CFR 264 requirements.

Federal Authority: RCRA §§1006, 2002, 3001 through 3007, 3010 and 7004; 40 CFR 260.10, 260.11, 264.112, 264.340, 265.112, 265.113, 265.340 and 266 Subpart H as amended February 21, 1991 (56 FR 7134).

Citation of Laws and Regulations; Date of Enactment and Adoption

- Ark. Code Ann. §§ 8-4-303(1) and (2)
- Ark. Code Ann. §§ 8-4-310(a)(1) and (2)
- Ark. Code Ann. § 8-7-209(b)
- Ark. Code Ann. § 8-7-210(d)
- Ark. Code Ann. § 8-7-218(c)
- Ark. Code Ann. § 8-7-503(7)
- ADPC&E Reg. No. 23 § 3a(9)
- ADPC&E Reg. No. 23 § 12
- ADPC&E Reg. No. 23 § 13a(3)

Remarks of the Legal Counsel

Arkansas regulates air pollutants and emissions under §§ 8-3-101 et. seq. of the Arkansas Water and Air Pollution Control Act (WAPCA). § 8-4-303 defines an "air contaminant" as any solid, liquid, gas, or vapor or any combination thereof; and defines

"air pollution" as the presence in the outdoor atmosphere of one or more air contaminants in quantities, of characteristics, and/or of a duration which are or may be expected to be materially injurious to human, animal, or plant life, or to property, or which reasonably interfere with enjoyment of life or use of property throughout the state or affected area. This definition is equivalent to "air emissions" as addressed at RCRA §3004(n). A.C.A. § 8-4-310 makes it unlawful to knowingly cause air pollution or to operate an air contaminant source without proper permits as may be required by ADPC&E regulations.

Authority to regulate air emissions under provisions of the Hazardous Waste Management Act stems from A.C.A. § 8-7-209(b) (which incorporates the state Water and Air Pollution Control and Solid Waste Management Act (WAPCA) into the Hazardous Waste Management Act - a facility treating or disposing of hazardous wastes which emits hazardous wastes or air contaminants produced as a result of treating or disposing of hazardous wastes is subject to regulation under the Hazardous Waste Management Act. A violation of either of these Acts with a hazardous waste is therefore a violation of the Hazardous Waste Management Act, subject to stiffer penalties imposed under the Hazardous Waste Management Act) and § 8-7-218 (requiring that facilities comply with the provisions of RCRA §3005 as a condition of a permit). § 8-4-310(b) of the WAPCA provides that liability for air pollution does not apply to "any unintended [emission] violation caused by an act of God, war, strike, riot, or other catastrophe, or accidental breakdown of equipment if properly prepared". This exemption is clearly less stringent than the provisions of 40 CFR 264 and 265 Subparts AA and BB, which provide no exclusions for accidental or catastrophic emissions. However, A.C.A. § 8-7-210(d) provides that "the provisions of [the Hazardous Waste Management Act], and the rules and regulations promulgated pursuant to it, shall govern if they conflict with the provisions of the Arkansas Water and Air Pollution Control Act, §§ 8-4-101 to 8-4-106, 8-4-201 to 8-4-229, and 8-4-301 to 8-4-313 [emphasis added], . . . , or any action taken by the Department or Commission under these laws". ADPC&E has incorporated 40 CFR Parts 264 and 265 Subparts AA and BB and 40 CFR Part 266, Subpart H in their entirety in Regulation No. 23; therefore these provisions would apply in lieu of the exemption provided for non-RCRA emissions under WAPCA.

This authority is broadened by the Remedial Action Trust Fund Act, which defines at A.C.A. § 8-7-503(7) a "release" as "any spilling, leaking, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, of disposing of hazardous substances into the environment"; and provides a mechanism for the state to require and enforce remedial or corrective action by the responsible party.

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

XXI. LAND DISPOSAL RESTRICTIONS

F. State statutes and regulations provide specific treatment standards and effective dates for the "Third Third" wastes, "soft hammer" First and Second Third wastes, five newly listed wastes, four wastes that fall into the F002 and F005 (spent solvent) waste codes, F025, mixed radioactive/hazardous wastes, characteristic wastes, and multi-source leachate, as well as establish revised treatment standards for petroleum refining hazardous wastes (K048-K052) as indicated in Revision Checklists 78 and 83.

Federal Authority: RCRA §§3001 and 3004 (d)-(k) and (m); 40 CFR 261, 262, 264, 265, 268, and 270 as amended June 1, 1990 (55 FR 22520) and January 31, 1991 (56 FR 3864).

Citation of Laws and Regulations; Date of Enactment and Adoption

ADPC&E Reg. No. 23 §§ 3a(2), (3), (5), (6), (8), and (9)

Remarks of the Legal Counsel

Federal revisions have been incorporated by reference; State provisions are therefore equivalent to the Federal program.

G. State statutes and regulations provide for alternate treatment standards for lab packs meeting certain criteria as indicated in Revision Checklists 78 and 83.

Federal Authority: RCRA §3004(d)-(k) and (m); 40 CFR 264.316(f), 265.316(f), 268.7(a)(7), 268.7(a)(8), 268.42(c), 268.42(c)(1)-(4), and Part 268 Appendices IV and V, as amended June 1, 1990 (55 FR 22520) and January 31, 1991, (56 FR 3864).

Citation of Laws and Regulations; Date of Enactment and Adoption

ADPC&E Reg. No. 23 §§ 3a(5), (6), and (8)

Remarks of the Legal Counsel

Federal revisions have been incorporated by reference; State provisions are therefore equivalent to the Federal program.



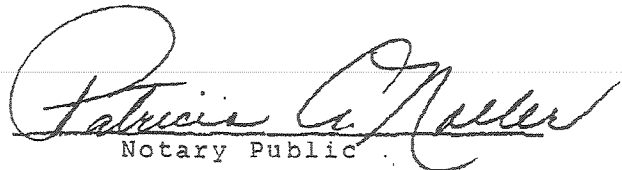
STEVE WEAVER

Independent Legal Counsel
State of Arkansas
Department of Pollution
Control and Ecology

5/7/92
(Date)

STATE OF ARKANSAS)
)
COUNTY OF PULASKI)

SUBSCRIBED AND SWORN to before me, a Notary Public, this
7th day of May, 1992.


Notary Public

My Commission Expires:

12/17/2000