

US EPA ARCHIVE DOCUMENT



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DEPARTMENT OF POLLUTION CONTROL & ECOLOGY

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**STATEMENT OF LEGAL AUTHORITY FOR FINAL
AUTHORIZATION FOR CHANGES TO THE FEDERAL
RCRA PROGRAM FROM JULY 1992 THROUGH
JUNE 1994**

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 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, May 7, 1992 (Non-HSWA Clusters V and VI), May 7, 1992 (RCRA Cluster I), and May 10, 1994 (RCRA Cluster II).

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 collectively as RCRA Clusters III and IV.

References to "Ark. Code Ann." and "A.C.A." refer to the Arkansas Code of 1987 Annotated, as amended and effective in 1995. 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), last amended on December 1, 1995, to adopt all final rules promulgated by EPA through June 30, 1995, and which was effective on January 21, 1996. Dates of enactment and adoption for other statutes or regulations are given when cited.

In April, 1994, the Department revised the format of Regulation No. 23 from one of "incorporation by reference" to the adoption and incorporation of the full text of the federal regulatory language, with modifications made as necessary to provide for the appropriate State protocol or point of contact for federally authorized rules and regulations under the State waste management program, and additional or more stringent State requirements. The text of 40 CFR Parts 260-266, 268, 270, 273, and 279 has been inserted into Chapter 2 of Regulation No. 23, with the federal "Parts" redesignated as State "Sections", and federal "Subparts" redesignated as State "Subsections". Part, Subpart, and paragraph numbering and citations have been retained in the same format as in the federal regulations throughout the text. Additional or more stringent State requirements within the incorporated federal language are identified by being typeset in italics. This restructuring makes it simpler for the regulated community to determine which specific rules are in effect at any point in time under the State hazardous waste management program, and provides a single regulatory reference for most hazardous waste management situations within the State.

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:

- (22) Administrative stay, from June 13, 1991 to December 24, 1992, of F032, F034 and F035 listings regarding 1) wastewaters that have not come into contact with process contaminants and 2) plants that have previously used chlorophenolic formulations, 40 CFR 261.31 as amended June 13, 1991 [56 ER 27332] and December 24, 1992 [57 ER 61492], Revision Checklists 91 and 120.

- (23) Listing of seven wastes (K141, K142, K143, K144, K145, K147, and K148) generated during the production, recovery and refining of coke by-products produced from coal, 40 CFR 261.32, and Part 261 Appendix VII as amended August 18, 1992 [57 ER 37284], Revision Checklist 110.
- (24) Listing of three wastes (K149, K150, and K151) from the production of chlorinated toluenes, 40 CFR 261.32 and Part 261 Appendix VII, as amended October 15, 1992 [57 ER 47376], Revision Checklist 115.
- (25) Exceptions to listings of F032, F034, and F035 for wastewaters that have not come into contact with process contaminants, 40 CFR 261.31 as amended December 24, 1992 [57 ER 61492], Revision Checklist 120.
- (26) Exception to listing of F032 for potentially cross-contaminated wastes that are otherwise currently regulated as hazardous wastes (i.e., F034 or F035), and where the generator does not reserve or initiate the use of chlorophenolic formulations, 40 CFR 261.31 as amended December 24, 1992 [57 ER 61492], Revision Checklist 120.
- (27) Listing of three chemicals from wood surface protection processes, 40 CFR 261 Appendix VIII, as amended January 4, 1994 [59 ER 458], Revision Checklist 128.
- (28) Listing of Beryllium (P015) is amended to read "Beryllium powder," 40 CFR 261.33 and Part 261, Appendix VIII, as amended June 20, 1994 [59 ER 31551], Revision Checklist 134.

Citation of Laws and Regulations: Date of Enactment and Adoption

A.C.A. § 8-7-209(a)(4)
Reg. No. 23 § 261.4(a)(10)
Reg. No. 23 § 261.31
Reg. No. 23 § 261.32
Reg. No. 23 § 261.33
Reg. No. 23 § 261, Appendix VIII
Reg. No. 23 § 264.572(a)(2)
Reg. No. 23 § 265.443(a)(2)

Remarks of the Independent Counsel

Federal requirements have been adopted verbatim at the references cited. State requirements are equivalent to those of the federal program.

L. State statutes and regulations revise the existing toxicity characteristic by replacing the Extraction Procedure (EP) leach test with the Toxicity Characteristic Leaching Procedure (TCLP) for identifying wastes that are defined as hazardous and subject to regulation under Subtitle C of RCRA as indicated in Revision Checklists 74, 108 and 117B. State statutes and regulations also provide for the addition of 25 organic chemicals and their regulatory levels to the list of toxic constituents of concern as indicated in Revision Checklist 74.

Federal Authority: RCRA §§1006, 2002(a), 3001, 3002, 3004, 3005 and 3006; 40 CFR Parts 261, 264, 265 and 268 as amended March 29, 1990 (55 ER 11798), June 29, 1990 (55 ER 26986), June 1, 1992 (57 ER 23062), and July 10, 1992 (57 ER 30657).

Citation of Laws and Regulations: Date of Enactment and Adoption

A.C.A. § 8-7-209(a)(4)
Reg. No. 23 § 261.3(a)(2)(i)
Reg. No. 23 § 261.4
Reg. No. 23 § 261.8
Reg. No. 23 § 261.24
Reg. No. 23 § 261.30(b)
Reg. No. 23 § 261, Appendix II
Reg. No. 23 § 264.301(e)(1)
Reg. No. 23 § 265.221(d)(1)
Reg. No. 23 § 265.273(a)
Reg. No. 23 § 265.301(d)(1)
Reg. No. 23 § 265, Appendix I

Remarks of the Independent Counsel

Federal requirements have been adopted verbatim at the references cited. State requirements are equivalent to those of the federal program.

