

US EPA ARCHIVE DOCUMENT

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SECTION I

INTRODUCTION

1. ***Relationship of this document with the Program Description (PD) previously submitted as part of the State's application for authorization***

The Arkansas Department of Environmental Quality is the agency responsible for administering all solid and hazardous waste regulations for the State of Arkansas. This document provides a description of the hazardous waste regulatory programs administered by the Department. It replaces the Program Description (PD) previously submitted as a part of the State's application for final authorization of RCRA Cluster VI.

2. ***Identification of areas for which the State is seeking authorization***

This Program Description reflects the evolution of Arkansas's hazardous waste management program since the base program was authorized, and also summarizes how the Federal regulatory requirements for the base program, Non-HSWA Clusters I through VI, HSWA Clusters I and II, and RCRA Clusters I through X are implemented by the State of Arkansas. This Program Description has been prepared in accordance with the requirements of 40 CFR §271.6.

3. ***Organization of the Program Description***

This Program Description is organized as follows:

Section II describes the scope, structure, coverage, and process of the Arkansas hazardous waste management program and includes a discussion of the legislative and regulatory provisions the State administers as well as a discussion of the differences between the Federal and State laws and regulations. Section III provides a description of State agencies responsible for administering the program with the aid of an organizational chart. The specific divisions which comprise the agencies are discussed and their individual responsibilities are examined. This section also includes a discussion of the responsibilities and procedures for coordination between the Arkansas Department of Environmental Quality and EPA. Checklists are included to provide information on both HSWA and non-HSWA activities to provide a concise, definitive statement of which program areas Arkansas is seeking authorization, as well as the

program areas for which EPA remains responsible.

Section IV deals with staffing and funding procedures and identifies hazardous waste staff and funding resources required to carry out the activities that are the subject of this program revision. This section distinguishes between new resources and existing resources being assigned to the new responsibilities. The impact on the existing authorized program of adding the additional program areas is also examined. Section V describes the State procedures that will be used to implement the program revision. Section VI examines the State's compliance tracking and enforcement processes and resources. Section VII indicates the estimated regulated activities as of the date of the Program Description, and Section VIII is set aside for copies of State forms and provides a discussion of coordination with other agencies.

SECTION II

PROGRAM SCOPE, STRUCTURE, COVERAGE, AND PROCESSES (40 CFR 271.6(a))

1. Scope and Coverage of Program Revision

1. *Narrative description of the scope and coverage of the program.*

Arkansas' hazardous waste program, in its broadest statement of purpose, is designed to protect the public health and safety and the environment from the effects of improper, inadequate, or unsound management of hazardous wastes. It accomplishes this to the fullest extent possible by establishing a program of strict regulation over the generation, storage, transportation, treatment, disposal, and other forms of management of these wastes. The program additionally affords the people of the State a voice in the management of hazardous wastes within Arkansas. The lead agency for the hazardous waste management program in Arkansas is the Department of Environmental Quality (ADEQ).

The Arkansas Department of Environmental Quality maintains and administers a hazardous waste management program that is equivalent in force and effect to the Federal program as established by the Resource Conservation and Recovery Act, as amended, including but not limited to the Hazardous and Solid Waste Amendment. Arkansas has adopted EPA's hazardous waste regulations of May 19, 1980 and subsequent amendments. Subsequent regulations promulgated in interim and final form for Non-HSWA Cluster III through June 30, 1987 were adopted by reference by the Commission after public hearing and presented in state program revisions submitted in final form on March 15, 1989. Final authorization for these changes was received effective May 29, 1990 (55 FR 11192, March 27, 1990). Federal regulations promulgated through June 30, 1989, known collectively as Non-HSWA Cluster IV, HSWA Cluster I, and elements of HSWA Cluster II have been adopted through annual revision of the Arkansas Department of Environmental Quality's Regulation No. 23 (Hazardous Waste Management). A revision authorization application for these changes was submitted on March 15, 1989. Addenda to this application for final authorization for these updates were submitted on September 18, 1989, and January 24, 1991. Final authorization for these program revisions was received effective November 18, 1991 (56 FR 57593, November 13, 1991). Final revision authorization application for the remainder of HSWA Cluster II and Non-HSWA Clusters V and VI were submitted on June 3, 1992. Final authorization for these program revisions was received effective December 6, 1992 (57 FR 45721 and 45722, October 5, 1992). Arkansas currently has final authorization for all components of and revisions to the federal RCRA program promulgated on or before June 30, 1992 (through RCRA Clusters I and II).

Although the state has not yet been authorized for RCRA Clusters III through X, Arkansas has adopted Federal regulations promulgated through July, 1999 during its

annual regulatory reviews and revisions. The current, 2000 revision to Arkansas Department of Environmental Quality (ADEQ) Regulation No. 23 (Hazardous Waste Management) addresses all Federal regulations in effect as of July 6, 2000. All components of RCRA Clusters III through IX are now being implemented and enforced as State regulations.

Future revisions of Regulation No. 23 and the State program are anticipated in order that the State program will remain equivalent and no less stringent than Federal requirements as federal regulations are amended or modified.

2. *Identification of exact rules/clusters for which the State is seeking authorization*

The regulatory program described in this document reflects the base program for which Arkansas is already authorized and the regulations in RCRA Clusters III through X for which the State is seeking authorization. In RCRA Clusters III through X, the State is seeking authorization for all requirements.

3. *Reference to Revision Checklists attached to PD or otherwise included in the revision package*

The Arkansas hazardous waste management program provides adequate enforcement relative to the Federal program as is demonstrated in Sections V and VI of this Program Description. The reader is referred to Section II.B for specific discussion of those program areas where the State program is more stringent or broader in scope, or otherwise differs from the corresponding Federal requirements. An Independent Counsel's Statement of Legal Authority is enclosed at Appendix II. Regulatory checklists providing a detailed crosswalk between the corresponding Federal and State requirements are enclosed at Appendix III.

2. Differences Between Federal and State Regulations

1. *Areas where the State program is more stringent*

Arkansas has enacted several requirements under its hazardous waste management program which are either in addition to, more stringent than, or broader in scope than the minimum standards of the Federal RCRA program set forth in 40 CFR Parts 260-279. These additional State requirements are set forth in this Regulation at Sections 1-6 and Sections 18-30, and appear in Sections 260-279 in italicized type to distinguish them from the adopted Federal language. The following State requirements are *more stringent* than the corresponding Federal regulation. The reader is referred to the appropriate Statement of the Independent Legal Counsel in the authorization application for the specific Cluster for detailed discussion of the significance of these differences.

- In the definition of “*Existing hazardous waste management (HWM) facility*”, the deadline for the operation or construction of a facility to be included in this definition is 20 months earlier than the date set in the Federal regulations. Thus, more facilities are subject to the more stringent requirements for new facilities than is the case under the Federal requirements.
- Regulation No. 23 § 262.13(g) requires that all generators of hazardous wastes newly characterized as TC wastes must notify the Department even if they have previously notified the Department of other hazardous waste activity. The Federal program does not have an analogous requirement, making the State more stringent.
- Arkansas does not have an analog to 40 CFR 262.20(e) which allows generators under certain specified conditions (e.g., tolling arrangements) not to be subject to the manifest requirements. This difference makes the State provisions more stringent than their Federal counterparts.
- Regulation No. 23 § 262.21(d) requires the use of the Arkansas version of the uniform manifest form; the use of the generic uniform manifest is not allowed.
- Regulation No. 23 § 262.24 contains additional requirements for generators not found in the Federal program including 1) submitting documentation that a weight difference of more than 10% between the initial and final weights on a manifest has been resolved between the generator and the TSDf. Under the Federal requirements only the TSDf has to submit such documentation. and 2) submitting a discrepancy report as per the criteria defined by the States counterpart to 40 CFR 265.72. Under the Federal program, only the TSDf has to submit this report.
- Regulation No. 23 § 262.35 contains more stringent management requirements for conditionally-exempt small quantity generators.
- Regulation No. 23 § 262.41 requires that generators submit annual rather than biennial reports. This is a more stringent requirement.
- Under Regulation No. 262.41(e), Arkansas is more stringent in that a generator must report accumulated wastes in addition to stored wastes. Under the Federal program, only stored wastes must be reported.

