

US EPA ARCHIVE DOCUMENT

Part I of the Arkansas RCRA Program Description

Organization and Management of the State Program – (RCRA §§ 271.6(b) through (h))

Organization and Structure of the State Agency.

Arkansas's hazardous waste management program is administered on a day-to-day basis by the Hazardous Waste Division of the Arkansas Department of Pollution Control and Ecology. The Department is the state agency charged with the implementation and enforcement of specified environmental media and management programs. A separate panel, the Arkansas Pollution Control and Ecology Commission, serves as the environmental policy and rule-making body, provides oversight to the Department in carrying out its programs, and provides for adjudicatory hearings, review, and appeal for contested decisions in permitting, enforcement, and rulemaking.

Recent legislation, Act 1219 of 1997, clarified the separation of powers between the Commission and the Department. In order to separate public perception of these agencies, the Act also renames the Department as the "Arkansas Department of Environmental Quality (ADEQ) effective March 31, 1999.

The Arkansas Department of Pollution Control & Ecology (ADPC&E)

The Arkansas Department of Pollution Control and Ecology, or "ADPC&E", is the state agency with primary responsibility for environmental regulation in Arkansas, including regulation of the management of hazardous wastes and substances. The ADPC&E offices are located in a seven-building complex approximately one-half mile southeast of the intersection of Interstate 30 and Geyer Springs Road in southwest Little Rock. The Department's mailing address and telephone number are:

Arkansas Department of Pollution Control &
Ecology
8001 National Drive
P.O. Box 8913
Little Rock, Arkansas 72219-8913

Telephone: (501) 682-0744
FAX: (501) 682-0880

Additionally, information about the Department and its programs may be accessed via the World Wide Web on the Internet at

<http://www.adeq.state.ar.us>.

ADPC&E consists of six media divisions which administer the State's air pollution control, water quality, solid waste, hazardous waste, regulated storage tank, and mining programs, and six non-regulatory divisions, a staff legal section, and a management services group which implement state assistance programs or provide administrative and technical support to the Department as a whole. The Department's structure is shown at **Figure 1**.

The ADPC&E operates an annual budget of approximately \$80.4 million. The Department is authorized 436 full-time staff and, as of July 1, 1997, actually employs 385.

The Director's Office

The ADPC&E is administered by a Director, who is nominated and confirmed by the Governor, with the consent of the State Senate. The Director serves an indefinite term at the pleasure of the Governor, and the Director is a full cabinet-level officer in the Governor's administration. The Director, with the advice and consent of the Governor, appoints all ADPC&E division chiefs. All other ADPC&E employees are employed by, and serve at the pleasure of, the Director, subject only to applicable civil service limitations. The Director is declared by statute to be the chief executive officer and active administrator of all pollution control activities of the Department.

The current Director of ADPC&E is Randall Mathis. Mr. Mathis has been employed by ADPC&E since 1981. He served as chief of the Solid Waste Division from 1981 to 1983 and as Deputy Director of ADPC&E from 1983 to 1988. Mr. Mathis became the Acting Director in 1988 and was formally confirmed by the Governor as Director of the ADPC&E in 1989. Mr. Mathis previously served as the County Judge of Clark County, Arkansas from 1969 to 1976, President of the Arkansas County Judges Association from 1974 to 1975, a member of the State Rural Development Advisory Council, and a charter member of the Executive Board of the Arkansas State Commission on Crime and Law Enforcement from 1971 to 1974.

Three Deputy Directors assist in administering the Department. Larry Wilson oversees the Water, Solid Waste, Regulated Storage Tank, and Mining Divisions; Becky Keough oversees the Air,

Hazardous Waste, and Technical Services Divisions, and Jim Shirrell oversees the non-regulatory divisions of Computer Services, Construction Assistance, Customer Service, Environmental Preservation, Market Development, and Recycling.

With respect to the hazardous waste management program, the Department is charged under state law with the following responsibilities:

- (1) To administer and enforce all laws, rules, and regulations regarding hazardous waste management;
- (2) To conduct and publish such studies of hazardous waste management in this state as shall be deemed appropriate including, but not limited to:
 - A description of the sources of hazardous waste generated within the state;
 - Information regarding the types and quantities of such waste; and
 - A description of current hazardous waste management practices and costs including treatment, recovery, and disposal;
- (3) To develop, publish, and implement plans in accordance with the provisions of this subchapter for the safe and effective management of hazardous wastes within this state including, but not limited to the establishment of criteria for the identification of those locations within the state which are suitable and/or unsuitable for establishment of hazardous waste treatment or disposal facilities or sites;
- (4) To establish criteria for determination of whether any waste or combination of wastes is hazardous for purposes of this subchapter and to identify and specify wastes or combination of wastes as being hazardous;
- (5) To issue, continue in effect, revoke, modify, or deny, under such conditions as it may prescribe, permits for the establishment, construction, operation, or maintenance of hazardous waste treatment, storage, or disposal facilities or sites, as more particularly prescribed by A.C.A. §§ 8-7-215 - 8-7-222;
- (6) To make such investigations and inspections and to hold such hearings, after notice, as it may deem necessary or advisable for the discharge of its duties under this subchapter and to ensure compliance with this subchapter and any orders, rules, and regulations issued pursuant thereto;
- (7) To make, issue, modify, revoke, and enforce orders, after notice and hearing,

prohibiting violation of any of the provisions of this subchapter, or of any rules and regulations issued pursuant thereto or any permit issued thereunder, and requiring the taking of such remedial measures as may be necessary or appropriate to implement or effectuate the provisions and purposes of this subchapter;

(8) To institute proceedings in the name of the department in any court of competent jurisdiction to compel compliance with, and to restrain any violation of the provisions of this subchapter, or any rules, regulations, and orders issued pursuant thereto, or any permit issued thereunder; and require the taking of such remedial measures as may be necessary or appropriate to implement or effectuate the provisions and purposes of this subchapter. In any civil action in which a temporary restraining order, preliminary injunction, or permanent injunction is sought, it shall not be necessary to allege or prove at any stage of the proceeding that irreparable damage will occur should the requested relief not be granted, nor that the remedy at law is inadequate;

(9) To initiate, conduct, and support research, demonstration projects, and investigations, and coordinate all state agency research programs pertaining to hazardous waste management, and establish technical advisory committees to assist in the development of procedures, standards, criteria, and rules and regulations, the members of which may be reimbursed for travel expenses;

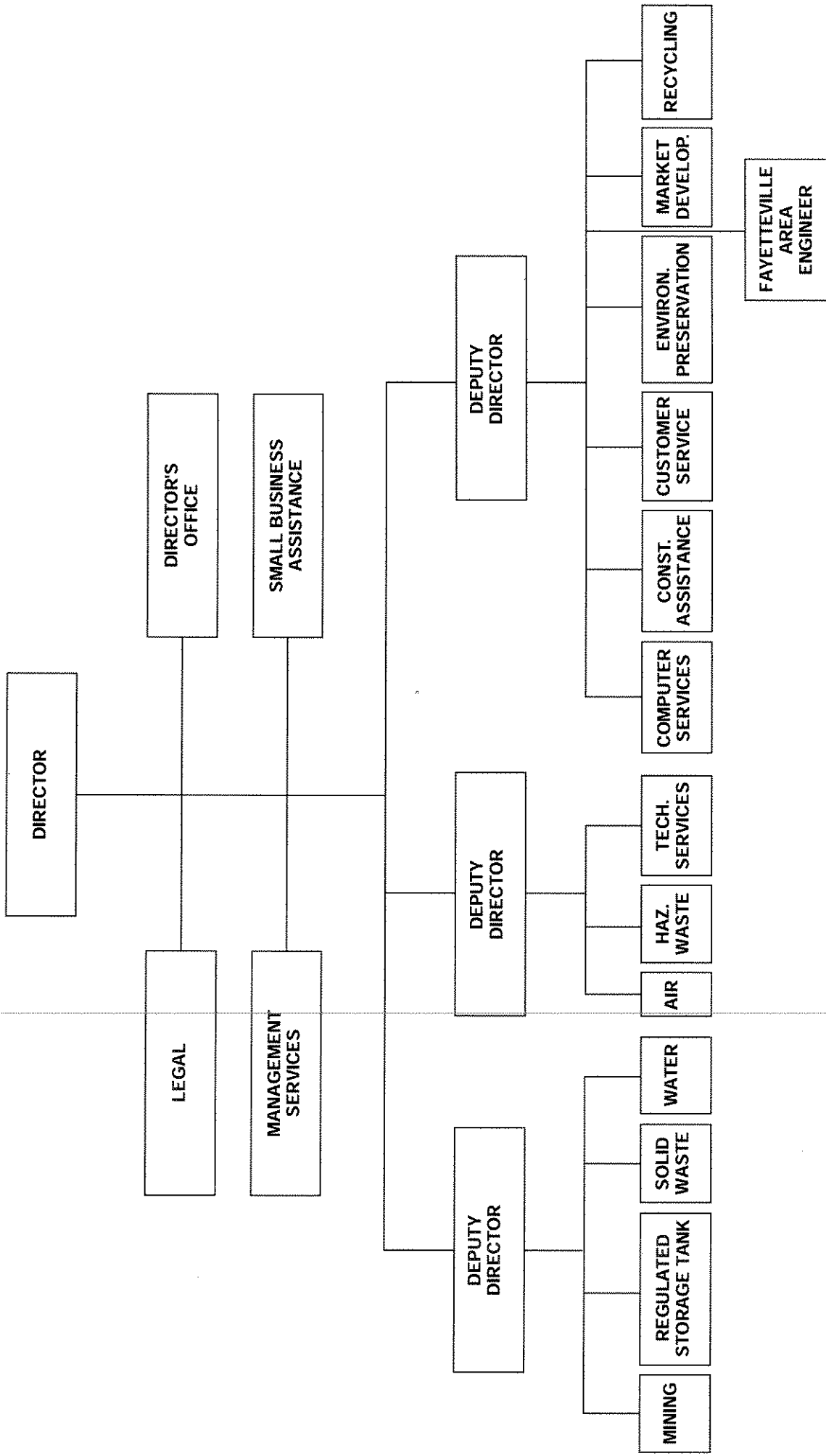
(10) To establish policies and standards for effective hazardous waste management; and

(11) To establish standards and procedures for the certification of personnel to operate hazardous waste treatment or disposal facilities or any commercial hazardous waste management facilities.

In addition to the powers listed above, the Department has and may use in the administration and enforcement of the hazardous waste program all of the powers which it has under any other laws administered by it, including the Arkansas Water and Air Pollution Control Act, § 8-4-101 *et seq.*, and the Arkansas Solid Waste Management Act, § 8-6-201 *et seq.*

ARKANSAS DEPARTMENT OF POLLUTION CONTROL & ECOLOGY

Main Organizational Chart



The Arkansas Pollution Control and Ecology Commission

The Arkansas Pollution Control and Ecology Commission is the environmental policy-making body for Arkansas. With guidance from the Governor, the Legislature, the EPA and others, the Commission determines the environmental policy for the state and the Arkansas Department of Pollution Control and Ecology implements those policies. The Commission was first established in 1949 as part of the Arkansas Water Pollution Control Act (Act 472 of 1949). Since that time, it has undergone significant changes — including a reorganization in 1991.

The Commission is comprised of 13 members, six representing state agencies and seven appointed by the Governor. The six agency representatives are directors — or their designee — of the:

- Arkansas Department of Health;
- Arkansas Game and Fish Commission;
- Arkansas Forestry Commission;
- Arkansas Soil and Water Conservation Commission;
- Arkansas Oil and Gas Commission; and
- the
- Arkansas Geology Commission

The seven other members of the Commission represent each of the four congressional districts in the state. Each district must have at least one representative on the Commission, but there may be no more than two representatives from the same congressional district.

The current composition of the Commission is shown at **Figure 2**.

To assist the Commissioners (who serve only part-time) in day-to-day activities and administration, the Commission has three full-time employees:

Michael O'Malley — Administrative
Hearing Officer

Laura Brown — Secretary

Shenel Sandidge — Secretary

By law, the Commission must meet four times each year. In practicality, they meet approximately once a month with the exception of November and December when there is a single meeting, generally on the first Friday of December.

The Commission is charged with the following powers and duties under state law:

- (1) To adopt, after notice and public hearing, and to promulgate, modify, repeal, and enforce rules and regulations regarding hazardous waste management as may be necessary or appropriate to implement or effectuate the purposes and intent of this subchapter and the powers and duties of the

department under it including, but not limited to, rules and regulations for:

- The containerization and labeling of hazardous wastes, which rules, to the extent practicable, shall be consistent with those issued by the United States Department of Transportation, the United States Environmental Protection Agency, and the Arkansas Highway and Transportation Department;
- Establishing standards and procedures for the safe operation and maintenance of facilities;
- Identifying those wastes or combination of wastes which are incompatible and which may not be stored or disposed of together and procedures for preventing the storage, disposal, recovery, or treatment of incompatible wastes together;
- The reporting of hazardous waste management activities;
- Establishing standards and procedures for the certification of supervisory personnel at hazardous waste treatment or disposal facilities or sites as required under § 8-7-219(3); and
- Establishing a manifest system for the transport of hazardous waste and prohibiting the receipt of hazardous waste at storage, processing, recovery, disposal, or transport facilities or sites without a properly completed manifest; comment period, the Commission shall compile a rulemaking record or response to comments demonstrating a reasoned evaluation of the relative impact and benefits of the more stringent regulation;

(2) Promulgation of rules, regulations, and procedures not otherwise governed by applicable law which the Commission deems necessary to secure public participation in environmental decision-making processes;

(3) Promulgation of rules and regulations governing administrative procedures for challenging or contesting department actions;

(4) In the case of permitting or grants decisions, providing the right to appeal a permitting or grants decision rendered by the director or his delegatee;

(5) In the case of an administrative enforcement or emergency action, providing the right to contest any such action initiated by the director;

(6) Instruct the director to prepare such reports or perform such studies as will

Arkansas Pollution Control & Ecology Commission

Julia Peck Mobley - Chair

Commercial National Bank
P.O. Box 1998
Texarkana, AR 75504
(870) 773-4561 Fax: (870) 772-6914
Appointed: 1/26/93 Term Expires: 8/1/99

Bill Bush

Arkansas Geological Commission
3815 W. Roosevelt
Little Rock, AR 72204
(501) 663-9714 Fax: (501) 663-7360
State Director position

Rev. Charles Coleman

ASU Dept. of Engineering
P.O. Box 1552
Arkansas State University, AR 72467
(870) 972-2088 Fax: (870) 972-3948
Appointed: Term Expires: 3/29/99

Dorothy Hanby (Vice Chair)

Dorothy Hanby, C.P.A.
P.O. Box 1880
Springdale, AR 72765
(501) 751-1951 Fax: (501) 751-1951
Appointed: 3/10/94 Term Expires: 3/29/99

Jerry Hill

Bureau of Environmental Health Services
Arkansas Health Department
4815 W. Markham
Little Rock, AR 72205
(501) 661-2574 Fax: (501) 661-2545
State Agency designee

Joseph A. Pascale

Pascale Industries, Inc.
P.O. Box 5410
Pine Bluff, AR 72205
(870) 536-3644 Fax: (870) 536-3599
Appointed: 5/17/85 Term Expires: 3/29/2001

Thomas Schueck

Shueck Steel, Inc.
8900 Fourche Dam Pike

Little Rock, AR 72206
(501) 490-4200 Fax: (501) 490-4411
Appointed: 3/30/97 Term Expires: 3/29/2001

John T. Shannon

Arkansas Forestry Commission
3812 W. Roosevelt
Little Rock, AR 72204
(501) 296-1940 Fax: (501) 296-1949
State Director position

Henry "Tri" Watkins, III

Portis Mercantile Company
P.O. Box 710
Lepanto, AR 72354
(870) 475-2200 Fax: (870) 475-3492
Appointed: 7/1/91 Term Expires: 7/1/98

Randy Wilbourn

Alltel Corporation
P.O. Box 2177
Little Rock, AR 72203
(501) 661-8148 Fax: (501) 558-6018
Appointed: 7/1/91 Term Expires: 7/1/98

William E. Wright

Arkansas Oil & Gas Commission
P.O. Box 1472
El Dorado, AR 71730
(870) 862-4965 Fax: (870) 862-8823
State Director position

Scott Yaich

Arkansas Game & Fish Commission
No. 2 Natural Resources Dr.
Little Rock, AR 72205
(501) 223-6304 Fax: (501) 223-6448
State Agency designee

Randy Young

Arkansas Soil & Water Conservation
Commission
101 E. Capitol, Suite 350
Little Rock, AR 72201
(501) 682-1611 (501) 682-3991
State Director position

The Commission

advance the cause of environmental protection in the state;

(7) Make recommendations to the director regarding overall policy and administration of the department, provided, however, that the director shall always remain within the plenary authority of the Governor; and

(8) Upon a majority vote, initiate review of any director's decision.

Commission Legislative History

Act 472 of 1949 — The Arkansas Water and Air Pollution Control Act established the Water Pollution Control Commission as a part of the State Board of Health. Its original membership consisted of the directors of four state agencies: the State Board of Health, the Arkansas Game and Fish Commission, the Arkansas Oil and Gas Commission and the Resources and Development Commission. The Commission also had three citizen members, each appointed by the Governor to represent interest areas of industry, municipalities and agriculture and livestock.

Act 232 of 1953 — Added to the Commission members the director of the State Forestry and Parks Commission.

Act 503 of 1963 — Required the Commission to appoint a director "who shall handle such correspondence make and arrange such inspections or investigations, and obtain and assemble or propose such reports and data as the Commission may direct and authorize, and who shall be the executive officer and active administrator of all pollution control activities and shall have such other delegated powers and duties as the Commission may direct or authorize."

Act 183 of 1965 — Changed the Commission's name to the Arkansas Pollution Control Commission, added authority for air pollution control, removed the Commission from the Health Department and changed the state agency membership. The new composition of the Commission included the directors of five state agencies: the State Board of Health, the Arkansas Game and Fish Commission, the Oil and Gas Commission, the Soil and Water Conservation Commission and the State Forestry Commission. The three appointed member representatives remained unchanged.

Act 236 of 1971 — Added two members to the Commission: the State Geologist and a representative of the state's mining industry. The special-interest representative was appointed by the Governor.

Act 38 of 1971 — State government reorganization act; created the Arkansas Department of Pollution

Control & Ecology and provided that the Department Director would be nominated by the Commission and confirmed by the Governor with consent of the State Senate.

Act 930 of 1985 — Added another member to the Commission and clarified the qualifications of one of the positions to be appointed by the Governor. The additional member, appointed by the Governor, was required to be a member of an organization which belonged to the Arkansas Conservation Coalition. The change in the qualifications of another appointee, a representative of municipalities, was changed to the designation of a representative of city or county government.

Act 744 of 1991 — Restructured the Commission as follows: Increased the size of the Commission to 13 members by adding two positions to be appointed by the Governor and removed the specific interest area designations for the gubernatorial appointees and required that private citizen appointees "... have knowledge or expertise in matters within the jurisdiction of the Commission including government, business or industry, agriculture and livestock, forestry, health, ecology, recreation and tourism and geology."

Other changes required each congressional district in the state to be represented by at least one of the seven private citizen appointees and provided that no district could have more than two appointees. Also, the act prohibited elected city, county or state officials from serving on the Commission after the expiration of any current member's term and prohibited the six state agency members from serving as chairman or vice chairman.

The new act required the presence of nine members as a quorum to conduct business, modified the procedures for issuance and revocation of wastewater discharge permits and for appeals of permit decisions involving wastewater discharges.

The changes also removed the selection of the Arkansas Department of Pollution Control & Ecology Director from the Commission's authority and placed the selection process directly with the Governor, subject to Senate confirmation.

Act 1230 of 1991 — Clarified the powers and duties of the Commission and the ADPC&E Director.

Act 1219 of 1997 — Further separated the functions of the Commission and the Department, renamed the Department to "Arkansas Department of Environmental Quality" effective March 31, 1999.

Commission Operations

The Commission sets forth its operating procedures

and requirements for adjudicatory hearings and rulemaking in APC&EC Regulation No. 8 (Administrative Procedures). Adjudicatory procedures of the Commission are discussed later in this Program Description with the discussion of the permit appeals process. The Commission's rulemaking process for the amendment and update of the hazardous waste management program, as codified at Section 3 of Regulation 8, is discussed immediately below.

Amendment and Update of Regulations

Federal RCRA regulations are developed by EPA and published according to an established process. When a regulation is proposed, it is published in a document called the *Federal Register*. It is usually first published as a proposed regulation, allowing the public to comment on it for a period of time, normally 30-60 days. Included with the proposed regulation is a discussion of the Agency's rationale for the regulatory approach and an explanation of the technical basis for the proposed regulation (the preamble). Following the comment period, EPA evaluates public comments. Addressing the comments frequently results in revision to the proposed regulation. The final regulation is then republished in the *Federal Register* ("promulgated"). Federal regulations are compiled annually and bound in the *Code of Federal Regulations* (CFR) according to a highly structured format. This latter process is called codification. The codified RCRA regulations can be found in Title 40 of the CFR, Parts 240-280. These regulations are often cited as 40 CFR, with the Part listed afterward, e.g., 40 CFR P, or the Part and Section, e.g., 40 CFR 264.10.

Although it may initiate rulemaking at any time, at least annually, in July, the Department initiates rulemaking procedures to adopt the cluster of federal revisions to existing regulations and any new regulations published in the previous year. For congruence with the federal schedule of state authorization for the RCRA hazardous waste

management program, new regulations promulgated in the *Federal Register* between July 1 of the previous year and June 30 of the current year are adopted as a single group or "cluster". Additionally, any new State regulations or revisions to the State regulations are normally proposed at the same time.

In formulating a new rule or revision to an existing regulation, the Hazardous Waste Division staff compiles the federal revisions to the hazardous waste management regulations promulgated during the time window for which the rulemaking is proposed (e.g., July 1 to the following June 30 for a RCRA cluster of federal rules) and then converts them to the format and style used in Regulation No. 23. The draft regulation is reviewed internally for

completeness and consistency, and a cost and economic benefit analysis is performed and documented for the rulemaking record pursuant to A.C.A. § 8-7-209(b)(2).

The draft regulation then goes through a pre-coordination process allowing review and informal comment from regulated industries and concerned environmental organizations. This is routinely done by providing pre-coordination drafts of the regulation to and soliciting input from the Arkansas Environmental Federation (statewide industry trade organization) and the Arkansas Conservation Coalition (statewide association of environmental activist groups) as well as any individuals or groups that have expressed a concern or interest in any of the proposed revisions.

Once pre-coordination is complete and a rulemaking proposal has been finalized, the Division prepares a request in the form of a pleading to the Commission to initiate rulemaking pursuant to Regulation No. 8, § 3.

The pleading and proposed new regulations or revisions to regulations are first presented to the Rules and Regulations subcommittee of the Arkansas Pollution Control and Ecology Commission. Upon the recommended approval by this committee and a successful motion by the full Commission to initiate rulemaking, the proposed rule is submitted for public notice. Public notice includes announcement of the proposed rule in a newspaper of statewide circulation, while full copies of the proposed rule are distributed to sixty repositories and public libraries throughout the state as well as made available for review and copying at the Department headquarters and for download via the Internet. Following a 30-day public comment period, a public hearing is held on the proposed rule to receive written and oral comments. Written comments are accepted for an additional 10 working days following the public hearing, after which the public comment period is closed.

The Department then gathers and considers all comments received during the public comment period, revises the proposed rule as necessary, and prepares a final rule and responsiveness summary which addresses the consideration and action taken pursuant to all comments received. If the proposed rule is amended such that the scope is changed beyond what was initially contained in the public notice, it is resubmitted for a second public notice and comment period.

The final rule and responsiveness summary is reviewed by the Rules and Procedures Committee of the Arkansas Legislative Council and the Arkansas House of Representatives' Public Health and Welfare Committee. Upon review and approval by these two bodies, the final rule is then presented again to the

Regulations committee of the Commission and to the full Pollution Control and Ecology Commission for approval and adoption.

Following the approval of the Commission, a minute order is prepared reflecting the Commission's decision. The approved rule and minute order are forwarded by the Commission Secretary to the Governor's Office for signature. The signed rule is then filed with the office of the Secretary of State for a notice of publication in the *Arkansas Register*, and copies of the complete, revised regulation (both printed and electronic versions) are filed with the Arkansas State Library, the Arkansas Code Revision Commission, and the Department's Legal Division. The new or revised rule is effective 20 calendar days following its filing with the Secretary of State.

The average time experienced for drafting, coordination, public notice and comment, adoption, and the effective date of a permanent rule under the Commission's procedures is 6 to 10 months. The Commission may, under specific circumstances, promulgate an emergency rule which is effective for no more than 180 days, and then follow the emergency rule with the formal rulemaking process.

In the occasional event that the Department and Commission must seek additional statutory authority and/or legislation in order to implement a new Federal requirement, the process can take as long as two years to enact such legislation, because the Arkansas General Assembly only meets every other year in the odd-numbered year. The General Assembly occasionally conducts special sessions (subject to the call of the Governor), however policy is that only noncontroversial bills are presented to a special session for review and enactment unless the session was specifically called for that issue.

Once the enabling legislation is enacted, the normal time frame applies for adopting the necessary implementing regulations.

Resources dedicated to the Federally-required program.

Approximately 70% of the Division's efforts at active facilities is dedicated to implementing the Federal hazardous waste management program.

Description, number, occupations, and general duties of the State Agency staff who will carry out the program.

Organization and Structure of the Hazardous Waste Division

ADPC&E's Hazardous Waste Division (HWD) implements and administers the State's hazardous waste management programs under the authority of the Arkansas Hazardous Waste Management Act, the Emergency Response Fund Act, the Remedial Action Trust Fund Act, and the Commission's Regulation No. 23 (Hazardous Waste Management). The Division has primary responsibility within ADPC&E for administering the hazardous waste permitting and enforcement authority delegated to the Department by EPA under the provisions of the federal Resource Conservation and Recovery Act. The HWD additionally is responsible for coordination and cooperation with EPA in implementing hazardous waste clean-up activities under the federal Superfund program, and for implementing the State clean-up program under the Arkansas Emergency Response Fund and Remedial Action Trust Fund Acts.

The basic procedures for implementation and coordination of the authorized RCRA program with EPA Region VI are set forth in the State/EPA Memorandum of Agreement ("MOA"), the Multi-Year Enforcement Memorandum of Understanding ("Enforcement MOU"), and the current RCRA § 3011 cooperative agreement work plan ("grant workplan").

The Chief of the Hazardous Waste Division is Mike Bates. Mr. Bates is a 1979 graduate of the University of Central Arkansas, where he received a Bachelor of Science degree in biology. He joined ADPC&E shortly after graduation, and has served in number of positions within the Hazardous Waste Division – as an inspector, Inspector Supervisor, and as the Enforcement Branch Chief. Mr. Bates has served as Chief of the Hazardous Waste Division since 1987.

The Hazardous Waste Division is organized into four functional branches (Enforcement, Groundwater, Superfund, and Technical) and an Administrative Services Group, with a total of 45 employees. The structure and manning of the Division is shown at **Figure 3**.

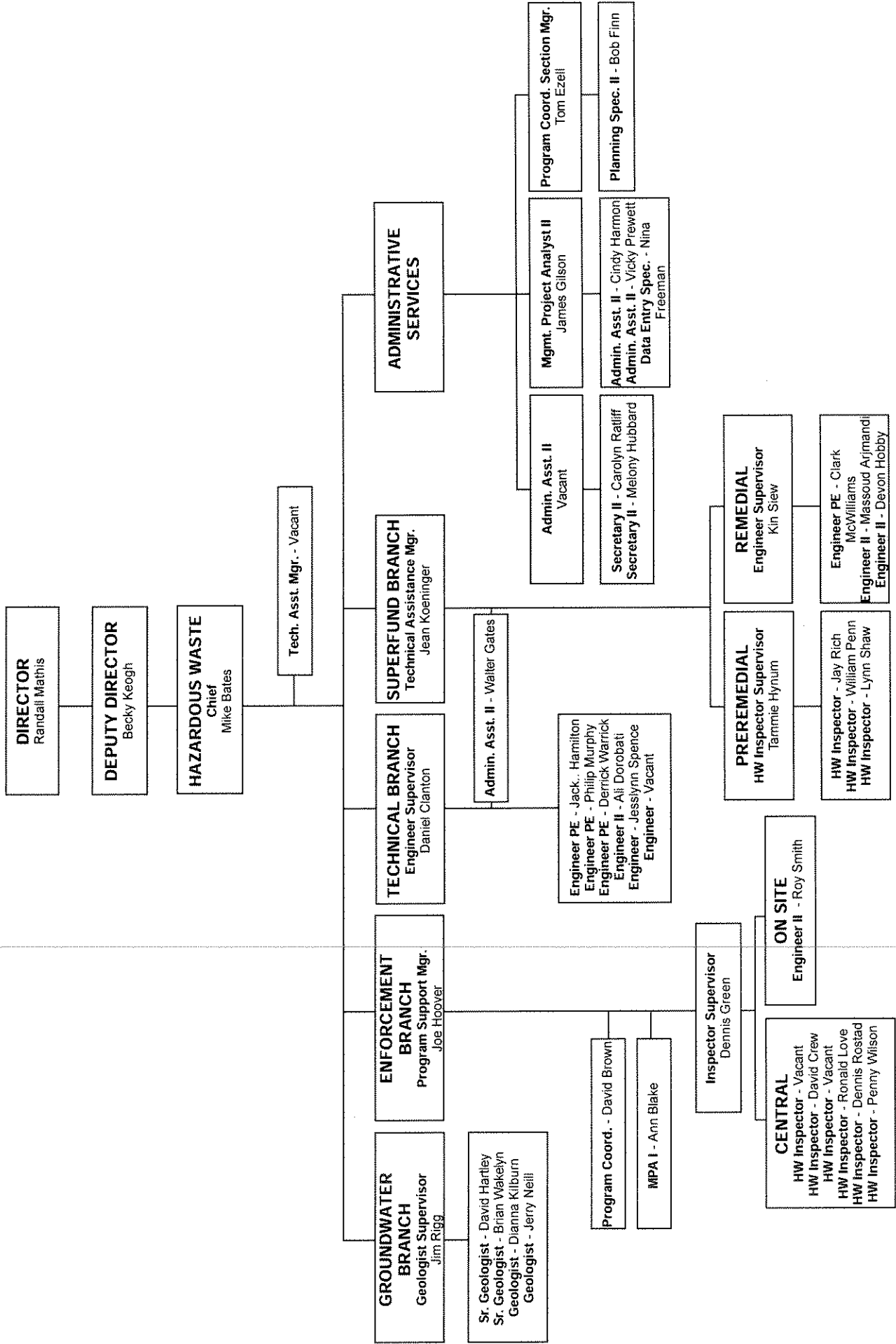
The function and staffing of each branch is as follows:

ENFORCEMENT BRANCH:

The Enforcement Branch is responsible for the conduct of inspections, oversight of corrective actions

ARKANSAS DEPARTMENT OF POLLUTION CONTROL & ECOLOGY

Hazardous Waste Division Personnel Chart



and enforcement proceedings. It consists of a branch manager, one inspector supervisor, six hazardous waste inspectors, an enforcement program coordinator, and a management project analyst. One engineer provides on-site inspection coverage of the ENSCO commercial disposal facility in El Dorado, while an additional on-site inspector covers the Rineco Chemicals commercial fuel blending facility in Haskell.

Enforcement Branch Job Summaries

PROGRAM SUPPORT MANAGER :

The Program Support Manager serves as the Enforcement Manager of the Hazardous Waste Division. The job duties include coordinating and negotiating with EPA on all grant commitments (MOU, RIP, grant workplan, etc.), determining the appropriate types of enforcement action regarding violations/violators, initiating, negotiating, and finalizing all formal enforcement actions for the Hazardous Waste Division. The Enforcement Manager must also coordinate all enforcement actions through the Legal Division and Director's office. The Enforcement Manager reports directly to the chief of the Hazardous Waste Division.

INSPECTOR SUPERVISOR:

The Inspector Supervisor serves as the supervisor for five inspectors and one engineer. The job duties include developing an annual inspection schedule, reviewing all Compliance Evaluation Inspections conducted by the inspectors, concur on all Waste Disposal Request Forms, log and track complaints, and provide technical assistance to the public. The Inspector Supervisor directly reports to the Enforcement Manager.

HAZARDOUS WASTE INSPECTOR (Little Rock): (6 positions) The Hazardous Waste Inspector is responsible for conducting pre-inspections, on-site compliance evaluation inspections, complaint investigations, and providing technical assistance to the public. The inspector is responsible for documenting, reporting, sampling, and tracking all facilities and complaints assigned to him/her.

ENGINEER II (El Dorado):

The Engineer II provides on-site inspections, monitoring, sampling, and tracking at Ensco. The Engineer II provides assistance in complaint investigations and emergency response when needed.

HAZARDOUS WASTE INSPECTOR (Haskell): The Hazardous Waste Inspector provides on-site inspections, monitoring, sampling, and tracking at the Rineco TSDF. The Hazardous Waste Inspector provides assistance in complaint investigations and emergency

response when needed.

PROGRAM COORDINATOR

The Program Coordinator works under the supervision of the Enforcement Branch Manager as the enforcement case worker, drafting and preparing all formal enforcement documents such as notices of violation (NOV) and consent administrative orders (CAO); assisting the Branch Manager and Legal staff in service and settlement negotiations, and tracking the status and disposition of all open and pending enforcement cases.

MANAGEMENT PROJECT ANALYST I

The Management Project Analyst I works under the supervision of the Enforcement Branch Manager and in coordination with the Management Project Analyst. Job duties include coordinating the preparation, review, and distribution of enforcement case documents; gathering weekly and monthly activity reports from Inspector Supervisor and Hazardous Waste Inspector Supervisor; developing and implementing administrative policies and procedures for the Branch Manager; and acting in support of branch personnel.

GROUNDWATER BRANCH

The Groundwater Branch of the Hazardous Waste Division is responsible for groundwater monitoring compliance and provides geological and groundwater technical consultation to the Division's RCRA permitting and enforcement and the Superfund branches. It consists of a Geology supervisor, two senior geologists, and two geologists. Four of the Branch's five geologists have attained the status of Registered Professional Geologists.

The Groundwater Branch is responsible for the evaluation of hydrogeologic assessments and groundwater monitoring systems at hazardous waste sites. Comprehensive groundwater monitoring evaluations and operation and maintenance inspections are performed regularly at hazardous waste facilities.

Through the technical branch, the branch reviews permit applications for technical adequacy with respect to groundwater. The Groundwater Branch, through cooperation with the technical, enforcement and Superfund branches, reviews

- RCRA Facility Investigation workplans and reports
- Corrective Measures Study workplans and reports
- Corrective Measures Implementation workplans and reports
- Superfund Remedial Investigation workplans and reports
- Superfund Feasibility Studies workplans

and reports

- Superfund Remedial Action workplans and reports
- Facility Investigations required by Consent Administrative Orders

The groundwater branch is part of the spill response team and also assists with inspections, oversight visits and other field/review activities as needed.

GEOLOGY SUPERVISOR : The Geology Supervisor serves as the manager of the Groundwater Branch and provides technical review and quality control of groundwater studies done in support of permitting efforts, corrective actions, site preliminary assessments, inspections, and management assistance sites. The Geology Supervisor reports directly to the chief of the Hazardous Waste Division.

SENIOR GEOLOGIST: Hydrogeologist responsible for groundwater surveys, investigation, and technical duties for permitting efforts, corrective actions, site preliminary assessments, inspections, and management assistance sites. Performs and assesses Comprehensive Groundwater Monitoring Evaluations (CMEs) and Operations and Monitoring inspections (O&Ms).

GEOLOGIST II : Hydrogeologist responsible for groundwater surveys, investigation, and technical duties for permitting efforts, corrective actions, site preliminary assessments, inspections, and management assistance sites. Performs and assesses Comprehensive Groundwater Monitoring Evaluations (CMEs) and Operations and Monitoring inspections (O&Ms).

SUPERFUND BRANCH

The Superfund Branch is responsible for all State actions under the Federal Superfund and State Remedial Action programs.

Superfund Branch Job Summaries

TECHNICAL ASSISTANCE MANAGER: The Technical Assistance Manager serves as the Superfund Branch Manager within the Hazardous Waste Division. Job duties include planning, coordinating, and implementation of pre-remedial site investigations, remedial investigations, design and construction of clean-up remedies, and development and implementation of the State's Brownfields program, as well as supervision of administrative and professional support staff. The Technical Assistance Manager works under the direct supervision of the Hazardous Waste Division Chief.

ENGINEER SUPERVISOR: The Engineer Supervisor supervises Superfund branch remedial activities. Job duties include scheduling and coordinating activity reports, work plans, and review of remedial investigations, feasibility studies, remedial designs, and environmental corrective action studies for National Priorities List (NPL) or State Priorities List (SPL) sites. In addition, the Engineer Supervisor is responsible for reviewing and preparing health and ecological risk studies. The Engineer Supervisor works under the direct supervision of the Technical Assistance Manager.

ENGINEER, P.E./ENGINEER II: The Engineer, P.E./ Engineer II (three positions) works in the remedial section of the Superfund branch. Job duties include engineering/technical review of environmental remedial action plans, remedial investigation reports, remedy selection reports, and other environmental corrective action studies. The Engineer, P.E./ Engineer II works under the direct supervision of the Engineer Supervisor.

HAZARDOUS WASTE INSPECTOR SUPERVISOR: The Hazardous Waste Inspector Supervisor supervises pre-remedial Superfund branch activities. Job duties include scheduling and coordinating activity reports, work load, research, and production of preliminary assessments and site investigations and reviewing site scores of potential hazardous waste sites for inclusion on the National Priorities List (NPL) or State Priorities List (SPL). In addition, the supervisor is responsible for reviewing and conducting health and ecological risk assessments and toxicological studies. The Hazardous Waste Inspector Supervisor works under the direct supervision of the Technical Assistance Manager.

HAZARDOUS WASTE INSPECTOR: The Hazardous Waste Inspector (three positions) is responsible for conducting discovery, preliminary assessments and site inspections at potentially uncontrolled hazardous waste sites under the pre-remedial phase of the Superfund branch. In addition, the inspector conducts preliminary ranking of sites investigated for possible inclusion on the National Priorities List (NPL) or State Priorities List (SPL). The Hazardous Waste Inspector works under the direct supervision of the Hazardous Waste Inspector Supervisor.

ADMINISTRATIVE ASSISTANT II: The Administrative Assistant II works directly under the supervision of the Technical Assistance Manager. Job duties include coordinating the receipt, review, and return of submittal documents; gathering weekly and monthly activity reports from Engineer Supervisor and Hazardous Waste Inspector Supervisor; develop-

ing and implementing administrative policies and procedures for the Technical Assistance Manager; and acting in support of branch personnel.

TECHNICAL BRANCH:

The Technical Branch is responsible for technical review of permit applications and enforcement actions, drafting and coordination of permits, and RCRA and RATFA corrective actions. The Technical Branch also provides engineering consultation to the rest of the Division. The Branch consists of a Branch Manager (Engineer Supervisor) and six environmental engineers.