X. State statutes and regulations exempt from the definition of hazardous waste, used oil filters meeting the 40 CFR 261.4(b)(15) criteria as indicated in Revision Checklists 104 and 107.

Federal Authority: RCRA §§1004, 1006, 2002, 3001 and 3014; 40 CFR 261.4(b)(15) as amended May 20, 1992 (57 ER 21524) and July 1, 1992 (57 ER 29220).

Citation of Laws and Regulations: Date of Enactment and Adoption

A.C.A. § 8-7-209(a)(4)
Reg. No. 23 § 261.4(b)(15)

Remarks of the Independent Counsel

Federal requirements have been adopted verbatim at the references cited. State requirements are equivalent to those of the federal program.

Y. State statutes and regulations exclude from being a solid waste K060, K087, K141, K142, K143, K144, K145, K147 and K148, and those coke by-product residues that are hazardous only because they exhibit the Toxicity Characteristic when, subsequent to generation, these wastes are recycled by being returned to coke ovens, to the tar recovery process as a feedstock to produce coal tar, or mixed with coal tar as specified in Revision Checklists 105 and 110.

Federal Authority: RCRA §§3001(e)(2) and (h); 40 CFR 261.4(a)(10) as amended June 22, 1992 (57 FR 27880) and August 18, 1992 (57 FR 37284).

Citation of Laws and Regulations; Date of Enactment and Adoption

A.C.A. § 8-7-209(a)(4)
Reg. No. 23 § 261.4(a)(10)
Reg. No. 23 § 261.32

Remarks of the Independent Counsel

Federal requirements have been adopted verbatim at the references cited. State requirements are equivalent to those of the federal program.

Z. State statutes and regulations contain reissued mixture and derived-from rules as indicated in Revision Checklist 117A.

Federal Authority: RCRA §§1006, 2002(a), and 3001-3005; 40 CFR 261.3, as amended March 3, 1992 (57 FR 7628), June 1, 1992 (57 FR 23062) and October 30, 1992 (57 FR 49278).

Citation of Laws and Regulations; Date of Enactment and Adoption

A.C.A. § 8-7-209(a)(4)
Reg. No. 23 § 261.3 (a), (b), (c), and (d)

Remarks of the Independent Counsel

Arkansas had previously adopted the mixture and derived-from rules under separate rulemaking and public notice procedures, hence the State's implementation of these requirements were not affected by the *Shell Oil* decision. As part of the April, 1994 update and revision of Regulation No.23, the Department again public noticed the retention and adoption of this interim final rule and incorporated this re-promulgation in the current rulemaking. State provisions remain equivalent to the federal requirements.

AA. State statutes and regulations do not require the use of the spike recovery correction as part of the Toxicity Characteristic Leaching Procedure as indicated in Revision Checklist 119.

Federal Authority: RCRA §§1006, 2002, 3001, 3002 and 3006; 40 CFR 261, Appendix II, as amended November 24, 1992 (57 FR 55114) and February 2, 1993 (58 FR 6854).

Citation of Laws and Regulations; Date of Enactment and Adoption

A.C.A. § 8-7-209(a)(4)
Reg. No. 23 § 261, Appendix II

Remarks of the Independent Counsel

Federal requirements have been adopted verbatim at the references cited. State requirements are equivalent to those of the federal program.

BB. State statutes and regulations replace the current Second Edition (including Updates I and II) of the "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, by incorporating by reference

the Third Edition (and its first update) of this test methods manual. Throughout the State's code, references to test methods directly refer to the methods as they are found in SW-846, as indicated in Revision Checklist 126.

Federal Authority: RCRA §§1006; 2002, 3001, 3002, 3004, 3005, 3006, 3010, and 3014; 40 CFR 260.11(a); 260.22(d)(1)(i); 261.22(a)(1)&(2); 261.24(a); 261 Appendices II, III, and X; 264.190(a); 264.314(c); 265.190(a); 265.314(d); 268.7(a); 268.40(a); 268.41(a); 268 Appendices I & IX; 270.6(a); 270.19(c)(1)(iii)&(iv); 270.62(b)(2)(i)(C)&(D); and 270.66(c)(2)(i)&(ii) as amended August 31, 1993 (58 FR 46040).

Citation of Laws and Regulations: Date of Adoption and Effective Date

- A.C.A. § 8-7-209(a)(4)
- Reg No. 23 § 260.11(a)
- Reg No. 23 § 260.22
- Reg No. 23 § 261.22(a)
- Reg No. 23 § 261.24(a)
- Reg No. 23 § 261, Appendices II, III, and X
- Reg No. 23 § 264.190(a)
- Reg No. 23 § 264.314(c)
- Reg No. 23 § 265.190(a)
- Reg No. 23 § 254.314(d)
- Reg No. 23 § 268.7(a)
- Reg No. 23 § 268.40(a)
- Reg No. 23 § 268.41(a)
- Reg No. 23 § 268 Appendices I and IX
- Reg No. 23 § 270.6(a)
- Reg No. 23 § 270.19(c)
- Reg No. 23 § 270.62(b)
- Reg No. 23 § 270.66(c)

Remarks of the Independent Counsel

Federal requirements have been adopted verbatim at the references cited. State requirements are equivalent to those of the federal program.

CC. State statutes and regulations incorporate by reference "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, the Third Edition (November 1986), as amended by Updates I, II and IIA, as indicated in Revision Checklists 128 and 132.

Federal Authority: RCRA §§2002(a), 3001(b), and 3001(e)(1); 40 CFR 260.11(a) as amended January 4, 1994 (59 FR 458) and June 2, 1994 (59 FR 28484).