- Arkansas does not have an analog to 40 CFR 262.44 which subjects generators of between 100 and 1000 kg per month to reduced recordkeeping requirements. This difference makes the State program more stringent than the Federal program.
- Regulation No. 23 § 262.50(c) requires that a copy of all export notifications and manifests that are submitted to EPA be also submitted to the Department. This is a more stringent requirement.
- Reg No. 23 § 260.10, definition of “commingling” prohibits transporters from commingling wastes in any manner that constitutes treatment.
- Reg. No. § 263.11(c) requires that each transfer facility obtain an EPA identification number. This difference makes the State more stringent than the Federal program.
- Arkansas has several specific authorities which relate to siting of hazardous waste management facilities. 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 establishes a finding that a lesser distance will provide an adequate margin of safety under normal operating conditions. Likewise, A.C.A. § 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.
- 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 equivalent 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 Arkansas 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 § 264.75 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 groundwater 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.
- 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 RCRA 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.
- Because Arkansas law does not distinguish between corrective action on-site and off-site, demonstration of financial responsibility is required for corrective action wherever it is needed.

- 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**. A.C.A. § 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.
- 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 § 265.75 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.
- 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.

- 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.
- Reg. No. 23 § 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; location and places where public notice must be made; 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.23 § 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 as required under the State Act, the facility is not eligible for interim status.
- Under Reg. No. 23 § 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.
- Reg. No. 23 § 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. 23 §§ 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. 23 § 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. 23 § 270.30(l)(9) requires an annual rather than a biennial report.

- Reg. No. 23 § 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 § 270.70(b), the analog to 40 CFR 270.70(b), Arkansas does not allow the owner/operator 30 days to explain or correct a deficiency. This difference makes the state more stringent.
- Arkansas requires that used oil handlers use the State's Notification of Regulated Waste Activity form to obtain an EPA identification number; requests via an ordinary letter are not accepted.
- Used oil transporters, processors, re-refiners, burners, and marketers who have previously obtained an EPA identification number must renotify in order to register their used oil activities with the Department.
- At Regulation No. 23 § 279.82, used oil used as a dust suppressant may not exhibit any characteristic of a hazardous waste, and such use must prevent the oil or any component of the oil from entering any waters of the State.
- Reg. 23 § 273.5(b)(3) specifically excludes broken and crushed lamps as well as the debris from broken or crushed lamps from being managed under the universal waste program

2. *Areas where the State program is broader in scope*

The following State requirements are ***broader in scope*** than the corresponding Federal regulation. The reader is referred to the appropriate Statement of the Independent Legal Counsel in the authorization application for the specific Cluster for detailed discussion of the significance of these differences.

- Regulation No. 23 § 6(n), (o), (p), and (q) establishes an annual monitoring and inspection fee for fully-regulated and small quantity generators; § 25 establishes an annual fee on hazardous waste generation.
- Regulation No. 23 §§ 262.13(d) and 262.24(e) require that generators give their wastes only to permitted transporters, because Arkansas requires that transporters be permitted. This is a broader in scope provision.
- Reg. No. 23 §§ 263.10(d) and 263.13 require that any person transporting hazardous waste in, from or through Arkansas must have a permit. § 263.13 outlines the specific requirements for this permit. This difference makes the State's program broader in scope than the Federal program. A.C.A § 8-7-209(a)(6) provides the authority to require such permits.
- In addition to the notification requirements found at 40 CFR 263.30(c)(1)&(2), Arkansas requires immediate notice to the Arkansas State Police and the principal officer or designated contact for the transporter.

- Reg. No. 23 § 263.30(c)(4) requires that copies of reports required by the U.S. Department of Transportation and the National Response Center be sent simultaneously to ADEQ.
- Reg. No. 23 § 6(a)-(n), (t), (u), (w), (x), and (z) establish a fee system for hazardous waste permitting and related activities; § 25 establishes an annual fee for treatment, storage, or disposal of out-of-state waste.
- Reg. No. 23 § 264.71(e) 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.
- State corrective action authority covers hazardous substances (including petroleum and petroleum-based products), rather than only hazardous wastes and hazardous constituents as prescribed by Federal law. Thus, State authorities are broader in scope in this regard than the Federal program's. (See A.C.A. § 8-7-502, § 8-7-503(12), § 8-7-508(a)(1).)
- Reg. No. 23 § 265.71(e) 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.
- 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.
- Arkansas distinguishes between commercial and non-commercial waste activities in setting its permit fee schedule.

3. *Areas where the State program differs from the Federal program.*

- Arkansas does not provide for a State delisting program. To delist a waste in Arkansas, an applicant must first complete the process to obtain a final delisting decision from the EPA Administrator. Once a final federal delisting decision has been published in the Federal Register, it is not effective in Arkansas until the Arkansas Pollution Control and Ecology Commission completes rulemaking to approve and incorporate the federal decision in Regulation No. 23.
- 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 § 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.
- 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.

- Reg. No. 23 § 270.12 contains state- and program-specific requirements for the submittal and handling of confidential business information in conjunction with permit applications and processing.

Table 1

**General Correspondence Between Arkansas's Hazardous Waste Regulations
and the Federal Regulations**

EPA REGULATION Code of Federal Regulations (40 CFR)	STATE REGULATION	DESCRIPTION
No analogous provisions	Reg. 23 § 1	Authorities
No analogous provisions	Reg. 23 § 2	Violations
No analogous provisions	Reg. 23 § 3	Amendments and Updates
No analogous provisions	Reg. 23 § 4	Conflict of Interest
No analogous provisions	Reg. 23 § 6	Permit and Administrative Fees
PART 260	Reg. 23 § 260	Hazardous Waste Management System: General
PART 261	Reg. 23 § 261	Identification and Listing of Hazardous Waste
PART 262	Reg. 23 § 262	Standards Applicable to Generators of Hazardous Waste
PART 263	Reg. 23 § 263	Standards Applicable to Transporters of Hazardous Waste
PART 264	Reg. 23 § 264	Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities
PART 265	Reg. 23 § 265	Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities
PART 266	Reg. 23 § 266	Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities
PART 268	Reg. 23 § 268	Land Disposal Restrictions
PARTS 270/124	Reg. 23 § 270	The Hazardous Waste Permit Program
PART 273	Reg. 23 § 273	Standards for Universal Waste Management
PART 279	Reg. 23 § 279	Standards for the Management of Used Oil
No analogous provisions	Reg. 23 § 19	Effect of Federal Regulations
No analogous provisions	Reg. 23 § 20	Authority to Enter into Memoranda of Agreement
No analogous provisions	Reg. 23 § 21	Definitions: Memoranda of Agreement
No analogous provisions	Reg. 23 § 22	State/EPA Memorandum of Agreement

No analogous provisions	Reg. 23 § 23	Authority: Remedial Actions Trust Fund
No analogous provisions	Reg. 23 § 24	Remedial Action Revolving Loans
No analogous provisions	Reg. 23 § 25	Fees on the Generation of Hazardous Waste
No analogous provisions	Reg. 23 § 26	Criteria for Listing Hazardous Substance Sites
No analogous provisions	Reg. 23 § 27	Remedial Action Trust Fund Priority List
No analogous provisions	Reg. 23 § 28	Penalty Policy and Administrative Procedures
No analogous provisions	Reg. 23 § 29	Severability
No analogous provisions	Reg. 23 § 30	Effective Date

References:

1. On-line copies of the current edition of Regulation No. 23 may be found at <http://www.adeq.state.ar.us/regs/reg23.htm>.
2. The updated, on-line version of the Arkansas Code of 1987, Annotated may be found at [http://www.arkleg.state.ar.us/lpbin/lpext.dll?f=file\[fbrowse-j.htm\]](http://www.arkleg.state.ar.us/lpbin/lpext.dll?f=file[fbrowse-j.htm]).