Technical Branch Job Summaries

ENGINEER SUPERVISOR: The Engineer Supervisor serves as the Technical (Permits) Branch Manager of the Hazardous Waste Division. The job duties include coordinating and negotiating with EPA on all grant commitments for permitting and corrective actions, and oversees the work of the Permit Engineers to ensure smooth and timely processing of permit applications and corrective action tasks and provide quality assurance. Recommends permit decisions for the approval of the Division Chief. Coordinates with Enforcement and Groundwater Branches for enforcement of permit conditions, application of RCRA or RATFA corrective actions pursuant to enforcement action, and provides technical assistance to the Superfund Branch in formulation RATFA remedial actions. The Technical Branch Manager reports directly to the chief of the Hazardous Waste Division.

PERMIT ENGINEER: The Permit Engineer (Engineer II/P.E.) works under the supervision of the manager of the Technical Branch in support of the hazardous waste treatment/storage/disposal facility permitting program and the HSWA corrective action program. The Engineer also serves as a support role in the state and federal Superfund program and in the enforcement activities of the Enforcement Branch. Duties include engineering/technical reviews and oversight of hazardous waste management permit applications and environmental corrective action programs by regulated facilities, facilities under enforcement order, and at abandoned sites.

ADMINISTRATIVE SERVICES GROUP

The Administrative Services Group consists of a branch manager, a planning specialist, a data management coordinator, an administrative assistant for RCRIS, an administrative assistant for manifests, and a data entry operator.

Administrative Section

The Administrative Section, consisting of an Administrative Assistant II and two secretaries, provides administrative support to the Division Chief and secretarial support for the Division.

Programs and Planning Section

The Program and Planning Section, consisting of a Program Section Coordinating Manager and a Planning Specialist, is responsible for developing the State hazardous waste regulations and programs, ensuring its equivalency to the Federal program, developing grant applications and new programs, and for operating educational and outreach programs.

Programs and Planning Section Job Summaries:

PROGRAM COORDINATING SECTION MANAGER: This individual provides program management support and coordination between the Division and branches undertaking technical activities; develops and coordinates state regulations so as to maintain equivalence and compliance with federal requirements; drafts, refines, coordinates, submits, and monitors program authorization applications and updates, grant applications and program workplans; tracks grant commitments; drafts and coordinates periodic reports; coordinates capacity assurance planning, and supervises the planning section.

PLANNING SPECIALIST II: Responsible for mid- and long-range program planning in support of the state RCRA program; drafts and coordinates hazardous waste minimization, pollution prevention, and technology transfer; reviews RCRA financial assurance certifications, and assists in budgeting and program logistic planning. Responsible areas: RCRA Financial Assurance; Pollution Prevention/Waste Minimization Program; Hazardous Waste Facility Operation Certification; Information and Training Literature; Long and mid-range planning and program development; Pollution Prevention Clearinghouse

Data Management Section

The Data Management Section is responsible for data management for the Division, including input, administration, and upkeep of data from RCRIS, hazardous waste activity notifications, annual and biennial reports, and manifest monitoring and tracking.

Data Management Section Job Summaries:

MANAGEMENT PROJECT ANALYST II: Data management section supervisor. Responsible for preparation, review, and management of the state annual and EPA biennial report; oversight and quality assurance of the state hazardous waste management data bases; and assists in development and coordination of the state Capacity Assurance Plan. Responsible areas: Data Base Quality Control and Oversight; Annual/Biennial Hazardous Waste Reports; Biennial/Annual Report System; Electronic Data Interchange; FOIA Requests for Data Files; RCRIS/Data Management MOU; Facility Invoice Amount Tracking System; Transporters and Manifests as needed

ADMINISTRATIVE ASSISTANT II: RCRIS Coordinator - Operates, updates, and maintains state RCRIS data base; coordinates hazardous waste generator and facility notifications and updates; and reviews applications for and issues transport permits. Responsible areas: RCRIS and RCRIS Data Base Integrity; Notification of Regulated Waste forms; EPA ID Numbers; FINDS; Superfund Fees Invoices, Hazardous Waste Operators Invoices, Permit Fee Invoices and Monitoring and Inspection Fees; HWOPERS; CCIS Data Base; OSWER Files, EPAIDS Data Base State Tracking Numbers; Provisional EPA ID Numbers; PCB Identification Numbers; and CXG Numbers.

ADMINISTRATIVE ASSISTANT I: Manifest Coordinator - Reviews all hazardous waste manifests and resolves discrepancies, maintains manifest data base and tracking system, and provides manifest information as requested. Responsible areas: Manifest orders and invoicing; FOIA requests; QA/QC of Manifest and UST Numbers; Hazardous Waste Transporter Permits and Invoicing

DATA ENTRY SPECIALIST: Performs data entry and filing for manifests and annual hazardous waste reports. Responsible areas: Manifest Data Entry; EPAIDS Data Entry; Manifest Rules

Costs of establishing and administering the program for at least the first two years after program approval.

STAFFING AND FUNDING RESOURCES
(271.6(b))

Administration of the RCRA portion of the Arkansas Hazardous Waste Management Program involves approximately \$3.2 million annually, and 50

man-years of effort. No separate estimate is made of the cost of implementing the revisions in this application alone.

Staffing Resources:

Hazardous Waste Division staffing levels are discussed earlier in this program description. Additional technical support rendered by the Department under "Department overhead" include those listed below.

Full-time personnel resources provided by Technical Services Division include two Chemist II positions (1 currently unfilled). This position analyzes samples and reports findings, performs verification and analysis of chemical substances, and provides testimony in enforcement litigation as required. This position contributes 2.0 workyears to the RCRA program, and is funded through indirect cost provisions in federal grants.

Legal support is provided by the Department's Legal Services Division. Responsibilities include legal counsel on RCRA matters, conducting hearings, initiating and prosecuting administrative and civil enforcement actions in accordance with Departmental policies, and final coordination of the legal portion of authorization applications. Legal counsel also coordinates with and supports local prosecuting attorneys in pursuing criminal prosecution of environmental crimes. Resources dedicated to meeting these responsibilities average 1.5 workyears by staff attorneys.

Other support positions for the RCRA program consist of a number of positions within the Department. These resources are funded through Departmental funds and the indirect cost rate applied to direct RCRA program personnel costs. These positions include the Director, Deputy Director, Fiscal Officer, computer services and support, public information, Central Records, and Management Services staffs. The support positions listed above contribute a total of approximately two workyears annually to the RCRA program.

Itemized costs by personnel position are shown at **Table 1**.

Resources Necessary to Administer More Stringent State Requirements

Broadened state RCRA program requirements impact resources in three areas: the manifest system requirements for small quantity and conditionally exempt generators and PCB wastes; operator certification for commercial hazardous waste management facilities, and annual versus biennial reporting requirements.

Additional state manifesting and annual report requirements generate 1.3 additional workyears annually, divided among the manifest coordinator, RCRIS coordinator, data entry personnel, and the data management coordinator. Funding for these additional activities is provided from Departmental resources.

The operator certification process uses existing Division staff resources, and requires approximately 0.1 manyears or less annually. This activity is accomplished using state funds.

Funding Resources:

The ADPC&E budget for the hazardous waste management program is funded by four sources:

- Federal grants;
- Permit, hazardous waste activity, and closure plan fees;
- An annual hazardous waste monitoring and inspection fee
- State general revenues.

The Hazardous Waste Division and its programs are primarily self-funded; the Division and Department receives little funding from State general revenues. In FY 98, the funding ratio is approximately 40% from Federal grants and 60% from ADPC&E matching and other monies, derived from State fees.

Under Arkansas law, no legislative appropriation may be for a period of more than two years. ADPC&E, therefore, prepares a biennial budget for submission to the General Assembly prior to each legislative session. This budget addresses funding necessary for operations during the next two years, with a forecast of funding needs anticipated for the following biennium.

The Department's operating budget for Fiscal Years 1998-1999 is shown at Table 2, and reflects combined costs and funding sources, including those for the RCRA and site remedial action programs.

Total annual operating costs of the state hazardous waste management program at the fully authorized staffing level are projected at \$9,162,718 for FY 98 and \$9,257,944 for FY 99, a 1% increase. Income from the federal §3011 RCRA Cooperative

Agreement has remained fixed at \$908,754 for the past five years, with a projected increase to \$935,000 for FY98. Federal funding levels are expected to remain at the same level or to decline slightly over the next biennium.

Itemization of costs of personnel.

Refer to **Table 1.**

Itemization of costs of administrative support.

Refer to **Table 1.**

Itemization of costs of technical support.

Refer to **Table 1.**

Itemization of sources and amounts of funding, including federal grant monies, available to the State Director to meet the costs of establishing and administering the program for at least two years.

Refer to **Table 2.**

Restrictions on Funding

The Arkansas Constitution of 1874 prohibits the state government from deficit spending. The Arkansas General Assembly normally meets only for sixty days every other year (in the odd year) to consider appropriations and other legislation. A legislative appropriation is required prior to the Department committing or obligating any funds, to include funds derived from fee collection or Federal grants. Even if funds are on hand, they may sometimes not be able to be committed due to lack of sufficient appropriation. The Department must then defer these expenditures until the next budget period, provided funds remain available, or seek a supplemental appropriation from the General Assembly or the Legislative Council. While achieving its aim of preventing state budget deficits, this provision sometimes results in the Department's having to defer hiring new or replacing personnel or purchasing equipment even though funds are on hand for a particular project or activity.

Table 1 - Hazardous Waste Division: Itemization of Costs of Personnel

Base year 1998

PERSONNEL	Annual Salary	Work Years	Typical Charge to RCRA Grant
Division Chief	\$ 50,727.24	0.65	\$ 32,972.71
Administrative Asst II	\$ 18,766.00	0.00	\$ 0.00
Technical Assistance Manager	\$ 50,175.76	0.15	\$ 7,526.36
Secretary II	\$ 17,392.12	0.50	\$ 8,696.06
Secretary II	\$ 14,993.05	0.50	\$ 7,496.53
Technical Branch Manager	\$ 50,346.19	0.65	\$ 32,725.02
Engineer P.E.	\$ 39,576.16	0.65	\$ 25,724.50
Engineer P.E.	\$ 33,714.72	0.65	\$ 21,914.57
Engineer II	\$ 43,978.27	0.65	\$ 28,585.88
Engineer II	\$ 44,278.00	0.65	\$ 28,780.70
Engineer II	\$ 41,860.62	0.65	\$ 27,209.40
Engineer P.E.	\$ 34,026.22	0.60	\$ 20,415.73
Engineer P.E.	\$ 34,026.22	0.00	\$ 0.00
Enforcement Branch Manager	\$ 39,092.56	0.65	\$ 25,410.16
Inspector Supervisor	\$ 47,060.00	0.65	\$ 30,589.00
Haz Waste Inspector	\$ 26,650.60	0.65	\$ 17,322.89
Haz Waste Inspector	\$ 26,885.04	0.65	\$ 17,475.28
Haz Waste Inspector	\$ 25,466.68	0.65	\$ 16,553.34
Haz Waste Inspector	\$ 24,508.43	0.65	\$ 15,930.48
Haz Waste Inspector	\$ 24,599.95	0.65	\$ 15,989.97
Haz Waste Inspector	\$ 24,884.99	0.65	\$ 16,175.24
Haz Waste Inspector	\$ 24,884.99	0.00	\$ -
Program Coordinator	\$ 22,871.68	0.65	\$ 14,866.59
Management Project Analyst I	\$ 22,617.92	0.65	\$ 14,701.65
Geology Supervisor	\$ 37,021.50	0.65	\$ 24,063.98
Senior Geologist	\$ 31,482.25	0.65	\$ 20,463.46
Senior Geologist	\$ 29,711.55	0.50	\$ 14,855.78
Geologist II	\$ 24,312.91	0.50	\$ 12,156.46
Geologist II	\$ 22,688.43	0.50	\$ 11,344.22
Superfund Branch Manager	\$ 32,827.18	0.00	\$ -
Engineer Supervisor	\$ 49,215.30	0.00	\$ -
Engineer P.E.	\$ 43,994.29	0.00	\$ -
Engineer II	\$ 36,088.00	0.00	\$ -
Engineer II	\$ 36,319.50	0.00	\$ -
Inspector Supervisor/Toxicologist	\$ 30,834.34	0.20	\$ 6,166.87
Haz Waste Inspector	\$ 24,046.67	0.00	\$ -
Haz Waste Inspector	\$ 24,047.30	0.00	\$ -
Haz Waste Inspector	\$ 23,460.74	0.00	\$ -

Administrative Assistant II	\$	19,076.30	0.00	\$	-
Program Coordinating Section Mgr	\$	37,021.50	0.60	\$	22,212.90
Planning Specialist	\$	36,582.00	0.51	\$	18,656.82
Management Project Analyst II	\$	31,037.13	0.65	\$	20,174.13
Administrative Asst II (RCRIS)	\$	26,678.70	0.65	\$	17,341.16
Administrative Asst II	\$	26,678.70	0.00	\$	-
Administrative Asst I	\$	16,678.00	0.50	\$	8,339.00
Data Entry Specialist	\$	13,109.61	0.65	\$	8,521.25
Data Entry Specialist	\$	12,172.00	0.00	\$	-
Attorney Specialist	\$	37,805.91	0.10	\$	3,780.59
Attorney Specialist	\$	45,096.77	0.10	\$	4,509.68
Chemist II	\$	40,140.36	0.30	\$	12,073.86
Attorney	\$	30,074.15	0.05	\$	1,624.00
Attorney	\$	30,074.69	0.05	\$	1,624.03
Attorney Specialist	\$	49,223.35	0.10	\$	4,922.34
Information Officer II	\$	23,442.04	0.10	\$	2,344.20
Planning Section Manager	\$	36,231.46	0.05	\$	1,811.57
	\$	1,740,556.04	19.36	\$	644,048.35

FRINGE BENEFITS: (26.47% of Personnel Costs) \$ 170,479.60

TRAVEL \$ 31,000.00

EQUIPMENT \$ -

SUPPLIES \$ 4,000.00

CONTRACTUAL
 OSHA medical monitoring \$ 11,000.00

OTHER: \$ -

TOTAL DIRECT CHARGES: \$ 860,527.94

INDIRECT CHARGES: (47.93% of Personnel Costs) \$ 308,692.37

GRAND TOTAL: \$ 1,169,220.32

Table 2: ADPC&E Biennial Budget and Appropriations - FY 98-99

(Act 1015 of 1997)

	FY 98	FY 99
State Appropriations		
Regular Salaries	\$ 2,422,280.00	\$ 2,488,411.00
Extra Help	\$ 22,674.00	\$ 22,674.00
Personal Service Matching	\$ 622,554.00	\$ 634,370.00
Maintenance and General Operation		
Operating Expenses	\$ 607,928.00	\$ 607,928.00
Conferences & Travel	\$ 5,485.00	\$ 5,485.00
Professional Fees	\$ 17,500.00	\$ 17,500.00
Capital Outlays	\$ 3,000.00	\$ 3,000.00
Data Processing	\$ -	\$ -
Total Appropriated	\$ 3,701,421.00	\$ 3,779,368.00
Federal Appropriations		
Regular Salaries	\$ 3,314,396.00	\$ 3,404,513.00
Extra Help	\$ 103,710.00	\$ 103,785.00
Personal Service Matching	\$ 894,497.00	\$ 910,490.00
Maintenance and General Operation		
Operating Expenses	\$ 2,006,125.00	\$ 1,918,576.00
Conferences & Travel	\$ 92,407.00	\$ 89,380.00
Professional Fees	\$ 756,726.00	\$ 667,256.00
Capital Outlays	\$ 664,884.00	\$ 337,685.00
Data Processing	\$ -	\$ -
Contractual Services	\$ 5,600,000.00	\$ 5,600,000.00
Total Appropriated	\$ 13,432,745.00	\$ 13,031,685.00
Wastewater Licensing	\$ 56,005.00	\$ 53,957.00
Land Reclamation Contracts	\$ 950,000.00	\$ 950,000.00
Hazardous Waste Permit Program		
Regular Salaries	\$ 725,520.00	\$ 745,340.00
Extra Help	\$ 15,795.00	\$ 15,795.00
Personal Service Matching	\$ 190,312.00	\$ 193,819.00
Maintenance and General Operation		
Operating Expenses	\$ 131,626.00	\$ 131,626.00
Conferences & Travel	\$ 2,240.00	\$ 2,240.00
Professional Fees	\$ 175,642.00	\$ 175,642.00
Capital Outlays	\$ -	\$ -
Data Processing	\$ -	\$ -
Total Appropriation:	\$ 1,241,135.00	\$ 1,264,462.00

Reclamation of Abandoned Mines	\$ 5,700,000.00	\$ 5,700,000.00
Surface Coal Mining	\$ 6,451.00	\$ 6,451.00
Mining Reclamation	\$ 1,520,000.00	\$ 1,520,000.00
Fee Administration		
Regular Salaries	\$ 5,717,514.00	\$ 6,112,486.00
Extra Help	\$ 10,000.00	\$ 10,000.00
Personal Service Matching	\$ 1,558,458.00	\$ 1,655,604.00
Maintenance and General Operation		
Operating Expenses	\$ 865,742.00	\$ 878,992.00
Conferences & Travel	\$ 28,913.00	\$ 32,413.00
Professional Fees	\$ 58,332.00	\$ 58,332.00
Capital Outlays	\$ 165,700.00	\$ 133,000.00
Data Processing	\$ -	\$ -
Total Appropriated:	\$ 8,404,659.00	\$ 8,880,827.00
Solid Waste Performance Bonds	\$ 500,000.00	\$ 500,000.00
Hazardous Waste Clean-Up		
Regular Salaries	\$ 173,890.00	\$ 178,688.00
Extra Help	\$ -	\$ -
Personal Service Matching	\$ 48,904.00	\$ 49,757.00
Maintenance and General Operation		
Operating Expenses	\$ 30,958.00	\$ 27,358.00
Conferences & Travel	\$ 4,700.00	\$ 4,700.00
Professional Fees	\$ 603,425.00	\$ 603,425.00
Capital Outlays	\$ 290,600.00	\$ 94,900.00
Data Processing	\$ -	\$ -
Data Processing Purchases	\$ 67,000.00	\$ 328,000.00
Contractual Services	\$ 6,500,000.00	\$ 6,500,000.00
Total Appropriated:	\$ 7,719,477.00	\$ 7,786,828.00
Emergency Response Program		
Regular Salaries	\$ 83,096.00	\$ 85,361.00
Extra Help	\$ -	\$ -
Personal Service Matching	\$ 20,757.00	\$ 21,159.00
Maintenance and General Operation		
Operating Expenses	\$ 9,703.00	\$ 9,703.00
Conferences & Travel	\$ -	\$ -
Professional Fees	\$ -	\$ -
Capital Outlays	\$ -	\$ -

	Data Processing	\$ -	\$ -
Contractual Services		\$ 374,655.00	\$ 374,655.00
Total Appropriation:		\$ 488,211.00	\$ 490,878.00

Solid Waste Management & Recycling

Regular Salaries		\$ 611,354.00	\$ 628,040.00
Extra Help		\$ -	\$ -
Personal Service Matching		\$ 168,328.00	\$ 171,445.00
Maintenance and General Operation			
Operating Expenses		\$ 94,502.00	\$ 94,502.00
Conferences & Travel		\$ 7,668.00	\$ 7,668.00
Professional Fees		\$ 42,000.00	\$ 42,000.00
Capital Outlays		\$ 5,000.00	\$ 5,000.00
Data Processing		\$ -	\$ -
Recycling Grants		\$ 4,650,000.00	\$ 4,650,000.00
Total Appropriation:		\$ 5,578,852.00	\$ 5,598,655.00

Regulated Substance Storage Tanks

Regular Salaries		\$ 633,826.00	\$ 651,076.00
Extra Help		\$ -	\$ -
Personal Service Matching		\$ 175,629.00	\$ 178,691.00
Maintenance and General Operation			
Operating Expenses		\$ 73,543.00	\$ 73,543.00
Conferences & Travel		\$ 5,005.00	\$ 5,005.00
Professional Fees		\$ -	\$ -
Capital Outlays		\$ 55,843.00	\$ 15,735.00
Data Processing		\$ -	\$ -
Total Appropriation:		\$ 943,846.00	\$ 924,050.00

Petroleum Storage Tank Trust Fund

Maintenance and General Operation			
Operating Expenses		\$ 19,000,000.00	\$ 19,000,000.00
Conferences & Travel		\$ -	\$ -
Professional Fees		\$ 500,000.00	\$ 500,000.00
Capital Outlays		\$ -	\$ -
Data Processing		\$ -	\$ -
Total Appropriation:		\$ 19,500,000.00	\$ 19,500,000.00

Hazardous Waste Management Program

Regular Salaries	\$ 140,858.00	\$ 144,677.00
Extra Help	\$ -	\$ -
Personal Service Matching	\$ 40,032.00	\$ 40,711.00
Maintenance and General Operation		
Operating Expenses	\$ 16,446.00	\$ 16,446.00
Conferences & Travel	\$ 3,520.00	\$ 3,520.00
Professional Fees	\$ -	\$ -
Capital Outlays	\$ -	\$ -
Data Processing	\$ -	\$ -
Total Appropriation:	\$ 200,856.00	\$ 205,354.00

Landfill Post-Closure Program

Regular Salaries	\$ 233,645.00	\$ 240,163.00
Extra Help	\$ -	\$ -
Personal Service Matching	\$ 63,014.00	\$ 64,774.00
Maintenance and General Operation		
Operating Expenses	\$ 104,971.00	\$ 103,944.00
Conferences & Travel	\$ 7,000.00	\$ 7,000.00
Professional Fees	\$ 20,000.00	\$ 20,000.00
Capital Outlays	\$ 22,251.00	\$ 15,000.00
Data Processing	\$ -	\$ -
Contractual Services	\$ 9,000,000.00	\$ 9,000,000.00
Illegal Dump Eradication & Corrective Action	\$ 850,000.00	\$ 850,000.00
Total Appropriation:	\$ 10,300,881.00	\$ 10,300,881.00

Waste Tire Recycling **\$ 5,371,000.00** **\$ 5,371,000.00**

State Marketing Board for Recyclables

Regular Salaries	\$ -	\$ -
Extra Help	\$ -	\$ -
Personal Service Matching	\$ -	\$ -
Maintenance and General Operation		
Operating Expenses	\$ 19,846.00	\$ 19,846.00
Conferences & Travel	\$ 8,665.00	\$ 8,665.00
Professional Fees	\$ 38,474.00	\$ 38,474.00
Capital Outlays	\$ -	\$ -
Data Processing	\$ -	\$ -
Total Appropriation:	\$ 66,985.00	\$ 66,985.00

Environmental Education

Regular Salaries	\$	44,372.00	\$	45,580.00
Extra Help	\$	-	\$	-
Personal Service Matching	\$	10,879.00	\$	11,093.00
Maintenance and General Operation				
Operating Expenses	\$	68,245.00	\$	68,245.00
Conferences & Travel	\$	3,000.00	\$	3,000.00
Professional Fees	\$	53,795.00	\$	53,795.00
Capital Outlays	\$	-	\$	-
Data Processing	\$	-	\$	-
Total Appropriation:	\$	180,291.00	\$	181,713.00

PC&E Commission Hearing Officer

Regular Salaries	\$	108,772.00	\$	111,738.00
Extra Help	\$	800.00	\$	800.00
Personal Service Matching	\$	28,382.00	\$	28,382.00
Maintenance and General Operation				
Operating Expenses	\$	18,667.00	\$	18,667.00
Conferences & Travel	\$	4,975.00	\$	4,975.00
Professional Fees	\$	33,267.00	\$	33,267.00
Capital Outlays	\$	-	\$	-
Data Processing	\$	-	\$	-
Total Appropriation:	\$	194,863.00	\$	197,829.00

Commission Educational/Training	\$	9,500.00	\$	9,500.00
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Lead-Based Paint Hazard Program

Maintenance and General Operation				
Operating Expenses	\$	13,500.00	\$	13,500.00
Conferences & Travel	\$	1,500.00	\$	1,500.00
Professional Fees	\$	-	\$	-
Capital Outlays	\$	1,000.00	\$	1,000.00
Data Processing	\$	-	\$	-
Total Appropriation:	\$	16,000.00	\$	16,000.00

Small Business Revolving Loan Fund

Regular Salaries	\$	87,759.00	\$	93,025.00
Extra Help	\$	-	\$	-
Personal Service Matching	\$	23,695.00	\$	25,117.00

Maintenance and General Operation		
Operating Expenses	\$ 8,500.00	\$ 9,010.00
Conferences & Travel	\$ 3,500.00	\$ 3,650.00
Professional Fees	\$ -	\$ -
Capital Outlays	\$ 12,800.00	\$ 4,500.00
Data Processing	\$ -	\$ -
 Total Appropriation:	 \$ 136,254.00	 \$ 135,302.00
	FY 98	FY 99
<u>Grand Total of Appropriations:</u>	\$ 80,439,432.00	\$ 80,493,396.00

State Permitting Procedures

Permits are issued to hazardous waste treatment, storage, and disposal facilities, and by the Arkansas Highway Police (a division of the Arkansas Highway and Transportation Department) to transporters. Permit guidelines and procedures, which include an appellate review process, have been developed and implemented.

ADPC&E has adopted Federal regulations found in Parts 260-266, 268, 270, and 124 of Title 40 of the Code of Federal Regulations as well as adopting several additional, more stringent regulations which meet the specific needs of the State.

Adequate Enforcement, Notice, and Hearing in the Permit Process

A compliance monitoring program and an enforcement program have been developed. Inspections are an integral element of the State's compliance monitoring program. Public notice and opportunity for comment is integral to both the Department's permitting and enforcement efforts.

APC&EC Regulation No. 8 and the "Guide to Commission Operations", an addendum to Regulation No. 8 adopted in October, 1995, establishes procedures for receiving public comment and protocol at hearings and commission meetings.

The State program provides for public participation at numerous decision-making points. Specific public hearing requirements pertain to the hazardous waste program. Regulation No. 23 requires that the applicant for a hazardous waste management facility publish a notice of permit application in the newspaper having the largest circulation in the county where the facility is planned, and notify by certified mail all adjacent landowners and tenants of his intention to apply for a RCRA permit.

The Department shall provide at least 45 days' notice of a hearing on such application; and the hearing shall be held in the county where the facility is proposed.

During the forty-five-day period between publication of the Department's notice and the hearing date, a copy of the draft permit will be available to the public at the Department and at a public facility (library or school, for example) in the area of the state where the facility is planned.

Consultation and submission of material on program topics by the public can be freely exercised by any citizen during the review process. The Department staff will consider all comments and re-evaluate program or permit elements as issues arise.

Another provision of Regulation No. 23

(Hazardous Waste Management) allows the Department director to hold a preliminary hearing on a proposed waste facility in the affected area. This is a discretionary power and should be exercised prior to the full-scale public hearing with the forty-five-day notice.

Permitting - General

Owners or operators of facilities that treat, store, or dispose of hazardous waste must obtain an operating permit under the Hazardous Waste Management Act. TSDFs in existence on April 14, 1979, or who file a administratively complete Part A application no later than six months after the effective date of the regulation which subjects them to RCRA permitting may operate under interim status until a final permit decision is made. All others are considered "new" TSDFs which are ineligible for interim status and must receive a RCRA permit before construction can commence. Only in a very limited number of circumstances can a person treat, store, or dispose of hazardous waste without a permit:

- Generators storing waste on site for less than 90 days
- Small quantity generators who store waste on site less than 180 days
- Farmers disposing of their own (hazardous) pesticides on site
- Owners or operators of totally enclosed treatment facilities, wastewater treatment units (tanks) and elementary neutralization units
- Transporters storing manifested wastes at a transfer facility for less than 10 days
- Persons engaged in containment activities during an immediate response to an emergency
- Owners or operators of solid waste disposal facilities handling only conditionally exempt small quantity generator waste
- Persons engaged in Superfund on-site cleanups and RCRA Section 7003 cleanups.

If any of the individuals listed above treat, store, or dispose of hazardous waste in a manner not covered by the exclusion, they are subject to the RCRA/HSWA permit requirements for that activity.

As noted earlier, a permit defines a facility's requirements under RCRA and the Arkansas Hazardous Waste Management Act. These requirements consist of all the general and technical standards listed in Reg. 23 Section 264, as well as any requirements for corrective action. Corrective action requirements specify that TSDFs clean up releases caused by facility operations.

TYPES OF HAZARDOUS WASTE PERMITS

Several categories of permits are issued under the RCRA Subtitle C program. Each category defines operating requirements and various provisions specific to the permitting need.

1. *Treatment, Storage, and Disposal Permits* - Most commonly, RCRA permits are issued for treatment, storage, and disposal units. The units are: containers, tank systems, surface impoundments, waste piles, land treatment units, landfills, incinerators, boilers and industrial furnaces, wood preserving units, and miscellaneous units. These methods are the most common way to treat, store, and dispose of hazardous waste. Minimum national standards have been promulgated for each of these methods at Reg. 23 Section 264. The federal HSWA added "corrective action" requirements to the permitting process. These requirements state that facilities must address existing or part releases. Interim status facilities or facilities permitted prior to HSWA must revise their permit to comply with these requirements. All permit conditions must be met prior to issuance of a permit, with the exception of corrective action requirements. Corrective action requirements can be met in one of two ways, by:

- writing it as a permit condition, or
- developing a schedule of compliance.

2. *Research, Development, and Demonstration Permits* - the Department encourages the use of alternative treatment technologies by issuing research, development, and demonstration (RD&D) permits for promising innovative and experimental treatment technologies. The permitting criteria are that national standards must not exist for the treatment technology. For example, a high temperature incinerator could not apply for an RD&D permit since standards have already been promulgated at Reg. 23 Section 264 Subsection O. These permits are issued for one year, although they may be renewed up to three times. RD&D facilities can receive only those wastes that are necessary to determine the efficacy of the treatment technology.

Issuance of RD&D permits follows a more streamlined process than a standard RCRA permit. The Department may modify or waive the usual permit application and issuance requirements, with the exception of financial responsibility and public

participation, as long as the Department maintains consistency with its mandate to protect human health and the environment.

3. *Post-Closure Permits* - Land disposal facilities that leave wastes in place when they close must obtain a post closure permit, specifying the requirements for proper post-closure care.

4. *Emergency Permits* - In potentially dangerous situations, ADPC&E can forego the normal permitting process. Specifically, when there is an "imminent and substantial endangerment to human health and the environment," a temporary (90 days or less) emergency permit can be issued to a:

- Non-permitted facility for the treatment, storage, or disposal of hazardous waste
- Permitted facility for the treatment, storage, or disposal of hazardous waste not covered by its existing permit.

5. *Permit-by-Rule* - The Department may issue permits under a number of different laws. In some instances, the requirements of one statute's permitting regulations are quite similar to those in RCRA and the Hazardous Waste Management Act. To avoid duplication, the Department has tried to abbreviate the application process for facilities that need to be permitted under two or more statutes. This is done through a permit-by-rule. A permit-by-rule eliminates the need for facilities to submit a full Subtitle C permit application when they are permitted under the following federal law:

- Safe Drinking Water Act (Underground Injection Control permit)
- Clean Water Act (National Pollutant Discharge Elimination System permit)
- Marine Protection, Research, and Sanctuaries Act (Ocean Dumping permit).

Facilities seeking a RCRA permit that already have one of the three permits listed above need only meet a subset of the Subtitle C regulatory requirements. For example, an owner or operator of a barge or vessel that has an ocean dumping permit, and complies with the appropriate conditions under Subtitle C (e.g., obtaining an EPA ID number, using the manifest system, and biennial reporting) will be considered to have a permit under RCRA.

6. *Trial Burn and Land Treatment Demonstration Permits* - ADPC&E issues permits to construct and operate new hazardous waste management facilities. Such

facilities cannot be constructed until a permit is issued. There is, however, an exception to this rule. Land treatment facilities and incinerators must go through a trial period during which their ability to perform properly under operating conditions is tested. This period is called a trial burn for incinerators and a land treatment demonstration for land treatment facilities. Owners or operators of these two types of facilities are required to obtain temporary permits that are enforced while the facility is being tested. Once the facility adequately completes its test, the Department can make decisions regarding the final permit. This sets the final operating conditions based on the data generated from these demonstrations.

NATIONAL HAZARDOUS WASTE COMBUSTION INITIATIVE:

In 1993, Headquarters, EPA promulgated a national hazardous waste combustion strategy to improve the margin of protection provided in the permitting and regulation of incinerators, boilers, and industrial furnaces burning hazardous wastes. The goals of this initiative were:

- To establish a strong preference for source reduction over waste management, and thereby reduce the long-term demand for combustion and other waste management facilities.
- To better address public participation in setting a national source reduction agenda, in evaluating technical combustion issues, and in reaching site-specific decisions during the waste combustion permitting process.
- To develop and impose implementable and rigorous state-of-the-art safety controls on hazardous waste combustion facilities by using the best available technologies and the most current science.
- To ensure that combustion facilities do not pose an unacceptable risk, and use the full extent of legal authorities in permitting and enforcement.
- To continue to advance scientific understanding with regard to waste combustion issues.

The Department's goal is to continuously improve the regulation of hazardous waste combustion to reflect advances in scientific understanding so that adequate protection of human health and the environment is assured. During the time it takes for EPA to propose and finalize updates to national regulations, ADPC&E will use its

omnibus authority on a case-by-case basis as necessary to protect human health and the environment to include the appropriate conditions in combustion permits being issued.

ADPC&E uses the RCRA omnibus provision and its State and RCRA permit modification regulations to add permit conditions as necessary to protect human health and the environment whenever a combustion facility owner/operator seeks issuance of a new permit or reissuance of an expiring permit, or, in appropriate circumstances, when existing permits are reopened for modification. The following concerns are addressed during the permitting process.

- *Risk Assessments.* ADPC&E requires that site-specific risk assessments be conducted at incinerators and BIFs during the permitting process. These are normally done in accordance with EPA's draft indirect risk assessment guidance pending EPA's issuance of updated, final guidance on conducting risk assessments at combustion facilities, including consideration of the risks from indirect exposures.

- *Upgraded Particulate Matter Standard and Supplemental Controls on Metal Emissions.* Hazardous waste combustion units are required, through appropriate use of the omnibus permit authority, to meet the more stringent particulate matter standard that is now applicable to municipal waste combustors -- 0.015 mg/dscm. This technology-based standard operates to provide a major control on metals emissions from combustion units. In addition, each combustion facility is required to consider, as part of its facility-specific risk assessment, whether the upgraded PM standard affords adequate protection against the risks posed by metals. If additional metal controls are found to be necessary, these controls may be imposed as permit conditions through use of the omnibus permit authority.

The upgraded PM standard will be used until EPA promulgates a final alternative PM standard incinerators and BIFs. It may be that the upgraded PM standard is sufficient for many combustion facilities. However, some combustion units may be emitting metals above *de minimis* quantities, in which case additional controls may be warranted.

- *Dioxins and Furans.* Site-specific risk assessments at hazardous waste combustion facilities may reveal the need for additional controls on dioxin and furan emissions. Through appropriate use of the omnibus permit authority, ADPC&E may impose as

an interim measure emission limits of 30 ng/dscm (based on the sum of all tetra- through octa- dioxin and furan congeners). This standard is the same as the New Source Performance Standard for new municipal waste combusters.

• *Permit Controls on Incinerators and BIFs.* ADPC&E is working to bring all incinerators and BIFs under final, § 264/266 permit controls as soon as possible. This is being implemented through establishment of a schedule for calling in all BIF permits for final determinations. ADPC&E has received final authorization for all incinerator and BIF permitting, and was the first agency in the nation to issue a final permit decision for a BIF.

• *Enhanced Public Participation.* ADPC&E is committed to meaningful public involvement in its permitting programs. Local citizens must be given the opportunity to assure themselves that facilities in their neighborhoods will be operated safely. Public notice is given at the very earliest stages of a facility's seeking a permit, and the same openness continues throughout the permitting process with extensive opportunity for public comment and participation.

• *Enhanced Inspection and Enforcement.* ADPC&E will continue and enhance its current enforcement efforts regarding combustion units through aggressive inspection and enforcement at both BIFs and incinerators. Based on our experience and the level of public concern about the compliance record of combustion units, the use of aggressive enforcement ensures the maximum timeliness and extent of compliance. In particular, if an event occurs that results in non-compliance, the state will be in a position to take the appropriate enforcement or permitting action, including abatement of the problem or, if necessary, shutdown of combustion operations. ADPC&E routinely requires the use of permanent on-site inspectors at commercial incinerators and BIFs whenever appropriate.

THE PERMIT PROCESS

All hazardous waste TSDFs required to get a RCRA permit follow the same basic permitting process. The exceptions are facilities that are issued a permit-by-rule or an emergency permit. The permit process consists of the following steps:

1. Submitting a permit application
2. Reviewing the permit application
3. Preparing the draft permit
4. Taking public comment
5. Finalizing the permit

An additional step of appealing the permit decision may occur with some permits.

There are a number of Federal laws that may affect the permit process, including the:

- Wild and Scenic Rivers Act
- National Historic Preservation Act of 1966
- Endangered Species Act
- Coastal Zone Management Act
- Fish and Wildlife Coordination Act.

When any of these laws is applicable, its procedures must be followed. For example, the Coastal Zone Management Act prohibits EPA or the Department from issuing a permit for an activity affecting land or water use in the coastal zone unless the proposed activity complies with the State's Coastal Zone Management Program, and is agreed to by the State. To get more information on these laws and their potential impacts on the RCRA permitting process, see Reg 23 § 270.3.

Permitting Procedures:

Permitting procedures for the Hazardous Waste Division are patterned after the procedures contained in Reg. 23 Section 270. The complete permit application for a hazardous waste management (RCRA) facility includes both Parts A and B as defined in Reg 23 §§ 270.13 and 270.14-270.29.

Part A consists of EPA Forms 1 and 3 of the consolidated Permit Application Forms and accompanying information as described in 270.13. There is no prepared application form for Part B; however, information required to be submitted in Part B is described in detail in 270.14 through 270.29. The respective facility standards are found in Reg. 23 Section 264. Because of the nature of their operation, commercial hazardous waste management facilities must meet several more stringent permitting standards than corresponding non-commercial facilities.

Under the provisions of HSWA, specific types of facilities can submit Parts A and B separately. Specifically, any TSDF that comes under the jurisdiction of RCRA Subtitle C or the Hazardous Waste Management Act due to statutory or regulatory changes must submit its Part A six months after the date of publication of the regulations in the *Federal Register*, or 30 days after the date they first become subject to the promulgated standards. The Part B for such facilities can either be voluntarily

submitted or called in by the Department. A special timetable applies to land disposal facilities that come under the jurisdiction of RCRA in this manner: they must submit a Part B within 12 months of becoming subject to RCRA permitting requirements or lose interim status.

Incinerators and all other facilities retain interim status until a final permit determination is made if they submit their Part B applications by the indicated deadlines.

New facilities submit Parts A and B, simultaneously. This submission must be made at least 180 days prior to the date on which physical construction is expected to start. RCRA § 3019 requires that final permit applications for surface impoundments and landfills be accompanied by information on the potential for public exposure to hazardous wastes or constituents from facility releases. Once the information is submitted, the Department makes it available to the Agency for Toxic Substances and Disease Registry (ATSDR). Additionally, if the Department believes that the release poses a substantial risk to human health, the Department may require that the facility perform a health assessment pursuant to Reg. No.23 § 270.34. The exposure information must at least address:

- Reasonably foreseeable potential releases from both normal operations and accidents at the facility, including releases associated with transportation to or from the facility,
- The potential pathways of human exposure to hazardous wastes or constituents resulting from the releases described above, and
- The potential magnitude and nature of the human exposure resulting from the releases described above.