Citation of Laws and Regulations: Date of Adoption and Effective Date

- A.C.A. § 8-7-209(a)(4)
- Reg No. 23 § 260.11(a)

Remarks of the Independent Counsel

Federal requirements have been adopted verbatim at the references cited. State requirements are equivalent to those of the federal program.

DD. State statutes and regulations increase the quantity and time limits for contaminated media used in treatability studies, as indicated in Revision Checklist 129.

Federal Authority: RCRA §3001; 40 CFR 261.4(e)(2)(i)&(ii), (e)(3), (f)(3), (f)(4), and (f)(5) as amended February 18, 1994 (59 FR 8362).

Citation of Laws and Regulations; Date of Adoption and Effective Date

A.C.A. § 8-7-209(a)(4)
Reg No. 23 § 261.4(e) and (f)

Remarks of the Independent Counsel

Federal requirements have been adopted verbatim at the references cited. State requirements are equivalent to those of the federal program.

II. DEFINITION OF SOLID WASTE

B. State statutes and regulations include as solid waste secondary materials, fed to a halogen acid furnace, that exhibit a characteristic of a hazardous waste or are listed as a hazardous waste in 40 CFR 261, Subparts C and D as indicated in Revision Checklists 85, 96, and 111.

Federal Authority: RCRA §3001; 40 CFR Part 261.2(d)(2) and (e)(2)(iv) as amended February 21, 1991 (56 FR 7134), August 27, 1991 (56 FR 42504) and August 25, 1992 (57 FR 38558).

Citation of Laws and Regulations; Date of Enactment and Adoption

A.C.A. § 8-7-209(a)(4)
Reg. No. 23 § 260.10
Reg. No. 23 § 260.20(a)
Reg. No. 23 § 261.2(d)(2)
Reg. No. 23 § 261.2(e)(2)(iv)
Reg. No. 23 § 261.4
Reg. No. 23 § 261.6

Remarks of the Independent Counsel

Federal requirements have been adopted verbatim at the references cited. State requirements are equivalent to those of the federal program.

VII. NATIONAL UNIFORM MANIFEST SYSTEM AND RECORDKEEPING

F. State statutes and regulations incorporate updates to the recordkeeping instructions so that the codes used by hazardous waste treatment, storage and disposal facilities to maintain records on-site match the codes used by these facilities on the Part A Permit Application Form as indicated on Revision Checklist 131. The new handling codes for Miscellaneous Units and Boilers and Industrial Furnaces, addressed by Checklist 131, are also incorporated into the statutes and regulations.

Federal Authority: RCRA §§ 3004 and 3005; 40 CFR 264 Appendix I, 265 Appendix I as amended March 24, 1994 (59 ER 13891).

Citation of Laws and Regulations: Date of Adoption and Effective Date

A.C.A. § 8-7-209(a)(5)
Reg. No. 23 § 264 Appendix I, Tables 1 and 2
Reg. No. 23 § 265 Appendix I, Tables 1 and 2

Remarks of the Independent Counsel

Federal requirements have been adopted verbatim at the references cited. State requirements are equivalent to those of the federal program.

X. LIQUIDS IN LANDFILLS

B. State statutes and regulations prohibit the disposal, in hazardous waste landfills, of liquids that have been sorbed in materials that are biodegradable or that release liquids during routine landfill operations, as indicated in Revision Checklist 118.

Federal Authority: RCRA §3004(c); 40 CFR 260.10, 264.13, 264.314, 264.316, 265.13, 265.314, and 265.316 as amended November 18, 1992 (57 ER 54452).

Citation of Laws and Regulations: Date of Enactment and Adoption

A.C.A. § 8-7-205(4)
A.C.A. § 8-7-209(a)(3), (4), (5)(B) and (5)(C), and (6)
A.C.A. § 8-7-218(a)
A.C.A. § 8-7-308(4)
Reg. No. 23 § 260.10
Reg. No. 23 § 264.13(c)(3)
Reg. No. 23 § 264.314
Reg. No. 23 § 264.316
Reg. No. 23 § 265.13(b)(c)
Reg. No. 23 § 265.314
Reg. No. 23 § 265.316

Remarks of the Independent Counsel

Arkansas has adopted the provisions of this amendment, with the exception of retaining previously authorized, more stringent State requirements which prohibit the disposal of any liquids in hazardous waste landfills in lieu of the provisions of 40 CFR 264.314(e) and 265.314(e). State provisions, with this more stringent exception, are equivalent to the federal requirements.

XIII. CORRECTIVE ACTION

G. State statutes and regulations contain remediation waste management provisions for corrective action management units (CAMUs) and temporary units (TUs) at RCRA facilities, as indicated in Revision Checklist 121.

Federal Authority: RCRA §§1006, 2002(a), 3004(u), 3004(v), 3005(c), 3007, and 3008(h); 40 CFR 260.10, 264.3, 264.101(b), 264.552, 264.553, 265.1(b), 268.2(c), 270.2 and Appendix I to 270.42, as amended February 16, 1993 (58 ER 8658).

Citation of Laws and Regulations: Date of Enactment and Adoption

A.C.A. § 8-7-209(a)(5), (6), and (8)

A.C.A. § 8-7-508

A.C.A. § 8-7-512

Reg. No. 23 § 260.10

Reg. No. 23 § 264.3

Reg. No. 23 § 264.101(b)

Reg. No. 23 § 264, Subsection S

Reg. No. 23 § 265.1(b)

Reg. No. 23 § 268.2(c)

Reg. No. 23 § 270.2

Reg. No. 23 § 270.42

Remarks of the Independent Counsel

Federal requirements have been adopted verbatim at the references cited. State requirements, with the exception of the definition of facility at Reg. 23 § 260.10, are equivalent to those of the federal program.