SECTION III

STATE AGENCY RESPONSIBILITIES (40 CFR 271.6(b))

3. Organization and Structure of the Hazardous Waste Program

1. *Identification of State agency(ies) responsible for administering program*

Arkansas's Hazardous Waste Management program is administered by the Hazardous Waste Division of the Department of Environmental Quality, and incorporates not only the state's equivalent of the federal RCRA hazardous waste program, but a hazardous substance site remedial action program similar to the federal Superfund program. Administration of the RCRA portion of the Arkansas Hazardous Waste Management Program involves approximately \$3.2 million annually, and 30 man-years of effort.

The Hazardous Waste Division of ADEQ administers the State's hazardous waste program under authority of the Arkansas Hazardous Waste Management Act, the Resource Recovery Act, the Emergency Response Fund Act, the Remedial Action Trust Fund Act, and Regulation No. 23 (Hazardous Waste Management). The Hazardous Waste Division has primary responsibility within the Department of Environmental Quality for administering the hazardous waste permitting and enforcement authority delegated by EPA under RCRA. The Division additionally is responsible for the Department's hazardous waste cleanup activities under the Federal "Superfund" act and the corresponding State statutes.

State agency(ies) responsible for administering program revisions

Revisions to the Arkansas hazardous waste management program will be administered and implemented by the Hazardous Waste Division of the Arkansas Department of Environmental Quality.

2. *Structure of the Department of Environmental Quality*

The Arkansas Department of Environmental Quality, or "ADEQ", is the state agency with primary responsibility for environmental regulation in Arkansas, including regulation of the management of hazardous wastes and substances. The ADEQ 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 Environmental Quality
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>.

ADEQ 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 ADEQ operates an annual budget of approximately \$80.4 million. The Department is authorized 436 full-time staff and, as of July 1, 2000, actually employs 385.

The Director's Office

The ADEQ 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 ADEQ division chiefs. All other ADEQ 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 environmental management and pollution control activities of the Department.

The current Director of the ADEQ is Richard A. Weiss. Mr. Weiss took office as interim Director of the Department on October 1, 2000.

Three Deputy Directors assist in administering the Department. Mary Leath serves as Chief Deputy Director and oversees the non-regulatory divisions of Computer Services, Construction Assistance, Customer Service, Environmental Preservation, and Fiscal. Larry Wilson oversees the Water, Solid Waste, Regulated Storage Tank, and Mining Divisions; Becky Keogh oversees the Air, Hazardous Waste, and Technical Services Divisions. Formerly separate divisions for Market Development and Recycling have been consolidated and merged into the Customer Service Division.

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;

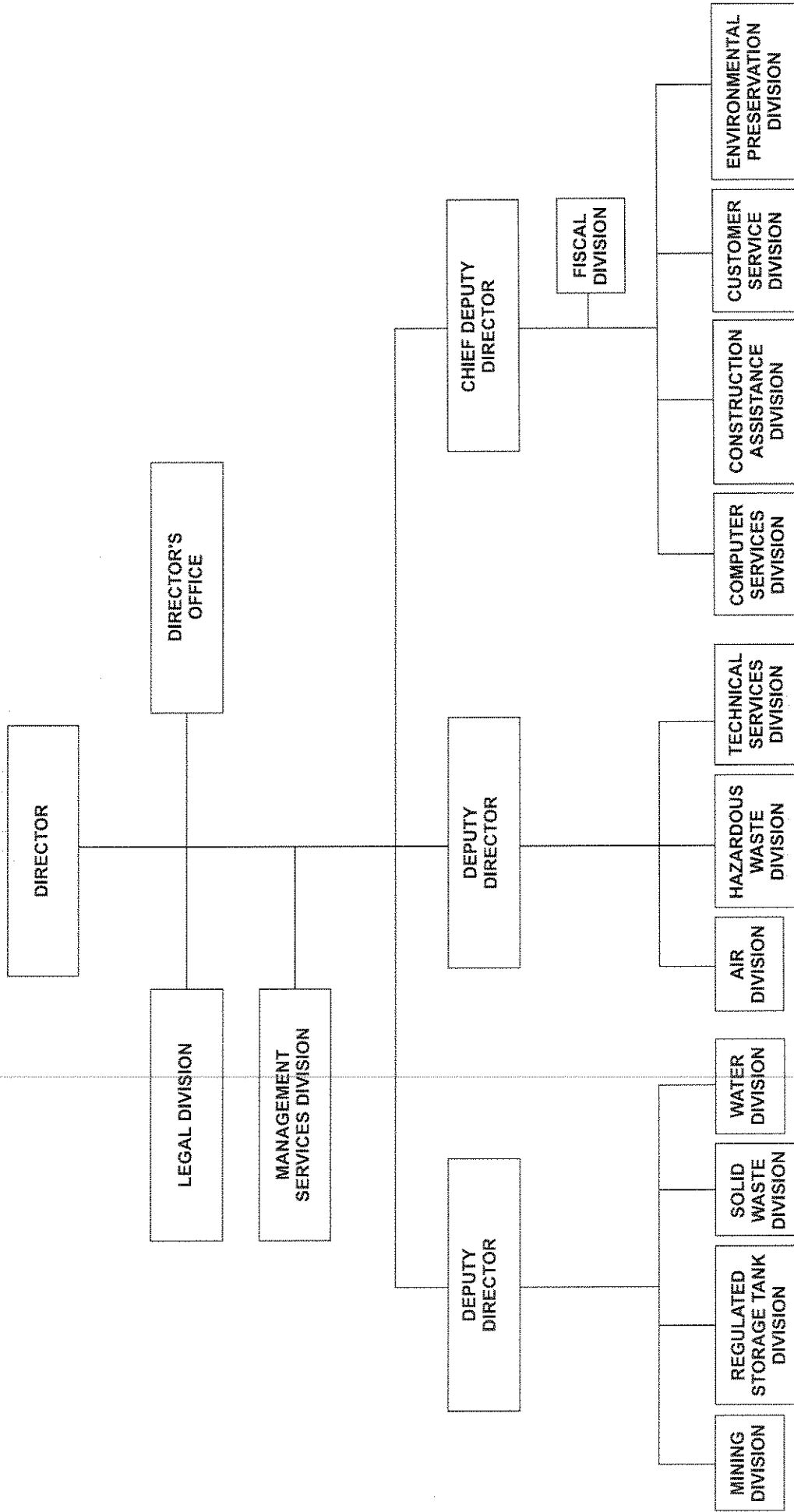
(9) To initiate, conduct, and support research, demonstration projects, and investigations, and coordinate all state agency research programs pertaining to hazardous waste management, and establish technical advisory committees to assist in the development of procedures, standards, criteria, and rules 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.

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

Organizational Chart



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.*

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

Shenel Sandidge — Secretary

LaVivian Daniels — 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 delegate;

(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 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 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 .