In some cases information contained in the permit application may be considered confidential by the owner or operator. Permit applicants often make a claim of confidentiality to protect trade secrets. In such cases, the owner or operator must make the claim known at the time of submission by following the procedures described in §270.12 of Regulation No.23. Claims of confidentiality are reviewed (by the Department's legal counsel) to determine if the information can legitimately be claimed as confidential. If a claim is substantiated, the information is treated as confidential and not released. If, on the other hand, a claim is denied, the information can be made public.

Once the owner or operator is informed, by letter, that his application is complete, an in-depth evaluation of the permit application begins. The purpose of this evaluation is to determine if the application satisfies the technical requirements of RCRA. After the permit application is evaluated,

ADPC&E makes a tentative decision either to issue or deny the permit. If the tentative decision is to deny the permit, the Department must send the owner or operator a notice of intent to deny. If the Department tentatively decides to issue the permit, a draft permit is prepared by the Hazardous Waste Division staff.

Prior to final technical review of a permit application, the application must be deemed to be complete. In order to facilitate this review, it is required that all applications for permits include both Part A and B, as described above, and any supplemental information required by Regulation No. 23 (unless the Part A has been previously submitted or updated for Interim Status and is unchanged). If changes have been made or are proposed to be made in the operation of the facility, then a revised Part A must be submitted as part of the permit application. Additionally, the permit application fee required by Section 6 of Regulation No. 23 must accompany the permit application.

As of August, 13, 1993, two public notices are required for all new permitting actions (excluding permit transfers and minor modifications of existing permits): 1) when the application is determined to be administratively complete and 2) when the draft permit is complete or the application is denied. The term "New permit" applies to the process for obtaining a permit for a proposed facility, a transportation permit, or a permit which will create additional impact to the environment. "Administratively complete" is achieved when the Division determines that enough information has been provided in order to process the permit.

Notice upon Application

When the Division determines the application is administratively (not technically) complete, the Division shall prepare and send the actual notice for publication to the applicant and shall direct the applicant to cause such notice to be published in the newspaper. Any interested party desiring a public hearing on an application for a permit must make a request to the Department within ten (10) days of the date of publication of the notice of application. Whether to have a hearing is within the Department's discretion. If a hearing is to be held, all commenters, as well as the applicant, must be notified of the hearing by certified mail. The public hearing is of record but is not adjudicatory in nature. The Department will receive public comments at any time, though it need only respond to comments received during a designated comment period. The only mandatory public comment period will be after public notice of the draft permit.

Figure 4

Regulation No. 23 § 270 – RCRA Permitting Process

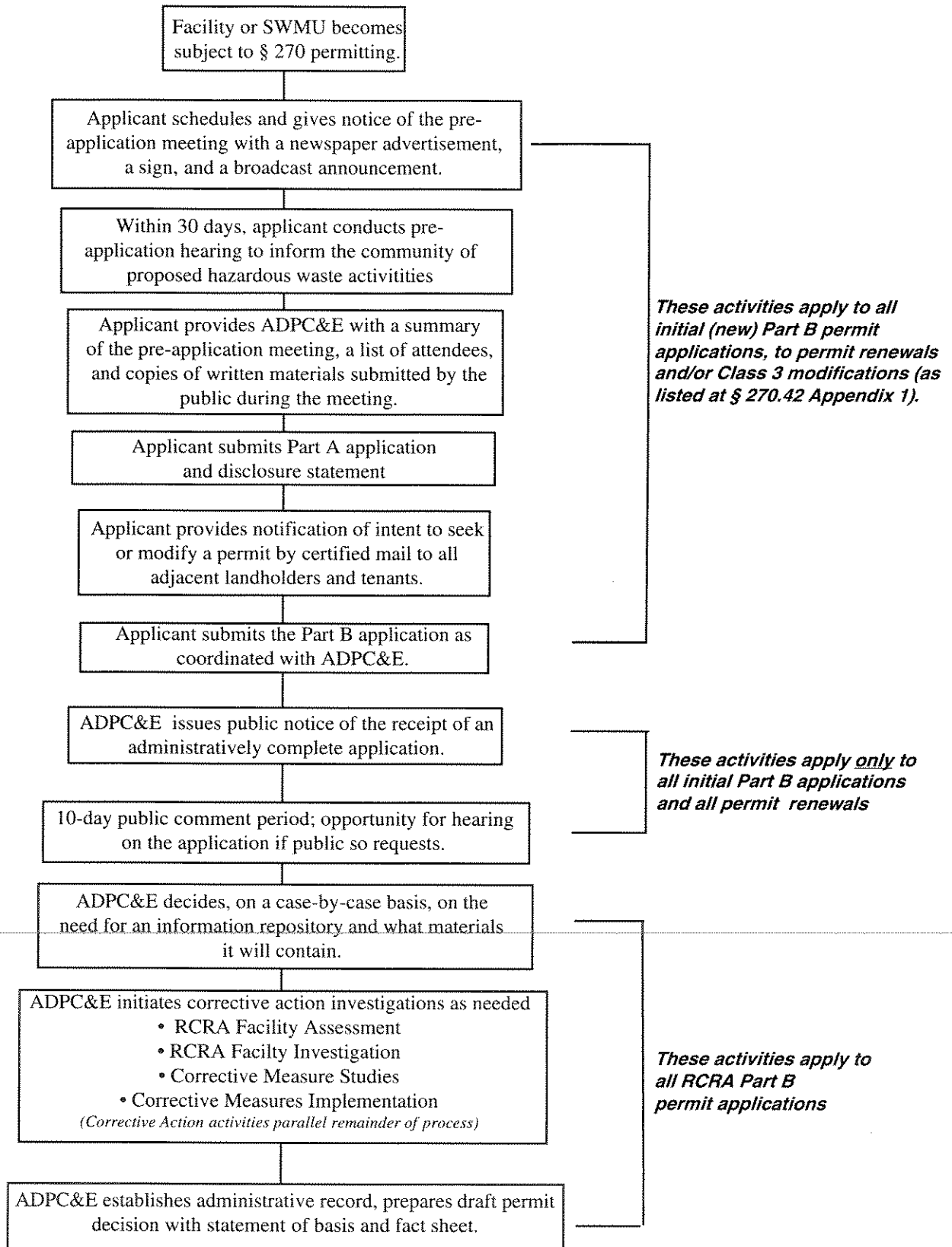
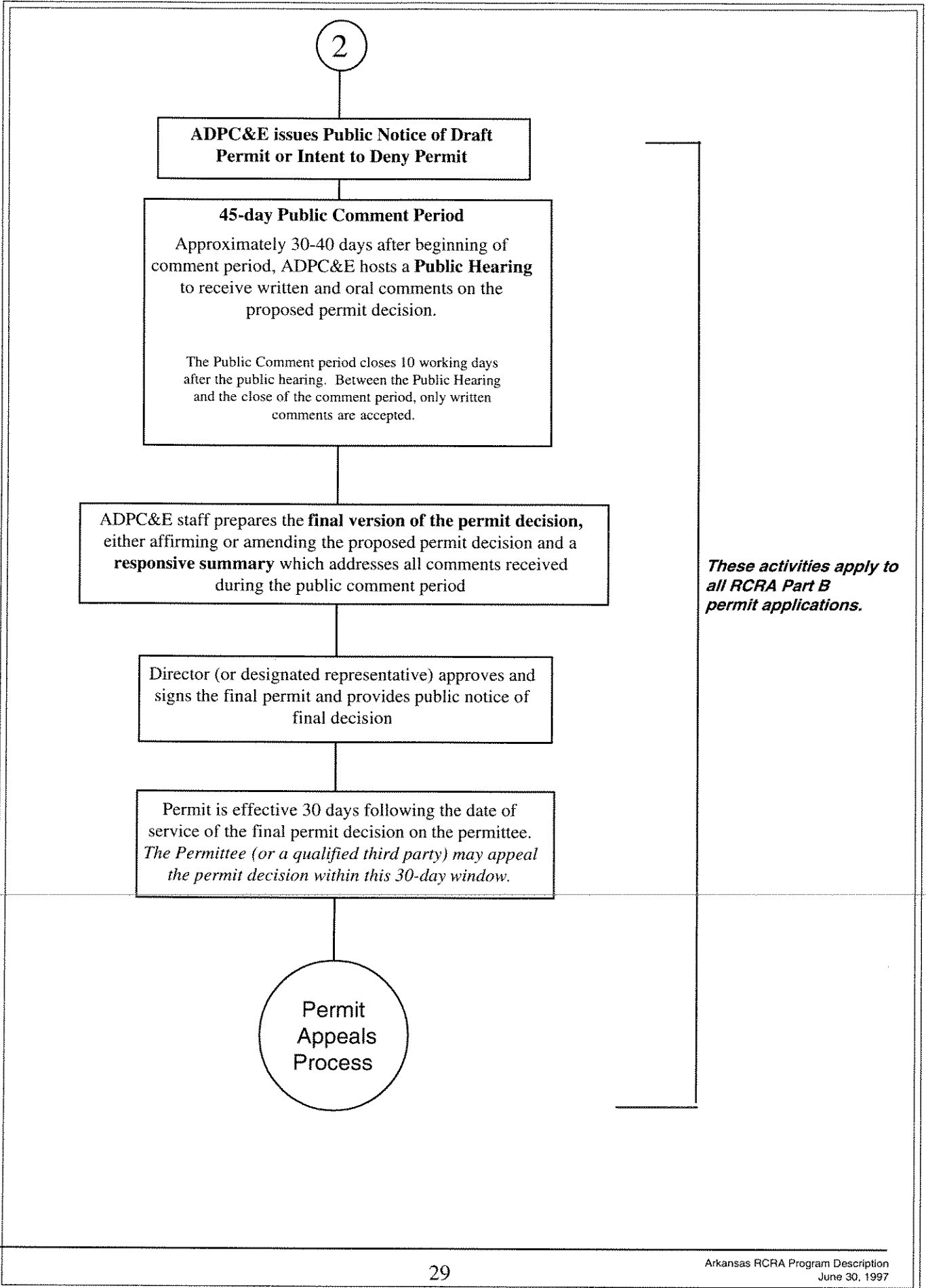


Figure 4- continued



Permit Application Review

The Department's hazardous waste permits staff review each application for the completeness of information submitted, including the permit fee. Upon completion of this review, the applicant is notified if any additional information is required.

When all information is present, and the required application fee is paid, the reviewing engineer conducts a detailed technical review of the application. During this portion of the application review, the reviewing engineer evaluates the basic application components (e.g. waste analysis plan, contingency plan, detailed engineering plans and specifications, etc.) as well as the HSWA corrective action components (RFA, SWMU identification, exposure assessment, etc.). Additional information is requested from the facility as necessary to fully determine the technical standards of the facility operations.

Upon completion, the engineer prepares a draft permit (or notice of intent to deny) which is then forwarded to the Technical Branch Manager for comment. This draft permit contains general permit conditions, general facility conditions, specific waste management conditions, special conditions, and corrective action conditions. The draft permit includes corrective action language requiring investigation of any known or potential releases of hazardous substances and, if necessary, an evaluation of corrective action alternatives and implementation of remedial (or interim) measures.

Preparing the Draft Permit

The draft permit incorporates applicable technical requirements and other conditions pertaining to the facility's operation. These other conditions are divided into two groups - those applicable to all permits (called general conditions) and those applied on a case-by-case basis. General permit conditions comprise:

- A requirement to comply with all conditions listed in the permit
- A responsibility to notify ADPC&E of any planned alterations or additions to the facility
- A requirement to provide the Department with any relevant information requested and to allow Department representatives to inspect the facility premises under certain conditions
- A requirement to certify annually that a program is in place to reduce the volume and toxicity of waste, and that the proposed method of treatment, storage, and disposal minimizes threats to human health and the environment

- A duty to submit required reports (e.g., Unmanifested Waste Report, Annual Report, and Manifest Discrepancy Report).

The case-by-case permit conditions include:

- Compliance Schedules - These schedules are used to bring a facility into compliance with corrective action requirements.
- Duration of Permit - The permit is valid for up to ten years; land disposal permits must be reviewed every five years
- A requirement to implement HSWA or RATFA corrective actions as appropriate.

ADPC&E uses a set of standardized permit modules in word processor format to prepare the draft permit, ensuring that all applicable general permit requirements are addressed and to ensure consistency between individual permits.

Public Notice of Draft Permit

When the draft permit is complete or the Division has determined to deny the application, the Division shall cause notice to be published in the newspaper. This notice starts the formal forty-five (45) day public comment period. The Division must receive proof of publication for all required public notices from the applicant and payment of applicable permit fees before the final permit is issued.

Following approval by the Technical Branch Manager, a public notice is issued announcing the draft permit and setting a forty-five (45) day public comment period. For initial permits, major modifications, or if significant public interest is forthcoming, the Director schedules a public hearing to receive comments from the public as provided in Regulations No. 8 and 23. The draft permit and any supporting documentation is made available for public scrutiny at one or more of the many depositories throughout the state and at the Department offices in Little Rock, Arkansas, as well as convenient points (city hall, county courthouse, and public libraries) in the neighborhood of the proposed facility.

Upon completion of the 45-day period for public comment, (including a hearing, if one is held) the permit is finalized and submitted to the Hazardous Waste Division Chief for final permit action, i.e., issuance or denial. Any appeal to the permit decision can be made to the Commission on Pollution Control and Ecology in accordance with the provisions of Regulation No. 8 and Arkansas Code, Annotated, Sections 8-1-101, *et seq.*, 8-3-101, *et seq.*, the Arkansas Water and Air Pollution Control Act (Act 472 of 1949, as amended), Ark. Code Ann. 8-4-101 *et seq.*, and 8-5-101, *et seq.*

In order to minimize confusion among permittees and applicants for permits due to overlapping and/or duplicative regulatory requirements, and to promote a smooth transition from federal to state control of hazardous waste management in the state, Arkansas elected to adopt in Regulation No. 23, applicable federal regulations as promulgated in 40 CFR 270, 124, 260 - 266, and 268. In those few instances where the State has more stringent requirements, the specific federal regulation was excluded from adoption and so indicated in Regulation No. 23. Consequently, specific permitting procedures and requirements contained in Reg. 23 Section 270, including any "unique" permitting procedures, are currently in effect in Arkansas, and are described in detail in the following federal regulations:

SUBJECT	REGULATORY CITATION
Transfer of Permit	270.40
Major Modifications or Revocation and Re-issuance of Permits	270.41
Minor Modifications of Permits	270.42
Disclosure Requirements	270.27
Termination by Rule	270.32
Permits by Rule	270.60
Emergency Permits	270.61
Hazardous Waste Incinerator Permits	270.62
Permits for Land Treatment Demonstrations using Field Tests or Laboratory Analyses	270.63
Qualifying for Interim Status	270.70
Operation During Interim Status	270.71
Changes During Interim Status	270.72
Termination of Interim status	270.73

The enclosed flow charts (Figure 4) depict the major procedural steps followed from the time of permit application to final permit action, accompanied by a brief description of each step in the process.

The State uses internally-developed Part B application completeness checklists which incorporate the federal requirements as well as more stringent requirements of Regulation No. 23 (Hazardous Waste Management). These checklists are also provided to the applicant for use in preparing a complete permit application.

Facility checklists used by the Department in reviewing permit applications are enclosed as enclosures to this revised program description. Appeals to State permitting decisions can be made pursuant to Section 2 of ADPC&E Regulation No. 8.

Joint Permitting Procedures

ADPC&E and EPA have agreed to a joint permitting process for the processing and enforcement of permits for those provisions of HSWA for which ADPC&E does not have

authorization. As ADPC&E receives authorization for additional provisions of the HSWA, EPA will suspend issuance and enforcement of Federal permits in Arkansas for those provisions, and will transfer that portion of permit responsibility to ADPC&E.

Whenever EPA adds permitting standards for processes not currently covered by federal regulations, EPA Region VI processes and enforces the portions of RCRA permits in Arkansas pertaining to these new areas until ADPC&E receives final authorization to enforce these changes. At the time the State program is approved in the new areas, EPA suspends issuance of federal permits in the state. EPA will then transfer any pending permit applications, completed permits, or pertinent file information to ADPC&E within thirty days of the approval of the State program in conformance with the conditions of the RCRA MOA.

EPA Overview of State Permits

While EPA may comment on any permit application or draft permit, EPA's overview function focuses primarily on specific facilities identified by ADPC&E and EPA in ADPC&E's Multi-Year Permitting Strategy and the annual state grant work program.

EPA may comment in writing on any draft permit or proposed permit modification, whether or not EPA commented on the permit application, within forty-five days of its receipt. Where EPA indicates in a comment that issuance, modification, reissuance, termination, or denial of the permit would be inconsistent with the approved state program, EPA must include in its comments:

- 1) A statement of the reasons for the comment (including the section of the State law or regulation that supports the comment), and
- 2) The recommended actions that should be taken by ADPC&E in order to address the comment (including the conditions which the permit would include if it were issued by EPA).

EPA is required to send a copy of its written comments to the permit applicant.

EPA shall withdraw these comments when satisfied that ADPC&E has met or refuted its concerns, and must also provide the permit applicant with a copy of such withdrawal.

Where the EPA and ADPC&E staffs cannot reach resolution or agreement on draft permits, the Director of ADPC&E confers with the Regional Administrator and both then direct their respective staff to coordinate as necessary and to efficiently discuss and consider all comments and concerns and

to resolve all misunderstandings. Any remaining conflicts are then settled by the mutual decision of the Director and the Regional Administrator.

Under Section 3008(a)(3) of RCRA, EPA may terminate a State-issued permit in accordance with the procedures of 40 CFR 124, Subpart E, or bring an enforcement action in accordance with the procedures of 40 CFR Part 22 in the case of a violation of a State program requirement. In exercising these authorities, EPA must observe the conditions established at 40 CFR 271.19(e).

ADPC&E's Role in Joint Permitting

ADPC&E is responsible for expeditiously drafting, circulating for public review and comment, issuing, modifying, reissuing, and terminating RCRA permits for those hazardous waste treatment, storage, and disposal facility permit provisions contained in the federally authorized portions of ADPC&E's program. ADPC&E does so in a manner consistent with RCRA as amended by HSWA, the State/EPA Region VI Memorandum of Agreement, all applicable federal requirements, and this Program Description.

ADPC&E issues, modifies, and reissues all permits contained in the authorized portions of ADPC&E's program in accordance with the Arkansas Hazardous Waste Management Act and Code and includes as permit conditions all applicable provisions of such statutes and regulations. In the exercise of its statutory variance authority (A.C.A. 8-7-211) ADPC&E shall not grant any variances that will result in any requirements less stringent than comparable federal statutory or regulatory requirements. Any compliance schedules contained in permits issued by ADPC&E will require compliance with applicable standards as soon as possible.

ADPC&E considers all comments EPA makes on permit applications and draft permits. ADPC&E will satisfy or refute in writing EPA's concerns on a particular permit application, proposed permit modification, or draft permit before issuing the permit or making the modification.

The Joint Permitting Process

Pursuant to section 3006(g)(1), and in accordance with the Hazardous and Solid Waste Amendments of 1984, EPA has authority to issue or deny permits or those portions of permits to facilities in Arkansas for the requirements and prohibitions in or stemming from HSWA until ADPC&E's program is amended to reflect those requirements and prohibitions and authorization is received for the portion or portions of the program.

EPA and ADPC&E established a joint permitting

process for the issuance of RCRA permits in Arkansas. This joint permitting process is established in accordance with section 3006(c)(3) of RCRA. Details of the joint permitting process are provided in the annual State grant work plan. The duties and responsibilities of EPA and ADPC&E for joint permitting are also specified in the Joint Permitting Agreement established and updated as a part of the annual State grant work program.

The details of the joint permitting process as contained in ADPC&E's grant work program are reviewed and revised as often as necessary, but not less often than annually so as to assure its continued appropriateness.

Upon authorization of ADPC&E for any of the provisions of HSWA, the specifics of the Joint Permitting Agreement as set forth in the annual state grant work program are amended so as to reflect the necessary changes due to authorization. An amendment to the RCRA MOA or the execution of a separate memorandum of agreement may be required for authorization of any of the provisions of HSWA.

Administration of Joint Permits

EPA's Role: EPA administers the RCRA permits or portions of permits it has issued to facilities in the State until they expire or are terminated. EPA is responsible for enforcing the terms and conditions of the Federal permits while they remain in force. When ADPC&E either incorporates the terms and conditions of the Federal permits in State RCRA permits or issues State RCRA permits to these facilities, EPA will terminate those permits subject to the terms of the Enforcement Memorandum of Understanding.

ADPC&E's Role: ADPC&E agreed to and has reviewed all hazardous waste permits which were issued under State law prior to the effective date of the RCRA MOA and will modify, or revoke and reissue such permits as are necessary to require compliance with the amended state program, the Arkansas Hazardous Waste Management Act, Regulation No. 23, and Regulation No. 8. ADPC&E agrees to modify or revoke and reissue these State permits as RCRA permits, as necessary, in accordance with the annual State grant workplan, the Joint Permitting Agreement, and the RCRA Memorandum of Agreement.

PERMIT ADMINISTRATION

Once issued, RCRA permits are valid for up to ten years. Land disposal permits have an additional requirement to be reviewed and updated after five years. During the term of a permit situations may

arise which may cause the permit to be modified, revoked and reissued, or terminated.

Permit Modification

Permits may need modification for a number of reasons, including:

- Substantial alterations or additions to the facility
- New information about the facility becomes available
- New statutory or regulatory requirements affect existing permitted activities.

In September 1988, EPA published regulations (under 40 CFR 270.41 and 270.42) that revised permit modification procedures for changes that facility owners and operators may want to make. EPA categorized selected permit modifications into three classes and established administrative procedures for approving modifications in each class. ADPC&E has adopted these revised requirements.

The permit modification regulations provide owners and operators more flexibility to change permit conditions, expand public notification and participation opportunities, and allow for expedited approval if no public concern exists for a proposed modification.

The classes are defined as:

Class 1: Routine changes and correction of errors

Class 2: Common or frequently occurring changes needed to maintain a facility's capability to manage wastes safely or conform to new requirements

Class 3: Major changes that substantially alter the facility or its operations.

In addition to establishing permit modification classes and administrative procedures, this regulation also gives the Department the authority to grant temporary authorization for facilities to respond promptly to changing conditions.

Revocation and Reissuance of the Permit

ADPC&E may revoke and reissue a permit in two circumstances:

- When cause exists for terminating the permit (under the circumstances described below), but the Department decides that revocation and reissuance is a more appropriate step
- When the permit holder plans to transfer the permit.

Permit Termination

In some instances, operators may not comply with the requirements stipulated in the permit, even after

enforcement action. In this case it may be necessary to terminate a hazardous waste permit. The Department may terminate a permit or deny its renewal for three reasons:

- 1) Noncompliance by the permittee with any condition of the permit
- 2) Failure on the part of the permittee to disclose any relevant information during the permit process or misrepresentation of facts at any time
- 3) The permitted activity endangers human health and the environment and can only be regulated to acceptable levels by permit termination.

A facility whose permit is terminated must implement its closure plan as required under Reg. 23 Section 264 Subsection G. If wastes remain on site, post-closure monitoring must also be done.

DISCLOSURE REQUIREMENTS

Arkansas has enacted legislation (Act 454 of 1991, codified at A.C.A. § 8-1-106) which authorizes the Department to deny any permit application, transfer of permit, or operating authorization if an applicant has a history of noncompliance with the environmental laws and regulations of Arkansas or any other jurisdiction, or if any person affiliated with the applicant has a history of such noncompliance. The Department requires all applicants for a new RCRA treatment, storage, or disposal permit for a hazardous waste management facility or a hazardous waste transporter permit to submit a disclosure statement with their permit application. The submission of the disclosure statement is mandatory; no application can be considered complete without it. The disclosure statement shall be an original, written statement by the applicant which contains:

(1) The full name, business address, and social security number of the applicant and all affiliated persons;

(2) The full name and business address of any legal entity in which the applicant holds a debt or equity interest of five percent (5%) or more, or which is a parent company or subsidiary of the applicant, and a description of the ongoing organizational relationships as they may impact the applicant's operations in Arkansas;

(3) A description of the experience and credentials of the applicant, including any past or present permits, licenses, certifications, or operational authorizations relating to environmental regulation;

(4) A listing and explanation of any civil or criminal enforcement actions by

governmental agencies involving environmental protection laws against the applicant or any affiliated person within the ten years immediately preceding the filing of the application, to include administrative enforcement actions or consent orders resulting in the imposition of sanctions, permit or license revocations or denials issued by any state or federal authority, any actions that have resulted in a finding or a settlement of a violation, and any similar action pending;

(5) A listing of any federal environmental agency and any other environmental enforcement agency that has or has had regulatory responsibility over the applicant; and

(6) Any other additional information the Director may require which relates to the competency, reliability, or responsibility of the applicant and any affiliated person.

(7) If the applicant is a publicly held company required to file periodic reports under the Securities and Exchange Act of 1934, or a wholly-owned subsidiary of a publicly-held company, he may submit, in lieu of a disclosure statement, a copy of the most recent annual and quarterly reports required by the Securities and Exchange Commission. The applicant shall also submit any other information required by the Director which relates to the competency, reliability, or responsibility of the applicant and any affiliated person.

Determination whether a particular facility or person constitutes a "bad actor" is made by the Director, on a case-by-case basis, based upon the recommendation of the Department staff. The Department does not maintain any permanent or temporary lists of "bad actors".

Description of applicable State appeals procedures.

Permit Appeals

The Commission provides an adjudicatory hearing and appeals process for contested permitting decisions as provided at § 2 of APC&EC Regulation No. 8 (Administrative Procedures). A flowchart of the appeals process is shown at **Figure 5**.

Certificate of Service on Final Permits

Act 163 of 1993 provides that a thirty (30)-day appeal period begin "after service of notice" for permittees, while it begins "after the date of the

Department's final decision" for third parties. In order to resolve this conflict, each final permit decision that is issued by the Department shall contain language that make it the Department's final decision.

Service of notice is complete when the permit decision is mailed to the permittee or applicant. The following language must be provided as the last paragraph of each permit:

"The Department decision to issue Permit No. ____ to modify Permit No. xx, to revoke Permit No. xx, or to deny this permit application is final for purposes of appeal as of the date indicated in the Certificate of Service below."

In addition, the following Certificate of Service must be placed at the end of each final permit:

"I, (Person mailing the final permit), hereby certify that a copy of this permit or denial of permit, permit modification, etc.] has been mailed by first-class mail to (Permittee or applicant], address, on or before this (Day of Month, Year)."

Party Preclusion and Issue Preclusion.

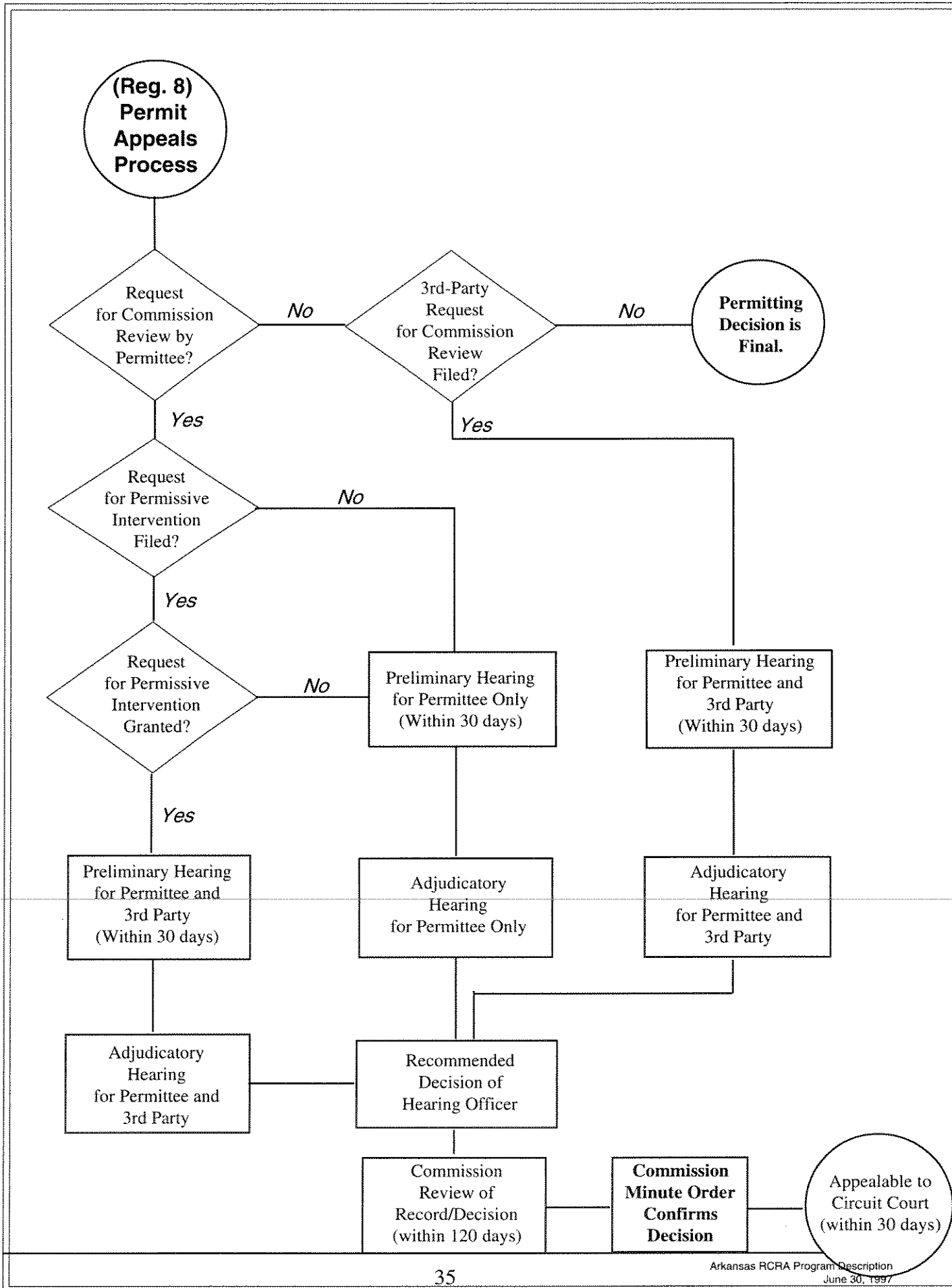
All appeals must be filed within thirty days of service of the permit decision (i.e. thirty days after the decision is mailed as explained above). However, only interested persons (other than the applicant) who submitted comments on the record during the comment period shall have standing to file an appeal. Written comments submitted prior or subsequent to the public comment period or telephone calls will not suffice to provide standing to appeal. Further, only the particular issues raised in the comments submitted by a party (other than the applicant) can be raised on appeal, unless the party can show good cause why it was not raised. The appeal must include a "complete and detailed statement identifying the legal and factual objections to the permit action". A petition without specific legal and factual objections will no longer be acceptable.

Preliminary Hearing

Within thirty (30) days after the appeal is filed with the Commission Secretary, a preliminary hearing shall be held by the hearing officer. At this hearing, the hearing officer shall decide which parties, if any, have standing (party preclusion) and which issues, if any, are properly appealed (issue preclusion). The recommended decision of the hearing officer on these matters will be heard by the Commission at its next regularly scheduled meeting.

The hearing officer will also schedule the hearing and other matters such as discovery deadlines (i.e., for depositions or interrogatories) in order to submit the hearing officer's decision in the matter for final Commission action within 120 days after the preliminary hearing. This 120-day limit may be extended by mutual agreement of the parties or by the hearing officer for just cause.

Figure 5



Stays

After a permit appeal is filed and before the Commission makes its final determination, a permit denial shall stand, but permit issuance, modification, or revocation shall be stayed. Nevertheless, a stay may be granted or terminated by the Commission upon application by any party to avoid substantial prejudice.

Permit Transfers

The permittee or transferee must submit a written request for transfer of the permit on a short form prepared by the Department and demonstrate compliance with the requirements of Regulation No. 23 § 270.40. The new permittee/transferee must provide the Department with a completed "bad actor" disclosure statement pursuant to A.C.A. § 8-1-106. The Department's thirty-day review period does not begin until these documents have been received.

Moratoria on Permits

The Director cannot declare a moratorium on the issuance of a particular type of permit. This power is reserved for the Arkansas Pollution Control & Ecology Commission through the rulemaking process.

Standardized forms used in the State Program (notification forms, manifests, etc.)

Arkansas uses a number of standardized forms in its implementation of the hazardous waste management program, shown here for reference. These include:

1. Notification of Regulated Waste Activity

("NORWA", AR/EPA Form 8700-12 (AR-6-97R)).

This form, used to apply for an EPA identification number and update one's notification of hazardous waste activity, replaces the EPA notification form. Refer to Regulation No. 23, § 262, Appendix II for a copy of this form and instructions for its completion.

2. Arkansas Hazardous Waste Manifest. AR/EPA

Form 8700-22) and continuation sheet (EPA Form 8700-22A). As described below, Arkansas requires the use of this form or an equivalent state manifest. The use of the Uniform Hazardous Waste Manifest is prohibited for wastes shipped into, out of, or through Arkansas. Refer to Regulation No. 23, § 262, Appendix I for a copy of this form and instructions for its completion.

State Compliance, Monitoring, and Enforcement Program:

INSPECTION/INVESTIGATION ACTIVITIES

ADPC&E performs routine compliance evaluation inspections (CEIs) as agreed to in the annual workplans negotiated with EPA Region VI. CEIs focus on identifying the most significant violations, however, all violations detected will be addressed. The inspector will note in his or her field logbook the violations that can be corrected during the CEI. The inspection objective will focus on finding circumstances which may cause serious harm to human health or the environment because of mismanagement of hazardous waste.

The criteria for selecting the handlers to be inspected is outlined in the RCRA Compliance/Enforcement Strategy, RCRA Implementation Plan (RIP), and/or the annual workplans. All inspections/investigations shall be conducted in a courteous and professional manner.

Pre-Inspection

Prior to conducting an inspection/investigation, the inspector shall become familiar with the facility to be visited. This shall be accomplished by reviewing all pertinent files regarding the facility. Files to be reviewed shall include the Central Files maintained by the Records Section of the Management Services Division, the working files maintained by the Technical and Enforcement Branches and/or the Administrative Services Group of the Hazardous Waste Division (HWD) and the Legal Division. Information to be obtained during this Pre-Inspection Review should include:

- The name and telephone number of the contact person.
- Wastes identified on the Notification of Hazardous Waste Activity form.
- Wastes handled as listed on the Part A Application or Permit.
- Processes (waste management activities) and design capacities.
- Site specific variances.
- Outstanding, uncorrected or recurring violations.
- Items or information unclear from previous reports.
- Status of outstanding enforcement actions.
- Waste shipments, received, treated, stored or disposed.
- Treatment, storage and/or disposal facilities utilized.
- Pertinent regulations.

- Financial assurance.

Once the inspector has determined the scope of the inspection, discussed the inspection with relevant personnel, and reviewed all background information and standards relevant to the facility, he/she should prepare a strategy for inspection of the facility.

Site Visit

Upon arrival at the facility, the inspector presents identification to the facility representatives and then gives a brief entrance interview to outline the inspection objectives. If at any time during the inspection facility representatives deny access to all or part of the facility, the inspector shall inform the representatives that Section 3007 of RCRA allows employees of an authorized State to enter at reasonable times any establishment or other place where hazardous wastes are or have been generated, stored, treated, disposed of, or transported from. If the facility representatives continue to deny access, the inspector shall contact the Inspector Supervisor and/or Enforcement Branch Manager to initiate proceedings to obtain an administrative search warrant.

During site visits, the inspector makes a visual inspection of the hazardous waste generation and waste management locations. The inspector shall also conduct a visual inspection of the process areas and grounds surrounding the manufacturing building(s) and/or waste management areas. The purpose of the "walk through" is to verify:

- Physical compliance with waste management requirements.
- Proper/accurate identification of all hazardous waste generated and/or handled.
- Volumes of wastes generated and/or handled.
- Any changes in operating and/or waste management practices.

The inspector also reviews pertinent records and plans required to be kept at the facility. If the inspector feels that a more detailed review is warranted than can be conducted at the facility, a copy of the particular item shall be obtained from the facility for later review. For any area of concern, the inspector may also obtain a copy of this item(s). If the facility can not or will not furnish a copy of any item requested, then the inspector shall complete a "Records and Plans Not Available" form as required. Any and all information obtained during the course of an inspection/investigation shall be deemed public information and as such, subject to placement in the Department's general files. Exceptions to this are made only when information is submitted to and accepted by the Department in accordance with APC&EC Regulation No. 23. It should be noted that

any confidential information in the possession of the Department obtained in accordance with the Arkansas Hazardous Waste Management Act and Regulation No. 23 may be transmitted to the EPA under the claim of continuing confidentiality.

The inspectors shall proper safety precautions during the course of conducting inspections or field investigations, including any site-specific requirements which may be requested by the facility.

Upon request by the facility, the inspector will conduct an exit interview to inform the facility of the findings of the inspection. The inspector should stress that any discussions of findings are preliminary and that a thorough review of the information gathered during the inspection will be conducted and the results documented and transmitted to the facility in writing at a later date.

Field Notes

Each inspector records all notes taken during the course of an inspection/investigation in a bound field logbook with sequentially numbered pages. The field notes are the basis for writing the inspection reports, therefore, the entries should be dated, legible, accurate, and must contain only facts and observations. The notations must be objective, factual, and free of personal feelings or conjecture. The notes should be of sufficient detail to recreate the events at the facility during the report writing or subsequent testimony, if necessary.

The field logbook will also be used to document photographs and samples taken during a site visit. The logbook is maintained in the possession of the inspector or in a secure location at all times. Any changes to the official field logbook should be lined out, initialed and dated by the inspector.

Photographs

Photographs taken during the course of an inspection/investigation may be attached to the inspection report. The photograph may be permanently affixed to a sheet of paper and the following information recorded along with the photograph:

- Facility name and location
- Brief description of the subject of the photograph (e.g., leaking drums, storage area, spill, etc.)
- Direction of photograph
- Date and time
- Photographer
- Witness

A photograph log shall be maintained in the inspector's field logbook. The log shall contain the information referenced above plus any observations pertinent to the scene, (i.e., location relative to

identifiable landmarks, colors or odors noticed, etc.). Each photograph should contain an object for scale reference (e.g., ruler, notebook), if applicable. The use of special lenses, filters or other image enhancement techniques must be noted in the log.

Negatives will be maintained in a file in the Inspector Supervisor's office. Negatives will be retained for a minimum of three (3) years unless there is ongoing enforcement action, in which case they will be retained for at least three (3) years following the resolution of the enforcement case.

Sampling

The procedures for sampling are detailed in the *Quality Assurance Project Plan for Hazardous Waste* which is updated periodically as required in the annual workplan negotiated with EPA. Additional sampling guidance is found in *Test Methods for Evaluating Solid Waste, Physical/Chemical Methods*, in EPA publication SW-846. The sampling procedures include pre-sampling preparation, sample collection, and chain-of-custody. It is imperative that these procedures be strictly followed in order to maintain accurate, reliable data and to preserve the admissibility of analytical results into evidence as needed. Prior to taking samples, the inspector shall coordinate with the Hazardous Waste Chemist in the Technical Services Division for special instructions pertaining to the specific samples to be taken.