As noted, Arkansas codifies in § 260.10, the definition of *facility* for the purposes of corrective action and the implementation of corrective action management units. Under this definition, a facility is "all contiguous property under the control of the owner or operator seeking a Subtitle C permit." This definition is the same as was proposed in EPA's July 27, 1990 corrective action (Subpart S) proposal, presented in the First HSWA Codification Rule (50 FR 28702, Codification Rule, July 15, 1985), and upheld in a decision of the U.S. Court of Appeals for the District of Columbia Circuit (*United Technologies v. U.S. EPA*, 821 F.2d 714 (DC Cir. 1987)).

In the July 15, 1985, Codification Rule, EPA interpreted the term "facility" in the context of section 3004(u) to mean all contiguous property under the control of the owner/operator of a facility seeking a permit under subtitle C. This interpretation was upheld in a decision of the U.S. District Court of Appeals (*United Technologies Corporation vs. U.S. EPA*, 821 F.2d. 714 (DC Cir. 1987)). Thus, by proposing this interpretation as the definition of facility in the CAMU rule, EPA did not modify its basic interpretation as previously elaborated for the purpose of implementing section 3004(u). There are, however, several aspects of this definition which merit further clarification.

As explained in EPA's final CAMU rule at 58 FR 8664 and in the HSWA Codification Rule, this definition applies only in the context of implementing HSWA- (and as adopted under State authority, RATFA-) mandated corrective actions. As such, this definition is distinct from the previous facility definition in Regulation 23 and 40 CFR 260.10 that is narrower in scope, and applies to the non-corrective-action-related provisions of RCRA subtitle C. The Department believes that codifying this definition is important to the clear understanding of the CAMU and temporary unit rules. Both types of units are restricted to managing wastes that are generated in implementing corrective action at a "facility". This facility definition, therefore, will ensure that this key concept is clear within the definitions of CAMU and remediation wastes (see following discussion).

Although EPA's July, 1990 definition of *facility* did not explicitly state that this definition applied to facilities undergoing corrective action pursuant to RCRA Section 3008(h) authority, as with the definition of CAMU, this definition was always intended to apply both to facilities with a RCRA permit and to those operating under interim status. EPA has clarified the Federal definition by adding a phrase in the federal rule stating that this definition also applies to facilities implementing corrective action under RCRA Section 3008(h).

In the July, 1990 proposal, EPA addressed several issues associated with this facility definition, including the concept of "contiguous" property, and EPA's interpretation of "owner or operator". EPA stated in the February, 1993 CAMU Rule that these subsidiary issues would be addressed in the final subpart S rulemaking, and/or in subsequent guidance.

The definition of *facility* in Regulation No. 23 at § 260.10 is not intended to alter or subsume the existing - and narrower - definition of "facility" that was formerly given in 40 CFR 260.10, and is identical to the current wording of that definition in the Federal rules at 40 CFR 260.10. The older definition described the facility as "... all contiguous land and structures ... used

for treating, storing or disposing of hazardous waste". The Department intends to retain this definition for the purposes of implementing RCRA Subtitle C requirements, with the exception of corrective action (including those provisions governing corrective action for regulated units). At the same time, however, the EPA is reviewing its uses of the term "facility" in other parts of the subtitle C regulations to ensure appropriate usage.

Arkansas's definition of *facility* refers to "contiguous property" under the control of the owner/operator. Several questions have been raised as to EPA's and the Department's interpretation of "contiguous property" in the context of defining the physical limits of the facility as it applies to the application of the RCRA/HSWA-like corrective action processes. Clearly, property that is owned by the owner/operator that is located apart from the facility (i.e., is separated by land owned by others) is not part of the "facility" as defined here. EPA did intend, however, to consider property that is separated only by a public right-of-way (such as a roadway or a power transmission right-of-way) to be contiguous property. This is also consistent with also consistent with previous Department findings.

The term "contiguous property" also has significant additional meaning when applied to a facility where the owner is a different entity from the operator. For example, if a 100-acre parcel of land were owned by a company that leases five acres of it to another company that, in turn, engages in hazardous waste management on the five acres leased, the "facility" for the purposes of corrective action would be the entire 100-acre parcel. Likewise, if (in the same example) the operator also owned 20 acres of land located contiguous to the 100-acre parcel¹ but not contiguous to the five-acre parcel, the "facility" would be the combined 120 acres. (55 FR 30808, July 27, 1990).

EPA and the Department acknowledge that, in some situations, "ownership" of property can involve a complex legal determination, and the Department recognized commenters' concerns regarding the responsibility of innocent parties within, for example, an industrial park setting where a release may have occurred from an adjacent tenant seeking a RCRA permit, and outside the control of the innocent tenant, as well as the concerns of the park's land owner and its legal obligations and restrictions in regard to interacting with its tenants.

In review of the overall scope of the Federal and State corrective action programs, it is the Department's interpretation that the onus of compliance with RCRA facility and corrective action standards lies with the owner/operator of the specific facility seeking the RCRA permit. Additionally, a key element in the Department's imposition of a corrective action order under its State authority, the Remedial Action Trust Fund Act, is a finding that a person required to implement and/or pay for remedial actions actually caused or contributed to the release or threatened release at the site or facility in question. (A.C.A. § 8-7-508(a)(1)). Land owners and neighboring tenants who did not contribute to the release requiring corrective action in the case cited by the commenters would accrue some degree of protection under these provisions, and while some degree of access would need to be requested to remediate contamination that has migrated across the facility boundary, primary responsibility and liability for remediation costs and financial assurance remains with the permitted or permit-seeking unit owner/operator. The land owner may, as the facility "owner" defined above, be subject to some additional responsibilities for releases on his property, however neighboring tenants, not contributing to the release, would not likely be held responsible.