1. Divisions, program areas and subunits within the agency(ies)

ADEQ'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 the ADEQ 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 cleanup activities under the federal Superfund program, and for implementing the State cleanup 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 ADEQ 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 three functional branches (Active Sites, Inactive Sites, and Technical & Administrative Services), and is authorized 45 employees. Current manning of the Division in May, 2000 is 42 employees. The structure and manning of the Division is shown at **Figure 3**.

The Active Sites Branch is responsible for all functions related to the regulation and monitoring of sites and facilities which are currently engaged in the management of hazardous wastes. Typically this branch conducts compliance monitoring and inspections (including the receipt and investigation of citizen complaints), permitting, and corrective or other remedial actions at currently operating waste management facilities.

The Inactive Sites Branch coordinates and implements remedial actions at abandoned hazardous substance sites under the provisions of the Arkansas Remedial Action Trust Fund Act (RATFA), the state's Voluntary Cleanup ("Brownfields") program, and coordinates with the U.S. Environmental Protection Agency to implement the federal CERCLA ("Superfund") program for sites in Arkansas.

The Technical and Administrative Support Branch is responsible for coordinating and implementing all enforcement actions dealing with hazardous wastes or hazardous substances as well as providing risk assessment and analysis, data and information management, program planning, and general administration and support to the entire Hazardous Waste Division.

2. Division of responsibilities among State agencies

ADEQ has primary responsibility for managing RCRA hazardous wastes in Arkansas. The Department shares portions of these responsibilities with two external agencies.

The Arkansas Highway Police, a division of the Arkansas Highway and Transportation Department, issues and monitors hazardous waste transportation permits for persons transporting hazardous wastes on the public streets or highways. Transporters must obtain an EPA identification number from ADEQ, and subsequently apply to the Arkansas Highway Police for the hazardous waste transporter permit. A annual \$50.00 application fee is assessed.

The Division of Radiation Control and Emergency Management of the Arkansas Department of Health has jurisdiction over the radioactive components of mixed hazardous waste, while ADEQ regulates the hazardous components. Handlers of radioactive mixed waste in Arkansas are thus subject to both the radiation control requirements of the Department of Health and the RCRA waste management requirements of ADEQ's Regulation No. 23.

4. *Procedures for Coordination Among Agencies*

The ADEQ maintains a memorandum of agreement and an active working relationship with the Arkansas Highway Police for regulation of hazardous waste transportation. Additionally, the Department has entered into a memorandum of agreement with the Arkansas Department of Health for the regulation and management of radioactive mixed wastes. Detailed procedures for coordination and cooperation between the agencies are contained in the memoranda themselves, which are contained at Appendix I.

5. *Division of Responsibility Between the ADEQ and EPA*

Joint Permitting Procedures

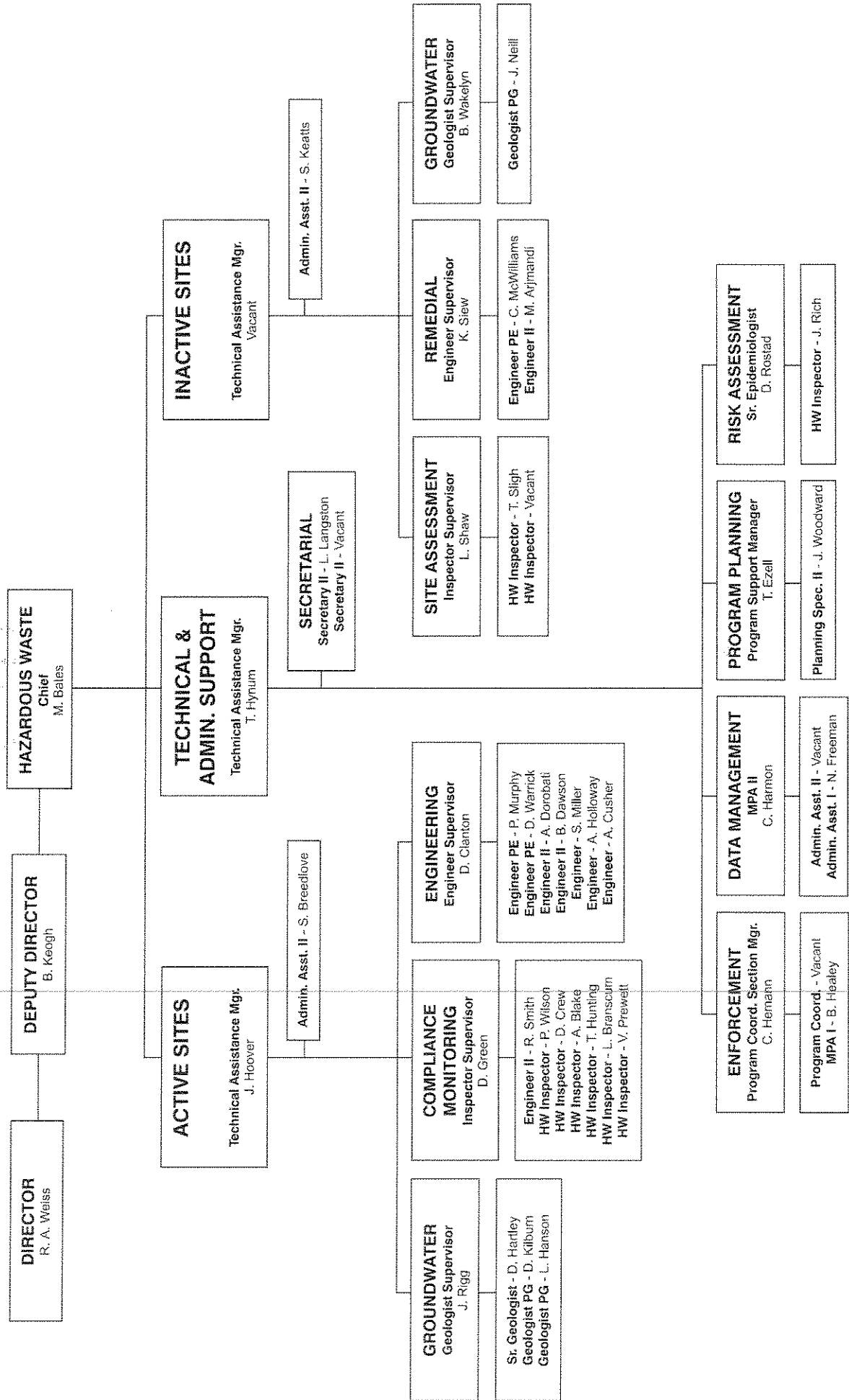
ADEQ and EPA have agreed to a joint permitting process for the processing and enforcement of permits for those provisions of HSWA for which ADEQ does not have authorization. As ADEQ receives authorization for additional provisions of the HSWA, EPA will suspend issuance and enforcement of Federal permits in Arkansas for those provisions, and will transfer that portion of permit responsibility to ADEQ.

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 ADEQ 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 ADEQ within thirty days of the approval of the State program in conformance with the conditions of the RCRA MOA.

EPA Overview of State Permits

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

Hazardous Waste Division Personnel Chart



While EPA may comment on any permit application or draft permit, EPA's overview function focuses primarily on specific facilities identified by ADEQ and EPA in ADEQ'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 ADEQ 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 ADEQ has met or refuted its concerns, and must also provide the permit applicant with a copy of such withdrawal.

Where the EPA and ADEQ staffs cannot reach resolution or agreement on draft permits, the Director of ADEQ 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).

ADEQ's Role in Joint Permitting

ADEQ 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 ADEQ's program. ADEQ 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.

ADEQ issues, modifies, and reissues all permits contained in the authorized portions of ADEQ'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) ADEQ 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 ADEQ will require compliance with applicable standards as soon as possible.