Information relative to sample collection must be recorded in the bound field logbook. The sample locations should be specific enough to locate the sample collection point during subsequent site visits. The following information must be recorded in the field logbook:

- Facility/site name and location
- Date and time
- Sample collection (station) location (should use direction and distance descriptions to identifiable landmarks when possible)
- Sample collector(s) (sample team)
- Preservative used
- Analytical parameters
- Observations (e.g., description of noticeable odors, colors, vegetation distress, proximity to leaking drums, etc.)
- Sample equipment used
- Sketch map depicting sampling locations and number sequence

Items (a) through (f) must also be recorded on the sample identification label as required in the sampling procedures detailed in the *Quality Assurance Project Plan for Hazardous Waste*.

Notations should also be made in the field logbook regarding weather conditions which might

effect the sample results (e.g., recent heavy rains, extreme temperatures, etc.). The inspector should offer to split samples with the facility and these samples should also be recorded in the field logbook. Details and results of field measurements, such as pH and conductivity should be entered into the logbook.

The sample collectors remain responsible for the care and custody of each sample until they are relinquished to another authorized person or the designated laboratory. The transfer of samples to other personnel will be documented on a chain-of-custody record sheet. This record must include the collectors' signatures, identification of all samples collected, and date and time of collection. The transferor and transferee must give their signatures and note the date and time of the transfer on the custody sheet.

Sampling tools and equipment are stored and maintained in the storage room at the front of the Hazardous Waste Division's office area. Equipment removed from the room must be logged out on the "Equipment Sign Out Sheet" located on the door to the storage room. Upon returning with the equipment, anything placed back into the storage room must be decontaminated and logged back in.

Post-Inspection

Post-inspection activities include review of field notes, photographs, sample results and other evidence gathered during the site visit. The inspector shall compare the facts gathered during the site visit with the information gathered during the pre-inspection review. If necessary, the inspector shall re-review specific documents (i.e., manifests, annual reports, Part A Applications, permits, etc.) in order to properly classify violations discovered. If more information is required to make a compliance determination, the inspector should request that information pursuant to the Arkansas Hazardous Waste Management Act. After all pertinent information has been reviewed and documented, a final report shall be prepared by the inspector.

Reports are to be written, submitted, and approved within thirty (30) days of the on-site inspection. Exceptions must be cleared through the Inspector Supervisor. The inspector is responsible for making sure the reports are complete and accurate.

The inspector, in consultation with the Inspector Supervisor and the Enforcement Branch Program Coordinator, shall determine the appropriate enforcement response in accordance with the Hazardous Waste Enforcement Response Policy (ERP). An informal enforcement response is the minimally appropriate response for Secondary Violators. *Secondary Violators* are those who have not caused actual exposure or a substantial likelihood of

exposure to hazardous waste or hazardous waste constituents; are not chronic or recalcitrant violators; and have not deviated substantially from the terms of a permit, order, agreement, or RCRA statutory or regulatory requirement.

A formal enforcement response is appropriate for a Significant Non-Complier. *Significant Non-Compliers* are those facilities which have caused actual exposure or a substantial likelihood of exposure to hazardous waste or hazardous waste constituents; are chronic or recalcitrant violators; or deviate substantially from the terms of a permit, order, agreement or from RCRA statutory or regulatory requirements. Formal enforcement actions will normally be initiated by the Program Coordinator and/or the Enforcement Branch Manager.

A facility has the potential to receive both a formal enforcement response for significant non-compliance and an informal enforcement response for secondary violations which were identified during the CEI. Areas of concern that are not documented violations, can be identified in formal and/or informal enforcement actions.

Informal Enforcement

The inspector shall prepare a report following all inspections/investigations. The report should be documented on the appropriate forms, as applicable, but must include:

- Facility name, address, and telephone number
- Date of inspection
- Facility contact
- Inspection participants
- Facility type (i.e., generator status, TSD facility, etc.)
- Hazardous waste permit number
- EPA identification number
- County Serial Number (CSN)
- List of references

The inspector shall also prepare a cover letter for the report, documenting the alleged violations. The time given in the cover letter for a facility to correct the violations noted shall not exceed thirty (30) days from receipt of the letter. If the corrective actions will take longer than thirty (30) days to complete, the facility shall be required to submit a compliance schedule within the thirty (30) day time frame. If a facility requests more than thirty (30) days for submission of a compliance schedule, an extension may be granted with the concurrence of the Inspector Supervisor and/or Enforcement Branch Manager. The inspector is responsible for transmitting a copy of the report and cover letter to the facility via Certified Mail/Return Receipt

Requested after review and concurrence by the Inspector Supervisor, Program Coordinator, and Enforcement Branch Manager. A copy of the cover letter and report shall be placed in Central Records.

If the facility does not respond within the required thirty (30) days or sends a negative response, a second letter is transmitted to the facility. The second letter will be known as a *Warning Letter*. The letter shall be sent via Certified Mail/Return Receipt Requested and will include a copy of the original letter. The facility will then have ten (10) days from receipt of the Warning Letter to respond with documentation that corrective actions have been taken. Failure to respond is cause for escalation to enforcement actions.

Formal Enforcement

Formal enforcement will normally be initiated by the Enforcement Coordinator and/or the Enforcement Branch Manager based upon non-compliance with informal action, actual exposure or a substantial likelihood of exposure to hazardous waste or hazardous waste constituents, chronic or recalcitrant violators, or substantial deviations from the terms of a permit, order, agreement or from RCRA statutory or regulatory requirements.

The inspector shall prepare and submit a report documenting all instances of significant non-compliance. The report should be documented on the appropriate forms, as applicable, but must include:

- Facility name, address, and telephone number
- Date of inspection
- Facility contact
- Inspection participants
- Facility type (i.e., generator status, TSD facility, etc.)
- Hazardous waste permit number
- EPA identification number
- County Serial Number (CSN)
- Documentation of violations
- List of references

A draft Consent Administrative Order (CAO), including a civil penalty calculated pursuant to APC&EC Regulation No. 7, is prepared and submitted by the Enforcement Coordinator for concurrence to the Enforcement Branch Manager, Hazardous Waste Division Chief, Legal Division, Deputy Director, and Director. Upon approval, the inspection report and associated CAO will be issued to the facility. The CAO will be consistent with a format approved by the Enforcement Branch Manager. In most cases, the CAO will be fairly generic in format and will incorporate the inspection report by reference. Requirements to correct non-

compliance will usually be performance based unless specific corrective actions are warranted.

To provide an incentive to expedite settlement of CAOs and return to physical compliance, a facility may be given a fifty percent (50%) reduction of the proposed civil penalty if the CAO is signed and returned for execution within a designated period, normally within twenty (20) calendar days of receipt of the expedited settlement offer. Only minor negotiations for settlement will be entertained during this period. Negotiations for settlement during this period will not include discussions on further penalty reduction or validity of compliance determinations. The opportunity for expedited settlement and 50% penalty reduction will not be offered to violators who exhibit criminal behavior, extreme negligence, patterns of habitual non-compliance, uncooperativeness, or recalcitrance. The Director shall have the sole discretion in making eligibility determinations. If the CAO is not signed and returned during the expedited settlement period, the offer for 50% penalty reduction will expire and, upon concurrence with the Director, a Notice of Violation (NOV) will be issued. Traditional negotiations for settlement may continue during the period prior to the NOV hearing, however, penalty reductions at this point will only be considered based on cause.

Complaints

All complaints and investigation requests received by the Hazardous Waste Division shall be referred to the Inspector Supervisor who shall assign an inspector for response. The Inspector Supervisor shall log the complaint information into the HWTRACKER program. The Log Number assigned upon entering into the HWTRACKER program shall be placed on the complaint form. All complaints assigned to an inspector shall be investigated within ten (10) days if at all possible. Complaints unable to be investigated in the allotted time, shall be worked out between the inspector and Inspector Supervisor.

Upon investigating the complaint, the inspector shall complete the follow-up report or write a memorandum to file and attach pictures (if applicable). This follow-up report or memorandum shall be forwarded to the Inspector Supervisor. If the complaint investigation is upgraded to a Compliance Evaluation Inspection, follow the aforementioned procedures for conducting the inspection and writing the report.

Miscellaneous Investigation Requests

If an inspector receives a request from another state agency or division he/she shall notify the Inspector Supervisor or Enforcement Branch Manager prior to conducting the investigation. A

direct request for assistance by the Director or Deputy Director where immediate response is necessary for an emergency situation or if the request is made by the Emergency Response Coordinator, the inspector shall notify the Inspector Supervisor or Enforcement Branch Manager prior to responding, where possible, or as soon as possible after responding.

Resource Conservation & Recovery Information System (RCRIS)

RCRIS is used in order to record and maintain current information concerning the compliance monitoring and enforcement of regulated facilities, insure timely responses and resolutions of compliance problems, and track all Department and federal compliance actions. Completion of data input forms is done in accordance with instructions provided in the Division's RCRIS Training Manual and any subsequent training provided.

The inspector is responsible for completing the necessary data entry forms and giving them to the Management Project Analyst I as soon as possible after an inspection/investigation takes place, when the violations are determined, a schedule for compliance is determined, and when actual compliance is achieved, for informal enforcement. If formal enforcement is warranted, the inspector shall complete the data entry forms after the inspection/investigation and when the violations are determined. If there is a combined enforcement action (i.e., informal and formal for a single inspection event), the inspector shall note in the comments section of the data entry form 120's with 104's to follow or 104's with 120's to follow.

When the inspector submits the report to the Enforcement Coordinator for formal enforcement action, the Enforcement Coordinator is then responsible for completing the appropriate data entry forms for actions taken (i.e., proposed order, proposed penalty, etc.) and submitting them to the Management Project Analyst I. When the CAO is signed and effective, the Management Project Analyst I shall complete the necessary data entry forms (i.e., final order, actual penalty, scheduled and actual compliance dates).

Enforcement at Federal Facilities

In most instances, Federal facilities are required to comply with environmental statutes to the same extent as non-Federal facilities. However, enforcing compliance under RCRA is different at Federal facilities. EPA may only issue Section 3008(h) corrective action orders at Federal facilities; no other orders may be used. The Department, however, may utilize the full range of its enforcement

authorities at Federal facilities.

When a Federal facility is out of compliance with the RCRA regulations, the Department issues a notice of non-compliance, outlining violations at the facility and continuing a compliance schedule, and a timetable for regaining compliance with RCRA. After the notice of non-compliance has been issued, ADPC&E and the Federal facility will negotiate an agreement outlining the steps to bring the facility back into compliance.

In cases where corrective action is required at a Federal facility, ADPC&E may issue either a Consent Administrative Order for corrective action or a permit schedule of compliance to achieve compliance with the corrective action requirements. As with non-Federal facilities, the choice of using an order or a permit to secure corrective action at facilities seeking permits is made on a case-by-case basis.

Waste management activities at Federal facilities will often be managed by a private contractor. In this case, both EPA and the Department have full authority to take enforcement activities against the contractor for violations of RCRA or the Hazardous Waste Management Act.

Notice of Enforcement Actions

Public notice must be provided for all enforcement actions (e.g., Notices of Violation, Consent Administrative Orders, and emergency orders) containing civil penalties, including in-kind services, upon the Director's signature on the order. Pursuant to the provisions of Act 163 of 1993, notice is not required for draft documents, Administrative Orders (as these are always preceded by an NOV) or enforcement orders which contain no monetary penalties. In the interim, as a matter of policy, all enforcement orders will go to public notice. The notices will be sent to the Commissioners and published on or about the tenth day of each month.

Contents of Notice

The notice must contain the following: 1) the identity of the person or facility alleged to be in violation 2) the location by city or county of the alleged violation 3) a brief description by environmental media (i.e. water, air, solid waste, hazardous waste) impacted by the alleged violation 4) the type of administrative action proposed (i.e. consent administrative order, notice of violation, or emergency order) and 5) the amount of the penalty to be assessed.

Effective Date of Consent Administrative Orders

A Consent Administrative Order containing a civil penalty is effective thirty (30) days after publication of the notice. However, a corrective

action may be required to be taken immediately by stating in the enforcement order that such shall be taken immediately notwithstanding public notice requirements. A Consent Administrative Order containing only corrective actions is effective upon the Director's signature.

Standing to Appeal

In order to preserve the right to file a request for a hearing on a CAO or to intervene in an action on an NOV, a person must comment on a proposed penalty during the 30-day public comment period which follows publication of notice. Although Act 163 does not contain a requirement for a responsiveness summary in enforcement actions, each Division shall prepare a response to public comments as soon as practicable. If no hearing is to be held - that is, if a CAO is involved - any person who commented on the proposed CAO may petition the Commission to set aside the order and provide a hearing. This petition must be filed within thirty days after the order is effective, i.e., sixty days after the notice is published, and it is heard by the Commission rather than a hearing officer. As a practical matter, any person who desires a hearing on a CAO must file a petition for such hearing regardless of the Department's response to public comments. In order to obtain a hearing on the CAO, the petitioner must present material evidence that was not considered in the issuance of the order, and the Commission must find that in light of the new evidence the order is not reasonable and appropriate. If the Commission denies the request for a hearing, it must give notice to the petitioner and state its reasons for the denial. That denial is appealable to court. In addition, the Commission may on its own initiative institute review of any enforcement action, but it must do so within thirty days of the effective date of such order. These public notice requirements will assure that our CAOs constitute diligent prosecution by the state agency for purposes of citizen suits under the Clean Water Act and other similar laws. None of these notice provisions apply to (1) criminal actions (2) actions filed directly in court, and (3) actions for recovery of fees where no additional penalty is sought.

Criminal Penalties and Enforcement

Arkansas has four different types of criminal penalties for violation of the hazardous waste laws or regulations. The burden of proof for these penalties is not greater than under the Federal law. These penalties are at least as stringent as, and in most cases more stringent than, those required for authorization.

Under the first (A.C.A. § 8-7-204(a)(1)), criminal

penalties can be assessed for violation of any provision of the Hazardous Waste Management Act or a violation of any rule, regulation, or order of the Commission or the Department. This is considered a misdemeanor; if a person is convicted, that person is subject to imprisonment for not more than 1 year or a fine of not more than \$25,000 or subject to both fine and imprisonment. Additionally, for the purpose of the fines only, each day or part of a day during which the violation is continued or repeated constitutes a separate offense.

The second type of criminal penalty (A.C.A. § 8-7-204(a)(2)) results if a person violates the provisions of the Hazardous Waste Management Act or violates any rule, regulation, or order of the Commission or the Department and then leaves the State or the jurisdiction of the State. In this case, the person is guilty of a felony. If convicted, that person is subject to imprisonment for not more than 5 years or a fine of not more than \$50,000 or both. As with the first type of criminal penalty, each day or part of any during which the violation is continued or repeated constitutes a separate offense.

The third type of criminal penalty (A.C.A. § 8-7-204(a)(3)) can be assessed when a person is convicted of treating, storing, transporting, or disposing of any hazardous wastes and purposely, knowingly or recklessly causing the release of hazardous wastes into the environment in a manner not otherwise permitted by law, or creates a substantial likelihood of endangering human health, animal or plant life, or property. The person is guilty of a felony and subject to imprisonment for not more than 10 years or to a fine of not more than \$100,000 or both. Each day or part of day during which the violation is continued is considered a separate offense.

The fourth type of criminal penalty (A.C.A. § 8-7-204(4)) differs from the third type in that the violation must also include placing another person in imminent danger of death or serious bodily injury. This is also a felony and subject to criminal penalties of not more than 20 years imprisonment or a fine of not more than \$250,000 or both. Each day or part of day during which the violation continues is considered a separate offense.

Finally, under A.C.A. § 8-7-204(a)(5), a person convicted and subject to any of the above criminal penalties may also be subject to additional fines if that person derived pecuniary gain from the commission of the offense. The fine may not exceed twice the amount of the pecuniary gain.

Environmental Audit Privilege

Act 350 of 1995, codified at A.C.A. § 8-1-301 *et seq.*, established an environmental audit privilege for

communications relating to voluntary internal environmental audits.

An "environmental audit" under Act 350 means a voluntary, internal and comprehensive evaluation of one or more facilities or an activity at one or more facilities subject to environmental regulation, or of management systems related to that facility or activity, that is designed to identify and prevent noncompliance and to improve compliance with statutory or regulatory requirements. An environmental audit may be conducted by either the owner or operator, by the owner's or operator's employees, or by independent contractors. An "environmental audit report" is defined as a set of documents prepared as a result of an environmental audit and labeled "ENVIRONMENTAL AUDIT REPORT; PRIVILEGED DOCUMENT" that may include field notes, records of observations, findings, opinions, suggestions, conclusions, drafts, memoranda, drawings, photographs, computer generated or electronically recorded information, maps, charts, graphs, and surveys collected or developed for the primary purpose of preparing an environmental audit; an audit report prepared by the auditor that includes the scope of the audit, the information gained in the audit, conclusions and recommendations, and any exhibits and appendices; memoranda and documents analyzing a portion of or all of the audit report and discussing implementation issues; or an implementation plan that addresses correcting past compliance, improving current compliance, and preventing future non-compliance.

Under Act 350, an environmental audit report shall be privileged and shall not be admissible as evidence in any legal action in any civil, criminal, or administrative legal action including enforcement actions. This privilege does not apply if:

- (1) It is waived expressly by the owner or operator of the facility that prepared or caused to be prepared the environmental audit report;
- (2) The owner or operator of a facility or person conducting an activity seeks to introduce an environmental audit report as evidence.
- (3) The owner or operator of a facility authorizes the disclosure of the environmental audit report to any party, except where:
 - disclosure is made under the terms of a confidentiality agreement between the owner or operator of a facility and a potential purchaser of the facility, or a customer, lending institution, or insurance company with an existing or proposed relationship with the facility; or disclosure is made under the terms of

a confidentiality agreement between government officials and the owner or operator of a facility; or disclosure is made to an independent contractor retained by the owner or operator of the facility for the purpose of identifying noncompliance with statutory or regulatory requirements and assisting the owner or operator in achieving compliance with reasonable diligence.

Such a waiver of the privilege described in A.C.A. § 8-1-303 may be for part or all of the environmental audit report and said waiver of privilege extends only to that part of the environmental audit report expressly waived by the owner or operator of a facility.

The environmental audit privilege does not apply to documents, communications, data, reports, or other information that must be collected, developed, maintained, reported, or otherwise made available to a regulatory agency under any federal or state law, extensions thereof, or any rule or standard adopted by the Commission, a determination, a permit, or an order made or issued by the Commission or the Director; or any other federal, state, or local law, permit, or order. Likewise, any information obtained by observation, sampling, or monitoring by any regulatory agency or obtained from any source independent of the environmental audit is not subject to the audit privilege. In all cases, the Department retains its full investigative authority and capability to obtain information and evidence independently of the audit.

In a civil, administrative, or criminal proceeding, a court of record or administrative tribunal, after an in camera review, shall require disclosure of material for which the privilege described in A.C.A. § 8-1-303 is asserted, if the court or administrative tribunal determines one of the following:

- (1) The privilege is asserted for a fraudulent purpose;
- (2) The material is not subject to the privilege;
- (3) The material is subject to the privilege and the material shows evidence of noncompliance with:
 - (A) federal or state law or extensions of such statutes; or
 - (B) any rule or regulation adopted by the Commission; or
 - (C) a determination, permit, or order issued by the Commission or the Director; and
 - (D) the person claiming the privilege did not promptly initiate and pursue appropriate efforts to achieve compliance with reasonable diligence.

If the noncompliance described above constitutes a failure to obtain a required permit, the person is deemed to have made appropriate efforts to achieve compliance if the person filed an application for the required permit not later than ninety (90) days after the date the person became aware of the noncompliance. In the event additional time is required to prepare a permit application, the person shall, within ninety (90) days, submit a schedule to the Department which identifies the activities required to complete the application, and if the schedule is acceptable to the Department, the filing of the application pursuant to the submitted schedule constitutes "reasonable diligence" to achieve compliance for a failure to obtain a required permit.

Description of manifest tracking system and coordination of interstate and international shipments.

Manifest Tracking System

Arkansas's hazardous waste management program is designed to manage hazardous waste from "cradle-to-grave". The Arkansas Hazardous Waste Manifest (AR/EPA Form 8700-22) is the key to this objective. Through the use of a manifest, generators and the Department can track the movement of hazardous waste from the point of generation to the point of its ultimate treatment, storage, or disposal.

The Department supplies and requires the use of an Arkansas manifest, supplied by ADPC&E, for all hazardous waste shipments into and within the State. Arkansas does not allow the use of the Uniform Manifest described at 40 CFR Part 262, but requires the use of either an Arkansas state manifest for any and all hazardous wastes imported within or into the state, and either the destination state manifest or an Arkansas manifest for any wastes shipped out of the state. If the destination state does not have or require the use of their state manifest, then generators must use an Arkansas manifest.

A copy of the Arkansas manifest and instructions is shown at Regulation No. 23, § 262, Appendix I.

If the generator has more than six line items of waste, he or she may use a generic manifest continuation sheet (Arkansas doesn't provide this form). Each continuation sheet must have the accompanying manifest serial number on it.

Arkansas hazardous waste manifests contain the:

- Name and EPA identification number of the generator, the transporter(s), and the facility where the waste is to be treated, stored, or disposed;
- DOT description of the waste being transported;

- Quantities of the waste being transported; and
- Address of the treatment, storage, or disposal facility to which the generator is sending waste (called the designated facility).

Each manifest contains a certification that:

- The generator has in place a program to reduce the volume and toxicity of the waste to the degree economically practicable, as determined by the generator; and
- The treatment, storage or disposal method chosen by the generator is the most practicable method currently available that minimizes the risk to human health and the environment.

The manifest is part of a controlled tracking system. Each time the waste is transferred, e.g., from a transporter to the designated facility or from a transporter to another transporter, the manifest must be signed to acknowledge receipt of the waste. A copy of the manifest is retained by each link in the transportation chain. Once the waste is delivered to the designated facility the owner or operator of that facility must send a copy of the manifest back to the generator. This system ensures that the generator has documentation that his or her hazardous waste has made it to its ultimate destination.

Key hints for successfully manifesting wastes under the provisions of Regulation No. 23 include:

- Verify the generator, transporter, and TSDF EPA identification numbers to make sure they are correct, and that you haven't transposed any of the numbers.
- A "provisional" EPA identification number is valid for only a single use for spill clean-up, or for the clean-up of a site that has no EPA ID number and when waste will not be generated from this site again. If a company has been issued a provisional number, this number may be used once and only once.
- Ensure that the EPA identification number matches the site address on the facility's notification of waste activity form.
- Enter both the mailing and site addresses on the manifest. If both will not fit in the space provided, use Block J for the mailing address. Ensure that the site address is in Block 3.
- All information requested in blocks 1 through 6, 7 and 8 (if applicable), 9-17, 18 (if applicable), and 19-20 must be completed. Additional information must be provided in the gray-shaded areas C, D, E, F, H, I, and K. The information in block 19 must be as descriptive as possible. If more space is needed, attach an additional page.
- Illegible manifests are treated as discrepancies. Write clearly or type the necessary information on the manifest form.

When the generator receive the dated and signed manifest back from the TSDF, showing that it has been received by the TSDF, he makes a copy of the final manifest (with the continuation pages) and mails it to the Department.

If 35 days pass from the date on which the waste was accepted by the initial transporter and the generator has not received a copy of the manifest from the designated facility, the generator must contact the transporter and/or the designated facility to determine the whereabouts of the waste. If an additional 10 days (45 days total) pass and the manifest still has not been received, the generator must submit an exception report (described below).

Where to Get Arkansas Manifests:

Arkansas manifests may be purchased from the Arkansas Department of Pollution Control and Ecology at a cost of \$2.00 per form. The manifests are six-part forms, serial numbered, and printed so that they may be used in tractor-feed printers as well as filled in individually. To order Arkansas manifests, call (501) 682-0861, or write to

Arkansas Dept. of Pollution Control & Ecology
8001 National Drive, P.O. Box 8913
Little Rock, AR 72219-8913

Exception Reports

In addition to the annual report, generators who transport waste off-site must submit an exception report to the Director if they do not receive a copy of the manifest signed and dated by the owner or operator of the designated facility within 45 days from the date on which the initial transporter accepted the waste (Reg 23 § 262.42). The exception report must describe efforts made to locate the waste, and the results of those efforts. Small quantity generators who do not receive a copy of the signed manifest from the designated facility within 60 days must explain the exception on a copy of the original manifest and send it to the Director.

Discrepancy Reports

When a manifest shows a weight difference of more than 10% between the initial weight shown by the generator and the final weight as received by the TSDF, the generator must attach documentation (a transmittal letter or other memorandum) to the record copy and to the copy forwarded to the Department indicating that the weight variance has been resolved by between the generator and the

TSDF. In many cases discrepancies may be due to the generator estimating the weight of his shipment, and the TSDF actually weighing it upon receipt. (Reconciliation is somewhat hampered in that generators are held accountable by weight, while TSDFs manage by piece count for received shipments.) If the generator is unable to resolve the discrepancy with the TSD, he or she should forward a copy of the manifest to the Department with an explanation of the discrepancy in Block 19 of the manifest, and an attached letter explaining the problem with the discrepancy.

Manifest Data Management

Upon receipt by the Department, manifests are sorted by source (generator) and date and reviewed for obvious errors as listed above. Manifests are then entered in to the MANIA database system. MANIA is a database (programmed in FORTRAN 77) developed by the Department's Computer Services Division for recording manifest data. It is linked to and shares handler identification data with EPAIDS, the Hazardous Waste Division's facility and handler identification system. MANIA records are available for manifest records from the inception of the program in 1980 through the date of current data entry.

Data entered into MANIA is processed and reviewed for by an error-checking module in the software. Discrepancies are compiled into a report for review, validation, and correction by the Data Management section staff. Once this quality control check has been passed, manifest records are merged into the main MANIA database for archival. MANIA serves as the primary archive and source of manifest data, but the paper copies of the manifests are archived as well for both evidentiary use in compliance monitoring and enforcement efforts as well as for public information and access. Because of the limited data management staff (2 full-time personnel), periodic personnel turnover, and the large quantities of manifests submitted, MANIA data input ranges from 18 months to 2 years behind real time. Paper copies of the manifests are thus valuable resources for ongoing compliance monitoring. Because of the limitations and resource-intensive nature of the MANIA system, the Department is continuing to seek ways to improve the timeliness and quality of the data as well as reduce the resource impact through electronic reporting in the same or similar manner to its efforts to automate submittal and processing of the annual hazardous waste reports.

Description of the State's hazardous waste universe.

Arkansas's RCRA-Regulated Universe

Arkansas's hazardous waste management program addresses a universe of **991** handlers of hazardous waste who were subject to the state's annual reporting requirements for 1996. This may be further broken down by handler category:

Category	Quantity
Treatment, Storage, and Disposal Facilities	35
Fully-regulated Generators (LQGs)	226
Small Quantity Generators	717
Hazardous Waste Transporters	35
Used Oil Processor/Re-refiner	10
Used Oil Burner	1
Used Oil Marketer	4

The total reportable universe of 991 handlers compares favorably with the universe of 1,153 reported in the State's 1995 Biennial Report and reflects a continued decline in the number of large and small-quantity generators. This reduction results mainly from waste minimization and source reduction efforts, as the same facilities continue to appear in the total handler universe, but in a lesser generation category.

Of the 35 treatment, storage, and disposal facilities noted above, 22 are subject to RCRA permitting requirements. The facilities in the Arkansas permitting universe, listed in order of the State's current working priority, are as follows: (Note that Pine Bluff Arsenal has multiple permits)

Arkansas Facilities Subject to RCRA Permitting by current priority:

(State priorities; re-ranking pursuant to R6CAPS pending)

1	Ash Grove Cement ARD981512270	21-H	Final Risk Assessment protocol and first submittal of RA is pending. Comments on draft RA workplan completed & sent out 3/25/97. Air modeling is ongoing; NOD on container storage, tank storage, and tank treatment portions of the consolidated Part B was mailed on 3/24/97. Issuance of draft permit currently pending Air review of the Part B.
2	Pine Bluff Arsenal (Chemical Demilitarization Facility) AR0213827070	29-H	Reply to NOD on risk assessment protocol and technical NOD for the permit pending; will need Air review.
3	Rineco Chemical Industries ARD981057870	28-H	Draft Permit issued; negotiations pending on on-site inspection team.
4	NTS ARD983274002	33-H	Part B received on 8/26/96, administratively complete on 1/28/97; NOD on risk assessment protocol 3/97; NOD pending on technical portions of Part B.
5	Albemarle ARD052528809	22-H	Permit for container and tank storage units; post-closure care for PSV-1 ready for final determination. Albemarle has questioned whether container, tank, and post-closure units qualify for permitting. Albemarle has submitted a closure plan

			for BIF units; and has proposed a CAO through the Water Division for corrective action for the facility.
6	Weyerhaeuser DeQueen ARD067671313	25-H	Finalizing draft permit.
7	Lion Oil ARD000021998	14-H	Finalizing resolution of financial assurance inadequacies for pending 5-year permit modification and update.
8	Arkansas Eastman ARD089234884	11-H	BIF application received 3/94. Pending Air review.
9	Reynolds Metals ARD006354161	10-H	Pending Air review; delisting action pending
10	Pine Bluff Arsenal AR0213827070	6-H	Preparing NOD, groundwater module
11	Pine Bluff Arsenal AR0213827070	19-H	PBA requested that we reissue the class 3 draft permit to allow some additional waste codes and delete tank; draft permit being reviewed by PBA.
12	Great Lakes Chemical Corporation ARD043195429	18-H	Permit modification pending to add a steam stripper to the Leachate Treatment Plant, incorporate items as agreed in the permit appeal settlement agreement, and to add containment for valves.
13	Pine Bluff Arsenal AR0213827070	1-H	Draft permit at PBA for review.
14	Austin Powder ARD093417525	31-H	Draft permit working, targeted for last half of FY 97.
15	Sporting Goods Properties ARD047335922	20-H	Working on draft permit. Facility requested variances for aisle spacing, fire extinguishers, and contingency plan; draft pending for resolution.
16	Atlantic Research ARD091688283	8-H	
17	ENSCO ARD069748192	10-H	5-year update pending. ENSCO will submit renewal application in Fall, 1997. Needs air review for metals trial burn plan.
18	Pine Bluff Arsenal AR0213827070	9-H	Part B received 4/1/96; facility correcting NOD
19	U of Ark Nuclear Landfill ARD983285230	32-H	Part B permit technically complete. Technical review ongoing.
20	Safety-Kleen (Little Rock) ARD054575238	16-H	Part B for post-closure of a tank unit that could not be clean-closed received on 6/6/96.
21	Tracor ARD980867873	26-H	Permit modification - Pending for RADD
22	Lockheed, Martin, Vought ARD980621155	27-H	CMI mod for RADD close.
23	Safety-Kleen - Fort Smith ARD000709733	15-H	Announced intent to close, January 1997
23	Sentinel Wood Treating ARD047335096	12-H	No current permitting activity
24	Koppers Industries ARD006344824	24-H	No current permitting activity
25	Pine Bluff Arsenal Incinerator AR0213827070	13-H	No current permitting activity
26	Lucent Technologies ARD006341119	17-H	No current permitting activity

Types of Hazardous Waste Management Facilities in Arkansas

Waste Management Activity	Quantity	Facilities in Universe
Commercial Storage/Treatment	2	Safety Kleen - Fort Smith Safety-Kleen - Little Rock
Noncommercial Storage/Treatment	1	Lucent Technologies
Land Disposal (UIC)	2	Great Lakes Chemical Albemarle
Landfills	1	Pine Bluff Arsenal
Incinerators	5	ENSCO Arkansas Eastman Chemical Reynolds Metals Pine Bluff Arsenal NTS (new construction)
Boilers/Industrial Furnaces	3	Ash Grove Cement Arkansas Eastman Chemical Albemarle
Open Burning/Detonation	6	Atlantic Research Austin Powder Lockheed, Martin, Vought Pine Bluff Arsenal Remington Tracor
Fuel Blending	1	Rineco Chemical
Closure/Post-Closure	7	ENSCO Koppers Industries Lion Oil Company Sentinel Wood Treating Sporting Goods Properties U of Ark. Nuclear Landfill Weyerhaeuser DeQueen

Estimate of the annual quantities of hazardous wastes that are managed within the State.

Quantities of Hazardous Waste Managed in Arkansas

Source of data: 1996 Arkansas Annual Hazardous Waste Report, compiled as of March 1, 1997

Total RCRA Hazardous Wastes Generated in Arkansas (pounds)	
1996	19,984,058.552.6

1996	
Arkansas Total RCRA Off-Site Shipments by Receiving State	
<i>State Receiving Waste</i>	<i>Total Waste Shipped (lbs)</i>
Kansas	79,060,599.00
Illinois	76,315,305.00
Louisiana	55,108,533.30
Tennessee	50,518,721.10
Texas	39,775,821.10
Mexico	32,804,620.00
Ohio	29,756,362.20
Missouri	24,801,192.00
Oklahoma	21,113,720.00
Arkansas	20,155,190.70
Pennsylvania	5,349,535.50
South Carolina	4,543,088.00
Alabama	3,805,072.50
New Jersey	3,407,558.00
Indiana	2,160,573.70
Michigan	1,924,493.00
Nebraska	1,619,352.00
Kentucky	1,366,766.30
Mississippi	1,077,206.00
Arizona	158,051.00
Georgia	156,120.00
New York	130,644.00
North Carolina	44,922.10
California	28,585.00
Idaho	26,260.00
Rhode Island	23,443.00
Florida	8,426.00
Minnesota	5,017.00
Maryland	1,265.00
Washington	900.00
Nevada	807.00
Wisconsin	650.00
Total:	455,248,106.50 lbs

1996 Arkansas Off-Site Waste Received by Shipping State		
<i>Shipping State</i>	<i>Number of Items Received</i>	<i>Quantity of Waste Received (lbs)</i>
California	9989	84,755,698.00
Texas	5972	79,915,873.00
Michigan	298	36,058,344.00
Arkansas	2259	21,543,529.69
Louisiana	2577	21,494,673.00
New York	2475	19,773,582.00
Indiana	566	17,049,759.00
Kentucky	310	16,757,052.00
Washington	833	16,073,722.00
Missouri	727	12,687,917.00
Georgia	9247	11,308,516.00
Illinois	4985	10,959,083.00
Ohio	4150	10,873,712.00
Kansas	870	9,874,473.00
Tennessee	441	8,999,621.00
North Carolina	2855	5,989,963.00
Alabama	239	4,366,324.00
Massachusetts	4529	4,257,090.00
Oklahoma	489	4,012,624.20
Wisconsin	1226	3,559,415.00
New Jersey	3024	2,906,520.00
Pennsylvania	1876	2,671,620.00
Mississippi	432	2,659,132.00
Maryland	3269	2,495,855.00
Connecticut	1447	2,231,438.00
Florida	1610	2,050,917.00
Colorado	1942	2,036,485.00
New Mexico	760	1,045,181.00
Minnesota	303	853,486.00
West Virginia	123	836,328.00
Delaware	333	831,642.00
Arizona	601	808,541.00
South Carolina	195	770,411.00
Virginia	332	751,288.00
Utah	265	742,340.00
Iowa	186	735,926.00
Alaska	18	483,727.00
Nebraska	180	458,638.00
Rhode Island	159	404,116.00
CESQG's	552	383,505.00
North Dakota	595	317,297.00
Nevada	58	292,933.00

New Hampshire	329	280,427.00
South Dakota	163	202,563.00
Oregon	78	197,220.00
Puerto Rico	177	183,776.00
Idaho	201	158,378.00
Vermont	37	107,824.00
District of Columbia	143	65,084.00
Wyoming	128	49,023.00
Maine	77	21,318.00
Hawaii	51	17,977.00
Totals:	74681	428,361,886.89

Arkansas RCRA Off-Site Shipments by TSD General System Type		
<i>BRS System Code</i>	<i>General TSD System</i>	<i>Total Waste Shipped (lbs)</i>
M01	Metals Recovery (for reuse)	146,652,680.00
M02	Solvents Recovery	6,136,698.70
M03	Other Recovery	22,396,784.20
M04	Incineration	7,359,737.50
M05	Energy Recovery (reuse as fuel)	107,906,791.40
M06	Fuel Blending	29,529,327.50
M07	Aqueous Inorganic Treatment	1,673,613.10
M08	Aqueous Organic Treatment	542,469.00
M09	Aqueous Organic & Inorganic Treatment	4,287,566.00
M10	Sludge Treatment	95,950.00
M11	Stabilization	43,447,483.10
M12	Other Treatment	3,579,896.60
M13	Disposal	79,598,757.90
M14	Transfer Facility Storage	1,982,335.20
	Other	58,017.00
	Total:	455,248,107.20

1996 Arkansas RCRA Treatment (On- and Off-Site) by Treatment Technology			
<i>BRS System Code</i>	<i>TSD System</i>	<i>Quantity Treated On-Site (lbs)</i>	<i>Quantity Treated Off-Site (lbs)</i>
M000	Unknown / Unreported		58,017.00
M011	High temperature metals recovery		142,566,057.00
M012	Retorting of metals		109,797.00
M013	Secondary smelting of metals		352,119.00
M014	Other metals recovery for reuse: e.g., ion exchange, reverse osmosis, acid leaching, etc.		820,281.00
M019	Metals recovery - type unknown		2,804,426.00
M021	Fractionation/distillation of solvents	1,695,959.10	5,320,308.20
M022	Thin film evaporation of solvents		656,869.00
M023	Solvent extraction		18,366.00
M029	Solvents recovery - type unknown		141,155.50
M032	Other recovery: e.g., waste oil recovery, nonsolvent organics recovery, etc.		22,360,826.70
M039	Other recovery - type unknown	66,300.00	35,957.50
M041	Incineration - liquids	29,607.80	3,462,748.70
M042	Incineration - sludges		2,192,252.00
M043	Incineration - solids	890,796.00	1,370,145.10
M044	Incineration - gases		301,675.00
M049	Incineration - type unknown		32,916.70
M051	Energy recovery - liquids	9,602.00	76,814,653.40
M052	Energy recovery - sludges		66,921.00
M053	Energy recovery - solids	180,987.20	30,973,359.00
M059	Energy recovery - type unknown		51,858.00
M061	Fuel blending	80,346.00	29,529,327.50
M071	Aqueous chrome reduction followed by chemical precipitation	11,086,815.00	170,244.10
M072	Aqueous cyanide destruction followed by chemical precipitation	78,630.00	245,821.00
M074	Aqueous chemical oxidation followed by chemical precipitation	241,255,970.00	
M075	Aqueous chemical oxidation only		4,800.00
M077	Aqueous chemical precipitation	28,929,124.60	1,231,857.00
M078	Other aqueous inorganic treatment: e.g., ion exchange, reverse osmosis, etc.		5,200.00
M079	Aqueous inorganic treatment - type unknown		15,691.00
M081	Aqueous biological treatment	46,497,160.00	340,769.00
M083	Air/steam stripping		201,700.00
M085	Other aqueous organic treatment	5,903.60	
M091	Chemical precipitation in combination with biological treatment		1,060,936.00
M092	Chemical precipitation in combination with carbon adsorption		2,869,860.00
M094	Other organic/inorganic treatment	2,219,145.00	
M099	Aqueous organic and inorganic treatment - type unknown		356,770.00

M101	Sludge dewatering	9,629,200.00	
M104	Solvent extraction from sludge		2,646.00
M109	Sludge treatment - type unknown		93,304.00
M111	Stabilization/Chemical fixation using cementitious and/or pozzolanic materials		21,870,512.10
M112	Other stabilization		20,473,780.00
M119	Stabilization - type unknown		1,103,191.00
M121	Neutralization only	3,806,787.60	1,128,934.00
M123	Settling/clarification only	78,000.00	78,000.00
M124	Phase separation (e.g., emulsion breaking, filtration) only	16,853,414.00	
M125	Other treatment	13,669,651.00	592,392.60
M129	Other treatment - type unknown		1,780,570.00
M132	Landfill		70,186,110.90
M134	Deepwell/underground injection	102,261,638.50	9,359,829.00
M137	Other disposal		52,818.00
M141	Transfer facility storage, waste was shipped off site with no on-site TDR activity		1,982,335.20
Totals:		479,325,037.40	455,248,107.20

Narrative Description of the Scope, Structure, Coverage, and Processes of the State Program (RCRA § 271.6(a))

Base Program Requirements

I. Identification and Listing of Hazardous Wastes:

A. Definition of hazardous waste

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 polychlorinated biphenyls (PCBs) which are transported to treatment or disposal facilities or commercial storage facilities as hazardous wastes.