During the public comment period for this rule, commenters requested that the Department narrow the definition of *facility* at § 260.10 so that it applies only to corrective action management units, a small subset of the corrective action universe, resulting in a state definition that is narrower in scope than the proposed Federal language. The existing State provisions were more stringent than the Federal requirements in that the implementation of CAMUs and temporary units would be prohibited without the rule's adoption in whole or in part. Such a partial adoption of the Federal CAMU rule, combined with the Department's authority to approve the use of CAMUs or TUs on a case-by-case basis, is unlikely to be inconsistent with the overall scope of the Federal program.

The Department therefore clarified and adopted the definition of *facility* for the purpose of corrective action within the definition of *facility* at Reg. 23 § 260.10:

"Facility" means all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them). (For the purpose of implementing corrective action under Section 264.101, 'Facility' means all contiguous property under the control of the operator which includes the hazardous waste management unit for which a permit under Subtitle C of RCRA and the Arkansas Hazardous Waste Management Act is being sought.)

Arkansas' definition at § 260.10 addresses only the "operator" of the facility which is seeking a permit. This is in keeping with the State's narrowed application of this refined definition only to cases applying to the implementation of corrective action management units, and in recognition of the fact that the property owner where a facility requiring corrective action may not always be the same as the owner of the regulated waste management unit and may have no involvement with the operation of said unit, particularly in the case of an industrial park. The Department took this stance as a means to exercise its enforcement discretion in providing a specific exemption for remedial wastes managed in a CAMU. In all other cases other than the construction of a CAMU, the Department retains its authority and policy under the provisions of the Remedial Action Trust Fund Act (A.C.A. § 8-7-508 and § 8-7-512) to hold both the actual property owner and the owner of the regulated unit responsible and liable to control and remediate any release or threatened release of hazardous wastes.

In permitting the use of corrective action management and temporary units at a smaller range of facilities than listed in the equivalent federal provisions, the State's definition of *facility* is more stringent than federal requirements. The remaining provision of Regulation 23 Subsection S and related language is equivalent to the federal requirements.

XV. STANDARDS FOR FACILITIES

L. 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 Checklists 82, 92 and 120.

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), July 1, 1991 (56 FR 30192), and December 24, 1992 (57 FR 61492).

Citation of Laws and Regulations: Date of Enactment and Adoption

A.C.A. § 8-7-209(a)(4), (5) and (6)
Reg. No. 23 § 260.10
Reg. No. 23 § 261.4
Reg. No. 23 § 261.35
Reg. No. 23 § 262.34
Reg. No. 23 § 264.190
Reg. No. 23 § 264 Subsection W
Reg. No. 23 § 265 Subsection W
Reg. No. 23 § 270.22
Reg. No. 23 § 270.26

Remarks of the Independent Counsel

Federal revisions have been adopted verbatim at the references cited. The revised State requirements are equivalent to those of the federal program. Arkansas has retained several more stringent requirements for drip pad construction, specifically a requirement to provide all existing drip pads with an impermeable coating prior to September 30, 1995 and a prohibition against using penetrating sealants to meet any requirements for an impermeable coating. State provisions for drip pads overall remain more stringent than the federal requirements

M. State statutes and regulations contain an administrative stay, from June 13, 1991 to December 24, 1992, for the requirement that new drip pads be impermeable as indicated in Revision Checklists 91 and 120.

Federal Authority: 5 U.S.C. 705; 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) and December 24, 1992 (57 FR 61492).

Citation of Laws and Regulations: Date of Enactment and Adoption

A.C.A. § 8-7-209(a)(5) and (6)
Reg. No. 23 § 264.570
Reg. No. 23 § 264.573
Reg. No. 23 § 265.440
Reg. No. 23 § 265.443

Remarks of the Independent Counsel

Federal revisions have been adopted verbatim at the references cited. The revised State requirements are equivalent to those of the federal program. Arkansas has retained several more stringent requirements for drip pad construction, specifically a requirement to provide all existing drip pads with an impermeable coating prior to September 30, 1995, a prohibition against using penetrating sealants to meet any requirements for an impermeable coating, and a reminder that any administrative stays for coating drip pads have expired. State provisions for drip pads overall remain more stringent than the federal requirements

O. State statutes and regulations allow the use of additional financial instruments (letter of credit, a surety bond, a guarantee, trust fund, and purchase of insurance by other firms) to meet the liability coverage requirements as specified in Revision Checklist 113.

Federal Authority: RCRA §§2002(a), 3004 and 3005; 40 CFR 264.141, 264.147, 264.151, 265.141, 265.147 and 265.151 as amended September 1, 1988 (53 FR 33938), July 1, 1991 (56 FR 30200), and September 16, 1992 (57 FR 42832).

Citation of Laws and Regulations: Date of Enactment and Adoption

A.C.A. § 8-7-209(a)(5) and (6)
A.C.A. § 8-7-216(f)
A.C.A. § 8-7-219(1) and (2)
A.C.A. § 8-7-218
A.C.A. § 8-7-512
Reg. No. 23 § 264.141
Reg. No. 23 § 264.147
Reg. No. 23 § 264.151
Reg. No. 23 § 265.141
Reg. No. 23 § 265.147

Remarks of the Independent Counsel

Federal requirements have been adopted verbatim at the references cited. State requirements are equivalent to those of the federal program.

P. State statutes and regulations include conforming changes to 264.147(f)(6) and 265.147(f)(6) to expand the instruments available to owners and operators that no longer meet the requirements of the financial test for liability coverage as indicated in Revision Checklist 113.

Federal Authority: RCRA §3004; 40 CFR 264.147(f)(6) and 265.147(f)(6) as amended September 16, 1992 (57 FR 42832).