ADEQ considers all comments EPA makes on permit applications and draft permits. ADEQ 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 ADEQ's program is amended to reflect those requirements and prohibitions and authorization is received for the portion or portions of the program.

EPA and ADEQ 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 ADEQ 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 ADEQ'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 ADEQ 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 ADEQ 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.

ADEQ's Role: ADEQ 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, Code, and Regulation No. 8. ADEQ 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.

Joint Enforcement Procedures

ADEQ has the primary responsibility under the State program to inspect and bring enforcement action against any hazardous waste generator, transporter, or facility in Arkansas. Without limiting in any manner EPA's ability to inspect or enforce, the two agencies have agreed that EPA will inspect or enforce in three situations: 1) when for policy reasons unrelated to the ability or willingness of ADEQ to inspect or enforce in a timely manner, EPA desires to inspect or enforce; 2) when in EPA's judgement ADEQ fails to take timely and appropriate enforcement action, or fails to timely and properly inspect; and 3) upon request by ADEQ.

In reference to the first category above, the frequency of EPA oversight and training inspections will be specified in the annual State work program. Normally, EPA will accompany ADEQ on no more than 10% of ADEQ's compliance inspections. Inspections and enforcement actions under this category shall not reflect or constitute evidence of any inability or unwillingness on the part of ADEQ.

In reference to the second category above, when in EPA's judgement ADEQ fails to take timely and appropriate enforcement action, or fails to timely and properly inspect: before conducting an inspection of a generator, transporter, or facility, the Regional Administrator will give the Director not less than fifteen days' notice of the intent to inspect in accordance with 40 CFR 271.8(b)(3)(i). If ADEQ performs a compliance inspection and submits a report and data relevant thereto within that time to EPA, no EPA inspection will be made, unless the Regional Administrator deems the ADEQ report and data to be inadequate. In the event the Regional Administrator deems the report and data inadequate, the Regional Administrator will provide to the Director a written statement of the deficiencies upon which such a determination is based. The statement of deficiencies will be provided within fifteen days following a determination of inadequacy. In case of an imminent hazard to human health or the environment, the Regional Administrator may shorten or waive the notice period. EPA enforcement in regard to this category shall then be initiated in accordance with the criteria set forth in the Enforcement MOU.

EPA may take enforcement action against any person determined to be in violation of RCRA in accordance with section 3008(a)(2). EPA will take enforcement action upon determining that ADEQ has not taken timely and appropriate enforcement action or upon request by ADEQ. Prior to issuing a compliance order under section 3008(a) EPA will give notice to ADEQ. EPA also retains its rights to issue orders and bring actions under sections 3008(h), 3013 and 7003 of RCRA and any other applicable Federal statute.

EPA may not take action under section 3008 of RCRA against a holder of a State-issued permit on the grounds that the permittee is not complying with a condition necessary to implement approved State program requirements, unless the Regional Administrator stated, in commenting on the permit application or draft permit, that the condition was necessary following the procedures set forth at 40 CFR 271.19(b) and Section V.B of this Agreement. EPA may, however, take action under section 3008 of RCRA against a holder of a State-issued permit on the grounds that the permittee is not complying with a condition that the Regional Administrator, in commenting on that permit application or draft permit, stated was necessary to implement

approved State program requirements, whether or not that condition was included in the final permit.

ADEQ agrees to carry out a timely and effective program for monitoring compliance by generators, transporters, and facilities as defined in the State/ EPA Enforcement Memorandum of Understanding and annual State grant work program against all persons in violation of generator and transporter standards (including manifest requirements), facility standards, permit requirements, compliance schedules, and all other program requirements, including violations detected by State or Federal compliance inspections. As part of this program, ADEQ will conduct inspections to assess compliance with generator and transporter standards (including manifest requirements), facility standards, permit requirements, compliance schedules, and all other program requirements. Compliance monitoring activities and priorities will be specified in the annual State grant work program and shall be consistent with all applicable Federal requirements and with ADEQ's Program Description. ADEQ will maintain procedures for receiving and ensuring proper consideration or information about violations submitted by the public.

In assessing civil penalties under Section 9 of ADEQ Regulation No. 7, the Department will apply the factors therein set forth in the manner provided by 40 CFR 271.16(c).

ADEQ retains all records for at least three years unless there is an enforcement action pending. In that case all records will be retained until such action is resolved. EPA also agrees to retain all records for at least three years.

SECTION IV

STAFFING AND FUNDING RESOURCES (40 CFR 271.6(b)(1)-(3))

1. *Description of Staffing of the ADEQ*

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.

Active Sites Branch Employees and Job Summaries

TECHNICAL ASSISTANCE MANAGER :

The Technical Assistance Manager serves as the Active Sites Branch Manager. The job duties include coordinating and negotiating with EPA on grant commitments (MOU, RIP, grant workplans, etc.), The Technical Assistance Manager reports directly to the chief of the Hazardous Waste Division.

ADMINISTRATIVE ASSISTANT II:

The Administrative Assistant II provides general administrative and clerical support to the Active Sites Branch.

Groundwater Section:

The Groundwater section is responsible for groundwater monitoring compliance and provides geological and groundwater technical consultation to the Division's RCRA permitting and enforcement sections. It consists of a Geology supervisor, two senior geologists, and two geologists. Two of the section's four geologists have attained the status of Registered Professional Geologists.

The Groundwater Section 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 section, through cooperation with the engineering and enforcement staff, reviews

- RCRA Facility Investigation workplans and reports
- Corrective Measures Study workplans and reports
- Corrective Measures Implementation 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 section 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 to the Active Sites Branch manager.

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).

Compliance Monitoring Section

INSPECTOR SUPERVISOR:

The Inspector Supervisor serves as the supervisor for six 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 reports directly to the Active Sites Branch 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.

Engineering Section

The Engineering Section is responsible for technical review of permit applications and enforcement actions, drafting and coordination of permits, and RCRA and RATFA corrective

actions. The section also provides engineering consultation to the rest of the Division. The section consists of an Engineer Supervisor and six environmental engineers.

ENGINEER SUPERVISOR: The Engineer Supervisor supervises and coordinates the activities of the permit engineers. The job duties include coordinating and negotiating with EPA on all grant commitments for permitting and corrective actions, and overseeing 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 sections for enforcement of permit conditions, application of RCRA or RATFA corrective actions pursuant to enforcement action, and provides technical assistance to the Inactive Sites Branch in formulation of RATFA remedial actions. The Technical Branch Manager reports directly to the Active Sites Branch Manager.

PERMIT ENGINEER: The Permit Engineer (Engineer II/P.E.) works under the supervision of the Engineering Supervisor 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.

Inactive Sites Branch

The Inactive Sites Branch is responsible for all State actions under the Federal Superfund and State Remedial Action and Voluntary Cleanup (Brownfields) programs.

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 cleanup 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.

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

Remedial Section

ENGINEER SUPERVISOR: The Engineer Supervisor supervises 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 (two 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.

Groundwater Section

The Groundwater section is responsible for groundwater monitoring compliance and provides geological and groundwater technical consultation to the remedial and Site Assessment sections. It consists of a Geology supervisor and a senior geologists. Both of the section's two geologists have attained the status of Registered Professional Geologists.

The Groundwater Section is responsible for the evaluation of hydrogeologic assessments and groundwater monitoring systems at hazardous waste sites. The section reviews Brownfields and voluntary cleanup applications and comprehensive site assessments for technical adequacy and completeness with respect to groundwater issues. Additionally, the section reviews and provides the State's comments and concerns regarding Superfund Remedial Investigation workplans and reports, Superfund Feasibility Studies workplans and reports, Superfund Remedial Action workplans and reports, and Facility Investigations required by Consent Administrative Orders. The groundwater section also assists with site inspections and investigations, groundwater sampling activities, 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 to the Inactive Sites Branch manager.