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 § 261.3; in addition to these wastes, polychlorinated biphenyls (PCBs), as defined in 40 CFR 761.3 (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 § 262.36 of Regulation No. 23 (Hazardous Waste Management)".

Specific definitions and listings of hazardous wastes included in 40 CFR Part 261 are incorporated in Regulation No. 23 (Hazardous Waste Management), and updated annually as Regulation No. 23 is revised.

The State's statutory definition of a hazardous

waste does not require that a hazardous waste first be proved to be a "solid waste" as defined in Reg 23 § 261.2. Arkansas thus controls a hazardous waste universe which is broader in scope than that controlled under the federal RCRA.

B. Hazardous waste lists and characteristics

Characteristic hazardous wastes

Regulation 23 § 261 identifies four characteristics for hazardous waste. Any solid waste that exhibits one or more of these characteristics is classified as hazardous under RCRA and the Arkansas HWM program:

- Ignitability
- Corrosivity
- Reactivity or
- Toxicity Characteristic (TC).

Regulation No. 23 §§ 261.20 through 261.24 define the properties of wastes exhibiting any or all of the existing characteristics described below:

Ignitability - Reg. 23 § 261.21

A solid waste that exhibits any of the following properties is considered a hazardous waste due to its ignitability:

- A liquid, except aqueous solutions containing less than 24 percent alcohol, that has a flash point less than 60°C (140°F)
- A nonliquid capable, under normal conditions, of spontaneous and sustained combustion.
- An ignitable compressed gas per Department of Transportation (DOT) regulations or
- An oxidizer per DOT regulation.

Corrosivity - Reg. 23 § 261.22

A solid waste that exhibits any of the following properties is considered a hazardous waste due to its corrosivity:

- An aqueous material with pH less than or equal to 2 or greater than or equal to 12.5 or
- A liquid that corrodes steel at a rate greater than 1/4 inch per year at a temperature of 55°C (130°F).

Reactivity - Reg. 23 § 261.23

A solid waste that exhibits any of the following properties is considered a hazardous waste due to its reactivity:

- Normally unstable and reacts violently without detonating
- Reacts violently with water
- Forms an explosive mixture with water

- Generates toxic gases, vapors, or fumes when mixed with water
- Contains cyanide or sulfide and generates toxic gases, vapors, or fumes at a pH of between 2 and 12.5
- Capable of detonation if heated under confinement or subjected to strong initiating source
- Capable of detonation at standard temperature and pressure or
- Listed by DOT as class A or B explosive

Toxicity Characteristic - Reg. 23 § 261.24

A solid waste exhibits the characteristic of toxicity if, using the test methods described in the Toxicity Characteristic Leaching Procedure (TCLP) or an approved equivalent method, the extract from a representative sample of the waste contains any of the contaminants listed below at the concentration equal to or greater than the respective value listed:

Waste Code	Contaminant	CASNo.	Regulatory Level (mg/L)
D004	Arsenic	7440-38-2	5.0
D005	Barium	7440-39-3	100.0
D018	Benzene	71-43-2	0.5
D006	Cadmium	7440-43-9	1.0
D019	Carbon tetrachloride	56-23-5	0.5
D020	Chlordane	57-74-9	0.03
D021	Chlorobenzene	108-90-7	100.0
D022	Chloroform	67-66-3	6.0
D007	Chromium	7440-47-3	5.0
D023	o-Cresol	95-48-7	4 200.0
D024	m-Cresol	108-39-4	4 200.0
D025	p-Cresol	106-44-5	4 200.0
D026	Cresol	4 200.0
D016	2,4-D	94-75-7	10.0
D027	1,4-Dichlorobenzene	106-46-7	7.5
D028	1,2-Dichloroethane	107-06-2	0.5
D029	1,1-Dichloroethylene	75-35-4	0.7
D030	2,4-Dinitrotoluene	121-14-2	3 0.13
D012	Endrin	72-20-8	0.02
D031	Heptachlor (and its epoxide)	76-44-8	0.008
D032	Hexachlorobenzene	118-74-1	3 0.13
D033	Hexachlorobutadiene	87-68-3	0.5
D034	Hexachloroethane	67-72-1	3.0
D008	Lead	7439-92-1	5.0
D013	Lindane	58-89-9	0.4
D009	Mercury	7439-97-6	0.2
D014	Methoxychlor	72-43-5	10.0
D035	Methyl ethyl ketone	78-93-3	200.0
D036	Nitrobenzene	98-95-3	2.0
D037	Pentachlorophenol	87-86-5	100.0
D038	Pyridine	110-86-1	3 5.0
D010	Selenium	7782-49-2	1.0
D011	Silver	7440-22-4	5.0
D039	Tetrachloroethylene	127-18-4	0.7
D015	Toxaphene	8001-35-2	0.5
D040	Trichloroethylene	79-01-6	0.5
D041	2,4,5-Trichlorophenol	95-95-4	400.0
D042	2,4,6-Trichlorophenol	88-06-2	2.0
D017	2,4,5-TP (Silvex)	93-72-1	1.0
D043	Vinyl chloride	75-01-4	0.2

The responsibility for determining if a particular solid waste is hazardous falls on the generators. If a solid waste is neither excluded nor listed, as

discussed in the following pages, generators must either test their waste using standard methods (specified in Reg. 23 § 261) or have sufficient knowledge about their waste to assess whether it exhibits any of the characteristics. If the waste does exhibit a characteristic, then it is hazardous and must be handled accordingly. Tests must be applied to each individual waste and cannot be used to assess a type of waste (other than to define the waste generically as hazardous). This provision was established to prevent a national company from making one waste determination and using the results nationwide, masking potential regional variations. The tests must also be run on representative samples to obtain results that adequately characterize the nature of the waste.

Listing of Hazardous Wastes

A solid waste is defined as hazardous if it is named on one of three lists in Reg. 23 § 261:

1. *Nonspecific source wastes* (Reg. 23 § 261.31) - These are generic wastes, commonly produced by manufacturing and industrial processes. Examples from this list include spent halogenated solvents used in degreasing and wastewater treatment sludge from electroplating processes as well as dioxin wastes, most of which are "acutely hazardous" wastes due to the danger they present to human health and the environment.

2. *Specific source wastes* (Reg. 23 § 261.32) - This list consists of wastes from specifically identified industries such as wood preserving, petroleum refining, and organic chemical manufacturing. These wastes typically include sludges, still bottoms, wastewaters, spent catalysts, and residues, e.g., wastewater treatment sludge from pigment production.

3. *Commercial chemical products* (Reg. 23 § 261.33(e) and (f), also called "P" and "U" list wastes) - The third list consists of specific commercial chemical products, or manufacturing chemical intermediates. This list includes chemicals such as chloroform and creosote, acids such as sulfuric acid and hydrochloric acid, and pesticides such as DDT and kepone.

Management of PCBs and PCB wastes

In addition to the lists of substances that EPA has declared to be hazardous wastes, Arkansas regulates wastes which contain polychlorinated biphenyls, or PCBs, and materials which meet the TSCA (40 CFR 761.3) definitions of "PCB equipment" and "PCB items" as hazardous wastes once these wastes are transported to an off-site treatment or disposal facility, or to a commercial storage facility. PCB wastes must be manifested for shipment using a

hazardous waste manifest, and may be shipped only using a permitted transporter of hazardous wastes. The generator must notify the Department that he generates PCB wastes, and obtain an EPA (or a State PCB) identification number.

Any PCB wastes generated are included in the amounts of waste subject to inclusion in the Annual Hazardous Waste Report and for which the generator must pay a generation fee if more than a specified threshold of wastes is generated during the year. However PCB wastes, while being accumulated, do not count against the handler's RCRA generator status (e.g. SQG, LQG, etc.) for accumulation times and standards under Reg No. 23 § 262.34.

All waste identification, management, accumulation, packaging, placarding, labelling, and handling requirements listed in Regulation 23 § 262, subsections A, B, C, D, and E which apply to RCRA hazardous wastes (described elsewhere in this program description) apply to any PCB wastes that are generated and shipped at the time these wastes enter the transportation system for movement away from their point of generation for further storage, treatment, or disposal. In addition to these broader state requirements, EPA regulates PCBs under the provisions of the federal Toxic Substances Control Act (TSCA) at 40 CFR Part 761. If a generator generates PCB wastes, he must comply with both the state management standards in Regulation 23 § 262 and §263, and the provisions of 40 CFR 761.

II. Standards for Generators

Generators are subject to the standards, including record-keeping requirements, set forth in Regulation No. 23 § 262.

The Department has established a comprehensive manifest system which, to the greatest extent possible, allows for a "cradle to grave" tracking of hazardous wastes generated in or disposed of in the State. This system provides for and allows the intrastate, interstate and international transport of hazardous wastes. The state requires the use of its own version of the uniform hazardous waste manifest, and does not permit the use of the uniform hazardous waste manifest by Arkansas shippers or for hazardous wastes imported into Arkansas. Arkansas additionally requires all persons transporting hazardous wastes into or out of the state, regardless of quantity, to notify the Department of Pollution Control and Ecology by having an EPA identification Number (or for conditionally exempt and PCB Waste generators, by obtaining a State tracking or PCB identification number) and using the Arkansas Hazardous Waste manifest or a

neighboring state equivalent. Arkansas does not permit the use of the Uniform Manifest.

Since small quantity generators comprise a significant percentage of the State's hazardous waste universe, Arkansas does not exempt small quantity generators from requirements to notify the Department and EPA of hazardous waste activity or to manifest and ship any and all hazardous wastes only to permitted treatment, storage, or disposal facilities. In the case of conditionally exempt or PCB generators, the Department issues a unique State "CXG" or "PCB" identification number to facilitate manifesting and shipping of hazardous wastes. The State also requires small quantity and PCB generators to submit an annual hazardous waste activity report equivalent to the requirements of 40 CFR 262.41. Beginning in 1993, Arkansas conditionally-exempt generators are being phased from the use of state CXG identification numbers to being issued standard EPA identification numbers.

Under the Arkansas hazardous waste management program, there are three categories of hazardous waste generators:

- Large quantity generators
- Small quantity generators
- Conditionally exempt small quantity generators.

Generator requirements under the Arkansas regulations are summarized in **Table 3**.

SQGs who store more than 6,000 kilograms of their waste on-site must meet all large quantity generator requirements. Generators of more than 1,000 Kilograms of hazardous waste per month or 1 Kilogram of acutely hazardous waste per month must, as was the case before the amendments, meet the large quantity generator requirements.

Conditionally Exempt Small Quantity Generators

Currently, a facility that generates less than 100 Kilograms per month of hazardous waste and less than 1 kg per month of acutely hazardous waste is "conditionally exempt" from full regulation under RCRA Subtitle C. The conditionally exempt SQG, however, must still:

- Identify the waste to determine whether it is a hazardous waste
- Not accumulate more than 1,000 kilograms of hazardous waste at any time
- Treat or dispose of the waste on site, or ensure that the waste is sent to a:
 - Permitted or interim status TSDF, or
 - Permitted municipal or industrial solid waste facility, or
 - Recycling facility.

Conditionally exempt SQGs who exceed the 100

Table 3.

Overview of Regulatory Requirements for Hazardous Waste Generators in Arkansas

Generation Status	Fully-Regulated Generator (LQG)	Small Quantity Generator (SQG)	Conditionally-Exempt Generator (CEG)
Identification of Hazardous Waste	All generators of waste(s) are responsible for identifying whether those waste(s) are hazardous as defined by PC&E Regulation No. 23 (Hazardous Waste Management). In general, waste are considered hazardous if they 1) are listed as a hazardous waste, or 2) meet the ignitability, corrosivity, reactivity, or toxicity characteristics outlined in the Regulation. (Reg. 23; § 261, § 262.10-11)		
Waste Generation and Accumulation Limits	Generators of more than 1000 kilograms (2200 lbs) of hazardous waste in a calendar month, and/or generates more than 1 kg (2.2 lbs) of acutely hazardous waste in 1 calendar month. May accumulate hazardous waste generated on-site for up to 90 days. (Reg 23; § 262.34)	Generates between 100 kilograms (220 lbs) and 1000 kg (2200 lbs) of hazardous waste in a calendar month, and/or generates no more than 1 kg (2.2 lbs) of acutely hazardous waste in 1 calendar month. May accumulate no more than 6000 kg (13200 lbs) of hazardous waste and/or up to 1 kg of acutely hazardous waste on-site, with no waste stored on-site more than 180 days. (Reg 23; § 262.34)	Generates no more than 100 kilograms (220 lbs) in a calendar month, and/or generates no more than 1 kg (2.2 lbs) of acutely hazardous waste in 1 calendar month. May accumulate up to 1000 kg (2200 lbs) of hazardous waste and/or up to 1 kg of acutely hazardous waste on-site. (Reg 23; § 261.5)
Notification Requirements	Facility must notify ADPC&E of hazardous waste generation and must obtain and use an EPA Identification Number. (Reg 23; § 262.12)		Notification of waste generation is not required. EPA Identification Number is not required. (Reg 23; § 261.5)
Inspections by ADPC&E	All hazardous waste generators are subject to inspection by ADPC&E at any time. (A.C.A. § 8-1-107)		
Containment of Hazardous Waste	Hazardous wastes must be managed in containers, tanks, or containment buildings meeting appropriate standards. Containers must be properly labeled, in good condition, and inspected weekly. Tanks require Engineer certification, secondary containment, and regular inspection. Level of waste and other operating conditions must be inspected each operating day. (Reg 23; § 262.34; § 262, see Preparedness and Accident Prevention below)		Wastes must be stored in a safe manner so as to prevent any release to the environment. (Reg 23; § 265.31; § 265.170-177)
Preparedness and Accident Prevention	Containment systems must meet appropriate air emission standards. Ignitable or reactive wastes must meet additional requirements. Preparedness and prevention plan, training, contingency and emergency procedures,	Emergency coordinator must be identified. Appropriate emergency information and training must be provided to employees. (Reg 23; § 262.34; § 265.30-37; § 265.170-175; § 265.177; § 265.201; § 268.7(a)(4))	No specific provisions

	appropriate testing, and monitoring systems must be in place. (Reg 23; § 262.34; § 265.16, § 265.30-37; § 265.50-56; § 265.111-114; § 265.170-178; § 265.190-200-202; § 265.440-445; § 265.1030-1091; § 268.7(a)(4))	
Transportation and Disposal of Hazardous Waste	<p>Hazardous wastes must be properly contained and labeled, and must be transported by a permitted hazardous waste transporter. Arkansas Hazardous Waste Manifest is required by ADPC&E. Generator must send signed copy of hazardous waste manifest to ADPC&E after waste disposal. (Reg 23; § 262.10(d); § 262.12; § 262.13; ; § 262.20; ; § 262.40; ; § 262.42)</p> <p>Wastes must be shipped to a permitted (or granted interim status) Treatment, Storage, or Disposal Facility (TSDF). (Reg 23; § 262.13-33)</p>	<p>Hazardous waste must be transported by a permitted hazardous waste transporter. Arkansas Hazardous Waste manifest is not required by ADPC&E.); § 262.12; § 262.13(d); § 262.35; § 263.10(d);</p> <p>Wastes must be shipped to a permitted (or interim status) TSD facility or a facility which beneficially reuses, reclaims, or recycles the waste(s). (Reg 23; § 262.12;); § 262.35)</p>
Reporting Requirements	Annual reporting of waste generation and waste disposal is required by ADPC&E. Reporting on ADPC&E forms is due by March 1 of each year. Other reporting concerning quantities and disposition of wastes may be required by ADPC&E. (Reg 23; § 262.41; § 262.43)	Annual reporting is not required by ADPC&E. Other reporting concerning quantities and disposition of wastes may be required by ADPC&E. (Reg 23; § 262.41)
Fees	A Remedial Action Trust Fund (RATF) fee (or "Superfund" fee) based on total waste generated is due annually on July 1 for facilities generating more than 30,000 lbs. Of waste in a calendar year. A Monitoring and Inspection Fee based on total waste generated is due annually on January 1 for facilities generating more than 2,640 lbs. Of waste in a calendar year. All fees are invoiced by ADPC&E 45 days before they are due. (Reg 23; § 6(n-r), § 25(a))	No fees are invoiced.

kg per month hazardous waste cut-off are regulated as Small Quantity Generators during the time they fail to qualify as conditionally exempt. Conditionally exempt SQGs that generate in excess of 1 kg per month of acutely hazardous waste are regulated as large quantity generators.

Arkansas has established and enforces more stringent provisions for generators of conditionally exempt small quantities of hazardous waste, who must comply with the requirements found at Regulation 23 § 261.5 and the additional requirements set forth at § 262.35.

ADPC&E requires that small quantity and conditionally exempt generators of hazardous waste (less than 100 kg/month) treat, store, or dispose of their hazardous wastes in one of four ways:

- 1) In a solid waste disposal facility in the State of Arkansas which has been permitted by the Department to dispose of such waste (currently, there are no such facilities).
- 2) In a hazardous waste management facility in the State of Arkansas which is permitted to store, treat, or dispose of such waste.
- 3) Shipped to an approved facility outside of the State of Arkansas, or
- 4) Treated or disposed of in an on-site solid waste facility which is permitted in accordance with the Arkansas Water and Air Pollution Control Act (Act 472 of 1949, as amended) or the Arkansas Solid Waste Management Act (Act 237 of 1971, as amended).

A hazardous waste treatment, storage, and disposal facility will be considered to have such permission if it is operating under the provision of Interim Status to accept such categories of wastes, or has been issued a permit to accept such wastes. Solid waste disposal facilities may accept such small quantity waste only in accordance with their permit and the provisions of the Arkansas Solid Waste Management Code.

EPA ID Number

One way that the Department monitors and tracks generators is to assign each generator a unique identification number. Without this number the generator is barred from treating, storing, disposing of, transporting, or offering for transportation any hazardous waste. Furthermore, the generator is forbidden from offering his or her hazardous waste to any transporter, or treatment, storage, or disposal facility that does not also have an EPA ID number.

The Department has assumed the role of receiving notifications of hazardous waste activity and assigning EPA identification numbers from EPA Region VI using the federal FINDS system. Handlers

of hazardous waste submit a state Notification of Regulated Waste Activity to the Department and receive the EPA ID number directly from the Department. The notification is entered into the FINDS system, and the original copy filed by the Department with a copy of the notification provided to EPA.

Pre-Transport Regulations

Arkansas has adopted and implemented pre-transport requirements for hazardous wastes which include:

- Proper packaging to prevent leakage of hazardous waste, during both normal transport conditions and potentially dangerous situations, e.g., when a drum falls out of a truck
- Labeling, marking, and placarding of the packaged waste to identify the characteristics and dangers associated with transporting wastes.

These pre-transport regulations apply only to generators shipping waste off site.

Accumulation of Waste

In addition to adopting the DOT regulations outlined above, the Department has adopted EPA's regulations that cover the accumulation of waste prior to transport. A large quantity generator may accumulate hazardous waste on site for 90 days or less as long as the following requirements are met:

- Proper Storage - The waste is properly stored in containers or tanks marked with the words "hazardous waste" and the date on which accumulation began.
- Emergency Plan - A contingency plan and procedures to use in an emergency must be developed. Large quantity generators are required to have a written contingency plan, but small quantity generators are not.
- Personnel Training - Facility personnel are trained in the proper handling of hazardous waste. Large quantity generators are required to have an established training program. Small quantity generators, however, are currently exempt from this requirement, but must ensure that employees handling waste are familiar with proper procedures.

The 90-day period allows a generator to collect enough waste to make transportation more cost-effective; that is, instead of paying to haul several small shipments of waste, the generator can accumulate waste until there is enough for one big shipment.

If the generator accumulates hazardous waste on site for more than 90 days, he or she is considered an

operator of a storage facility and must comply with the Subtitle C requirements for such facilities. Under temporary, unforeseen, and uncontrollable circumstances the 90 day period may be extended for up to 30 days by the Director on a case-by-case basis.

Small quantity generators may store waste on site for up to 180 days, providing certain criteria are met. The on-site quantity of waste cannot exceed 6,000 kilograms at any time. The facility must have basic safety information, e.g., the telephone number of the fire department and a coordinator for emergency activities. The generator must also ensure that personnel are familiar with emergency procedures that must be followed during spills and accidents. For more information on safety requirements, see Reg. 23 § 262.34(d). Additionally, small quantity generators who must transport waste for 200 miles or more for off-site treatment, storage, or disposal, are allowed to accumulate waste for up to 270 days. The generator must still comply with the basic safety requirements outlined above.

III. Standards for Transporters

Arkansas' transporter regulations were developed jointly by the Department and the Arkansas Highway and Transportation Department to avoid contradictory requirements between the two agencies. Although the regulations are integrated, they are not contained in the same part of the Code of Federal Regulations (CFR). A transporter must comply with the regulations under 49 CFR Parts 171-179 (The Hazardous Materials Transportation Act) as well as those under Reg. 23 Section 263, and the Arkansas Motor Carrier Act.

Transporters are subject to all standards covered by Reg. 23 Section 263, which is broader in scope compared to 40 CFR 263. Hazardous waste transporters must additionally be permitted by the Arkansas Highway and Transportation Department. A high level of cooperation is maintained between the two agencies to insure that their regulatory activities are not duplicated.

Generators may consign hazardous wastes to and TSD facilities may receive hazardous wastes only from transporters with a valid EPA identification number and who are permitted by the state highway department. Persons transporting hazardous or PCB wastes into or through Arkansas must also possess a valid state permit.

A transporter under the Arkansas Hazardous Waste Management Act and Regulation No. 23 is defined as any person engaged in the off-site transportation of hazardous waste within the United States, if such

transportation requires a manifest under Reg. 23 Section 262. This definition covers transport by air, rail, highway, or water. The transporter regulations do not apply either to the on-site transportation of hazardous waste by generators who have their own TSDFs or to TSDFs transporting wastes within a facility.

Under certain circumstances, a transporter of hazardous waste may be subject to RCRA regulatory requirements other than those contained in Reg. 23 Section 263. Once a transporter accepts hazardous waste from a generator or another transporter, he or she can store it at a transfer station for up to ten days without being subject to other than the transporter regulations. However, if the storage time exceeds ten days, the transporter is considered a storage facility and must comply with the regulations for such a facility. In addition, transporters who bring hazardous waste into the United States or mix hazardous wastes of different DOT shipping descriptions in the same container are classified as generators, and must comply with the regulations applicable to generators.

A transporter is subject to a number of regulatory obligations:

- Obtaining an EPA ID number;
- Obtaining the appropriate hazardous waste transportation permits from the Arkansas Highway and Transportation Department;
- Compliance with the manifest system; and
- Handling hazardous waste discharges.

EPA ID Number

One way that the Department keeps track of transporters is by requiring each transportation company to obtain a unique ID number from EPA. Without this identification, the transporter is forbidden from handling any hazardous waste.

Furthermore, a transporter may not accept waste from a generator unless that generator has an EPA ID number (or State Tracking Number for conditionally exempt small quantity generators).

Arkansas Hazardous Waste Transporter Permits

Any person who transports hazardous waste in, from, or through the State of Arkansas is required to first obtain Arkansas transporter permits. These permits are renewable annually.

Transporters are required to obtain, a Hazardous Materials Carrier permit from the Arkansas Highway Police. Annual fees for the Highway Police permit are \$50. Persons transporting hazardous waste must carry a copy of a valid transporter permit in their vehicle, and display it upon request by law

enforcement or environmental compliance officers, and to reception personnel at Arkansas TSD facilities to verify they have a current permit.

Arkansas additionally requires transfer facilities operating within the State to submit a Notification of Regulated Waste Activity to the Department or as required by their home state, and to obtain an individual EPA identification number.

The Manifest

In summary, the transporter is required to deliver an entire quantity of waste accepted from either the generator or another transporter, to the designated facility listed on the manifest. If the waste cannot be delivered as the manifest directs, the transporter must inform the generator and receive further instructions, i.e., return the waste or take it to another facility. Before handing the waste over to a TSD, the transporter must have the owner or operator sign and date the manifest. One copy of the manifest remains at the TSD while the other stays with the transporter. The transporter must retain a copy of the manifest for three years from the date the hazardous waste is accepted by the initial transporter.

Arkansas has not adopted and does not allow the special exemption from the normal manifest requirements for transporters who handle certain reclaimed wastes from small quantity generators, listed at 40 CFR 262.20(e). Generators and transporters who use these so-called "tolling arrangements" remain fully responsible for complying with all applicable manifesting requirements and provisions of the hazardous waste management regulations.

Handling Hazardous Waste Discharges

Even if generators and transporters of hazardous waste comply with all appropriate regulations, transporting hazardous waste can still be dangerous. There is always the possibility that an accident will occur. To respond to this possibility, the regulations require transporters to take immediate action to protect health and the environment if a release occurs, (e.g., notifying local authorities and/or diking the discharge area).

The regulations also give certain officials special authority to handle transportation accidents. Specifically, if a Federal, State, or local official, with appropriate authority, determines that the immediate removal of the waste is necessary to protect human health or the environment, the official can authorize waste removal without the use of a manifest by a transporter who lacks an EPA ID number or Arkansas permit.

When a serious accident or spill occurs, the transporter must notify the National Response Center

(NRC), Arkansas Office of Emergency Services, and the Arkansas Highway Police. Specifically, these agencies must be notified when:

- A person is killed or seriously injured
- Estimated damage exceeds \$50,000
- The spill involves disease-causing agents or radioactive material
- The spill exceeds a CERCLA reportable quantity
- A life-threatening situation exists.

The Center for Disease Control must also be informed if the spill involves disease-causing agents. Within 15 days of the incident, the transporter must file a report with DOT. If hazardous wastes were involved in the spill, the transporter must supply a copy of the hazardous waste manifest and an estimate of the quantity of waste removed from the site, where it was taken, and the disposition of any unremoved waste. Consumer commodities, batteries, and small containers of paint are exempt from the 15-day notification requirement.

IV. Standards for Facilities

A. Permit Standards.

Arkansas's statutes and regulations provide standards for hazardous waste management facilities equivalent to 40 CFR Parts 264 and 266 including: 1) technical standards for tanks, containers, waste piles, incineration, chemical, physical and biological treatment facilities, surface impoundments, landfills, land treatment facilities, boilers and industrial furnaces, containment buildings, corrective action management units and temporary units 2) financial responsibility during facility operation, 3) preparedness for and prevention of discharges or releases of hazardous waste, 4) contingency plans and emergency procedures, 5) closure and post-closure requirements, including financial requirements ensuring that money will be available during these periods for monitoring and maintenance, 6) ground-water monitoring, 7) security to prevent unauthorized access to the facility, 8) facility personnel training, 9) inspections, monitoring, recordkeeping and reporting; 10) manifest requirements, and 11) other requirements to the extent they are included in 40 CFR Parts 264 and 266. Arkansas has a series of broad authorities that can be used to develop and implement a regulatory program for TSDs. A.C.A. §§ 8-7-209(a)(1), (3) and (5) provide the Department with general authorities to administer and enforce all laws, rules and regulations regarding hazardous waste management; develop and implement plans for the safe and

effective management of hazardous wastes, including location standards; and to adopt, promulgate, modify and enforce rules and regulations to implement and effectuate the purposes and intent of the Arkansas Hazardous Waste Management Act. § 8-7-202(2) specifically states as one of the purposes of this Act establishing a program of regulation for the generation, storage, transportation, treatment and disposal of hazardous waste. Additionally, § 8-7-218(b)(2) requires that all rules, regulations, standards, procedures or other requirements adopted and imposed by the Department must be no less stringent than the regulations promulgated or revised by the EPA pursuant to RCRA of 1976 as amended. § 8-7-209(a)(11) gives the Department the authority to establish policies and standards for effective hazardous waste management. § 8-7-209(a)(6) gives the Department the authority to require permits for the treatment, storage, and disposal facilities or sites. Under § 8-7-218(c), no permit may be issued except under the terms of regulations of the department which conform to the provisions of RCRA '3005.

Arkansas requires specific standards for waste management facilities, including remedial measures, financial responsibility, personnel qualifications, contingency plans and emergency procedures, and location standards, are provided by A.C.A. §§ 8-7-209(a)(8) and 8-7-219. § 8-7-219 specifies the terms and conditions that must be met before a permit can be issued for any commercial facility. Under A.C.A. § 8-7-209(a)(12), the State has the authority to establish standards and procedures for the certification of personnel to operate hazardous waste treatment or disposal facilities. § 8-7-225(a) gives the State the authority to require notification of hazardous waste activities and for owners and operators to establish and maintain records, make reports, install, use and maintain such samples, perform such tests, and provide other information to the department as the director may reasonably require .

Arkansas has several specific authorities which relate to siting. A.C.A. § '8-7-223 specifically prohibits a landfill disposal facility from being located within one-half mile of any occupied dwelling unless the applicant can demonstrate and the Department can find that a lesser distance will provide an adequate margin of safety under normal operating conditions. Likewise, § 8-6-1504 (in the Arkansas Environmental Equity Act (Act 1263 of 1993)) establishes a rebuttable presumption against siting any "high impact solid waste management facility" within 12 miles' radius of any other such facility. The definition of a high impact solid waste management facility includes all commercial

hazardous waste incinerators and commercial hazardous waste treatment, storage, or disposal facilities.

Authority to grant variances from the facility standards in a manner consistent with RCRA is provided by § 8-7-211. However, the § 8-7-211 provision states that in no case shall the duration of any such variance exceed one (1) year.

Finally, in its administration and enforcement of the hazardous waste management act, A.C.A. § 8-7-209(b) gives the department the additional authority to use all of the powers which it has under other laws administered by it, including the Arkansas Water and Air Pollution Control Act, § 8-4-101 *et seq.* and the Arkansas Waste Management act, § 8-6-201 *et seq.* The Federal regulations have been adopted verbatim at the references cited. State requirements are equivalent to those of the federal program, except for the following:

- Reg. No. 23 §264.13(a)(1) provides that the analysis must at a minimum include a detailed waste characterization by a commercial facility for at least 10 % of the waste handled for each large quantity generator shipping to the facility. The Federal requirements at 40 CFR 264.13(a) do not contain this specification; however, this additional State requirement is consistent with the Federal requirements.

- Reg. No. 23 § 264.16(f) has no Federal counterpart and requires that at least one person certified by the State be on duty at all times before a facility will be permitted to operate. Certified persons must meet certain qualifications including physical capability; a B.S. Degree or related experience in engineering, physical science, health sciences or related disciplines; familiarity with principles of industrial operation; and be a U.S. citizen. Facilities must also maintain records of employees, provide personnel training and review and require annual health physicals. These provisions make the State's program more stringent than the Federal program.

- Reg. No. 23 §§ 264.18(d)-(i) have no Federal counterpart and state that facilities will not be permitted in an active fault zone, regulatory floodway, 100-year floodplain, recharge zone or wetland area unless it can be proven that there is no risk to public health or the environment. Facilities located within an area containing geologic or pedologic factors will not be permitted nor will any facility located within one half mile

of an occupied dwelling, school or hospital. These provisions are more stringent than the Federal location requirements at 40 CFR 264.18.

- Reg. No. 23 §§ 264.19(a), 264.115 and 264.120 restrict the engineers who can develop and implement a CQA to those registered in Arkansas. The Federal regulations allow registration in any State. This difference makes the State more stringent.
- Reg. No. 23 § 264.20 has no Federal counterpart and contains performance standards that are specific to Arkansas. These standards make the State more stringent.
- Reg. No. 23 § 264.71(d) has no Federal counterpart and requires notification to the State of unpermitted transporters arriving at a TSD facility, because all persons who transport hazardous waste in, from or through Arkansas must have a permit. This provision makes the State's program broader in scope.
- Reg. No. 23 § 264.75 requires that facilities submit annual rather than biennial reports. This difference makes the State program more stringent than the Federal program.
- Reg. No. 23 § 264.75(i) requires annual submission of monitoring data. Under the Federal requirements, these data must only be submitted by interim status facilities. This difference makes the Arkansas program more stringent than the Federal program.
- Reg. No. 23 § 264.175(b)(2) has no Federal counterpart and requires an impermeable coating on all surfaces of the secondary containment structure for container storage areas. This difference makes Arkansas' program more stringent than the Federal program.
- Reg. No. 23 §§ 264.191 through 264.193 restrict those engineers who can inspect or certify a tank system's integrity to those registered in Arkansas. The Federal requirements allow registration in any State. Arkansas is therefore more stringent.
- The requirements at 40 CFR 264.314(d) have not been incorporated directly into the Arkansas regulations. Disposal in ampoules and lab packs is allowed as per the requirements at Reg. No. 23 § 264.314(a). However, the other situations under 40 CFR 264.314(d) which allow free liquid disposal are not allowed in Arkansas, making the State's program more stringent than the

Federal program.

- Reg. No. 23 § 264.571(b) requires that for immediate protection of the environment, all existing drip pads must have an impermeable coating or cover in place not later than September 30, 1995. This requirement is more stringent than its Federal counterpart.
- Reg. No. 23 §§ 264.571(a)-(c) and 264.573(m)(3) restrict engineers who can certify a drip pad's integrity or completed repairs to those registered in Arkansas. The Federal counterparts allow engineers to certify that are registered in any state. This difference makes the State's program more stringent.
- Reg. No. 23 § 264.573(a)(4)(i) states that penetrating sealants are not adequate to meet the coating or cover requirements for drip pads. The Federal requirements do not have this restriction; therefore, the State is more stringent.
- Reg. No. 23 § 264.601(d)&(e) have no Federal counterpart and prohibit open burning or detonation of hazardous wastes on unprotected ground. Open burning or open detonation may only be conducted in or on an elevated containment device which will prevent leaching or migration of waste. Prior to open burning or detonation, a permit must be obtained and it must be demonstrated that no other feasible alternative is available. These requirements are consistent with Federal requirements at 40 CFR Part 264, Subpart X. However, the required demonstration that there are no other feasible alternatives is a more stringent provision.
- Reg. No. 23 §§ 264.1101(c)(2)&(c)(3)(iii) restrict the engineers who can certify a containment design or completed repairs to those registered in Arkansas. Under the Federal requirements the engineer can be registered in any state.

B. Interim Status Requirements

Arkansas's laws and regulations provide for interim status and include interim status standards for hazardous waste management facilities covered by 40 CFR Part 265. A.C.A. § 8-7-216 provides the Department with the authority to allow existing and newly regulated facilities to operate under interim status until a permit can be issued. Arkansas allows existing facilities to continue operation only if the facility was in existence on March 14, 1979 and

submitted an initial State application form to the Department by September 14, 1979. § 8-7-216 requires that an initial State application for interim status be submitted to the Department by September 14, 1979. Thus, Arkansas has a more stringent form of interim status. § 8-7-209(a)(5) provides the Department with general authorities to adopt, promulgate, modify and enforce rules and regulations to implement and effectuate the purposes and intent of the Arkansas Hazardous Waste Management Act. § 8-7-202(2) specifically states as one of the purpose of this Act as establishing a program of regulation for the generation, storage, transportation, treatment and disposal of hazardous waste. Additionally, § 8-7-218(b)(2) requires that all rules, regulations, standards, procedures or other requirements adopted and imposed by the Department must be no less stringent than the regulations promulgated or revised by the EPA pursuant to RCRA of 1976 as amended. § 8-7-209(a)(11) gives the Department the authority to establish policies and standards for effective hazardous waste management. State requirements are equivalent to those of the federal program, except for the following:

- Reg. No. 23 § 265.13(a)(1) provides that the analysis must at a minimum include a detailed waste characterization by a commercial facility for at least 10 % of the waste handled for each large quantity generator shipping to the facility. The Federal requirements at 40 CFR 265.13(a) do not contain this specification; however, this requirement is consistent with the Federal requirements.

- Reg. No. 23 § 265.16(f) has no Federal counterpart and requires that at least one person certified by the State be on duty at all times before a facility will be permitted to operate. Certified persons must meet certain qualifications including physical capability, a BS Degree or related experience in engineering, physical science, health sciences, or related disciplines, familiarity with principles of industrial operation and be a U.S. citizen. Facilities must also maintain records of employees, provide personnel training and review and require annual health physicals. These provisions make the State's program more stringent than the Federal program.

- Reg. No. 23 §§ 265.19(a), 265.115 and 265.120 restrict the engineers who can develop and implement a CQA to those registered in Arkansas. The Federal regulations allow registration in any State. This difference makes the State more

stringent.

- Reg. No. 23 § 265.71(d) has no Federal counterpart and requires notification to the State of unpermitted transporters arriving at a TSD facility, because all persons who transport hazardous waste in, from or through Arkansas must have a permit. This provision makes the State's program broader in scope.

- Reg. No. 23 § 265.75 requires that facilities submit annual rather than biennial reports. This difference makes the State program more stringent than the Federal program.

- Reg. No. 23 §§ 265.143(h), 265.143(h) and 265.147(e) require that the engineer who certified closure be registered in Arkansas. Under the Federal requirements, the engineer may be registered in any state.

- Reg. No. 23 §§ 265.191 through 265.193, 265.196(f) and 265.280(e) restrict those engineers who can inspect or certify a tank system's integrity to those registered in Arkansas. The Federal requirements allow registration in any State. Arkansas is therefore more stringent.

- The requirements at 40 CFR 265.314(c) have not been incorporated directly into the Arkansas regulations. Disposal in ampoules and lab packs is allowed as per the requirements at Reg. No. 23 § 265.314(a). However, the other situations under 40 CFR 265.314(c) which allow free liquid disposal are not allowed in Arkansas making the State's program more stringent than the Federal program.

- Reg. No. 23 §§ 265.441(a)&(c), 265.443(g)&(m)(3) and 265.444(a) restrict engineers who can certify a drip pad's integrity or completed repairs to those registered in Arkansas. The Federal counterparts allow engineers to certify that are registered in any state. This difference makes the State's program more stringent.

- Reg. No. 23 § 265.441(b) requires that for immediate protection of the environment, all existing drip pads must have a impermeable coating or cover in place not later than September 30, 1995. This requirement is more stringent than its Federal counterpart.

- Reg. No. 23 § 265.443(a)(4)(i) states that penetrating sealants are not adequate to meet the coating or cover requirements for drip pads. The Federal requirements do not have this restriction; therefore, the State is more stringent.

- Reg. No. 23 §§ 265.1101(c)(2)&(c)(3)(iii) restrict the engineers who can certify a containment design or completed repairs to those registered in Arkansas. Under the Federal requirements the engineer can be registered in any state.

C. State-specific Siting Criteria

In addition to the general location standards found in 40 CFR 264.18, ADPC&E has adopted more restrictive general siting criteria for new treatment, storage, and disposal (TSD) facilities.