Citation of Laws and Regulations: Date of Enactment and Adoption

A.C.A. § 8-7-209(a)(5) and (6)
A.C.A. § 8-7-216(f)
A.C.A. § 8-7-219(1) and (2)
A.C.A. § 8-7-218
A.C.A. § 8-7-512
Reg. No. 23 § 264.147(f)(6)
Reg. No. 23 § 265.147(f)(6)

Remarks of the Independent Counsel

Federal requirements have been adopted verbatim at the references cited. State requirements are equivalent to those of the federal program.

Q. State statutes and regulations require reporting of third-party claims against an owner's or operator's liability coverage as indicated by Revision Checklist 113.

Federal Authority: RCRA §§2002(a), 3004 and 3005; 40 CFR 264.147(a)(7)&(b)(7) and 265.147(a)(7)&(b)(7) as amended September 1, 1988 (53 ER 33938) and September 16, 1992 (57 ER 42832).

Citation of Laws and Regulations: Date of Enactment and Adoption

A.C.A. § 8-7-209(a)(5) and (6)
A.C.A. § 8-7-219(1) and (2)
A.C.A. § 8-7-218
A.C.A. § 8-7-512
Reg. No. 23 § 264.147(a)(7)
Reg. No. 23 § 264.147(b)(7)
Reg. No. 23 § 265.147(a)(7)
Reg. No. 23 § 265.147(b)(7)

Remarks of the Independent Counsel

Federal requirements have been adopted verbatim at the references cited. State requirements are equivalent to those of the federal program.

R. State statutes and regulations require owners or operators of new drip pads to have either 1) a surface protection system meeting the hydraulic conductivity, material chemical compatibility, and assessment requirements of 264.573(a)(4) or 265.443(a)(4), or 2) a liner and leak detection system below the pad as well as a leak collection system as specified in Revision Checklist 120.

Federal Authority: RCRA §§2002(a) and 3001(b)&(e)(1); 40 CFR 264.572, 265.573, 265.442 and 265.443 as amended December 24, 1992 (57 ER 61492).

Citation of Laws and Regulations: Date of Enactment and Adoption

A.C.A. § 8-7-209(a)(5) and (6)
Reg. No. 23 § 264.573(a)(4)
Reg. No. 23 § 265.443(a)(4)

Remarks of the Independent Counsel

Federal revisions have been adopted verbatim at the references cited. The revised State requirements are equivalent to those of the federal program. Arkansas has retained several more stringent requirements for drip pad construction, specifically a requirement to provide all existing drip pads with an impermeable coating prior to September 30, 1995 and a prohibition against using penetrating sealants to meet any requirements for an impermeable coating. State provisions for drip pads overall remain more stringent than the federal requirements

S. State statutes and regulations require owners or operators of existing drip pads to meet the hydraulic conductivity, material chemical compatibility, and assessment requirements of 264.573(a)(4) or 265.443(a)(4), as specified in Revision Checklist 120.

Federal Authority: RCRA §§2002(a) and 3001(b)&(e)(1); 40 CFR 264.571, 264.573, 265.441 and 265.443 as amended December 24, 1992 (57 FR 61492).

Citation of Laws and Regulations; Date of Enactment and Adoption

A.C.A. § 8-7-209(a)(5) and (6)
Reg. No. 23 § 264.573(a)(4)
Reg. No. 23 § 265.443(a)(4)

Remarks of the Independent Counsel

Federal revisions have been adopted verbatim at the references cited. Arkansas has retained several more stringent requirements for drip pad construction, specifically a requirement to provide all existing drip pads with an impermeable coating prior to September 30, 1995 and a prohibition against using penetrating sealants to meet any requirements for an impermeable coating. State provisions for drip pads overall remain more stringent than the federal requirements

T. State statutes and regulations contain requirements for the management of infrequent and incidental drippage in storage yards as indicated in Revision Checklist 120.

Federal Authority: RCRA §§2002(a) and 3001(b)&(e)(1); 40 CFR 264.570(c) and 265.440(c) as amended December 24, 1992 (57 FR 61492).

Citation of Laws and Regulations; Date of Enactment and Adoption

A.C.A. § 8-7-209(a)(5) and (6)
Reg. No. 23 § 264.570
Reg. No. 23 § 265.440

Remarks of the Independent Counsel

Federal revisions have been adopted verbatim at the references cited. The revised State requirements are equivalent to those of the federal program.

U. State statutes and regulations indicate that the "Uniform Customs and Practice for Documentary Credits" is a copyrighted document of the International Chamber of Commerce as indicated in Revision Checklist 133.

Federal Authority: RCRA 2002(a), 3004, 3005, and 3006; 40 CFR 264.151(d) & (k) as amended June 10, 1994 (59 FR 29958).

Citation of Laws and Regulations; Date of Adoption and Effective Date

Reg. No. 23 § 264.151(d) & (k)

Remarks of the Independent Counsel

Federal revisions have been adopted verbatim at the references cited. The revised State requirements are equivalent to those of the federal program.

XX. STANDARDS FOR THE MANAGEMENT OF WASTE FUEL AND USED OIL AND FOR THE BURNING OF THESE MATERIALS 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 Checklists 85, 94, 96, 111, and 114. Hazardous waste storage units at regulated burners are subject to the 40 CFR Part 264 requirements.

Federal Authority: RCRA §§1006, 2002, 3001 through 3007, 3010 and 7004; 40 CFR 260.10, 260.11, 260.20, 261.3, 261.6, 264.1, 264.112, 264.340, 265.1, 265.112, 265.113, 265.340, 265.370, Part 266 Subpart H, and Part 266 Appendices I-X as amended February 21, 1991 (56 ER 7134), July 17, 1991 (56 ER 32688), August 27, 1991 (56 ER 42504), August 25, 1992 (57 ER 38558), and September 30, 1992 (57 ER 44999).