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).

Site Assessment Section

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.

Technical and Administrative Support Branch

The T&ASB provides common support functions (enforcement, information management, risk evaluation, regulatory development and interpretation, program planning and financial/budgetary functions) to the Active Sites Branch and Inactive Sites Branch. Activities of this branch are coordinated and supervised by a Technical Assistance Manager, who serves as the branch chief.

Secretarial Section

This section, consisting of two secretaries, provides administrative support to the Division Chief and secretarial support for the Division. One secretary is permanently stationed with the Department's Central Records Section to oversee, file, and maintain control of the Hazardous Waste Division's archived files.

Enforcement Section

PROGRAM COORDINATING SECTION MANAGER

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.

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.

Programs and Planning Section

The Program and Planning Section, consisting of a Program Support 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.

PROGRAM SUPPORT 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.

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

Risk Assessment Section

SENIOR EPIDEMIOLOGIST

The Senior Epidemiologist serves as a human health and ecological risk assessor in the Risk Assessment Section, Technical & Administrative Support Branch of the Hazardous Waste Division. This person reviews and evaluates risk assessments (human health and ecological) submitted to and/or conducted by the HWD in support of the RCRA Corrective Action, Remediation, MACT (combustion permitting) Brownfields, and Voluntary Cleanup programs. This Risk Assessment section also supports the ADEQ's Air Division in the review of RCRA/MACT Combustion Risk Assessments (Human Health & Ecological Risk).

HAZARDOUS WASTE INSPECTOR

This person conducts field research and sampling in support of risk evaluations conducted by the Hazardous Waste Division, and assists the Senior Epidemiologist in the conduct and review of risk assessments (human health and ecological) submitted to and/or conducted by the HWD in support of the RCRA Corrective Action, Remediation, MACT (combustion permitting) Brownfields, and Voluntary Cleanup programs.

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 1.0 work years to the RCRA program, and is funded through indirect cost provisions in federal grants and state permit fees.

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 work years annually to the RCRA program.

2. *Overall Changes in Existing Resources for Previously Authorized Program*

1. *Changes in staffing, internal reorganizations, and shifts in priorities*

Since the previous Program Description, the Hazardous Waste Division has reorganized into three branches, dividing functions between active and abandoned facilities, with a third branch which implements enforcement for both categories and provides technical and administrative support to both program branches. The structure and responsibilities of each branch have been previously discussed.

2. *Changes in size of the regulated community since previous authorization*

Arkansas's universe of regulated hazardous waste management facilities has gradually declined over the past five years as improved waste management awareness and waste minimization and pollution prevention incentives have caused many handlers to drop from a fully-regulated generator or small quantity generator status to conditionally-exempt or non-generators.

3. *Program changes that have significant impact on State's efficiency and existing program resources*

This subsection should expand the discussion of changes in existing resources in order to describe how such changes have impacted the program. For example, a decrease in the number of staff conducting inspections may make compliance monitoring efforts less efficient.

3. *Itemization of Estimated Costs and Sources of Funding for Revision*

1. *Personnel*

Personnel resources devoted to the Arkansas Hazardous Waste Management

Program have been described in the section immediately above.

To better meet the increasing need for hydrogeologic investigations, the increasing use of risk management techniques, and fully implement the State's developing Voluntary Clean-Up and Brownfields Program, the Division has requested nine additional personnel for the upcoming biennium (FYs 2002-2003).

These new positions include a Brownfields/Voluntary Clean-Up Coordinator (Program Support Manager), Engineer II, Senior Epidemiologist, and Senior Geologist/Geologist P.G. in the Inactive Sites Branch, two additional and Senior Geologist/Geologist P.G. and an additional Hazardous Waste Inspector in the Active Sites Branch, and an additional Senior Epidemiologist in the Technical and Administrative Support Branch.

2. Funding

1. Estimated program and technical support costs

The integration of specific changes in the program revisions addressed in this application (RCRA Clusters VII, VIII, IX, and X) makes the incremental costs associated with these revisions indistinguishable from the ongoing costs of implementing the hazardous waste management program. Increased staffing levels addressed immediately above stem from increasing workload and participation in the existing regulated universe rather than to specific or individual program revisions addressed in these Clusters.

2. Sources and amounts of available funding

The ADEQ budget for the hazardous waste management program is funded by four sources:

- Federal grants (appropriation 358);
- Permit, hazardous waste activity, and closure plan fees (appropriation 1PM);
- An annual hazardous waste monitoring and inspection fee (appropriation 2JX); and
- Fees on the generation of hazardous waste (appropriation 245).

The Hazardous Waste Division and its programs are primarily self-funded; the Division and Department receives little funding from State general revenues. In FY 2000, the funding ratio to implement the equivalent Federal requirements of the hazardous waste management program is approximately 47% from Federal grants and 53% from ADEQ matching and other monies, which are derived from State fees.

Under Arkansas law, no legislative appropriation may be for a period of more than two years. ADEQ 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 Arkansas Constitution of 1874 and the Revenue Stabilization Act of 1947 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.

SECTION V

STATE PROCEDURES, PERMITTING PROGRAM AND COORDINATION WITH OTHER AGENCIES AND PERMITTING (40 CFR 271.6(c) & (f))

1. *Regulatory Development*

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.

Proposed new regulations or revisions to regulations are first presented to the Rules and Regulations subcommittee of the Arkansas Pollution and Ecology Commission. Upon the approval by this committee, 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. 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 then presented again to the Regulations committee of the Commission and the Rules and Procedures Committee of the Legislative Council. Upon approval by these two bodies, the final rule is presented 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 and the rule and minute order are forwarded to the Governor's Office for signature. The signed rule is then filed with the office of the Secretary of State for publication in the *Arkansas Register*. The new or revised rule is then effective 20 calendar days following its filing with the Secretary of State.

2. Notification

The Department monitors and tracks handlers of hazardous wastes by assigning each generator a unique 12-digit 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 RCRIS system. Handlers of hazardous waste submit a state Notification of Regulated Waste Activity (Arkansas/EPA Form 8700-12) to the Department and receive the EPA ID number directly from the Department. The notification is entered into the RCRIS system, and the original copy filed by the Department with a copy of the notification provided to EPA.

In addition to RCRIS, Arkansas maintains an internal database, EPAIDS, as a historic record of all permanent and provisional EPA identification numbers as well as state-generated identification numbers for PCB generators and conditionally-exempt small quantity generators. EPAIDS is regularly cross-referenced to RCRIS to insure that information in both databases is complete and consistent.

3. Manifest Tracking System

The Arkansas 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 ultimate treatment, storage, or disposal.

Arkansas does not allow the use of the Uniform Manifest, but requires the use of either the Arkansas manifest for wastes imported into the state, and either the destination state manifest or an Arkansas manifest for any wastes exported from the state.

Arkansas 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
- Address of the treatment, storage, or disposal facility to which the generator is sending waste (called the designated facility).

Each manifest contain 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
- 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.

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 45 days pass and the manifest still has not been received, the generator must submit an exception report (described below).

The recordkeeping and reporting requirements for hazardous waste handlers provide the State with a method to track the quantities of waste generated and the movement of hazardous wastes. The generator regulations in Reg. 23 Section 262 contain three primary recordkeeping and reporting requirements:

- Annual reporting
- Exception reporting
- Three year retention of reports, manifests, and test records.