No permit will be issued for a new TSD facility located in an active fault zone, a "regulatory floodway", a 100-year floodplain, a recharge zone of sole source aquifer or a "wetland area" which is inundated or saturated by surface or groundwater unless the applicant affirmatively demonstrates and the Department specifically finds that the location of the facility in this area would not constitute a risk to the public health or the environment.

In addition, no permit may be issued for a hazardous waste landfill or surface impoundment that is located in the following areas:

- Of high earthquake potential.
- Soil which would be classified as vertisol or as having a subgroup modifier of vertic.
- Where a stratum of limestone or similar rock of an average thickness of more than three feet lies within 99 feet of the base of the proposed liner system.
- Where bottom of the liner system or in-place soil barrier is less than 10 feet above the historical high water table.
- Close to any functioning public or private water supply.

No permit shall be issued for the construction or operation of a new commercial hazardous waste landfill, if the active portions of the facility are located within one-half mile of any occupied dwelling, church, school, hospital or similarly occupied structure at the time the initial permit application is submitted to the Department unless the applicant affirmatively demonstrates and the Department specifically finds that the location of the facility in this area would not constitute a risk to the public health or the environment.

No permit shall be issued for a hazardous waste TSD facility, if the area and configuration of the facility's property is such that the distance between active portions of the facility and the facility's property line is less than 200 feet; or the active portions of the facility are located less than 300 feet from the right-of-way for a public road, pipelines carrying natural gas, fuel oils or chemicals, water and wastewater lines, and power transmission lines. The

Department of Pollution Control and Ecology will consider the instances in which the permit applicant can demonstrate that location of such facilities in the above areas would not constitute a risk to the public health or environment.

The above restrictions do not apply to treatment facilities which began operation prior to March 14, 1979, or which had an existing operating permit issued by the Department of Pollution Control and Ecology, or to any subsequent modifications to such facilities, provided that the owner of such facility affirmatively demonstrates and the Department specifically finds that the location of the facility in this area would not materially increase the degree of hazard associated with the facility.

D. Environmental Equity

Act 1263 of 1993, codified at A.C.A. §§ 8-6-1501 *et seq.*, requires the consideration of "environmental equity" in the siting of new high impact solid waste management facilities, which includes hazardous waste treatment, storage, or disposal facilities. Enactment of Act 1263 was prompted by a court ruling from Washington County Chancery Court declaring Act 933 of 1991 (currently codified at A.C.A. 8-6-218) to be unconstitutional local and special legislation. Rather than appeal this ruling, the Department convinced the sponsors of Act 933 that a more appropriate fix would be a law which was clearly of general applicability and continued to address their specific concerns. As a result, Arkansas became the first state in the nation to enact legislation addressing the concept of "environmental equity."

The "environmental equity" concept was prompted by recent national surveys which recognized a trend of locating environmentally "undesirable" facilities in areas populated predominantly by the poor and politically disenfranchised. Act 1263 creates a rebuttable presumption against the permitting of "high impact solid waste facilities" within a 12 mile radius of an existing high-impact solid waste management facility. Such facilities include solid waste landfills and incinerators and hazardous waste treatment, storage and disposal facilities. This presumption may be rebutted if the applicant proves there is no other suitable site for his proposed facility because of geological constraints or existing siting restrictions codified at A.C.A. § 8-7-206(b)(2); or if the local community manifests acceptance of the facility because of provided incentives such as increased employment opportunities, payment of reasonable host fees, contributions by the facility to the community infrastructure, compensation of any adjacent landowners for any assessed decrease in property values, or subsidization of community

services.

The provisions of Act 1263, like those of A.C.A. § 8-7-206(b)(2), are more stringent than federal requirements. The apparent ban on siting hazardous waste treatment, storage, and disposal facilities within 12 miles of an existing facility does not violate the provisions of 40 CFR 271.4 (which prohibits the authorization of any aspect of State law or the State program which has no basis in human health or environmental protection and which acts as a prohibition on the treatment, storage, or disposal of hazardous wastes in the State) because of the rebuttable presumption. Furthermore, the provisions of Act 1263 are consistent with recent federal initiatives to implement the concepts of environmental justice in the federal RCRA hazardous waste management program.

E. Certification of Commercial Hazardous Waste Facility Operators

In the requirements found in Reg. 23 Sections 264.16(f) and 265.16(f), ADPC&E has adopted more stringent requirements for certification of commercial TSD facility operators and personnel.

ADPC&E requires that at least one person, certified by the Department, shall be on duty or on fifteen-minute call at all times while a commercial TSD facility is being operated. In some cases, more than one person may be required to be on duty at all times.

These operators must have the following qualifications:

- Physically capable to perform all tasks.
- Bachelor's degree in engineering, physical science, health science or related disciplines, or four years of significant demonstrated experience in such fields.
- At least four additional years of experience in management, engineering or in conducting chemical/physical analysis.
- Working familiarity with the principles and requirements relative to industrial hygiene, worker safety, emergency procedures, and environmental protection.
- Basic knowledge of the principles of operation and standard operating procedures for all equipment used in the facility.
- Citizen of the United States, of good moral character with no prior conviction of a felony or a crime of moral turpitude.

F. Personnel Training.

ADPC&E also imposes requirements for personnel training in addition to those found in 40 CFR 264.16 and 265.16. In addition to maintaining records prescribed by the federal requirements,

owners and operators of commercial TSD facilities shall:

1. Maintain complete updated records of all workers assigned to specific jobs, including name, address, date of starting specific job and date of termination of specific job.
2. Maintain a complete previous employment history and a complete job mobility history within the facility for each employee.
3. Have their personnel trained in contingency procedures as prescribed in the facility's contingency plan, which plan has been submitted and approved pursuant to the Hazardous Waste Management Code.
4. Have their personnel take part in semi-annual reviews and updates of their initial training in contingency plans, which has previously been submitted to the Department and approved.
5. Have each of their personnel undergo an annual health physical. Spouses shall be offered an annual physical.

Whenever modification of training is required by direction of the Department or as a modification of permit conditions, owners and operators shall promptly comply.

G. Performance Standards

The following standards apply, in addition to those of 40 CFR 264 and 265 as incorporated in Regulation No. 23, to all hazardous waste management facilities:

The capacity of hazardous waste storage facilities associated with a treatment facility shall not exceed a volume equal to ninety times the permitted daily processing rate of the treatment process; unless the Commission finds that a lesser volume is required to provide adequate protection of public health and safety or applicant affirmatively demonstrates and the Commission finds that such a restriction shall unduly inhibit the use of the most acceptable method or methods available for treatment. These requirements do not apply to wastewater treatment facilities which are designed and operated to meet state and federal water pollution control regulations.

Each hazardous waste management facility must be designed to operate in such a manner that any emissions from the facility will comply with the provisions of the Arkansas Hazardous Waste Management Act of 1979, as amended (codified at A.C.A. §§ 8-7-201 *et seq.*), the provisions of Regulation No. 23 (Hazardous Waste Management), and all applicable state and federal standards concerning air and water quality. The transfer,

handling and storage of materials must not violate state and federal standards concerning worker safety or create unreasonable hazards to the environment or to the health and welfare of the people living and working in or near such a facility.

When it is technically feasible that destruction of the waste can be accomplished by incineration utilizing currently available technology, no acutely hazardous waste shall be disposed of in landfills in the State of Arkansas unless the applicant can demonstrate that the waste is not included in Class I high hazard materials as defined in the Chemical Manufacturer's Association's "A System for Management of Hazardous Wastes by Degree of Hazard Under Subtitle "C" of RCRA" dated July 30, 1979 or as revised or amended thereto after approval by the Commission.

Incineration will be deemed technically feasible by the Director for destruction of all acutely hazardous materials for which disposal in landfills is not allowed unless:

- 1) The generator or the disposer can demonstrate to satisfaction of the Director that incineration is not technically feasible;
- 2) It is generally accepted by the scientific community that incineration would not be technically feasible or that incineration would not produce the desired results;
- 3) Incineration would not appreciably reduce the degree of hazard; or
- 4) The toxicity of the waste results primarily from inorganic materials which are not destroyed by incineration.

The Director may give a waiver to this subsection if it can be demonstrated to his satisfaction that a process other than incineration is available and will be used that would destroy or permanently immobilize the hazardous components of the waste prior to landfilling.

No materials in the form of bulk liquids, semi-solids, and sludges may be disposed of in hazardous waste landfills unless such waste is pretreated and/or stabilized into cement-like material. Under no circumstances may municipal refuse be placed in a hazardous waste landfill.

V. Requirements for Permits

Arkansas's statutes and regulations provide permit requirements consistent with the specifications of 40 CFR 271.13 and 271.14. A.C.A. § 8-7-209(a)(6) provides the Department with the authority to issue, continue in effect, revoke, modify or deny, under such conditions as it may prescribe, permits for the establishment, construction, operation, or maintenance of hazardous waste treatment, storage, or

disposal facilities or sites as prescribed by §§ 8-7-215 through 8-7-222. § 8-7-215(a) specifically prohibits a person from constructing, substantially altering or operating any hazardous waste treatment or disposal facility or site without a permit from the Department. There is a similar prohibition for the storage, treatment or disposal of hazardous waste. Arkansas also has the authority, under § 8-7-209(a)(10), to promulgate rules regarding research and demonstration projects. Under §§ 8-7-209(a)(1)&(5), the State has the broad authority to administer and enforce all laws and rules regarding hazardous waste management and to adopt regulations as may be necessary or appropriate to implement and effectuate the purposes and intent of the Arkansas Hazardous Waste Management Act, as specified at § 8-7-202.

A.C.A. § 8-7-218 requires that the Department only issue a permit if it will be operated in a manner that will comply with the provisions of the Arkansas Hazardous Waste Management Act and all applicable state and federal standards and regulations concerning air and water quality as well as protect and prevent unreasonable hazards to the environment or to the health and welfare of persons living and working near the facility. Under § 8-7-218(b)(2), the Department must adopt and impose rules, regulations, standards and procedures or other requirements that are not less stringent than the regulations promulgated or revised by EPA pursuant to RCRA of 1976, as amended. § 8-7-218(c) requires that no permit be issued for a hazardous waste treatment, storage, or disposal facility except under the terms of the regulations of the department which conform to the provisions of RCRA §§ 3005. A.C.A. § 8-7-219 sets out certain terms and conditions of a permit including, but not limited to, evidence of liability insurance, financial responsibility, appropriately trained and educated personnel, an appropriate preventive maintenance program, and a location consistent with the siting criteria of § 8-7-209(a)(3).

Consistent with the Federal program, § 8-7-220 limits permit duration to ten years with renewal for land disposal permits every five years. The Department has the authority for renewal as well as the authority to renew or modify the permit at any time during its term. § 8-7-221 provides the authority for permit revocation for failure of the permittee to comply with the terms and conditions of the permit, the rules and regulations of the Department or the provisions of the Arkansas Hazardous Waste Management Act. § 8-7-217 addresses public participation in the issuance of a permit, with the requirement of a 30-day advance notice of a permit hearing. Notice must be in the largest newspaper of the county in which the facility will be located. § 8-7-222 allows any

person, who is denied a permit by the Director or who has had a permit revoked or modified, to have the opportunity for a hearing.

§ 8-7-216 provides the Department with authority relative to interim status both for existing and newly regulated facilities. However the state's date for qualifying as an existing facility is earlier than under the Federal requirements - March 14, 1979, versus November 19, 1980. § 8-7-216 also provides authority relative to the termination of interim status. These authorities are consistent with the requirements found at 40 CFR 270.73(e)-(g).

Under § 8-7-209(b), the Department also has the authority to use all of the powers which it has under other laws administered by it, including the Arkansas Water and Air Pollution Control Act, §§ 8-4-101 *et seq.*, and the Arkansas Solid Waste Management Act, §§ 8-6-201 *et seq.* § 8-7-213 ties the procedures for the conduct of hearings, notice, power of subpoena, presumptions, finality of actions and related matters to state provisions as specified in, but not limited to, sections of Chapter 4 of Title 8 addressing water and air pollution. These apply as long as they do not conflict with provisions set forth in the Hazardous Waste Management Act. §§ 8-4-203, 8-4-204 and 8-4-205 primarily address public participation and procedures for hearings. Two public notices are required for all new permitting actions (excluding permit transfers and minor modifications of existing permits): 1) when the application is determined to be administratively complete and 2) when the draft permit is complete or the application is denied.

Fees are required by A.C.A. § 8-7-226 and Reg. No 23, Section 6 for permitting. This requirement is broader in scope because there is no direct Federal analog addressing permit fees.

The Federal Part 270 regulations have been adopted verbatim at the references cited. In addition, at Reg. No. § 3(b)(3) and (4), the state incorporates by reference, the 40 CFR Part 124 provisions required for authorization. APC&EC Regulation 8 also contains additional state administrative procedures. State requirements are equivalent to those of the Federal program, except for the following:

- At Reg. No. '270.2 in the definition of hazardous waste, the state definition is broader in scope because it includes PCBs.
- At Reg. No. '270.2 "existing hazardous waste management facility", the date to qualify for interim status is prior to the corresponding Federal date. This difference makes the state more stringent because fewer facilities qualify for the interim status

requirements. See Section V B for additional discussion.

- Reg. No. 270.7 has no direct analog in the Federal requirements and includes additional requirement relative to permit application. Some of the requirements are a restatement of the Federal requirements, but others are additional demonstrations which must be made or information which must be provided. Included are such things as evidence that the contingency plan has been developed in consultation with the fire department, the Mayor/City Manager/County Judge in the municipality/county in which the facility is to be located; provision of contracts, agreements, and such other documentation to demonstrate that the waste which will be disposed of is waste which resulted from the treatment of waste to the full extent of known technology and economics or is waste for which there is no technically and economically feasible means of treatment available; demonstration of full fee ownership of lands and all mineral rights; proof of public notice of application submission prior to any permit decision; written notice to all landholders and tenants of property contiguous to the proposed or existing facility; evidence of good faith effort to contact all contiguous landholders; and permittee must submit as part of the annual permit review process a plat of any landfill disposal area in which waste has been disposed. These requirements make the state more stringent.

- Reg. No. 270.8 has no Federal analog and requires each transporter to obtain a transporter permit for the transport of hazardous waste in or through any part of the State. This provision makes Arkansas broader in scope.

- Reg. No. 270.10(e)(1) requires that any facility in existence on March 14, 1979 submit a permit application on or before September 4, 1979. The State is more stringent because if the application was not submitted to the Department under the State Act, the facility was not eligible for interim status.

- Arkansas does not include an analog to the HSWA provision at 40 CFR 270.10(e)(1)(iii) because the date has passed and the Federal date overrides.

- Under Reg. No. 270.10(e)(8), Arkansas can take immediate enforcement action relative to an application deficiency; whereas the Federal requirements allow 30 days to fix the application. This difference makes the state more stringent.

- Arkansas has not adopted the 40 CFR 270.12 language which references 40 CFR Part 2. Instead, the State has replaced the Federal language with its own provisions. These provisions are consistent with the Federal requirements for "Availability of Information".

- Reg. No. 270.13(o), which does not have a Federal analog, requires disclosure information to be

submitted as part of the permit application. A.C.A. '8-1-106(b) provides the State with the authority to require this information. This requirement makes Arkansas more stringent than the Federal program.

- Reg. No. 270.14(a), 270.16(a), 270.26(c)(15) and 270.30(l)(2)(i) are more stringent because they restrict those registered professional engineers who can certify certain technical data those who are registered in Arkansas. The Federal requirements allow the engineer to be registered in any state.

- In Reg. No. 270.19(d), Arkansas uses "may" rather than "shall" giving the Director the discretion for non-approval. The Administrator does not have this discretion making the State more stringent.

- Reg. No. 270.30(l)(9) requires an annual rather than a biennial report.

- Reg. No. 270.34, which does not have a Federal analog, requires that a survey be conducted by any appropriate health agency to establish baseline health data. In addition, the state requires that if emissions from any hazardous waste management facility are related to disease etiology, the Department shall conduct pertinent epidemiologic investigation. This requirement makes the state more stringent.

- At Reg. No. 23 270.60, a permit-by rule is provided for specific Explosive Ordnance Disposal emergency response actions. This provision allows only for the permit by rule, and is thus more stringent than the equivalent provisions of the federal Military Munitions Rule. (Note: Arkansas has not yet adopted the February, 1997 Military Munitions Rule.)

- At Reg. No. 270.70(b), the analog to 40 CFR 270.70(b), Arkansas does not allow the owner/operator 30 days to explain or cure a deficiency. This difference makes the state more stringent.

VI. Enforcement Remedies

A. Authority to restrain unauthorized activities

The Arkansas Hazardous Waste Management Act (A.C.A. 8-7-209(a)(9)) authorizes the Department to institute civil suits and seek and obtain injunctions to restrain any violations of the hazardous waste laws, regulations, or permit conditions and compel compliance, and specifies that "irreparable damage" is not a requisite element of proof in order to obtain such an injunction. A.C.A. 8-7-214(a)(1) additionally authorizes the ADPC&E Director to issue orders, without notice or hearing, "requiring that such action be taken as he deems necessary to protect" public health and the environment in an emergency situation. This latter statute does not require the finding of an imminent hazard, but an order may be issued without there being any "unauthorized activity."

The two statutes are mutually independent alternatives which do not restrict or limit each other, but which, rather, provide for a variety of responses broader than the federal requirements.

B. Authority to sue without revoking permit

The Department has at its disposal a range of alternatives for administrative enforcement procedures to compel a violator's return to compliance.

C. Authority to assess \$10,000/day civil penalties

The Arkansas Hazardous Waste Management Act, at A.C.A. 8-7-204(b)(4), and APC&EC Regulation No. 7 authorize the assessment of up to \$25,000 per day for violations of the Act or of Regulation No. 23.

D. Authority to obtain \$10,000/day criminal penalties

The Arkansas Hazardous Waste Management Act, at A.C.A. 8-7-204(a)(1)(B) authorizes the assessment of up to \$25,000 per day in fines and imprisonment for up to one (1) year for misdemeanor violations of the Act or of Regulation No. 23. Additionally, A.C.A. 8-7-204(a)(2)(B) authorizes the assessment of up to \$50,000 per day in fines and imprisonment for up to five (5) year for felony violations of the Act or of Regulation No. 23. In both cases, each day or part of a day in which a violation is continued constitutes a separate offense. Penalties escalate appropriately with the risk or degree of exposure caused by a violator's actions, as shown below:

"Any person who treats, stores, transports, or disposes of any hazardous wastes and purposely, knowingly, or recklessly causes the release of hazardous wastes into the environment in a manner not otherwise permitted by law, or creates a substantial likelihood of endangering human health, animal or plant life, or property, shall be guilty of a felony. Notwithstanding any other provisions of Arkansas law, upon conviction that person shall be subject to imprisonment for not more than ten (10) years or a fine of not more than one hundred thousand dollars (\$100,000), or subject to both such fine and imprisonment. For the purpose of fines only, each day or part of a day during which the violation is continued or repeated shall constitute a separate offense."

"Any person who treats, stores, transports, or disposes of any hazardous waste and purposely, knowingly, or recklessly causes the release of hazardous wastes into the environment in a manner not otherwise permitted by law, thereby placing another person in imminent danger of death or serious bodily injury, shall be guilty of a felony. Notwithstanding any other provisions of Arkansas law, upon conviction that person shall be subject to imprisonment for not more than twenty (20) years or a fine of not more than two hundred fifty thousand dollars (\$250,000), or subject to both such fine and imprisonment. For the purpose of fines only, each day or part of a day during which the violation is continued or repeated shall constitute a separate offense."

Notwithstanding the above statutory limits on fines set by the Act, if a person convicted under any of the above categories has derived pecuniary gain from commission of those offenses, then he may be sentenced to pay a fine not to exceed twice the amount of the pecuniary gain.

VIII. Public Participation in the State Enforcement Process

Notice of Enforcement Actions

Public notice must be provided for all enforcement actions (e.g., Notices of Violation, Consent Administrative Orders, and emergency orders) containing civil penalties, including in-kind services, upon the Director's signature on the order. Pursuant to the provisions of Act 163 of 1993, notice is not required for draft documents, Administrative Orders (as these are always preceded by an NOV) or enforcement orders which contain no monetary penalties. In the interim, as a matter of policy, all enforcement orders will go to public notice. The notices will be sent to the Commissioners and published on or about the tenth day of each month.

Contents of Notice

The notice must contain the following: 1) the identity of the person or facility alleged to be in violation 2) the location by city or county of the alleged violation 3) a brief description by environmental media (i.e. water, air, solid waste, hazardous waste) impacted by the alleged violation 4) the type of administrative action proposed (i.e. consent administrative order, notice of violation, or emergency order) and 5) the amount of the penalty to be assessed.

A. Authority to allow intervention to obtain remedies

A.C.A. 8-7-206 provides for an unrestricted private right of action for any person adversely affected by a violation of the hazardous waste laws, regulations and/or a condition of permit to seek legal relief against any such violation.

B. Assurances that State will investigate complaints, not oppose citizen intervention, and allow for public comment on any proposed settlement of State enforcement action

As a matter of policy, the Department investigates and resolves all citizen complaints for alleged environmental violations and/or perceived or actual threats to human health and the environment in as timely a manner as possible. The Department does

not interfere in nor does it attempt to inhibit citizen intervention nor suits under the private right to action provision.

For discussion of the availability of public comment on enforcement settlements, see VIII introductory language above.

IX. Authority to Share Information with EPA.

§8-7-208 of the Arkansas Code of 1987, Annotated, authorizes the Department to share any information gathered pursuant to the hazardous waste management program with EPA and other state environmental agencies. The RCRA Memorandum of Agreement between the Department and EPA Region VI specifies the procedures for sharing any requested information.

X. Authority over Indian Lands

Arkansas has no designated Indian Lands; therefore, the Arkansas Department of Pollution Control and Ecology has not been authorized for and does not seek RCRA authority over Indian lands within the state.

I. Non-HSWA Requirements through June 30, 1984

A. Biennial Report: 48 FR 3997, 1-28-1983 (Checklist 1, also refer to Checklist 30)

Arkansas requires the submission of an Annual Hazardous Waste Report that is equivalent in scope to the federal Biennial Report. Treatment, storage, and disposal facilities submit this report to the Department on state forms or using an electronic reporting system by March 1 of each year. ADPC&E then compiles the data and electronically submits data for the federal biennial report to EPA in accordance with the current grant workplan.

B. Permit Rules - Settlement Agreement: 48 FR 39611, 9-1-1983 (Checklist 2)

Arkansas has adopted the provisions of this federal revision; state requirements are equivalent to those of the Federal program.

C. Interim Status Standards - Applicability: 48 FR

52718, 11-22-1983 (Checklist 3, also refer to Checklist 10)

Arkansas has adopted the provisions of this federal revision; state requirements are equivalent to those of the Federal program.

D. Chlorinated Aliphatic Hydrocarbon Listing: 49 FR 5308, 2-10-1984 (Checklist 4)

Arkansas has adopted the federal rule adding these substances to the list of hazardous wastes. State requirements are equivalent to the Federal program.

E. National Uniform Manifest: 49 FR 10490, 3-20-1984 (Checklist 5, also refer to Checklists 17D and 32)

Arkansas does not permit the use of the Uniform Manifest. The state requires the use of its own version of the uniform hazardous waste manifest, and does not permit the use of the uniform hazardous waste manifest by Arkansas shippers or for hazardous wastes imported into Arkansas. Arkansas additionally requires all persons transporting hazardous wastes into or out of the state, regardless of quantity, to notify the Department of Pollution Control and Ecology by having an EPA identification Number (or for conditionally exempt and PCB Waste generators, by obtaining a State tracking or PCB identification number) and using the Arkansas Hazardous Waste manifest or a neighboring state equivalent.

F. Permit Rules: Settlement Agreement: 49 FR 17716, 4-24-1984 (Checklist 6)

Arkansas has adopted the provisions of this federal revision; state requirements are equivalent to those of the Federal program.

G. Listing of Warfarin and Zinc Phosphide: 49 FR 19922, 5-10-1984 (Checklist 7)

Arkansas has adopted the federal rule adding these substances to the list of hazardous wastes; state requirements are equivalent to those of the Federal program.

H. Lime-Stabilized Pickle Liquor Sludge: 49 FR 23284, 6-5-1984 (Checklist 8)

Arkansas has adopted the federal rule adding these substances to the list of hazardous waste; state requirements are equivalent to those of the Federal program.

II. Non-HSWA Cluster I (July 1, 1984 through June 30, 1985)

A. State Availability of Information (RCRA § 3006(f))

Any information made available to the Department must be made available to the public to the extent and in the manner authorized by the Arkansas Freedom of Information Act codified at Ark. Code Ann. 25-19-101 to 25-19-107 (Repl. 1979 and Supp. 1985) and by the Freedom of Information Act, 5 U.S.C. Section 552, Section 3007(b) of RCRA and EPA regulations implementing the Freedom of Information Act.

The following Freedom of Information policy was adopted for use by the Department on August 6, 1986:

- 1) All documents not subject to protection or exclusion under the provisions of the FOIA will be available for public review during normal working hours. All provisions of the FOIA will be adhered to.

Arkansas's Freedom of Information Act is much broader in scope than its Federal equivalent. Arkansas's FOIA defines a public record as "writings, recorded sounds, films, tapes, or data compilations in any form, required by law to be kept or otherwise kept, and which constitute a record of the performance or lack of performance of official functions which are or should be carried out by a public official or employee, a governmental agency, or any other agency wholly or partially supported by public funds or expending public funds. All records maintained in public offices or by public employees within the scope of their employment shall be presumed to be public records."

"Except as otherwise specifically provided by this section or by laws specifically enacted to provide otherwise, all public records shall be open to inspection and copying by any citizen of the State of Arkansas during the regular business hours of the custodian of the records."

"... the following records shall not be deemed to be made open to the public by the provisions of this Act:

- (1) State income tax returns;
- (2) Medical, scholastic, and adoption records;
- (3) The site files and records maintained by the Arkansas Historic Preservation Program and the Arkansas Archaeological Survey;
- (4) Grand jury minutes;
- (5) Unpublished drafts of judicial or quasi-judicial opinions and decisions;
- (6) Undisclosed investigations by law enforcement agencies of suspected criminal activity;
- (7) Unpublished memoranda, working papers, and correspondence of the Governor, legislators, Supreme Court Justices, and the Attorney General;
- (8) Documents which are protected from disclosure by order or rule of court;
- (9) Files which would, if disclosed, give advantage to competitors or bidders; and
- (10) Personnel records to the extent that such disclosure would constitute

a clearly unwarranted invasion of personal privacy...

ADPC&E is not classified as a law enforcement agency, and with the exception of documents submitted and approved as confidential business information, all documents in the Department's offices are subject to disclosure under the Arkansas FOIA. The Department may not withhold information from disclosure which EPA may designate as "enforcement sensitive".

2) Space will be made available for public review of documents.

3) Copying services will be available to the public on a time available basis. Copies will be made of specifically requested documents only. A person assessing file materials must make a specific listing of each document they wish copied and give this list to the person assigned to assist them. Forms will be provided to assist in this compilation. In some instances, actual copying may not be available the same day the material is reviewed, however, copying requests will be processed with daily work loads as quickly as possible.

4) Copying and item charges are as follows: each separate page at 20 cents each, if copying is done by Department staff, plus staff time charges for compilation or copying if in excess of one (1) hour at employees' hourly rate. If Department staff is not immediately available to provide copying, or if the requesting individual so desires, individuals may make their own copies using Department copiers at a cost of 10 cents per page.

5) Any questions concerning public documents must be in written form and given to the assistant. These questions will be responded to in writing or by phone as soon as normal work commitments allow.

6) Files in active use, which would otherwise be available for immediate public review, will be made available for review as quickly as possible but not later than the three day period provided for under the FOIA.

7) Items or requests not covered by this policy will be handled on a case by case basis.

A 1991 amendment (Act 435 of 1991) to the Arkansas Hazardous Waste Management Act allows for the recoupment of attorney's fees and other reasonable expenses from the Department when a plaintiff substantially prevails in a lawsuit against the Department for a violation of the Arkansas Freedom of Information Act.

Specific policies on the availability of information to the public are contained in the State/EPA RCRA Memorandum of Agreement and Section 6 of

Regulation No. 23 (Hazardous Waste Management) .

Handling of Confidential Business Information and Trade Secrets

In lieu of the provisions of 40 CFR 270.12, the following provisions (Regulation No. 23 § 270.12) apply within Arkansas's authorized hazardous waste management program:

Any records, reports, or information contained under this Regulation and any permits, permit applications, and related documentation shall be available to the public for inspection and copying. However, upon a satisfactory showing to the Director that such records, reports, permits, documentation, or information, or any part thereof would, if made public, divulge methods or processes entitled to protection as trade secrets, the Director shall consider, treat and protect such records as confidential. It shall be the responsibility of the person claiming any information as confidential under the provisions of subsection a above to clearly mark each page containing such information with the words "CONFIDENTIAL" and to submit an affidavit setting forth the reasons that said person believes that such information is entitled to protection.

Any document submitted to the Department which contains information for which the claim of confidential information is made shall be submitted in a sealed envelope marked "CONFIDENTIAL" and addressed to the Director. The document shall be submitted in two separate parts. The first part shall contain all information which is not deemed by the person preparing the report as confidential and shall include appropriate cross references to the second part which contains data, words, phrases, paragraphs, or pages and appropriate affidavits containing or relating to information which is claimed to be confidential.

No information shall be protected as confidential information by the Director unless it is submitted to him in accordance with the provisions of subsection (c) above. No information which is submitted in accordance with the provisions of subsection (c) above shall be afforded protection as confidential information unless the Director finds that such protection is necessary to protect trade secrets and that such protection will not hide from public view the characteristics of waste material and probable effects of the introduction of such waste or byproducts into the environment as a result of the operation of a hazardous waste management facility. The person who submits information claimed as confidential shall receive written notice from the Director as to whether the information has been accepted as confidential or not.

All information which meets the tests of

subsection (d) above shall be marked with the term "ACCEPTED" and shall be protected as confidential information. Whenever the Director finds that information which has been submitted as confidential information in accordance with subsection (c) above does not meet the criteria of subsection (d) above, he shall promptly notify the person submitting such information of his findings and shall give that person reasonable opportunity to further justify his contention that the information deserves protection as a trade secret or to further limit the scope of information for which the request for protection is made. If said person fails to satisfactorily demonstrate to the Director that such information in the form presented to him meets the criteria of subsection (d) above, the Director shall mark the information "REJECTED" and promptly return such information to the person submitting such information. Such person shall have 30 days to resubmit the information in acceptable form or appeal the decision of the Director.

All information which is accepted by the Director as confidential shall be stored in locked filing cabinets and only those personnel of the Department specifically designated by the Director shall have access to the information contained therein. The Director shall not designate any persons to have access to confidential information unless the person requires such access in order to carry out his responsibilities and duties. No person shall disclose any confidential information except in accordance with the provisions of this Section. No copies shall be made other than for internal Department use or for use or transmittal to officers and employees of the United States except with the written permission of the Director and the person submitting the information.

The person(s) designated by the Director to maintain confidential files as herein provided shall maintain a log showing the persons who have had access to the confidential files and the dates of such access.

As necessary to carry out the provisions of the Arkansas Hazardous Waste Management Act, any confidential information acquired by the Department under the provisions of said act may be transmitted to other offices, employees, or authorized representatives of the state or United States provided that the owner or operator of the facility to which such information pertains is informed of such transmittal and provided that such transmittal is made under a continuing restriction of confidentiality.

Nothing contained herein shall be construed so as to restrict the release of relevant confidential information during situations declared to be emergencies by the Director or his designee.

Claims of confidentiality for the name and address of any permit applicant or permittee will be denied.

If a request for any records, documents or information acquired or maintained by ADPC&E pursuant to the Arkansas Hazardous Waste Management Act and/or this Regulation is denied by the Director a notice shall be sent to the requestor stating the basis of the denial and informing the requestor that:

1) He may appeal immediately from such denial to an appropriate Circuit Court pursuant to the Arkansas Freedom of Information Act; or,

2) He may request judicial review within thirty (30) days of receipt of the notice by filing a notice of appeal with the Secretary of the Arkansas Commission on Pollution Control and Ecology and proceeding further pursuant to A.C.A. § 8-4-222.

If a request for records, documents or information is denied, the Director will send the notice required by subsection (k) within twenty (20) days of receipt of the request.

If the Director fails to produce requested records, documents or information and fails to send the notice required by subsection (k), such failure shall constitute final agency action giving the requestor the right to judicial review under A.C.A. § 8-4-222 in addition to any rights of review under the Arkansas Freedom of Information Act.

B. Exclusion of Household Waste: 49 FR 44978, 11-13-1984 (Checklist 9)

Arkansas has adopted the provisions of this federal revision; state requirements are equivalent to those of the Federal program.

C. Interim Status Standards - Applicability: 49 FR 46094, 11-21-1984 (Checklist 10)

Arkansas has adopted the provisions of this federal revision; state requirements are equivalent to those of the Federal program.

D. Corrections to Test Methods Manual: 49 FR 47390, 12-4-1984 (Checklist 11)

Arkansas has adopted the provisions of this federal revision; state requirements are equivalent to those of the Federal program.

E. Satellite Accumulation: 49 FR 49568, 12-20-1984 (Checklist 12)

Arkansas has adopted the provisions of this federal revision; state requirements are equivalent to those of the Federal program.

F. Redefinition of Solid Waste: 50 FR 614, 1-4-1985; 50 FR 14216, 4-11-1985; 50 FR 33541, 8-20-1985 (Checklist 13)

Arkansas has adopted the provisions of this federal revision; state requirements are equivalent to those of the Federal program.

G. Interim Status Standards for Landfills: 50 FR 16044, 4-23-1985 (Checklist 15)

Arkansas has adopted the provisions of this federal revision; state requirements are equivalent to those of the Federal program.

III. Non-HSWA Cluster II (July 1, 1985 through June 30, 1986)

A. Closure, Post-Closure, and Financial Responsibility Requirements: 51 FR 16422, 5-2-1986 (Checklist 24)

Arkansas has adopted the provisions of this federal revision; state requirements are equivalent to those of the Federal program.

B. Listing of Spent Pickle Liquor: 51 FR 19320, 5-28-1986; 51 FR 33612, 9-22-1986; 52 FR 28697, 8-3-1987 (Checklist 26)

Arkansas has adopted the federal rule adding these substances to the list of hazardous wastes; state requirements are equivalent to those of the Federal program.

IV. Non-HSWA Cluster III (July 1, 1986 through June 30, 1987)

A. Radioactive Mixed Waste: 51 FR 24504, 7-3-1986 (No Checklist)

As the Arkansas Department of Health is the state agency with jurisdiction over licensing or registration of by-products, source, special nuclear materials, or devices and equipment using such materials under the Arkansas Radiation Control Act (codified at A.C.A. §§ 20-21-201, *et seq.*), the Arkansas

Department of Pollution Control and Ecology has established a Memorandum of Agreement with the Arkansas Department of Health wherein the ADH regulates the radioactive component of mixed wastes, while ADPC&E regulates the hazardous component of the waste.

Generators of Mixed Waste must comply not only with the minimum technical requirements of Regulation No. 23, but also with the NRC regulations as well. Thus, since the hazardous and radioactive waste components cannot be readily separated, the design of facilities, drafting of operating requirements for RCRA permits or NRC Licenses, and the development of cleanup solutions must be done in a manner that adequately addresses the hazards posed by both the radioactive and hazardous components of the waste. State requirements are equivalent to those of the Federal program.

B. Liability Coverage - Corporate Guarantee: 51 FR 25350, 7-11-1986 (Checklist 27, also refer to Checklist 43)

Arkansas has adopted the provisions of this federal revision; state requirements are equivalent to those of the Federal program.

C. Hazardous Waste Tank Systems: 51 FR 25422, 7-14-1986; 51 FR 29430, 8-15-1986 (Checklist 28, also refer to Checklist 52)

Arkansas has adopted the provisions of this federal revision; except as noted in the description of requirements for permitted and interim status, state requirements are equivalent to those of the Federal program.

D. Correction to Listing of Commercial Chemical Products and Appendix VIII Constituents: 51 FR 28296, 8-6-1986 (Checklist 29, also refer to Checklist 46)

Arkansas has adopted the provisions of this federal revision; state requirements are equivalent to those of the Federal program.

E. Revised Manual SW-846; Amended Incorporation by Reference: 52 FR 8072 3-16-1987 (Checklist 35)

Arkansas has adopted the provisions of this federal revision; state requirements are equivalent to those of the Federal program.

F. Closure/Post-Closure Care for Interim Status Surface Impoundments: 52 FR 8704, 3-19-1987 (Checklist 36)

Arkansas has adopted the provisions of this federal revision; state requirements are equivalent to those of the Federal program.

G. Definition of Solid Waste; Technical Corrections: 52 FR 21306, 6-5-1987 (Checklist 37)

Arkansas has adopted the provisions of this federal revision; state requirements are equivalent to those of the Federal program.

H. Amendments to Part B Information Requirements for Land Disposal Facilities: 52 FR 23447, 6-22-1987; 52 FR 33936, 9-9-1987 (Checklist 38)

Arkansas has adopted the provisions of this federal revision; state requirements are equivalent to those of the Federal program.

V. Non-HSWA Cluster IV

(July 1, 1987 through June 30, 1988)

A. List (Phase 1) of Hazardous Constituents for Groundwater Monitoring: 52 FR 25942, 7-9-1987 (Checklist 40).

Arkansas has adopted the Federal rules at 40 CFR 264.98 and 264.99 requiring groundwater monitoring and analysis for contaminants specified at Appendix IX, Part 264 and defined site specific contaminants at all land based hazardous waste treatment, storage, and disposal facilities. State provisions are equivalent to the Federal standards.

B. Identification and Listing of Hazardous Waste (Container/Inner Liner Correction): 52 FR 26012, 7-10-1987 (Checklist 41).

Arkansas has adopted the Federal rule listing additional hazardous wastes as listed in Revision Checklist 41. State provisions are equivalent to the Federal standards.

C. Liability Requirements for Hazardous Waste Facilities, Corporate Guarantee: 52 FR 44314, 11-18-1987 (Checklist 43 also refer to Checklist 27).

Arkansas has adopted the Federal rules at 40 CFR 264.147, 264.151, and 265.147 allowing qualified companies which treat, store, or dispose of hazardous wastes to use a corporate guarantee to satisfy liability insurance requirements. State provisions are equivalent to the Federal standards.

D. Hazardous Waste Miscellaneous Units: 52 FR 46946, 12-10-1987; 54 FR 615, 1-9-1989 (Checklists 45 and 59).

Arkansas has adopted miscellaneous Federal rule changes concerning 1) recording and maintenance of monitoring, testing, and analytical data and corrective action in facility operating records; 2) compliance with 264 Subpart F for releases from SWMUs; 3) compliance with closure and post-closure financial responsibility requirements, 4) operating records for miscellaneous hazardous waste units; and 5) general application requirements for miscellaneous hazardous waste units as listed in Revision Checklist 45. State provisions are equivalent to the Federal standards.

E. Technical Corrections, Identification and Listing of Hazardous Waste: 51 FR 28296, 8-6-1986; 53 FR 13382, 4-22-1988 (Checklists 29 and 46).

Arkansas has adopted the Federal rule listing additional hazardous wastes as listed in Revision Checklists 29 and 46. State provisions are equivalent to the Federal standards.

