

US EPA ARCHIVE DOCUMENT



STATE OF ARKANSAS
DEPARTMENT OF POLLUTION CONTROL & ECOLOGY

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**STATEMENT OF LEGAL AUTHORITY
FOR FINAL AUTHORIZATION FOR CHANGES TO THE RCRA PROGRAM
FROM JULY 1995 THROUGH JUNE 1996**

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), May 10, 1994 (RCRA Cluster II), February 2, 1996 and March 3, 1997 (RCRA Clusters III and IV), and July 31, 1997 (RCRA Cluster V).

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 Cluster VI.

References to "Ark. Code Ann." and "A.C.A." refer to the Arkansas Code of 1987 Annotated, as amended and effective in 1997. References to "APC&EC Reg. No. 23" refer to the Arkansas Pollution Control and Ecology Commission's (APC&EC) Regulation Number 23, (Hazardous Waste Management) (formerly titled the Arkansas Hazardous Waste Management Code), last amended on July 25, 1997, to adopt all final rules promulgated by EPA through February 19, 1997, and which was effective on August 22, 1997. Dates of enactment and adoption for other statutes or regulations are given when cited.

I. IDENTIFICATION AND LISTING

II. State statutes and regulations provide that recovered oil excluded from the definition of hazardous waste at 40 CFR 261.4(a)(12) be inserted into the petroleum refining process at or before a point where contaminants are removed as indicated in Revision Checklist 150.

Federal Authority: RCRA §§ 2002 and 3001; 40 CFR 261.4(a)(12) as amended March 26, 1996 (61 FR 13103).

Citation of Laws and Regulations; Date of Enactment and Adoption

Reg. No. 23 § 261.4(a)(12)

Remarks of the Independent Counsel

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

X. LIQUIDS IN LANDFILLS

C. State statutes and regulations provide that OECD 301B (Modified Sturm Test) may also be used to demonstrate that a sorbent is non-biodegradable as indicated in Revision Checklist 145.

Federal Authority: RCRA § 3004(c), 42 U.S.C. 6924(c); 40 CFR 264.314(e)(2)(ii)&(iii), and 265.314(e)(2)(ii)&(iii) as amended July 11, 1995 (60 FR 35703).

Citation of Laws and Regulations; Date of Enactment and Adoption

Reg. No. 23 § 264.314(e)(2)(ii)-(iii)
Reg. No. 23 § 265.314(f)(2)(ii)-(iii)

Remarks of the Independent Counsel

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

XVI. REQUIREMENTS FOR PERMITS

Z. State statutes and regulations provide for opportunities for earlier public involvement in the permitting process and expand public access to information throughout the permitting process and the operational lives of facilities as indicated in Revision Checklist 148.

Federal Authority: RCRA §§ 2002, 3004, 3005, and 7004(b), 40 CFR 124.31, 124.32, 124.33, 270.2, 270.14(b)(22), 270.30(m), 270.61(b)(5), 270.62(b)(6), 270.62(d), 270.66(d)(3), and 270.66(g); 60 FR 63417 (December 11, 1995).

Citation of Laws and Regulations; Date of Enactment and Adoption

A.C.A. § 8-4-203(b)-(h)
A.C.A. § 8-7-217
Reg. No. 8 § 2.1.2-10
Reg. No. 23 § 3(b)(3)
Reg. No. 23 § 270.7(d)-(f)
Reg. No. 23 § 270.2
Reg. No. 23 § 270.14(b)(22)
Reg. No. 23 § 270.30(m)

Reg. No. 23 § 270.61(b)(5)
Reg. No. 23 § 270.62(b) & (d)
Reg. No. 23 § 270.66(d) & (g)

Remarks of the Independent Counsel

For a discussion of the statutory authorities, see Section VII A of the March 3, 1997 Consolidated Statement of Legal Authority. Modifications to the federal public notice and comment requirements addressed here have been adopted at the above citations. The requirements set forth at 40 CFR 124.31(a) have been adopted and incorporated into the previous state requirements for public participation in the permit process at Regulation No. 23 § 270.7. State requirements are generally equivalent to the federal regulations with the following exceptions:

- Pursuant to A.C.A. § 8-7-217 Arkansas requires that a public notice be published “in the largest newspaper published in the county in which a facility or facilities are located or proposed to be located, as well as published in the largest newspaper published in the adjoining counties.” This provision makes the state requirement more stringent, as the federal regulation simply specifies a display newspaper advertisement.
- Arkansas requires additional information to be submitted along with the description and location of the facility. This provision makes the state requirement broader in scope.
- At § 270.7(e)(2)(i), Regulation 23 requires the facility owner/operator to publish the public notice and then provide proof of such notice (a copy of the notice(s) along with a statement from the newspaper(s) listing when the advertisements ran, and a copy of the paid receipt for the advertisements) to the Director as part of the permit application. This provision makes the state requirements more stringent.
- In the same manner as above, Regulation 23 §270.62(b)(6) and § 270.66(d)(3) require the owner/operator to provide public notice of the trial burn and provide proof of notice to the Director, ~~instead of this notice being published by the Department.~~ A.C.A. § 8-4-203(d), Regulation No. 8 §§ 2.1.4(c) and 2.1.5(c), and Regulation No. 23 § 6(z) require that the costs of public notices be paid by the permit applicant, e.g., the facility owner/operator. The mechanism for this process is that the Department drafts (or approves) the public notice, for which the facility owner/operator arranges for publication and subsequently provides the Department with a copy of the published notice and proof of payment for publication costs for inclusion in the administrative record. This provision makes the state requirements more stringent.

XXI. LAND DISPOSAL RESTRICTIONS

S. State statutes and regulations contain treatment standards for hazardous wastes from the production of carbamate pesticides and from primary aluminum production; contain the

treatment standards for hazardous wastes that exhibit the characteristic of reactivity; and put back into place the LDR "Third Third" provisions for the treatment of certain wastewaters as indicated in Revision Checklist 151. These statutes and regulations also codify the Federal policy that combustion of inorganic waste is an impermissible form of treatment as also indicated in this checklist.

Federal Authority: RCRA § 3004(d) through (k), § 3004(m); Public Law 104-119, 100 Stat. 830, 40 CFR part 268 as amended April 8, 1996 (61 FR 15566 and 61 FR 15660); April 30, 1996 (61 FR 19117); June 28, 1996 (61 FR 33680); July 10, 1996 (61 FR 36419); and August 26, 1996 (61 FR 43924).

Citation of Laws and Regulations; Date of Enactment and Adoption

Reg. No. 23 § 268.1(c) & (e)
Reg. No. 23 § 268.2(f), (i), and (j)
Reg. No. 23 § 268.3(a)-(c)
Reg. No. 23 § 268.7(a) and (b)
Reg. No. 23 § 268.8
Reg. No. 23 § 268.9(a) and (d)
Reg. No. 23 § 268.39
Reg. No. 23 § 268(a), (e), (g), and Table TTS
Reg. No. 23 § 268.42 Table 1
Reg. No. 23 § 268.44(a)
Reg. No. 23 § 268.48(a) and Table UTS
Reg. No. 23 § 268 Appendix XI

Remarks of the Independent Counsel

For a discussion of the statutory authorities, see Section VI A of the March 3, 1997 Consolidated Statement of Legal Authority. Federal regulations have been adopted verbatim at the reference cited. State requirements are equivalent to those of the federal program.



AL ECKERT

Independent Legal Counsel; and
Chief, Legal Division
State of Arkansas
Department of Pollution Control and Ecology

12-1-97
(Date)