4. *Coordination of Information Regarding Interstate and International Shipments*

Arkansas has adopted the Federal regulations at 40 CFR Part 262 Subparts E, F, and H regarding exports, imports, and transfrontier shipments of hazardous waste for recovery within the OECD. Arkansas has made no modifications to the Federal rules with the exception of requiring that a copy of the import, export, or transfrontier shipment request and manifest be provided to the ADEQ at the same time the documents are provided to EPA. Historically, Region VI EPA has received its information on waste shipments from the ADEQ based on the State's reporting its receipt of the state copies of the foreign manifests.

Receipt, review, and reporting of import and export manifests for hazardous waste is accomplished by the Data Management section within the Technical and Administrative Support Branch of the Hazardous Waste Division. Receipt, review, and approval of OECD transfrontier shipments is accomplished by the Programs & Planning section within the same branch.

5. **Permitting**

ADEQ issues Permits to hazardous waste treatment, storage, and disposal facilities and transporters. Permit guidelines and procedures, which include an appellate review process, have been developed and implemented. No permit shall be issued by the Department for a term greater than 10 years. Thus far, ADEQ has adopted, by reference, EPA's regulations which were enacted through June 30, 1992. ADEQ has established procedures to accept as interim provisions of Regulation No. 23 all amendments and other changes to Federal Regulations prior to hearings held to adopt such changes.

ADEQ has adopted EPA 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. Federal regulations not adopted by reference are included as equivalent standards in Regulation No. 23 (Hazardous Waste Management).

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.

A public comment policy, adopted July 24, 1981, 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. The State program 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 give 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 Subtitle C. TSDFs in existence on November 19, 1980 operate under interim status until a final permit decision is made. New TSDFs 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. HSWA added “corrective action” requirements to the permitting process. These requirements state that facilities must address existing or past 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* - EPA and the Department encourage 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. 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, ADEQ 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* - ADEQ 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 Agency 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:

ADEQ seeks 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, ADEQ 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.

ADEQ 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.* ADEQ 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, ADEQ 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 combustors.

- Permit Controls on Incinerators and BIFs.* ADEQ 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. ADEQ 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.* ADEQ 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.* ADEQ 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. ADEQ 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. For more information on these laws and their potential impacts on Subtitle C's permitting process, the reader is referred to Regulation 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.

HSWA imposed a statutory timetable for Part B submittals for interim status facilities, summarized below. Those facilities that fail to meet the submittal deadline lose their interim status and must close if they do not receive permits by the deadline. However, these deadlines do not apply to new facilities or facilities that gained interim status after November 8, 1984.

Type of Facility	Loses/Lost Interim Status	Unless Part B Submitted by
Land disposal	Nov. 8, 1985	Nov. 8, 1985
Incinerator	Nov. 8, 1989	Nov. 8, 1986
All others	Nov. 8, 1992	Nov. 8, 1988

Under the provisions of HSWA, another group of facilities can submit Parts A and B separately. Specifically, any TSDF that comes under the jurisdiction of Subtitle C 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 Subtitle C in this manner: they must submit a Part B within 12 months of becoming subject to Subtitle C 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 Section 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. 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 Section 6 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, ADEQ 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.

ADEQ must either approve or deny the applications for facilities that received interim status on or before November 8, 1984 in accordance with the following schedule set out under HSWA:

- Land disposal facilities - by November 8, 1988
- Incinerators - by November 8, 1989
- All other TSDFs - by November 8, 1992.

For new facilities that submit their applications after November 8, 1984, HSWA places no time limits on how long the Department can take to evaluate the application.

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.

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 ADEQ 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.

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 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 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 Part B application completeness checklists provided by EPA, as well as the Part A and Part B Supplemental Checklists which incorporate more stringent requirements of Regulation No. 23 (Hazardous Waste Management) . These checklists are 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 Parts III, VIII, and IX of ADEQ Regulation No. 8, dated July 6, 1994.

PERMIT ADMINISTRATION

RCRA permits issued by ADEQ are valid for up to ten years. Land disposal permits have an additional requirement to be reviewed after every 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. ADEQ 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

ADEQ 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

Act 454 of 1991, codified at A.C.A. § 8-1-106, 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.

ADEQ 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.

PERMIT APPEALS

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. 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.

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 § 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 now reserved for the Arkansas Pollution Control & Ecology Commission through the rulemaking process.

6. Waste Minimization/ Pollution Prevention Program

Guidance:

The Program Description should cover the types of activities that form the State’s waste minimization/pollution prevention program, including any outreach or training the State provides as part of that program. It should also identify the subunits within the agency(ies) responsible for the various programs.

7. Availability of Information Procedures (RCRA § 3006(f))

Any information made available to the ADEQ 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...

ADEQ 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 by-products 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 ADEQ 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.

8. Appeal Procedures

The Commission provides an adjudicatory hearing and appeals process for contested permitting and enforcement 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 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 action”. A petition without specific legal and factual objections is not acceptable.

Preliminary Hearing

Within thirty (30) days after the appeal is filed with the Commission Secretary, a preliminary hearing shall be held by the Commission’s administrative 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.

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.

The recommendation of the administrative hearing officer is subject to approval and adoption by the Commission, and the decision is published in the form of a minute order.

SECTION VI

COMPLIANCE TRACKING AND ENFORCEMENT (40 CFR 271.6(e))

State Compliance, Monitoring, and Enforcement Program:

An effective and efficient compliance monitoring and enforcement program is critical to the success of the State's Hazardous Waste Program. The compliance and monitoring system as outlined in this section is designed to assess and monitor compliance with facility standard and generator and transporter requirements equivalent to:

- Reg. 23 § 262, "Standards Applicable to Generators of Hazardous Waste".
- Reg. 23 § 263, "Standards Applicable to Transporters".
- Reg. 23 §§ 264 and 265, "Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities", "Standards Applicable to Existing Facilities with Interim Status", and any additional standards imposed by Acts 406, 1098, and the State Hazardous Waste Code.
- Reg. 23 § 266, "Standards for the Management of Specific Hazardous Waste and Specific Types of Hazardous Waste Management Facilities".
- Reg. 23 § 268, "Land Disposal Restrictions".
- Reg. 23 § 270, "Administered Permit Programs: The Hazardous Waste Permit Program."

The Hazardous Waste, Technical Services and Legal Divisions of the Department are responsible for the numerous activities associated with compliance monitoring and enforcement.

Frequency of Inspections

Frequencies of compliance evaluation inspections (CEI's) and comprehensive groundwater monitoring evaluations (CME's) are in accordance with EPA's annual Operating Year Guidance and RCRA Implementation Plan, and is coordinated via the annual state grant workplan.

The inspectable universe is defined as all facilities active in RCRIS, and is coordinated between ADEQ and EPA Region VI annually.

Currently, all permitted, operating, and closed land disposal facilities with outstanding Class I violations, closed LDFs not inspected during the previous year, incinerators, federally-owned TSDFs, and industrial boilers and furnaces are inspected annually. Commercial land disposal and treatment, storage, or disposal facilities are inspected twice annually. All commercial land disposal facilities subject to groundwater monitoring receive a comprehensive monitoring evaluation each year, noncommercial facilities every three years. Eight percent of all generators, including small quantity generators, are inspected each year. An active program is established and maintained to respond to citizen complaints, identify violators and nonnotifiers, and bring them into compliance.

COMPLIANCE MONITORING

The first phase of the enforcement program is monitoring facilities to verify that they comply with RCRA's regulatory requirements. This monitoring serves several purposes. It allows the Department and EPA to find out which facilities are not in compliance. It also allows EPA and the States to assess the effectiveness of specific legal actions, such as administrative orders, that may have been taken against a handler. Also, the overall compliance monitoring program allows EPA to evaluate the effectiveness of State programs and to monitor nationwide compliance with RCRA. Finally, monitoring acts as a deterrent, encouraging compliance with the regulations by making non-compliers susceptible to enforcement actions.