VI. Non-HSWA Cluster V

(July 1, 1988 through June 30, 1989)

A. Identification and Listing of Hazardous Wastes: (Checklists 47, 49, 53, 56, and 57).

These provisions have been adopted in their entirety, in Regulation No. 23 (Hazardous Waste Management). This Regulation is currently in force and the wastes listed in the above checklists are considered hazardous in Arkansas. Arkansas has declined to impose different or more stringent requirements than those modified by Checklist 49. State requirements and listings of hazardous wastes are, in total, broader in scope than the Federal requirements. In these specific instances, state requirements are equivalent to the Federal program.

B. Standards for Hazardous Waste Storage and Treatment Tank Systems: 53 FR 34079, 9-2-1988 (Checklist 52).

This revision deals only with the correction of typographic errors in 40 CFR. Changed portions of 40 CFR have been incorporated in Regulation No. 23 subsequent to the date of this rule, and state requirements are equivalent to the Federal program.

C. Permit Modifications for Hazardous Waste Management Facilities: 53 FR 37912, 9-28-1988; 53 FR 41649, 10-24-1988 (Checklist 54).

Arkansas has adopted 40 CFR 124.5 by reference. State requirements here are equivalent to the Federal program.

Arkansas has adopted 40 CFR 264.112 and 265.112, but has also established analogous provisions to specific requirements in Regulation No. 23 § 264.112 and § 265.112. Regulation No. 23 incorporates 40 CFR 270 in its entirety, with the exception of selected definitions in 270.2. The remaining revisions of Checklist 54 have been adopted and are in force at state level at this time.

D. Statistical Methods for Evaluating Groundwater Monitoring Data from Hazardous Waste Management Facilities: 53 FR 39720, 10-11-1988 (Checklist 55).

Arkansas has adopted revised Federal standards prescribing statistical methods, sampling procedures, and performance standards for groundwater monitoring.

E. Hazardous Waste Miscellaneous Units; Standards Applicable to Owners and Operators: 54 FR 615, 1-9-1989 (Checklist 59, also refer to Checklist 45)

Arkansas has adopted the provisions of this federal revision; state requirements are equivalent to those of the Federal program.

F. Amendment to Requirements for Hazardous Waste Incinerator Permits: 54 FR 4286, 1-30-1989 (Checklist 60)

Arkansas has adopted Federal provisions requiring incinerators to conduct and successfully complete a trial burn, and submit supplemental data as required before a permit can be issued for that facility.

G. Changes to Interim Status Facilities for Hazardous Waste Management Permits; Modifications of Hazardous Waste Management Permits; Procedures for Post-Closure Permitting: 54 FR 9596, 3-7-1989 (Checklist 61)

Arkansas has adopted Federal provisions for lifting the reconstruction limit for changes to certain interim status units so as to allow compliance with federal, state, or local requirements and as necessary to allow continued handling of newly listed or identified hazardous wastes, or as required in accordance with an approved closure plan or pursuant to a corrective action order. Provisions at 40 CFR 124.1 and 124.15 are not incorporated, equivalent state requirements are found at ADPC&E Regulation No. 8. Provisions at 270.42 classifying permit modifications necessary to comply with the Land Disposal Restrictions have been adopted.

VII. Non-HSWA Cluster VI (July 1, 1989 through June 30, 1990)

A. Delay of Closure Period for Hazardous Waste Management Facilities: 54 FR 33376, 8-14-1989 (Checklist 64)

Federal provisions allowing amendments of portions of the closure plan for certain types of hazardous waste facilities have been adopted.

B. Mining Waste Exclusion I: 54 FR 36592, 9-1-1989 (Checklist 65)

Federal provisions excluding specified mineral processing wastes from regulation as hazardous wastes (the Bevill exclusion) have been adopted.

C. Testing and Monitoring Activities: 54 FR 40260, 9-29-1989 (Checklist 67)

Arkansas has adopted the most recent revision of SW-846 for hazardous waste sampling and analytical procedures.

D. Changes to 40 CFR Part 124 Not Accounted for by Present Checklists: 55 FR 246, 1-4-1990 (Checklist 70)

Miscellaneous changes to 40 CFR 124 have been incorporated by reference as applicable. Where specific portions have not been incorporated in Regulation No. 23, analogous and equivalent provisions are found in ADPC&E Regulation No. 8.

E. Financial Responsibility; Settlement Agreement; Correction (Checklist 24)

Arkansas has adopted this technical correction to a previously corrected rule.

F. Mining Waste Exclusion II: 55 FR 2322, 1-23-1990 (Checklist 71)

Federal provisions excluding specified mineral processing wastes from regulation as hazardous wastes (the Bevill exclusion) have been adopted.

G. Modifications of F019 Listing: 55 FR 5340, 2-14-1990 (Checklist 72)

Arkansas has adopted the Federal provision deleting these sludges from the list of hazardous wastes from specific sources.

H. Testing and Monitoring Activities; Technical

Corrections: 55 FR 8948, 3-9-1990 (Checklist 73)

Arkansas has adopted the most recent revision of SW-846 for hazardous waste sampling and analytical procedures.

I. Criteria for Listing Toxic Wastes; Technical Amendment: 55 FR 18496, 5-2-1990 (Checklist 76)

Arkansas has adopted this technical correction to a previously corrected rule.

J. Land Disposal Restrictions for the Third Third Scheduled Wastes: 55 FR 22520, 6-1-1990 (Checklist 78)

Arkansas has adopted the provisions of this federal rule; state requirements are equivalent to those of the Federal program.

VIII. HSWA Cluster I

(November 8, 1984 through June 30, 1987)

A. Surface Impoundment Requirements (HSWA § 3005(j) and § 3004(d), no checklist)

Arkansas has adopted the provisions of this federal rule; state requirements are equivalent to those of the Federal program.

B. Exceptions to the Burning and Blending of Hazardous Wastes (HSWA § 3004(q)(2)(A) and § 3004(r)(2)&(3), no checklist)

Arkansas has adopted the provisions of this federal rule; state requirements are equivalent to those of the Federal program.

C. Hazardous and Used Oil Fuel Criminal Penalties (HSWA § 3006(h), § 3008(d) and § 3014; no checklist)

Arkansas has adopted the provisions of this federal rule; state requirements are equivalent to those of the Federal program.

D. Direct Action Against Insurers (RCRA § 3004(t), no checklist)

Though not incorporated into the Hazardous Waste Management Code, State law allows the Attorney General to take action as necessary against responsible and potentially responsible parties to recover costs of site remediation and cleanup conducted under the Emergency Response and Remedial Action Trust Fund Acts

(Ark. Code Ann. 8-7-415, 8-7-514, 8-7-522). This includes direct action against the insurer or guarantor of a facility owner/operator's financial responsibilities if the owner/operator is in bankruptcy reorganization.

E. Dioxin Waste Listing and Management Standards: 50 FR 1978, 1-14-1985 (Checklist 14)

Arkansas identifies and lists dioxin wastes as hazardous wastes controlled under Reg. 23 § 261. Management and permitting standards for facilities managing dioxin wastes and applicable prohibitions are equivalent to Federal standards in 40 CFR Parts 264, 265, and 270.

F. Paint Filter Test: 50 FR 18370, 4-30-1985 (Checklist 16, also refer to Checklist 25)

Arkansas has adopted the use of the paint filter test to determine the absence or presence of free liquids in containerized and bulk wastes. State provisions are equivalent to the Federal standards.

G. Sharing of Information with the Agency for Toxic Substances and Diseases Registry ((HSWA § 3019(b), no checklist)

Arkansas has adopted the provisions of this federal rule; state requirements are equivalent to those of the Federal program.

H. HSWA Codification Rule: 50 FR 28702, 7-15-1985 (Checklist 17, also refer to Checklist 44)

With the exception of the provisions for delisting, Arkansas has adopted the provisions of this federal rule as discussed immediately below.

I. Small Quantity Generators: 50 FR 28702, 7-15-1985 (Checklist 17A, also refer to Checklist 23)

Arkansas' definition of and prescribed responsibilities of small quantity generators are equivalent to Federal provisions. Since small quantity generators comprise a significant percentage of the State's hazardous waste universe, Arkansas does not exempt small quantity generators from requirements to notify the Department and EPA of hazardous waste activity or to manifest and ship hazardous wastes only to permitted treatment, storage, or disposal facilities. The State requires all small quantity generators to submit an annual hazardous waste activity report equivalent to the requirements of 40 CFR 262.41. State provisions for small quantity and conditionally exempt generators are broader in scope than the Federal requirements.

J. Delisting: 50 FR 28702, 7-15-1985 (Checklist 17B)

Arkansas has not adopted a separate, State mechanism for the delisting of hazardous wastes, and the State does not request authorization for the provisions of Checklist 17B. Delisting wastes in Arkansas is a two-step procedure. A person who wishes to seek a delisting for a specific waste stream must first seek to have the waste delisted with Headquarters, U.S. EPA, in Washington, DC [Note: EPA Headquarters delegates federal delisting decisions to the EPA Regional offices. An Arkansas petitioner should submit his initial delisting petition to the EPA Region VI offices in Dallas, Texas.]. Once EPA has approved the delisting and published it as a final rule in the *Federal Register*, the Department will initiate rulemaking to review, provide public notice and an opportunity to comment, and adopt the EPA delisting decision in Regulation No. 23, Section 261, Appendix IX. The delisting would then be effective within the State of Arkansas on the effective date of the Commission's adoption and incorporation of the federal delisting decision in Regulation No. 23.

K. Household Waste: 50 FR 28702, 7-15-1985 (Checklist 17C)

Arkansas has adopted and incorporated by reference the Federal rule defining waste so as not to exclude household wastes other than those excluded in 40 CFR 261.4(b)(1). State provisions are equivalent to the Federal standards.

L. Waste Minimization: 50 FR 28702, 7-15-1985 (Checklist 17D, also refer to Checklist 32)

Anyone who generates a hazardous waste in the State of Arkansas is required to submit an annual report under provisions of ADPC&E Regulation No. 23 § 262.41, containing a description of the efforts undertaken in the preceding year regarding waste minimization, as well as a description of any change in volume or toxicity of hazardous wastes generated. Generators must submit annual reports and manifest certifications regarding efforts taken to minimize the amounts and toxicity of wastes. Each individual manifest requires the facility manager to certify that he has established a waste minimization program and is taking necessary efforts to reduce the volume and/or toxicity of the waste generated.

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

residues from waste treatment must also certify their waste minimization efforts on individual manifests and in the state annual hazardous waste reports. Federal regulations at 40 CFR 264.70, 264.73 and 270.30(j)(2) are incorporated in the state hazardous waste regulations, and require the TSD facility to provide the Director with satisfactory documentation that any resulting wastes have been neutralized to the extent possible by technology or have no other approved means of treatment.

Arkansas's hazardous waste activity and Remedial Action Trust Fund contribution fees are based upon a sliding scale, increasing with the total amount of wastes generated by a given generator or facility. These fees provide an additional, financial incentive to reduce the amounts of wastes generated.

M. Location Standards for Salt Domes, Salt Beds, Underground Mines and Caves: 50 FR 28702, 7-15-1985 (Checklist 17E)

Arkansas prohibits the land disposal of hazardous wastes as described in 40 CFR 264.18 and 265.18, including salt domes, salt beds, underground mines, and caves, except as authorized by an approved land disposal facility permit. This same authority enables the Department to ban storage of these prohibited hazardous wastes and to regulate air emissions from hazardous waste treatment, storage, and disposal facilities as under RCRA Sections 3004(j) and 3004(n). State provisions are equivalent to the Federal standards.

N. Liquids in Landfills: 50 FR 28702, 7-15-1985 (Checklist 17F, also refer to Checklist 25)

Arkansas prohibits the disposal in hazardous waste landfills of:

(1) Bulk liquids, semisolids and sludges unless, before disposal, such waste is treated or stabilized into cement-like material.

(2) Containers holding free liquids unless all free-standing liquid has been removed or treated or stabilized into cement-like material; or the container is very small, such as an ampule, or is a lab pack as defined in 264.316 or 265.316, as applicable and is disposed of in accordance with 264.316 or 265.316 as applicable.

(3) Municipal refuse which is not hazardous waste.

(4) Ignitable wastes in containers, unless all free liquids therein have been removed or treated and stabilized into cement-like material.

State provisions are more restrictive than the Federal standards, in that no free liquids of any kind may be placed in a Subtitle C landfill.

O. Dust Suppression: 50 FR 28702, 7-15-1985 (Checklist 17G)

Arkansas has adopted the Federal rule prohibiting the use of used or waste oil containing a hazardous waste for dust suppression. State provisions are equivalent to the Federal standards.

P. Double Liners: 50 FR 28702, 7-15-1985 (Checklist 17H)

Arkansas has adopted the Federal rule requiring a double liner, leachate collection system, and groundwater monitoring for all hazardous waste surface impoundments, waste piles, and landfills. State provisions are equivalent to the Federal standards.

Q. Groundwater Monitoring: 50 FR 28702, 7-15-1985 (Checklist 17I)

Arkansas has adopted Federal requirements at 40 CFR 264 for groundwater monitoring installation and surveillance at all hazardous waste surface impoundments, waste piles, land treatment units, and landfills. State provisions are equivalent to the Federal standards.

R. Cement Kilns: 50 FR 28702, 7-15-1985 (Checklist 17J)

Arkansas prohibits the burning of fuels containing hazardous wastes in cement kilns as specified at 40 CFR 266.31, 266.34, and 261.6, and 261.33. State provisions are equivalent to the Federal standards.

S. Fuel Labeling: 50 FR 28702, 7-15-1985 (Checklist 17K, also refer to Checklist 19)

Arkansas has adopted the Federal rule at 40 CFR 266.34 and 261.31 regulating the production, marketing, and distribution of fuels containing hazardous waste(s). State provisions are equivalent to the Federal standards.

T. Corrective Action: 50 FR 28702, 7-15-1985 (17L)

Arkansas has adopted 40 CFR 264.100 and 264.101 in Regulation No. 23. State provisions and requirements for corrective action are broader in scope than Federal requirements. In addition to the federal authority incorporated in Reg. 23 Sections 264.100 and 264.101, ADPC&E may require corrective action under State authority pursuant to the Remedial Action Trust Fund Act (RATFA) (Act 479 of 1985, as amended, A.C.A. 8-7-501 *et seq.*).

Corrective action under state authority pursuant to RATFA is not limited to listed RCRA hazardous wastes, but applies to all "hazardous substances" as defined by RATFA, e.g.:

"as of March 21, 1985, any substance designated pursuant to Section 311(b)(2)(A) of the Federal Water Pollution Control Act (Public Law 92-500); any element, compound,

mixture, solution, or substance designated pursuant to Section 102 of Title I of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Public Law 96-510); any hazardous waste, including polychlorinated biphenyls (PCB's), as defined by the Arkansas Hazardous Waste Management Act, as amended, Section 8-7-201 *et seq.*, and the regulations promulgated thereunder; any toxic pollutant listed under Section 307(a) of the Federal Water Pollution Control Act; any hazardous air pollutant listed under Section 112 of the federal Clean Air Act; and any hazardous chemical substance or mixture regulated under Section 7 of the federal Toxic Substances Control Act, and any other substance or pollutant designated by regulations of the Commission promulgated under this subchapter." (Source: Remedial Action Trust Fund Act, A.C.A. 8-7-503(8))

RATFA additionally authorizes the implementation of any corrective or remedial action measures necessary to investigate, control, prevent, abate, treat, or contain any releases or threatened releases of hazardous substances from a site or facility, without regard to the actual facility boundary. Implementation of these corrective and remedial actions may be directed by means of an administrative or judicial order, or as a condition of permitting.

Arkansas's HSWA authorization, at 56 FR 57595, includes authorization for on-site contamination requiring corrective action (RCRA Revision Checklist 17L), permit applications requiring corrective action (RCRA §3004, Revision Checklist 44A), corrective action beyond the facility boundaries (RCRA §3004(v), Revision Checklist 44B), and corrective action for injection wells (RCRA §3004(u), Revision Checklist 44C).

Scope of Corrective Action

To better understand the scope of the corrective action requirements, one must understand its key terms.

1. *Solid waste management units (SWMUs)* are waste management units from which hazardous wastes or constituents may migrate, even if the unit was not intended for the management of hazardous waste. Additionally, any areas that become contaminated as a result of routine and systematic releases of wastes are SWMUs (e.g., spill areas).

2) *Regulated units* are a subset of all SWMUs. A regulated unit is any surface impoundment, waste pile, land treatment unit, or landfill that received waste after July 26, 1982.

3) *Hazardous constituents* are any substances listed in Reg. 23 Section 261, Appendix VIII.

The scope of the corrective action process for regulated units at permitted facilities can vary somewhat from that required at other solid waste management units at permitted or interim status

facilities. Releases to ground water from regulated units are addressed under Reg. 23 Section 264, Subsection F. RCRA Sections 3004(u) and (v) of RCRA (adopted in Reg 23 § 264.101) require corrective action for releases of hazardous wastes or constituents from any SWMU at a TSDf that is seeking or subject to a RCRA permit. The Arkansas Remedial Action Trust Fund Act authorizes the Department to impose corrective action requirements for releases that have migrated beyond the facility boundary, and further authorizes ADPC&E to require corrective action or other necessary measures through an enforcement order, whenever there is or has been a release of hazardous waste or constituents from a RCRA facility.

ADPC&E can require permitted facilities with releases from regulated units to:

- 1) Take corrective action only on those releases to the uppermost aquifer (under Reg. 23 Section 264 Subsection F), or
- 2) Clean up any other contaminated media (under Sections 3004(u) and (v) of RCRA and RATFA).

This decision is made by the Department on a case-by-case basis, taking into account the nature and magnitude of the release.

Corrective Action Components

The corrective action process has four main components. Each component comprises a number of steps. The number of steps required and the complexity of corrective action permit conditions or other enforcement actions may vary depending on the extent and severity of releases of hazardous waste at a TSDf. The decision on which steps to include is made on a facility-by-facility basis. ADPC&E may also require that facilities take interim corrective measures whenever necessary to protect human health and the environment.

RCRA Facility Assessment (RFA)

Release determinations for all environmental media from SWMUs (i.e., soil, ground water, subsurface gas, air, or surface water) will be made by the regulatory agency primarily through the RCRA Facility Assessment (RFA) process. The Department performs an RFA for each facility seeking a RCRA permit to determine if there are continuing releases of concern. The major objectives of the RFA are to:

- Identify SWMUs and collect existing information on contaminant releases, and
- Identify releases or suspected releases needing further investigation.

The RFA begins with a preliminary but fairly comprehensive review of pertinent existing information on the facility. If necessary, the review is followed by a visual site inspection to verify

information obtained in the preliminary review and to gather information needed to develop a sampling plan. A sampling visit is subsequently performed, if necessary, to obtain appropriate samples for making release determinations.

The findings of the RFA will result in one or more of the following actions:

- No further action under the RCRA corrective action program is required at this time, since no evidence of a release(s) or of a suspected release(s) was identified
- A RCRA Facility Inspection (RFI) by the facility owner or operator is required where the information collected indicates a release(s) or suspected release(s) warrants further investigation
- Interim corrective measures by the owner or operator are required where the regulatory agency believes that expedited action should be taken to protect human health or the environment
- In cases where problems associated with permitted releases are found, the regulatory agency will refer such releases to the appropriate permitting authorities.

RCRA Facility Investigation (RFI)

If the Department determines that a RFI is necessary, this investigation will be required of the owner or operator either under a permit schedule of compliance or under an enforcement order. ADPC&E will apply the appropriate regulatory authority and develop specific conditions in permits or enforcement orders. These conditions will generally be based on results of the RFA and will identify specific units or releases needing further investigation. Such permits or orders may be accompanied by a supporting fact sheet. The RFI can range widely from a small specific activity to a complex multimedia study. In any case, through these conditions, the regulatory agency will direct the owner or operator to investigate releases of concern. The investigation may initially involve verification of a suspected release. If confirmed, further characterization of such releases will be necessary.

The RFI step also includes interpretation by the regulatory agency of release characterization data against established health and environmental criteria to determine whether a Corrective Measures Study (CMS) is necessary. This evaluation is crucial to the corrective action process. The regulatory agency will ensure that data and information collected during the RFI adequately describe the release, and can be used to make decisions regarding the need for a CMS with a high degree of confidence.

Identifying and implementing interim corrective measures may also be conducted during the RFI. If,

in the process of conducting the investigation, a threat or exposure to hazardous constituents is identified, interim corrective measures may be required. Both the owner or operator and the regulatory agency have a continuing responsibility to identify and respond to emergency situations and to define priority situations that warrant interim corrective measures.

Corrective Measures Study (CMS)

If the potential need for corrective measures is identified during the RFI process, the owner or operator is then responsible for performing a Corrective Measures Study (CMS). During this step of the corrective action process, the owner or operator will identify and recommend as appropriate, specific measures that will correct the release.

Information generated during the RFI will be used not only to determine the potential need for corrective measures, but also to aid in the selection and implementation of these measures. While conducting the RFI, the owner or operator is encouraged to collect data (e.g., engineering data such as soil compaction properties or aquifer pumping tests), which may be needed to select and implement corrective measures.

Corrective Measures Implementation (CMI)

Corrective measures implementation includes designing, constructing, operating, maintaining, and monitoring selected corrective measures if the remedy is not properly implemented, ADPC&E will direct the facility to take additional action on a site-specific basis.

HSWA requires that facilities demonstrate financial assurance for corrective action prior to implementation. This ensures that facilities have the necessary funds available to carry out cleanup of the site. EPA has proposed regulations to require financial assurance for corrective action. Under the proposed rule, acceptable financial mechanisms include trust funds, surety bonds, letters of credit, financial tests, and corporate guarantees. Until finalized, the proposed rule is used as guidance to implement the statutory requirement for financial assurance for corrective action.

RCRA Corrective Action vs. RATFA Response

The Arkansas Remedial Action Trust Fund Act (RATFA) authorizes ADPC&E to require corrective action (under an enforcement order or as part of a permit) whenever there is, or has been, a release of hazardous waste or constituents. The statute provides similar corrective action authority in response to releases at interim status facilities. Further, RATFA allows PC&E to require corrective

action beyond the facility boundary. PC&E interprets the term "corrective action" to cover the full range of possible actions, from studies and interim measures to full cleanups. Anyone who violates the corrective action order can be fined up to \$25,000 per day of noncompliance and runs the risk of having interim status suspended or revoked.

On the whole, the RATFA response authority has a broader reach than RCRA's corrective action. The RCRA provisions apply only to RCRA-regulated facilities. RATFA, on the other hand, can be utilized to require response work by any potentially responsible party (PRP) at any place where there is a release or potential release. Moreover, the RATFA response authorities go beyond requiring responsible parties to perform cleanup work. Under RATFA, governmental and private parties who are not PRPs can perform such work and receive Fund financing. The Department can then seek reimbursement, penalties, or damages up to triple the cost of the cleanup from PRPs. Additionally, where RCRA corrective action is restricted to only listed and characteristic hazardous wastes, the Department's corrective action authority under RATFA applies to the full scope of hazardous substances, including petroleum and petroleum-based products.

Imminent Hazards Under RATFA and RCRA

Both RATFA and the Hazardous Waste Management Act contain provisions that allow APC&E to require persons contributing to an imminent hazard to take the necessary actions to clean up releases. Under A.C.A. § 8-7-508, PC&E has the authority to abate an imminent or substantial danger to public health or the environment that results from a hazardous substance release. In an enforcement action, the RATFA and RCRA program imminent hazard provisions may be used in tandem to strengthen the government's case.

U. Pre-Construction Ban 50 FR 28702, 7-15-1985 (Checklist 17M)

Arkansas has adopted the Federal rule at 40 CFR 270.10 allowing an approved TSCA facility to incinerate PCBs without first obtaining a RCRA permit, provided that the facility subsequently applies for a RCRA permit. State provisions are equivalent to the Federal standards.

V. Permit Life: 50 FR 28702, 7-15-1985 (Checklist 17N)

Arkansas's regulations provide for a permit term not to exceed ten (10) years, and additionally require review of land disposal permits every five years in accordance with 40 CFR 270.41 and 270.50. The Department has

authority for renewal as well as options to renew or modify the permit at any time during its term. State provisions are equivalent to the Federal standards.

W. Omnibus Provision: 50 FR 28702, 7-15-1985 (Checklist 17O)

Arkansas requires that permits contain any provision necessary to protect human health and the environment in addition to any other regulatory requirement. In addition, Arkansas may require pursuant to Reg. 23 § 270.34 that, prior to operation, new commercial TSD facilities conduct a survey to establish baseline health data. State provisions are thus more stringent than the Federal requirements.

X. Interim Status: 50 FR 28702, 7-15-1985 (Checklist 17P)

Arkansas has adopted Federal rules terminating interim status 12 months after the date a facility first becomes subject to a particular permitting requirement unless a Part B application, certification of compliance with groundwater monitoring, and documentation of financial assurance are submitted by that date. State provisions are equivalent to the Federal standards.

Y. Research and Development Permits: 50 FR 28702, 7-15-1985 (Checklist 17Q)

Arkansas has adopted the Federal Rule at 40 CFR 270.65 allowing the issuance of a one-year research development, and demonstration permit (renewable 3 times) for any hazardous waste treatment facility which proposes an innovative and experimental hazardous waste treatment technology or process not yet regulated as indicated in Revision Checklist 17Q. The proposed facility must meet RCRA's financial responsibility and public participation requirements. ADPC&E retains authority to terminate experimental activity if necessary to protect health or the environment. State provisions are equivalent to the Federal standards.

Z. Hazardous Waste Exports: 50 FR 28702, 7-15-1985 (Checklist 17R, also refer to Checklist 31)

Arkansas requires generators and transporters to notify ADPC&E and EPA of hazardous waste shipments destined for export outside the United States. State provisions are equivalent to the Federal standards.

AA. Exposure Information: 50 FR 28702, 7-15-1985 (Checklist 17S)

Arkansas has adopted the Federal rule requiring permit applicants for hazardous waste landfills and/or surface

impoundments to submit exposure information as required by Reg. 23 § 270.10(j). State provisions are equivalent to the Federal standards.

AB. Listing of TDI, TDA, and DNT: 50 FR 42936, 10-23-1985 (Checklist 18)

Arkansas has incorporated by reference the Federal rule adding these substances to the list of regulated hazardous wastes. State provisions are equivalent to the Federal requirements.

AC. Burning of Waste Fuel and Oil in Boilers and Industrial Furnaces: 50 FR 49164, 11-29-1985; 52 FR 11819, 4-13-87 (Checklist 19)

Arkansas identifies these fuels as solid wastes, and has adopted the Federal rules establishing special management standards for these fuels. State provisions are equivalent to the Federal standards.

AD. Spent Solvents Listing: 50 FR 53315, 12-31-1985, 51 FR 2702, 1-21-1986 (Checklist 20)

Arkansas has adopted the Federal rule adding these substances to the list of regulated hazardous wastes. State provisions are equivalent to the Federal standards.

AE. EDB Waste Listing: 51 FR 5327, 2-13-1986 (Checklist 21)

Arkansas has adopted the Federal rule adding these substances to the list of regulated hazardous wastes. State provisions are equivalent to the Federal standards.

AF. Four Spent Solvents Listing: 51 FR 6537, 2-25-1986 (Checklist 22)

Arkansas has adopted the Federal rule adding these substances to the list of regulated hazardous wastes. State provisions are equivalent to the Federal standards.

AG. Small Quantity Generators: 51 FR 10146, 3-24-1986 (Checklist 23, also refer to Checklists 42 and 47)

Corrections to Federal requirements for small quantity generators have been adopted. State provisions are broader in scope than Federal requirements as Arkansas has no quantity exemption for small quantity generators. (See also the remarks pertaining to Checklist 17A.)

AH. Paint Filter Test; Correction: 51 FR 19176, 5-28-1986 (Checklist 25)

Corrections to Federal requirements for the paint filter test have been adopted; State provisions are equivalent

to Federal requirements.

AI. Standards for Hazardous Waste Storage and Treatment Tank Systems: 51 FR 25422, 7-14-86, 51 FR 29430, 8-15-1986 (Checklist 28, also refer to Checklist 52)

Arkansas has adopted the Federal standards regarding companies which generate, treat, or store hazardous waste in tanks.

AJ. Biennial Reports; Correction: 51 FR 28556, 8-8-1986 (Checklist 30)

Corrections to Federal biennial reporting requirements have been incorporated by reference; State provisions are more stringent than Federal requirements in that the state requires an annual hazardous waste activity report, and requires reporting from small quantity generators.

AK. Exports of Hazardous Waste: 51 FR 28664, 8-8-1986 (Checklist 31, also refer to Checklist 40)

Arkansas requires generators and transporters to notify ADPC&E and EPA of hazardous waste shipments destined for export outside the United States. State provisions are equivalent to the Federal standards.

AL. Standards for Generators - Waste Minimization Certifications: 51 FR 35190, 10-1-1986 (Checklist 32)

State regulations require generators to complete a certification of efforts to minimize the quantity and toxicity of wastes generated for each manifested shipment of hazardous wastes. State provisions are equivalent to the Federal standards.

AM. Listing of EBDC: 51 FR 37725, 10-24-1986 (Checklist 33)

Arkansas has incorporated by reference the Federal rule adding these substances to the list of regulated hazardous wastes. State provisions are equivalent to the Federal standards.

AN. Land Disposal Restrictions (Solvents and Dioxins): 51 FR 40572, 11-7-1986; 52 FR 21010, 6-4-1987 (Checklist 34; also refer to Checklists 39 and 50)

Arkansas has adopted disposal restrictions and treatment standards for the list of wastes described at Checklist 34. Arkansas has not adopted the Federal exemption at 264.314(e), allowing certain liquids in containers to be landfilled; but requires that all containers be crushed, all liquids drained, and treated and converted to a non-leaching, cement-like material.

State provisions are thus more stringent than the equivalent Federal standards.

IX. HSWA Cluster II

(July 1, 1987 through June 30, 1990)

A. California List Waste Restrictions: 52 FR 25760, 7-8-1987 (Checklist 39, also refer to Checklists 34 and 50)

Arkansas has adopted federal regulations restricting the disposal of specified "California list" wastes, including liquid hazardous waste containing polychlorinated biphenyls above specified concentrations, and hazardous wastes containing halogenated organic compounds above specified concentrations as specified in Revision Checklist 39. State provisions are equivalent to and no less stringent than Federal requirements.

B. Exception Reporting for Small Quantity Generators of Hazardous Waste: 52 FR 35894, 9-23-1987 (Checklist 42, also refer to Checklist 23)

Arkansas requires that generators of between 100-1000 kg per month file an exception report in cases where the generator has not received confirmation of delivery of his hazardous wastes to a permitted TSD as specified in Revision Checklist 42. State provisions are broader in scope in comparison to and no less stringent than Federal requirements.

C. HSWA Codification Rule 2: 52 FR 45788, 12-1-1987 (Checklist 44, also refer to Checklist 17)

Arkansas has adopted the provisions of this federal rule as further discussed below:

D. Permit Application Requirements Regarding Corrective Action: 52 FR 45788, 12-1-1987 (Checklist 44A)

Arkansas requires that owners and operators of facilities seeking RCRA permits provide descriptive information concerning all affected solid waste management units and all available information pertaining to any releases from these units. State provisions are equivalent to and no less stringent than Federal requirements.

E. Corrective Action Beyond the Facility Boundary: 52 FR 45788, 12-1-1987 (Checklist 44B)

The Remedial Action Trust Fund, Arkansas's authority to conduct corrective action, does not distinguish

between on-site and off-site contamination. Arkansas can thus easily require that owners and operators of hazardous waste TSDFs institute corrective action beyond the facility boundary to protect human health and the environment, unless the owner/ operators are denied access to these adjacent lands despite their best efforts. State provisions are equivalent to and no less stringent than Federal requirements.

F. Corrective Action for Injection Wells: 52 FR 45788, 12-1-1987 (Checklist 44C)

Arkansas has adopted corrective action requirements for underground deep injection wells as specified in Revision Checklist 44C. State provisions are equivalent to and no less stringent than Federal requirements.

G. Permit Modification: 52 FR 45788, 12-1-1987 (Checklist 44D)

Arkansas has adopted federal regulations allowing the Department or EPA to initiate modifications to a permit, without first receiving a request from the permit holder, in cases where statutory changes or amended regulatory standards affect the basis of the permit. State provisions are equivalent to and no less stringent than Federal requirements.

H. Permit As A Shield Provision: 52 FR 45788, 12-1-1987 (Checklist 44E)

Arkansas requires that permittees comply with new requirements imposed by the land disposal restrictions under Part 268 even if there are contrary permit conditions. State provisions are equivalent to and no less stringent than Federal requirements.

I. Permit Conditions to Protect Human Health and the Environment: 52 FR 45788, 12-1-1987 (Checklist 44F)

Arkansas requires information from RCRA permit applicants concerning permit conditions necessary to protect human health and the environment. Additionally, the state may require that a permit applicant conduct a background health study pursuant to Reg. 23 § 270.34 prior to siting a TSD facility. State provisions are more stringent than Federal requirements.

J. Post-Closure Permits: 52 FR 45788, 12-1-1987 (Checklist 44G)

Arkansas requires a post-closure permit for any landfill, surface impoundment, waste pile, and/or land treatment

unit receiving hazardous waste after July 26, 1982. State provisions are equivalent to and no less stringent than Federal requirements.

K. Identification and Listing of Hazardous Waste; Technical Correction: 53 FR 27162, 7-19-1988 (Checklist 47. Also refer to Checklist 23)

Arkansas has adopted the provisions of this federal rule; state requirements are equivalent to those of the Federal program.

L. Farmer Exemptions; Technical Corrections: 53 FR 27164, 7-19-1988 (Checklist 48, also refer to Checklist 31)

Arkansas has adopted the provisions of this federal rule; state requirements are equivalent to those of the Federal program.

M. Land Disposal Restrictions - First Third Scheduled Wastes: 53 FR 31138, 8-17-1988; 54 FR 8264, 2-27-1989 (Checklist 50, also refer to Checklist 62)

Arkansas has adopted the provisions of this federal rule; state requirements are equivalent to those of the Federal program.

N. Standards for Hazardous Waste Storage and Treatment Tank Systems: 53 FR 34079, 9-2-1988 (Checklist 52, also refer to Checklist 28)

Arkansas has adopted the Federal standards regarding companies which generate, treat, or store hazardous waste in tanks.

O. Land Disposal Restrictions - First Third Scheduled Wastes: 54 FR 18836, 5-2-1989 (Checklist 62, also refer to Checklist 50)

Arkansas has adopted the provisions of this federal rule; state requirements are equivalent to those of the Federal program.

P. Land Disposal Restrictions - Second Third Scheduled Wastes: 54 FR 26594, 6-23-1989 (Checklist 63)

Arkansas has adopted Federal disposal restrictions and treatment standards for the "Second Third" list of wastes described at Checklist 63, however the total prohibition of liquids in Subtitle C landfills remains in effect.

Q. Land Disposal Restrictions - Correction to the First Third Wastes 54 FR 36967, 9-6-1989; 55 FR 23935, 6-13-1990 (Checklist 66)

Arkansas has adopted the provisions of this federal rule; state requirements are equivalent to those of the Federal program.

R. Reportable Quantity Adjustment Methyl Bromide Production Wastes 54 FR 41402, 10-6-1989 (Checklist 68)

Arkansas has adopted Federal provisions adding K131 and K132 wastes from the production of methyl bromide to the lists of regulated hazardous wastes.

S. Reportable Quantity Adjustment 54 FR 50968, 12-11-1989 (Checklist 69)

Arkansas has adopted Federal provisions adding K131 and K132 wastes from the production of methyl bromide to the lists of regulated hazardous wastes.

T. Toxicity Characteristic Revisions 55 FR 11798, 3-29-1990; 55 FR 26986, 6-29-1990 (Checklist 74)

Arkansas has adopted the Toxicity Characteristic standard and the toxicity characteristic leaching procedure (TCLP) in replacement of the Extraction Procedure (EP) test for the toxic characteristic of hazardous wastes, and has adopted the Federal list adding 25 organic chemicals to the list of toxic wastes of concern, as well as the federal regulatory concentrations for each of these wastes.

U. Listing of 1,1-Dimethylhydrazine Production Wastes 55 FR 18496, 5-2-1990 (Checklist 75)

Arkansas has adopted Federal provisions adding these wastes to the list of hazardous wastes from specific sources.

V. HSWA Codification Rule, Double Liners; Correction 55 FR 19262, 5-9-1990 (Checklist 77)

Arkansas has adopted this technical amendment to the previously adopted rule.

W. Land Disposal Restrictions - Third Third Scheduled Wastes 55 FR 22520, 6-1-1990 (Checklist 78)

Arkansas has adopted Federal disposal restrictions and treatment standards for the "Third Third" list of wastes described at Checklist 78; however, the State rule which totally prohibits any free liquids in Subtitle C landfills remains in effect.

X. Organic Air Emission Standards for Process Vents and Equipment Leaks 55 FR 25454, 6-21-1990

(Checklist 79)

Arkansas has adopted by reference the Federal provisions limiting organic air emissions as a class from hazardous waste facilities.

X. RCRA Cluster I
(July 1, 1990 through June 30, 1991)

A. Toxicity Characteristic; Hydrocarbon Recovery Operations 55 FR 40834, 10-5-1990; 56 FR 3978, 2-1-1991; 56 FR 13406, 4-2-1991 (HSWA) (Checklist 80)

Arkansas has adopted the federal rule extending the Toxicity Characteristic rule compliance date for petroleum refinery and bulk plants engaged in hydrocarbon recovery and site remediation activities resulting from the handling of petroleum products. State provisions are equivalent to the federal rule.

B. Petroleum Refinery Primary and Secondary Oil/Water/Solids Separation Sludge Listings (F037 and F038) 55 FR 46354, 11-2-1990; 55 FR 51707, 12-17-1990 (Checklist 81)

Arkansas has adopted the federal rule adding F037 and F038 wastes to the list of hazardous wastes from non-specific sources under 40 CFR 261.31, and subsequent corrections to this rule. State provisions are equivalent to the federal requirements.

C. Wood Preserving Listings (HSWA/non-HSWA) 55 FR 50450, 12-6-1990 (Checklist 82)

Arkansas has adopted the federal rule adding three categories of hazardous wastes (F032, F034, and F035) from wood preservation operations to the list of hazardous wastes. This listing includes wastewaters, process residuals, preservative drippage, and spent preservatives from facilities that currently or have previously used chlorophenolic, creosote, or chromium/arsenic preservative formulations. The state has adopted the federal standards for permitting and interim status for drip pads used to collect treated wood drippage, including the requirements for drip pad design and operations, inspection, and closure. The state has also adopted the June 13, 1991 administrative stay for F032, F034, and F035 listings, and extending the effective dates for enforcing the new drip pad management standards to February 6, 1992, for upgrading existing drip pads, and to May 6, 1992, for installing new drip pads. Technical corrections to this rule promulgated on July 1, 1991, have not yet

been adopted, and will be addressed in the revision authorization application for RCRA Cluster II. State provisions for the RCRA Cluster I provisions are equivalent to the federal requirements.

D. Land Disposal Restrictions for Third Third Scheduled Wastes; Technical Amendment 56 FR 3864, 1-31-1991 (Checklist 83)

Arkansas has adopted and incorporated by reference federal revisions and corrections to the Third Third land disposal restriction rule. State provisions are equivalent to the federal requirements.