Citation of Laws and Regulations: Date of Enactment and Adoption

A.C.A. § 8-7-209(a)(5) and (6)

Reg. No. 23 § 260.10

Reg. No. 23 § 260.11

Reg. No. 23 § 260.20

Reg. No. 23 § 261.2

Reg. No. 23 § 261.3

Reg. No. 23 § 261.4

Reg. No. 23 § 261.6

Reg. No. 23 § 264.1

Reg. No. 23 § 264.112

Reg. No. 23 § 264.340

Reg. No. 23 § 265.1

Reg. No. 23 § 265.112

Reg. No. 23 § 265.113

Reg. No. 23 § 265.340(a)

Reg. No. 23 § 265.370

Reg. No. 23 § 266 Subsection H

Reg. No. 23 § 266 Appendices I-X

Reg. No. 23 § 270.22

Reg. No. 23 § 270.42

Reg. No. 23 § 270.66

Reg. No. 23 § 270.72

Reg. No. 23 § 270.73

Remarks of the Independent Counsel

Federal requirements have been adopted verbatim at the references cited. State requirements are equivalent to those of the federal program.

E. State statutes and regulations provide used oil management standards for used oil generators, transporters, processors, re-refiners, burners, and marketers as indicated in Revision Checklists 112, 122, and 130.

Federal Authority: RCRA §§1004, 1006, 2002, 3001, 3014 and 7004; 40 CFR Parts 260, 261, 266 and 279 as amended September 10, 1992 (57 FR 41566) and May 3, 1993 (58 FR 26420).

Citation of Laws and Regulations: Date of Enactment and Adoption

A.C.A. § 8-7-209(a)(4), (5), (6) and (11)
Reg. No. 23 § 260.10
Reg. No. 23 § 261.3(a)(2)
Reg. No. 23 § 261.5(j)
Reg. No. 23 § 261.6(a)(2), (3), and (4)
Reg. No. 23 § 266.40 - 266.44
Reg. No. 23 § 266.100(b)
Reg. No. 23 § 279
Reg. No. 23 § 30(b)

Remarks of the Independent Counsel

Federal requirements have been adopted verbatim at the references cited. With the following exception, State requirements are equivalent to those of the federal program.

Arkansas has adopted more stringent requirements for used oil management at three points: 1) the Department, which manages the assignment of EPA identification numbers within the State, requires that all handlers use the state's Notification of Regulated Waste Activity form and does not accept notifications by letter as provided in the federal rule; 2) the Department requires that oil processors and re-refiners submit an annual activity report rather than biennial, and 3) has implemented more stringent requirements for the use and disposal of used oil as a dust suppressant, described at Reg. 23 § 279.82.

F. State statutes and regulations are amended such that the procedures for conducting air quality modeling and screening for boilers and industrial furnaces burning hazardous wastes reference the method recommended in Appendix W of 40 CFR Part 51. State regulations and statutes also incorporate by reference the October 1992 edition of "Screening Procedures for Estimating the Air Quality Impact of Stationary Sources" as indicated in Revision Checklist 125.

Federal Authority: §§1006, 2002, 3001 through 3007, 3010 and 7004; 40 CFR 260.11(a), 266.104(e)(3), 266.106(h) and Part 266 Appendix X, as amended July 20, 1993 (58 FR 38816).

Citation of Laws and Regulations: Date of Adoption and Effective Date

A.C.A. § 8-7-209(a)(5) and (6)
Reg. No. 23 § 260.11(a)
Reg. No. 23 § 266.104(e)
Reg. No. 23 § 266.106(h)
Reg. No. 23 § 266, Appendix X

Remarks of the Independent Counsel

Federal requirements have been adopted verbatim at the references cited. State requirements are equivalent to those of the federal program.

G. State statutes and regulations contain an administrative stay, until further administrative action is taken, that replaces the current limits needed to qualify for the Beville exemption under test number 2 with the land disposal restriction limits for underlying constituents as indicated in Revision Checklist 127.

Federal Authority: RCRA §§1006, 2002(a), 3004, and 3014; 40 CFR 266.112(b)(2)(i) and Part 266 Appendix VII, as amended November 9, 1993 (58 FR 59598).

Citation of Laws and Regulations: Date of Adoption and Effective Date

A.C.A. § 8-7-209(a)(4), (5) and (6)
Reg. No. 23 § 266.112(b)
Reg. No. 23 § 266, Appendix VII

Remarks of the Independent Counsel

Federal requirements have been adopted verbatim at the references cited. State requirements are equivalent to those of the federal program.

XXI. LAND DISPOSAL RESTRICTIONS

I. State statutes and regulations provide an extension of the land disposal restriction effective date for hazardous waste debris until May 8, 1994, as indicated in Revision Checklists 103, 116, and 123.

Federal Authority: RCRA §3004(h)(3); 40 CFR 268.35(c)-(e) as amended May 15, 1992 (57 FR 20766), October 20, 1992 (57 FR 47772), and May 14, 1993 (58 FR 28506).

Citation of Laws and Regulations: Date of Enactment and Adoption

A.C.A. § 8-7-209(a)(5) and (6)
Reg. No. 23 § 268.35(c)-(e)

Remarks of the Independent Counsel

Federal requirements have been adopted verbatim at the references cited. State requirements are equivalent to those of the federal program.

K. State statutes and regulations provide land disposal treatment standards for certain hazardous wastes listed after November 8, 1984 as well as treatment standards for debris contaminated with listed hazardous wastes or debris that exhibit certain hazardous waste characteristics as indicated in Revision Checklist 109.

Federal Authority: RCRA §§3004(d)-(k) and (m); 40 CFR 261.3(f), 268.2, 268.5, 268.7, 268.14, 268.36, 268.40, 268.41, 268.42, 268.43, 268.45, 270.13 and 270.14, as amended August 18, 1992 (57 FR 37194).

Citation of Laws and Regulations: Date of Enactment and Adoption

A.C.A. § 8-7-209(a)(4), (5) and (6)
Reg. No. 23 § 261.3(f)
Reg. No. 23 § 268.2
Reg. No. 23 § 268.5
Reg. No. 23 § 268.7
Reg. No. 23 § 268.14
Reg. No. 23 § 268.36

Reg. No. 23 § 268.40
Reg. No. 23 § 268.41
Reg. No. 23 § 268.42
Reg. No. 23 § 268.43
Reg. No. 23 § 268.45
Reg. No. 23 § 270.13
Reg. No. 23 § 270.14

Remarks of the Independent Counsel

Federal requirements have been adopted verbatim at the references cited. State requirements are equivalent to those of the federal program.

L. State statutes and regulations include revisions to existing land disposal restrictions including revision of F001-F005 spent solvents treatment standards, conversion of wastewater standards for twenty-four "F" and "K" water codes based on scrubber standards; revisions to K061, K062 and F006 treatment standards; change of recordkeeping requirements; and clarification of rules related to wastes listed because they exhibit a characteristic as indicated in Revision Checklist 109.

Federal Authority: RCRA §§3004(d)-(k) and (m); 40 CFR 261.3(a)&(c), 268.9, 268.41, 268.42, 268.43 and 268.46, as amended August 18, 1992 (57 FR 37194).

Citation of Laws and Regulations: Date of Enactment and Adoption

A.C.A. § 8-7-209(a)(4), (5) and (6)
Reg. No. 23 § 261.3(a)&(c)
Reg. No. 23 § 268.9
Reg. No. 23 § 268.41
Reg. No. 23 § 268.42
Reg. No. 23 § 268.43
Reg. No. 23 § 268.46

Remarks of the Independent Counsel

Federal requirements have been adopted verbatim at the references cited. State requirements are equivalent to those of the federal program.

M. State statutes and regulations allow storage and treatment in containment buildings as indicated in Revision Checklist 109.

Federal Authority: RCRA §§3004(d)-(k) and (m); 40 CFR 260.10, 262.34, 264.110, 264.111, 264.112, 264.140, 264.142, 264 Subpart DD, 265.110, 265.111, 265.112, 265.140, 265.142, 265.221, 265 Subpart DD, 268.50, 270.42 and 270.72, as amended August 18, 1992 (57 FR 37194).

Citation of Laws and Regulations: Date of Enactment and Adoption

A.C.A. § 8-7-209(a)(5) and (6)
Reg. No. 23 § 260.10
Reg. No. 23 § 262.34
Reg. No. 23 § 264.110
Reg. No. 23 § 264.111
Reg. No. 23 § 264.112
Reg. No. 23 § 264.140

Reg. No. 23 § 264.142
Reg. No. 23 § 264 Subsection DD
Reg. No. 23 § 265.110
Reg. No. 23 § 265.111
Reg. No. 23 § 265.112
Reg. No. 23 § 265.140
Reg. No. 23 § 265.142
Reg. No. 23 § 265.221
Reg. No. 23 § 265 Subsection DD
Reg. No. 23 § 268.50
Reg. No. 23 § 270.42
Reg. No. 23 § 270.72

Remarks of the Independent Counsel

Federal requirements have been adopted verbatim at the references cited. State requirements are equivalent to those of the federal program.

N. State statutes and regulations provide a case-by-case extension of the land disposal effective date until May 8, 1994 for Third Third hazardous soils whose best demonstrated available technology (BDAT) was incineration, retorting or vitrification, as well as for Third Third soils contaminated with radioactive mixed waste as indicated in Revision Checklists 116 and 123.

Federal Authority: RCRA §3004(h)(3); 40 CFR 268.35(c)-(e) as amended October 20, 1992 (57 ER 47772) and May 14, 1993 (57 ER 28506).

Citation of Laws and Regulations: Date of Enactment and Adoption

A.C.A. § 8-7-209(a)(4), (5) and (6)
Reg. No. 23 § 268.35(c)-(e)

Remarks of the Independent Counsel

Federal requirements have been adopted verbatim at the references cited. State requirements are equivalent to those of the federal program.

O. State statutes and regulations include land disposal restrictions and treatment standards for certain ignitable and corrosive characteristic wastes whose treatment standards were vacated, as indicated in Revision Checklist 124.

Federal Authority: RCRA §3004(d),(e)&(g); 40 CFR 268.37 as amended on May 24, 1993 (58 ER 29860).

Citation of Laws and Regulations: Date of Enactment and Adoption

A.C.A. § 8-7-209(a)(4), (5) and (6)
Reg. No. 23 § 268.37

Remarks of the Independent Counsel

Federal requirements have been adopted verbatim at the references cited. State requirements are equivalent to those of the federal program.

P. State statutes and regulations include a revision to P015 listing in the land disposal restrictions technology-based treatment standards as indicated on Revision Checklist 134.

Federal Authority: RCRA §3004(d)-(k) and (m); 40 CFR 268.42(a)/Table 2, as amended June 20, 1994 (59 FR 31551).

Citation of Laws and Regulations; Date of Adoption and Effective Date

A.C.A. § 8-7-209(a)(4), (5) and (6)
Reg No. 23 § 268.42(a), Table 2

Remarks of the Independent Counsel

Federal requirements have been adopted verbatim at the references cited. State requirements are equivalent to those of the federal program.



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2/1/96
(Date)