E. Toxicity Characteristic; Chlorofluorocarbon Refrigerants (HSWA) 56 FR 5910, 2-13-1991 (Checklist 84)

Arkansas has adopted and incorporated by reference the federal rule suspending the Toxicity Characteristic rule for chlorofluorocarbon refrigerants that are recycled and were used as the heat transfer fluid in a refrigeration cycle in totally enclosed heat exchange equipment. These CFC's include CFC-11, CFC-113, and other chlorofluorocarbon refrigerants, including HCFC's. State provisions are equivalent to the federal requirements.

F. Burning of Hazardous Waste in Boilers and Industrial Furnaces (HSWA/non-HSWA) 56 FR 7134, 2-21-1991 (Checklist 85)

Arkansas has adopted the federal rule expanding environmental controls on hazardous waste combustion and regulating air emissions from the burning of hazardous wastes in boilers and industrial furnaces. Emissions of toxic organic compounds, toxic metals, HCl, chlorine gas, and particulate matter are regulated. Owners and operators of boilers and industrial furnaces are subject to the general hazardous waste facility standards applicable to other hazardous waste treatment, storage, and disposal facilities. Hazardous waste storage units at regulated burner facilities are subject to Part 264 permit standards. Halogen acid furnaces are defined as industrial furnaces. State provisions for the RCRA Cluster I provisions are equivalent to the federal requirements.

G. Removal of Strontium Sulfide from the List of Hazardous Waste; Technical Amendment 56 FR 7567, 2-25-1991 (Checklist 86)

Arkansas has adopted the federal correction to this rule. State provisions are equivalent to the federal requirements.

H. Organic Air Emission Standards for Process

Vents and Equipment Leaks; Technical Amendment (HSWA) 56 FR 19290, 4-26-1991 (Checklist 87)

Arkansas has adopted the federal correction to the Organic Air Emissions rule. State provisions are equivalent to the federal requirements.

I. Administrative Stay for K069 Listing (non-HSWA) 56 FR 19951, 5-1-1991 (Checklist 88)

Arkansas has adopted the federal stay on the listing of K069 slurries generated from air pollution control devices intended for capturing acid gases and not dedicated chiefly to controlling particulate air emissions. State provisions are equivalent to the federal requirements.

J. Revision to F037 and F038 Listings (HSWA) 56 FR 21955, 5-13-1991 (Checklist 89)

Arkansas has adopted the provisions of this federal rule; state requirements are equivalent to those of the Federal program.

K. Mining Exclusion III (non-HSWA) 56 FR 27300, 6-13-1991 (Checklist 90)

Arkansas has adopted the federal amendments containing the final regulatory determination for 20 special wastes from oil and mineral processing. State provisions are equivalent to the federal requirements.

L. Administrative Stay for F032, F034, and F035 Listings (HSWA/non-HSWA) 56 FR 27332, 6-13-1991 (Checklist 91)

Arkansas has adopted the provisions of this federal rule; state requirements are equivalent to those of the Federal program.

XI. RCRA Cluster II
(July 1, 1991 through June 30, 1992)

A. Wood Preserving Listing; Technical Correction (HSWA/non-HSWA) 56 FR 30192, July 1, 1991 (Checklist 92)

Arkansas has adopted these technical corrections amending a final rule that added three categories of wastes generated from wood preserving processes (F032, F034, and F035) to the list of hazardous wastes from non-specific sources. Arkansas did not, however adopt the administrative stay concerning the implementation of protective coating on drip pads, and subsequently adopted more stringent standards

requiring that all existing drip pads be upgraded to meet the final federal standards by September 30, 1995, and further, that the use of penetrating sealants is insufficient to meet the requirement for an impermeable coating on the drip pad. State provisions are more stringent than the federal rule.

B. Burning of Hazardous Waste in Boilers and Industrial Furnaces; Corrections and Technical Amendments I (HSWA/non-HSWA) 56 FR 32688, 7-17-1991 (Checklist 94)

Arkansas has adopted the first of many technical amendments to the regulations governing boilers and industrial furnaces which burn hazardous wastes, as well as adding Appendices IX and X to Section 266.

C. Land Disposal Restrictions for Electric Arc Furnace Dust (K061) (HSWA) 56 FR 41164, 8-19-1991 (Checklist 95)

Arkansas has adopted this federal rule revising the land disposal restrictions and finalizing treatment standards for K061 nonwastewaters in the high zinc (≥15% total zinc) subcategory.

D. Burning of Hazardous Waste in Boilers and Industrial Furnaces; Technical Amendments II (HSWA/non-HSWA) 56 FR 42504, 8-27-1991 (Checklist 96)

Arkansas has adopted this technical amendments to the regulations governing boilers and industrial furnaces which burn hazardous wastes, as well as adding Appendices XI and XII to Section 266.

E. Exports of Hazardous Waste; Technical Correction (HSWA) 56 FR 43704, 9-4-1991 (Checklist 97)

Arkansas has adopted this federal amendment requiring that exporters send to EPA's Office of International Activities advance written notice of their plans to export hazardous waste and annual export reports; and requiring that notifications and annual reports be sent to EPA's Office of Waste Programs Enforcement.

F. Coke Ovens Administrative Stay (HSWA) 56 FR 43754, 9-5-1991 (Checklist 98)

Arkansas has adopted this technical amendment to the BIF regulations providing a stay to certain coke ovens burning certain hazardous wastes from the coke by-products recovery process. After August 21, 1991, this rule permitted coke ovens to process residues from the by-product recovery process without having to comply with the BIF regulations.

G. Amendments to Interim Status Standards for Downgradient Groundwater Monitoring Well Locations at Hazardous Waste Facilities (non-HSWA) 56 FR 66365, 12-23-1991 (Checklist 99)

Arkansas has adopted this rule, promulgating requirements allowing facilities to install alternate groundwater monitoring wells in certain circumstances where existing physical obstacles cannot be avoided. The owner/operator must demonstrate that the alternate location will meet the criteria specified at Reg. 23 265.91(a)(3); and the demonstration must be certified by a qualified groundwater scientist.

H. Liners and Leak Detection Systems for Hazardous Waste Land Disposal Units (HSWA/non-HSWA) 57 FR 3462 (1-29-1992) (Checklist 100)

Arkansas has adopted and implemented this amendment concerning liner and leachate collection and removal systems for hazardous waste surface impoundments, landfills, and waste piles. The rule also requires owners and operators of hazardous waste surface impoundments, landfills, and waste piles to install and operate leak detection systems at such time as these units are added, laterally expanded, or replaced.

I. Administrative Stay for the Requirement that Existing Drip Pads be Impermeable (HSWA/non-HSWA) 57 FR 5859, 2-18-1992 (Checklist 101)

This rule announced an administrative stay of the requirements for drip pad coatings, sealers, or covers at wood preserving facilities. The effect of the stay was to extend the effective date of coating or covering requirements until October 30, 1992. The Department adopted additional, more stringent standards in lieu of these requirements at Reg. 23 264 and 265 Subsection W. State requirements for this provision are more stringent than the federal requirement.

J. Second Correction to the Third Third Land Disposal Restrictions (HSWA) 57 FR 8086 3-6-1992 (Checklist 102)

Arkansas has adopted and implemented this amendment correcting errors and clarifying the language in the preamble and regulations of the June 1, 1990 final rule for the Third Third Land Disposal Restrictions.

K. Hazardous Debris Case-by-Case Capacity Variance (HSWA) 57 FR 20766, 5-15-1992 (Checklist 103)

Arkansas adopted this amendment establishing a

case-by-case capacity variance for the land disposal of hazardous debris pending the promulgation of the final treatment standards for hazardous debris.

L. Used Oil Filter Exclusion (HSWA) 57 FR 21524 5-20-1992 (Checklist 104)

Arkansas has adopted and implemented this exemption for non-terne plated oil filters from categorization as hazardous wastes, provided that the filters are hot-drained and contain no free liquids.

M. Coke By-Product Exclusion (HSWA) 57 FR 27880, 6-22-1992 (Checklist 105)

Arkansas has adopted and implemented this rule amending Reg. 23 268.4(a) to exclude certain coke by-product residues which are recycled from the definition of hazardous waste.

N. Lead-Bearing Hazardous Materials Case-by-Case Capacity Variance (HSWA) 57 FR 28628, 6-26-1992 (Checklist 106)

Arkansas has adopted and implemented this rule, amending Reg. 23 268.35(c) to provide notice of a case-by-case capacity variance for storage of lead-bearing hazardous materials.

XIII. RCRA Cluster III (July 1, 1992 - June 30, 1993)

A. Used Oil Filter Exclusion, Technical Correction (HSWA) 57 FR 29220, 7-1-1992 (Checklist 107)

Arkansas has adopted the provisions of this exclusion at Reg. 23 § 261.4 without change. State provisions are equivalent to the federal requirements.

B. Toxicity Characteristics Revision; Technical Corrections (HSWA) 57 FR 30657, 7-10-1992 (Checklist 108)

Arkansas has adopted the provisions of this rule at Reg. 23 § 261.4 without further change. State provisions are equivalent to the federal requirements.

C. Land Disposal Restrictions for Newly-Listed Wastes and Hazardous Debris (HSWA) 57 FR 37194, 8-18-1992 (Checklist 109)

Arkansas has adopted the provisions of this rule at Reg. 23 §§ 261.10, 262.34, 264 and 265 Subsections DD, and 268 without further change. State provisions are

equivalent to the federal requirements.

D. Coke By-Products Listings (HSWA) 57 FR 37284, 8-18-1992 (Checklist 110)

Arkansas has adopted the provisions of this rule at Reg. 23 §§ 261.4 and 261.32 without further change. State provisions are equivalent to the federal requirements.

E. Burning of Hazardous Waste in Boilers and Industrial Furnaces; Technical Amendments III (HSWA/non-HSWA) 57 FR 38558, 8-25-1992 (Checklist 111)

Arkansas has adopted the provisions of this rule at Reg. 23 §§ 260.10 and 266 without further change. State provisions are equivalent to the federal requirements.

F. Recycled Used Oil Management Standards (HSWA/non-HSWA) 57 FR 41566, 9-10-1992 (Checklist 112)

Arkansas adopted the federal Used Oil Management Standards promulgated on September 10, 1992 as a part of the State's hazardous waste management program codified in ADPC&E Regulation No. 23 (Hazardous Waste Management), in June, 1994 with an effective date (for the used oil regulations) of July 1, 1994. These regulations govern the handling, storage, recycling, processing, and disposal of all used oils in the State after the effective date of the regulations.

Arkansas's adoption and implementation of the used oil management standards are equivalent to three requirements of the federal program with the exception of three more stringent requirements:

- Arkansas requires that used oil handlers submit the state's Notification of Regulated Waste Activity in order to notify the Department of their used oil management activities and to obtain an EPA identification number; the state does not allow notification by a simple letter as provided for in the federal rules. A handler who attempts to notify by letter will be mailed a NORWA form and instructions, with instructions to complete and return the appropriate form.

- In order to better identify the used oil universe subject to compliance monitoring, Arkansas requires that used oil handlers subject to notification requirements but who have already obtained an EPA identification number must submit an updated notification form for their used oil activities.

- Arkansas has established more stringent requirements wherein used oil may be disposed by using it as a dust suppressant. State rules require that a clear demonstration be made on a lot by lot

basis that used oil disposed in this manner does not contain any hazardous constituent, and use as a dust suppressant be done in such a manner that no part or component of the oil is allowed to enter any waters of the State as defined in the Arkansas Water and Air Pollution Control Act.

Disposal of Petroleum-Contaminated Media.

Pursuant to APC&EC Regulation No. 22 (solid Waste Management), petroleum-contaminated soils and other media may be disposed of in a Class 1 Subtitle D landfill provided the following conditions have been met:

- 1) Concentrations for BTEX (benzene, toluene, ethylbenzene, and xylene) shall not exceed 400 parts per million (ppm), with benzene contributing no more than 25 parts per million (ppm) of the total, and;
- 2) TPH (total petroleum hydrocarbons) may not exceed 1000 parts per million (ppm).

Petroleum contaminated soils may not be used as a daily cover at a landfill. The soils must be spread over the compacted daily waste cell or placed at the toe of the working face with cover being applied at the end of the working day.

Petroleum contaminated soils from other than a regulated storage tank release, shall meet the same standards established above as well as the most current testing procedure for determining hazardous waste characteristics.

The Department may grant an exemption to the testing requirements herein provided if it is demonstrated that the contamination is not regulated under Subtitle C of the Resource Conservation Recovery Act.

Soils and media exceeding these standards must generally be disposed of in a hazardous waste landfill or other treatment and disposal facility, or treated to meet the above standards for disposal in a Class 1 landfill.

G. Financial Responsibility for Third-Party Liability; Closure and Post-Closure (non-HSWA) 57 FR 42382 9-16-1992; 53 FR 33938, 9-1-1988; 56 FR 30200, 7-1-1991 (Checklist 113)

Arkansas has adopted the provisions of these rules at Reg. 23 § 264 and 265 Subsection H without substantial change. State provisions are equivalent to the federal requirements.

H. Burning of Hazardous Waste in Boilers and Industrial Furnaces; Amendment IV (HSWA/non-HSWA) 57 FR 44999, 9-30-1992 (Checklist 114)

Arkansas has adopted the provisions of this rule at Reg. 23 § 266.103 without change. State provisions are equivalent to the federal requirements.

I. Chlorinated Toluene Production Waste Listing (HSWA) 57 FR 47376, 10-15-1992 (Checklist 115)

Arkansas has adopted the provisions of this rule at Reg. 23 § 261.32 without change. State provisions are equivalent to the federal requirements.

J. Hazardous Soil Case-by-Case Capacity Variance (HSWA) 57 FR 47772 10-20-1992 (Checklist 116)

Arkansas has adopted the provisions of this rule at Reg. 23 § 268.35 without change. State provisions are equivalent to the federal requirements.

K. "Mixture" and "Derived-from" Rules; Responses to Court Remand (HSWA/non-HSWA) 57 FR 7628, 3-3-1992; 57 FR 23062, 6-1-1992; 57 FR 49278, 10-20-1992 (Checklist 117)

While the State equivalent to the "Derived-From" and "Mixture" rules were originally promulgated under state rulemaking procedures which were not affected by the *Shell Oil* decision, the Department re-public noticed and adopted EPA's repromulgation of this interim final rule. State provisions remain equivalent to the federal requirements. Arkansas has adopted the provisions of this rule at Reg. 23 § 261.3 without change. State provisions are equivalent to the federal requirements.

L. Liquids in Landfills II (HSWA) 57 FR 54452 (Checklist 118)

Arkansas has adopted the provisions of this rule at Reg. 23 § 264.314 and 265.314, with the exception that the state rules do not allow the disposal of any liquids in a hazardous waste landfill. State provisions are more stringent than the federal requirements.

M. Toxicity Characteristic Revision; TCLP (HSWA) 57 FR 55114, 11-24-1993; 58 FR 6854, 2-2-1993 (Checklist 119)

Arkansas has adopted the provisions of this rule at Reg. 23 § 261 Appendix II without change. State provisions are equivalent to the federal requirements.

N. Wood Preserving; Amendments to Listings and Technical Requirements (HSWA/non-HSWA) 57 FR 61492, 12-24-1992 (Checklist 120)

Arkansas has adopted the provisions of this rule at Reg.

23 §§ 264 and 265 Subsections W, but has retained more stringent State rules which require all existing drip pads to have a protective coating or cover installed prior to September 30, 1995, and prohibiting the use of penetrating sealants to meet the protective coating requirements. State provisions are more stringent than the federal requirements.

O. Corrective Action Management Units and Temporary Units; Corrective Action Provisions Under Subtitle C (HSWA) 58 FR 8658, 2-16-1993 (Checklist 121)

Arkansas has adopted the provisions of this rule at Reg. 23 § 264 Subsection S without change, except for the definition of "facility" at § 260.10, which was modified as described in the enclosed Statement of Legal Authority. State provisions are equivalent to the federal requirements.

P. Recycled Used Oil Management Standards; Technical Amendments and Corrections (HSWA/non-HSWA) 58 FR 26420, 5-3-1993; 58 FR 33341, 6-17-1993 (Checklist 122)

Arkansas has adopted the provisions of this rule at Reg. 23 § 279 without change. State provisions are equivalent to the federal requirements.

Q. Land Disposal Restrictions; Renewal of the Hazardous Waste Debris Case-by-Case Capacity Variance (HSWA) 58 FR 28506, 5-14-1993 (Checklist 123)

Arkansas has adopted the provisions of this rule at Reg. 23 § 268.35 without change. State provisions are equivalent to the federal requirements.

R. Land Disposal Restrictions for Ignitable and Corrosive Characteristic Wastes Whose Treatment Standards Were Vacated (HSWA) 58 FR 29860; 5-24-1993 (Checklist 124)

Arkansas has adopted the provisions of this rule at Reg. 23 § 268 without change. State provisions are equivalent to the federal requirements.

**XIII. RCRA Cluster IV
(July 1, 1993 through June 30, 1994)**

A. Requirements for Preparation, Adoption, and Submittal of Implementation Plans (HSWA/non-HSWA) 58 FR 38816, 7-20-1993 (Checklist 125)

Arkansas has adopted the provisions of this rule at Reg. 23 § 266 without change. State provisions are equivalent to the federal requirements.

B. Testing and Monitoring Activities (non-HSWA) 58 FR 46040, 8-31-1993; 59 FR 47980, 9-19-1994 (Checklist 126)

Arkansas has adopted the provisions of this rule without change. State provisions are equivalent to the federal requirements.

C. Burning of Hazardous Waste in Boilers and Industrial Furnaces (HSWA/non-HSWA) 58 FR 59598, 11-9-1993 (Checklist 127)

Arkansas has adopted the provisions of this rule at Reg. 23 § 266 without change. State provisions are equivalent to the federal requirements.

D. Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Wastes from Wood Surface Protection (non-HSWA) 59 FR 458, 1-4-1994 (Checklist 128)

Arkansas has adopted the provisions of this rule without change. State provisions are equivalent to the federal requirements.

E. Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Treatability Studies Sample Exclusion (non-HSWA) 59 FR 8362, 2-18-1994 (Checklist 129)

Arkansas has adopted the provisions of this rule without change. State provisions are equivalent to the federal requirements.

F. Hazardous Waste Identification and Listing of Hazardous Waste; Recycled Used Oil Management Standards (HSWA/non-HSWA) 59 FR 10550, 3-4-1994 (Checklist 130)

Arkansas has adopted the provisions of this rule without change. State provisions are equivalent to the federal requirements.

G. Recordkeeping Instructions (non-HSWA) 59 FR 13891, 3-24-1994 (Checklist 131)

Arkansas has adopted the provisions of this rule without change. State provisions are equivalent to the federal requirements.

H. Hazardous Waste Management System; Identification and Listing of Hazardous Wastes; Wastes from Wood Surface Protection; Correction (non-

HSWA) 59 FR 28484, 6-2 1994 (Checklist 132)

Arkansas has adopted the provisions of this rule without change. State provisions are equivalent to the federal requirements.

I. Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities, Underground Storage Tanks, and Underground Injection Control Systems; Financial Assurance; Letter of Credit (non-HSWA) 59 FR 29958, 6-10-1994 (Checklist 133).

Arkansas has adopted the provisions of this rule without change. State provisions are equivalent to the federal requirements.

J. Hazardous Waste Management System; Correction of Listing of P015 - Beryllium Powder (non-HSWA) 59 FR 31551, 6-20-1994 (Checklist 134)

Arkansas has adopted the provisions of this rule without change. State provisions are equivalent to the federal requirements.

XIV. RCRA Cluster V (July 1, 1994 through June 30, 1995)

A. Identification and Listing of Hazardous Waste; Amendments to Definition of Solid Waste: 59 FR 38536, 7-28-1994 (non-HSWA) (Checklist 135)

Arkansas has adopted the provisions of this rule without further change. State provisions are equivalent to the federal requirements.

B. Standards for the Management of Specific Hazardous Wastes; Amendment to Subpart C - Recyclable Materials Used in a Manner Constituting Disposal; Final Rule: 59 FR 43496, 8-24-1994 (HSWA) (Checklist 136)

Arkansas has adopted the provisions of this rule without further change. State provisions are equivalent to the federal requirements.

C. Land Disposal Restrictions Phase II - Universal Treatment Standards, and Treatment Standards for Organic Toxicity Characteristic Wastes and Newly-Listed Wastes: 59 FR 47982, 9-19-1994; 60 FR 242, 1-3-1995 (HSWA/non-HSWA) (Checklist 137)

Arkansas has adopted this federal revision (and subsequent corrections) to the Land Disposal Restriction

requirements and establishment of the Table of Treatment Standards for specific waste codes with the Universal Treatment Standards applicable to specific hazardous constituents within waste streams. State requirements are equivalent to the federal rules.

D. Testing and Monitoring Activities: 60 FR 3089, 1-13-1995 (non-HSWA) (Checklist 139)

Arkansas has adopted this federal revision which amended the Third Edition of the EPA-approved test methods manual "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846 which is incorporated by reference in ' 260.11. This amendment adds new and revised methods as Update II to SW-846 and also incorporates the SW-846 Third Edition, as amended by Updates I (promulgated August 31, 1993), II, and IIA (promulgated January 4, 1994 as part of the wood surface protection rule).

E. Carbamate Production Identification and Listing of Hazardous Waste: 60 FR 7824, 2-9-1995; 60 FR 19165, 4-17-1995; 60 FR 25619, 5-12-1995 (HSWA) (Checklist 140)

Arkansas has adopted this February 9, 1995 federal rule which lists as hazardous six wastes generated from the production of carbamate chemicals based upon RCRA §§ 3001(e)(2) and 3001(b)(1). The rule provides an exemption from the definition of hazardous waste for certain wastes, if the generator demonstrates that hazardous air pollutants are not being discharged or volatilized during waste treatment. The February 9, 1995 federal rule also exempts from the definition of hazardous wastes biological treatment sludges generated from the treatment of certain wastes provided the sludges do not display any of the characteristics of a hazardous waste (i.e., ignitability, corrosivity, reactivity, or toxicity). EPA additionally added 58 specific chemicals to the list of commercial chemical products that are hazardous wastes when discarded and to the list of hazardous constituents upon which listing determinations are based.

Note: Status of Carbamate Wastes. On November 1, 1996, the U.S. Court of Appeals for the District of Columbia vacated EPA's listing of 28 carbamate wastes, initially promulgated at 60 FR 7824-7827 (February 9, 1995) (*Dithiocarbamate Task Force v. EPA*, CA DC 95-1249, 11/1/96). The effect of this ruling is to void all previous and current listings of these waste streams at the federal level. The Department, however, conducted a separate rulemaking in adopting these regulations in full text, and the vacation of the federal rule does not void the Arkan-

sas regulation of these wastes as hazardous.

Arkansas has only a single facility, Zeneca Ag Products of North Little Rock, which generates any of the carbamate waste streams (based on the 1995 and 1996 annual hazardous waste reports) [specifically, production and other wastes from products marketed commercially as *Sutan* (butylate), *Ro-neet* (cycloate), *Eptam* and *Eradicane* (EPTC), *Ordram* and *Arrosolo* (molinate), *Tillam* (pebulate), *Vernam* (vernolate) and *Vapam* (metam sodium)]. Zeneca has independently sought and obtained from the Commission a twelve-month variance from the continued listings of these wastes in Reg. No. 23 (Minute Order 97-___, effective February 28, 1997 until February 27, 1998). This variance applies only to Zeneca and its customers, for all other facilities these waste streams remain a state-listed hazardous waste.

EPA is currently developing a *Federal Register* notice which will codify the court's decision in *Dithiocarbamate Task Force vs. EPA*; however this revision to the CFR is not expected to be published until mid-summer, 1997. Pending EPA's revision to the CFR, the Department will retain its current listing of carbamates as hazardous wastes, a more stringent provision than provided for under the revocation of the federal rules. EPA is additionally preparing a repromulgation of the carbamate waste listings that will correct the defects on which parts of the original rule were vacated. In light of EPA's pending actions to codify the extent of the court decision and the likely repromulgation of these wastes as hazardous, the Department is deferring the delisting of these waste codes pending codification of the court decision in the CFR. At that time, the Department will consider recommending adoption of the revised federal rule or, in light of the pending repromulgation, conduct the necessary analyses to maintain carbamates as state-listed hazardous wastes pending the new listing by EPA.

F. Testing and Monitoring Activities: 60 FR 17001, 4-4-1995 (Checklist 141)

Arkansas has adopted this federal rule which amended the Third Edition of the EPA-approved test methods manual "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846 which is incorporated by reference in Regulation No. 23, § 260.11. This amendment clarifies the temperature requirement for pH measurements of highly alkaline wastes and adds Update IIB Method 9040B (pH Electrometric Measurement) and Method 9045C (Soil and Waste pH) to EPA Publication SW-846.

G. Universal Waste Rule; Administrative Requirements: 60 FR 25492, 5-11-1995 (non-HSWA) (Checklist 142A)

Arkansas has adopted this federal rule which promulgates streamlined hazardous waste management regulations governing the collection and management of certain widely used wastes known as universal wastes. The specific wastes covered by this rule include: 1) hazardous waste batteries, 2) hazardous waste pesticides that are either recalled or collected in waste pesticide collection programs, and 3) hazardous waste thermostats. Other wastes may be added to the universal waste regulations in the future, but at this time only these three wastes were included. A petition process is included that allows the Commission flexibility to add wastes to its list of universal wastes without requiring the wastes to be added at the Federal level. State requirements for universal wastes and the management thereof are equivalent to the federal requirements.

H. Universal Waste Rule; Covered Batteries: 60 FR 25492, 5-11-1995 (non-HSWA) (Checklist 142B)

As noted above, Arkansas has adopted the federal universal waste rules as they apply to specific types of batteries. The adopted language is identical to that in the Federal rule, therefore there is no conflict with the provisions of the federal Rechargeable Battery Management Act (PL 104-142). Arkansas law and regulations provide for enforcement of these requirements, and there is no barrier to State implementation of the universal waste rule for the applicable types of batteries. State requirements are equivalent to the federal rules.

I. Universal Waste Rule; Covered Pesticides: 60 FR 25492, 5-11-1995 (non-HSWA) (Checklist 142C)

As noted above, Arkansas has adopted the federal universal waste rules as they apply to specific types of pesticides. State requirements are equivalent to the federal rules.

J. Universal Waste Rule; Covered Thermostats: 60 FR 25492, 5-11-1995 (non-HSWA) (Checklist 142D)

As noted above, Arkansas has adopted the federal universal waste rules as they apply to specific types of mercury-containing thermostats. State requirements are equivalent to the federal rules.

K. Universal Waste Rule; Petitions to Include Other Wastes: 60 FR 25492, 5-11-1995 (non-HSWA) (Checklist 142E)

As noted above, Arkansas has adopted the federal universal waste rules which allows the state to include and define other types of wastestreams in its definition of universal wastes. Such additions would be proposed by either the Department or a third-party according to the procedures for rulemaking in APC&EC Regulation No. 8 (Administrative Procedures) and Reg. 23 § 260.23. State requirements are equivalent to the federal rules.

L. Solid Waste, Hazardous Waste, Oil Discharge and Superfund Programs; Removal of Legally Obsolete Rules: 60 FR 25492, 5-11-1995 (non-HSWA) (Checklist 144)

Arkansas has adopted this federal revision which deleted specific federal rules from the Code of Federal Regulation which were no longer legally in effect because they implemented statutory provisions which have been repealed, had expired by their own terms or by terms of the implementing statute, or had been vacated (e.g., declared void and of no effect) by a court. The sections of Regulation 23 affected by this revision included the deletion of a footnote to § 261.31(a) regarding a former stay to listing certain wood preserving wastes as hazardous wastes; deletion of an alternative emission standard for carbon monoxide at boilers and industrial furnaces (§ 266.104(f)); and references to federal interim authorization for non-HSWA rules, including references to "Phase I" and "Phase II" non-HSWA interim authorization in Section 270.

XV. RCRA Cluster VI

(July 1, 1995 through June 30, 1996)

A. Hazardous Waste Management; Liquids in Landfills: 60 FR 35703, 7-1-1995 (Checklist 145)

Arkansas has adopted this revision, issued by EPA in response to a petition, which provides increased flexibility to the regulated community by adding another test (modified Sturm) to demonstrate that a sorbent is non-biodegradable.

B. RCRA Expanded Public Participation: 60 FR 63417, 12-11-1995 (non-HSWA) (Checklist 148)

Arkansas has adopted this federal revision, intended to improve the process for permitting facilities that store, treat, or dispose of hazardous wastes by providing earlier opportunities for public involvement in the process and expanding public access to information throughout the permitting process and the operational lives of facilities.

Arkansas and the ADPC&E have already implemented a number of state-specific requirements which provide for more information to be made available to the public at an earlier stage than would be required under the federal regulations. For example, Regulation 23 requires that a permit applicant provide written notice to all adjacent landowners and tenants when applying for a hazardous waste permit or a modification to a previously issued RCRA permit (§ 270.7(i)); requires that notice of the permit application be published in the newspaper(s) having the largest circulation in both the facility's home county as well as in the surrounding counties so as to reach the largest possible percentage of the population; and provides for a 10-day public notice and hearing upon submittal of an "administratively complete" permit application to the Department. The provisions of this revision enhance and complement the State's previous efforts to provide a maximum amount of information to the public regarding RCRA permits in their community. In comparison to the federal standards, the Arkansas program retains a number of more stringent and broader-in-scope requirements as shown by the italicized text in § 270.7.

The revised rules require a prospective applicant to hold an informal public meeting before submitting an application for a RCRA permit. The applicant is required to advertise this meeting in the newspaper, through a broadcast announcement (e.g., by radio or television), and on a sign, legible to passers-by, posted at or near the facility property. This meeting will provide a chance for the community to interact with and provide input to a facility owner or operator before the owner or operator submits a permit application. The rule also directs the Department to mail a notice to interested people when the facility submits its application. The notice will tell members of the public where they can examine the application at the same time that the Department reviews it.

This rule gives the Department authority to require a facility owner or operator to set up an information repository at any time during the permitting process or the permit life. It is anticipated that the Department will use this authority only in those permitting cases that raise a great deal of public interest, or in other cases where the public needs more access to information. The repository will hold all information and documents that the permitting agency decides are necessary to fulfill the purposes for which the repository was established. Finally, the revised rule requires combustion facilities (i.e., incinerators, boilers or industrial furnaces ("BIFs") and other facilities that burn hazardous wastes) to provide notice to the public before they hold a trial burn.

(The owner or operator of a combustion unit must conduct a trial burn as part of the permitting process for a combustion unit. The trial burn is a demonstration period held by the owner or operator of a combustion unit to test the unit's ability to meet the regulatory performance standards for treatment of hazardous wastes. The Department then uses the results of the trial burn to establish operating conditions and limits in the final RCRA permit.)

RCRA facilities that are already involved in the permitting process will not be required to step back in the process to comply with these new requirements. Instead, the revised rules apply to a facility according to which stage of the process the facility is in when the rule becomes effective. For instance, if a facility has submitted its part B permit application before the effective date of this rule, then the Department would not require the facility to hold a pre-application meeting. This facility would, however, have to comply with all requirements relating to steps in the permitting process that it has not yet undertaken prior to the effective date of this rule-making.

The public participation components of the equivalent federal rule are included in 40 CFR 124, a portion of the Code of Federal Regulations which the Department and Commission have elected to incorporate by reference at § 3(b)(3) instead of reprinting it verbatim. Thus, in an effort to consolidate the state requirements and process for applying for and obtaining a RCRA permit into a simpler format, and to retain Regulation 23's purpose as a "single source" for waste management information and requirements, the Department has incorporated the revised portions of 40 CFR 124, Subpart B, into Section 270.7 of Regulation 23, which describes the state-only requirements for permit applications originally embodied in the Arkansas Hazardous Waste Management Code. Section 270.7 itself was extensively reorganized to simplify and consolidate its presentation of State-only requirements in the permit process. A number of requirements have been relocated to the "checklist" areas which specify information that must be included in a technically complete permit application, and the remaining general provisions have been integrated with the provisions of the federal rule proposed here for adoption. The portions of the revised rule dealing with expanded notice and participation for trial burns has been placed in the sections of Regulation 23 (§§ 270.62 and 270.66) equivalent to their federal counterparts.

C. Identification and Listing of Hazardous Waste; Amendments to Definition of Solid Waste: 61 FR 13103, 3-26-1996 (non-HSWA) (Checklist 150)

Arkansas has adopted this federal revision which corrected the text at Reg. 23 § 261.4(a)(12) of an exclusion from the regulatory definition of solid waste for recovered oil which is inserted into the petroleum refining process. The current text of the exclusion contained a factual error as to the location in the refining process at which recovered oil can be inserted. The result of this error was to inappropriately restrict legitimate recycling of recovered oil. The corrected rule also in fact reflects the result EPA initially intended, which was to condition the exclusion of recovered oil on that oil being reinserted into the petroleum refining process at a point where that process removes or will remove at least some contaminants.

D. Land Disposal Restrictions Phase III; Decharacterized Wastewaters, Carbamate Wastes, and Spent Potliners: 61 FR 15556, 4-8-1996; 61 FR 15660, 4-8-1996; 61 FR 33680, 6-28-1996; 61 FR 36419, 7-10-1996; 61 FR 43924, 8-26-1996; 62 FR 7501, 2-19-1997 (HSWA) (Checklist 151)

Arkansas has adopted this set of revisions to the federal land disposal restrictions in § 268.39 and Table TTS of § 268.40 of Regulation No. 23. This revision issued new treatment standards for hazardous wastes generated from the production of carbamate pesticides and from primary aluminum.

Arkansas's adoption of this set of LDR revisions includes the complete text of the federal rules proposed for adoption, and thus includes the land disposal restrictions for the carbamate wastes as promulgated in the federal rule and subsequently revised at 62 FR 7501 on February 19, 1997 (complete through Checklists 151.6).

E. Imports and Exports of Hazardous Waste; Implementation of OECD Council Decision: 61 FR 16289, 4-12-1996 (non-HSWA) (Checklist 152)

Arkansas has adopted this federal rule which identifies the wastes, under the Resource Conservation and Recovery Act (RCRA), that are subject to a graduated system (green, amber, red) of procedural and substantive controls when they move across national borders within the Organization for Economic Cooperation and Development, or "OECD", for recovery. (EPA may, in the future, identify wastes under other statutes that are subject to the OECD

Decision). It seeks to make the transactions fully transparent and to prevent or minimize the possibility of such wastes being abandoned or otherwise illegally handled. These requirements apply only to U.S. exporters and importers of RCRA hazardous wastes which are destined for recovery in OECD countries (except for Canada and Mexico; waste shipments to and from these countries will continue to move under the current bilateral agreements and regulations). Those U.S. exporters and importers transacting hazardous waste movements outside the scope of this rule will remain subject to the current waste export and import regulations at Regulation No. 23, Section 262, subsections E and F.

This rule does not increase the scope of wastes subject to U.S. export and import controls; it does, however, modify the procedural controls governing their export and import when shipped for recovery among OECD countries. This rule is intended to assist in harmonizing the new OECD requirements, reducing confusion to U.S. importers and exporters, and increasing the efficiency of the process.

This rule adds additional instructions at §§262.10(d), 262.53, 262.56, 262.58, 263.10(d), 264.12, 264.71, 265.12, 265.71, 266.70, 273.20, 273.40, 273.56, and 273.70 of Regulation No. 23; and adds a new Subsection H to Section 262 for generators or other handlers who manifest wastes for import or export to OECD countries

XIV. RCRA Cluster VII

(July 1, 1996 through June 30, 1997)

A. Criteria for Classification of Solid Waste Disposal Facilities and Practices; Identification and Listing of Hazardous Waste; Requirements for Authorization of State Hazardous Waste Programs: 61 FR 34252, 7-1-1996 (Non-HSWA) (Checklist 153)

Arkansas has adopted this federal rule which revises the provisions for hazardous wastes generated by CESQGs at § 261.5(f) and (g) to clarify acceptable disposal options under Subtitle D of RCRA. It specifies that CESQG hazardous waste may be managed at municipal solid waste landfills subject to 40 CFR 258 and at non-municipal non-hazardous waste disposal units subject to the facility standards in 40 CFR 257.5 through 257.30. (Arkansas has elsewhere adopted the provisions of 40 CFR 257 and 258 in APC&EC Regulation No. 22, the Arkansas Solid Waste Management Code.) State provisions for disposal of conditionally-exempt hazardous waste

remain more stringent in that Reg. 23 § 262.35(b) offers fewer options for the disposal of these wastes, and in that Regulation No. 22 requires a modification to the landfill's permit prior to accepting any type of regulated hazardous waste, including conditionally-exempt wastes.

B. Hazardous Waste Treatment, Storage, and Disposal Facilities and Hazardous Waste Generators; Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers: 61 FR 59931, 11-25-1996 (HSWA) (Checklist 154)

Arkansas has adopted all provisions of the federal regulations for organic air emissions from these regulated units, collectively known as the "Subpart CC" rules. These air standards apply to certain tanks, containers, and surface impoundments (including tanks and containers at generators' facilities) used to manage hazardous waste capable of releasing organic waste constituents at levels which can harm human health and the environment.

This *Federal Register* notice amended the final subpart AA, BB, and CC standards in 40 CFR 264 and 265. Following the publication of the final subpart CC rule (59 FR 69826, December 4, 1994), the EPA published three *Federal Register* documents to delay the effective date of that rule. The first (60 FR 26828, May 19, 1995) revised the effective date of the standards to be December 6, 1995. The second (60 FR 56952, November 13, 1995) revised the effective date of the standards to be June 6, 1996. The third (61 FR 28508, June 5, 1996) further postponed the effective date for the rule requirements until October 6, 1996. EPA also issued an indefinite stay of the standards specific to units managing wastes produced by certain organic peroxide manufacturing processes (60 FR 50426, September 29, 1995).

The Commission adopted the December 4, 1994 federal final rule on December 1, 1995 (with an effective date of January 21, 1996), initiating this update prior to EPA's issuing its second and third stays. In response to petitions from the Arkansas Environmental Federation, the Department issued an interim enforcement policy delaying enforcement of the CC requirements until June, 1996; and the Commission later adopted a minute order (Minute Order 96-019, dated March 22, 1996) which waived the requirements for affected persons to comply with the provisions of Reg. 23 §§ 264 and 265, Subsections CC for a period of one year (until March 22, 1997) or until EPA's final effective date of implementation for 40 CFR Parts 264 and 265, whichever came first. The November 25, 1996 *Federal Register* notice consti-

tuted EPA's final effective date of implementation for the Subpart CC rules, and expired Minute Order 96-019 effective December 6, 1996. With the expiration of the minute order, the earlier, more stringent Subpart CC provisions of Regulation No. 23 were restored to effect. Adoption of the revised federal rule on July 25, 1997 returned the state program requirements to equivalence with those of the federal program.

C. Land Disposal Restrictions Phase III— Emergency Extension of the K088 Capacity Variance: 62 FR 1992, 1-14-1997 (HSWA) (Checklist 155)

Arkansas has adopted rule extending for six (6) months the current national capacity variance for spent potliners from primary aluminum production (Hazardous Waste Number K088). K088 wastes do not have to be treated to meet LDR treatment standards until July 8, 1997, six months from the original effective date of January 8, 1997.

D. Military Munitions Rule: Hazardous Waste Identification and Management; Explosives Emergencies; Manifest Exemption for Transport of Hazardous Waste on Right-of-Ways on Contiguous Properties: 62 FR 6622, 2-12- 1997 (Non-HSWA) (Checklist 156)

Arkansas has deferred adoption of this rule pending additional review and evaluation.