Inspections

The primary method of collecting compliance monitoring data is through an inspection. The inspection may include a formal visit to the handler, a review of records, taking of samples, or observation of operations. In addition to supplying information for enforcement proceedings, inspections are used to gather data to assist EPA in the development of RCRA regulations, and to help EPA track program progress and accomplishments.

Inspectors from the Hazardous Waste Division's Enforcement Branch conduct the inspections. In instances where criminal activity is suspected, the Arkansas State Police or EPA's National Enforcement Investigations Center (NEIC) may become involved. Similarly, the Arkansas Highway Police and the Department of Transportation (DOT) may participate where waste transporters are involved.

The Arkansas Hazardous Waste Management Act provides the authority for conducting inspections. This Act allows ADEQ inspectors to enter any premises where hazardous waste is handled to examine records and take samples of the wastes.

HSWA requires that all Federal or State operated facilities be inspected annually. Furthermore, all TSDFs must be inspected at least once every two years. Facilities also may be inspected at any time if EPA or the State has reason to suspect that a violation has occurred. Finally, facilities are chosen for an inspection when specific information is needed to support the development of RCRA regulations.

Types of Inspections

A number of different types of inspections are conducted under the authority of the RCRA program. Inspections may be conducted by EPA, an authorized State, or both. Typically, either the State or EPA will assume overall responsibility, or the lead, for conducting the inspection. The different inspection types are explained below.

1. Compliance Evaluation Inspection (CEI) - These are routine inspections of hazardous waste generators, transporters, and TSDFs to evaluate compliance with the requirements of RCRA. CEIs encompass a file review prior to the site visit, an on-site examination of generation, treatment, storage or disposal areas, a review of records, and an evaluation of the facility's compliance with the requirements of RCRA.

2. Case Development Inspection (CDI) - CDIs are conducted when significant RCRA violations are known, suspected, or revealed. A case development inspection is performed to gather data in support of a specific enforcement action. Most of the activities conducted

during a CDI are specific to the type of information required to document the violation (e.g., incinerator investigations, closure/post-closure investigations).

3. Comprehensive Ground-Water Monitoring Evaluations (CME) - The CME is conducted to ensure that ground-water monitoring systems are designed and function properly at RCRA land disposal facilities. In addition to the CEI activities, CMEs include sampling and analysis of the facility's ground-water monitoring system and hydrogeological conditions.

4. Compliance Sampling Inspection (CSI) - These are inspections in which samples are collected for laboratory analysis. A sampling inspection may be conducted with a CEI, or any inspection except a CDI.

5. Operations and Maintenance Inspection (O&M) - Many land disposal facilities close with waste in place. The purpose of O&M inspections is to ensure that ground-water monitoring and other systems continue to function properly after a land disposal facility has closed. O&M inspections are usually conducted at facilities that have already received a thorough evaluation of the ground-water monitoring system under a CME inspection.

Conducting the Inspection

Inspections conducted pursuant to a citizen complaint are conducted on a no-notice basis. Scheduled inspections are conducted on a no-notice or short notice basis so as to more closely ascertain the day-to-day operations of a facility. All inspections and investigations are conducted in a courteous and professional manner. Prior to conducting an inspection and/or an investigation the inspector familiarizes himself with the facility to be visited. This is done by reviewing all pertinent file regarding the facility. These include the Department Central files, working files maintained by the Legal Division and the Technical and Enforcement branches, and the Division's manifest and annual report files. Pertinent information is recorded on a Pre-Inspection Worksheet, which the inspector maintains in his possession for reference during the site visit.

During the site visit, the inspector makes a visual inspection of the hazardous waste generation and waste management locations. He also visually inspects the process area and grounds surrounding the manufacturing building(s) and waste management area(s). The purpose of this "walk-through" is to verify:

- 1) Physical compliance with waste management requirements.
- 2) Proper and accurate identification, labeling, and handling of all hazardous wastes generated or handled.
- 3) Approximate volume of wastes generated and/or handled.

During the course of a CEI, ADEQ inspectors examine all hazardous waste management processes and waste streams which apply at that specific facility. Inspection checklists are used to insure thorough coverage of each inspected area.

The inspector also reviews all permanent 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 site, he may make copies of selected items for later review.

The inspector follows proper safety and personal protection procedures throughout the site visit, including any site-specific precautions which may be required by the facility.

Upon request by the facility, the inspector will conduct an exit briefing to inform the facility staff of the preliminary findings of the inspection. It is stressed that the results at this time are preliminary and that a thorough review of the information gathered will be conducted, and the results documented and transmitted to the facility in writing at a later date.

All notes taken during the course of an inspection or investigation are recorded in a bound field notebook with sequentially numbered pages. These field notes are the basis for writing the resulting report, therefore entries must be dated, legible, and accurate, and contain only facts or observations. Notes must be of sufficient detail to recreate the events at the facility during the writing of the report or subsequent legal testimony, if necessary. The notebook is also used to document photographs and samples taken during the inspection. The notebook is kept in the physical possession of the inspector or in a secure location at all times.

Photographs taken during inspections, as well as the analytical results of samples taken, are included in the inspection report. Negatives of photographs are filed separately in Division files, and are retained for at least three years (unless there is ongoing enforcement action against the facility, in which case negatives are retained for 3 years following final resolution of the enforcement case).

Procedures for sampling during inspections and investigations are documented in the *Quality Assurance Plan For Hazardous Waste*, which is updated annually in accordance with the State's RCRA grant workplan. Additional sampling procedures as well as analytical techniques are detailed in EPA publication SW-846, *Test Methods for Evaluating Solid Waste, Physical/Chemical Methods*.

Post-inspection activities include review of all field notes, photographs, sample results, and any other evidence gathered during the site visit. The inspector compares facts gathered during the site visit with the information gathered during the pre-inspection review. If necessary, the inspector re-reviews specific documents in order to identify and classify any violations. If more information is required from the facility, the inspector requests that information pursuant to the Arkansas Hazardous Waste Management Act. After all pertinent information has been considered and documented, the inspector prepares a final report.

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 Active Sites 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. (Effective August 1, 2000, ADEQ will transition to the new RCRAInfo data management system.)

The inspector is responsible for completing the necessary data entry forms and giving them to the Database Coordinator 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

The effective implementation of RCRA's regulatory programs rests on whether or not the people and companies regulated under the Act comply with its various requirements. The goals of the RCRA enforcement program are to ensure that the regulatory and statutory provisions of RCRA are met, and to compel necessary corrective action. This requires close monitoring of hazardous waste handler (generator, transporter and TSD) activities and expeditious legal action where non-compliance is detected. Facility inspections by Federal and State officials are the primary tool for monitoring compliance. When non-compliance is detected, legal action may follow. This may include the use of administrative orders, civil lawsuits, or criminal lawsuits depending on the nature and severity of the problem. The combination of effective monitoring and expeditious legal action is intended to reduce the number of handlers not operating in compliance with RCRA's requirements and to deter potential violations by imposing penalties

ENFORCEMENT ACTIONS

The second phase of the compliance monitoring and enforcement program involves taking enforcement actions to bring handlers into compliance with applicable Subtitle C regulations. The goal of enforcement actions is to compel:

- 1) Proper handling of hazardous waste
- 2) Compliance with RCRA's recordkeeping and reporting requirements
- 3) Monitoring and corrective action in response to releases of hazardous and nonhazardous waste, and hazardous constituents.

Once the inspection or investigation report has been prepared, the inspector, with consultation with the Inspector Supervisor, determines the existence, nature, extent, and classification of any violations. The *RCRA Enforcement Response Policy* and the *RCRA Enforcement Priority Classification Scheme* are used as guidelines for assigning the violation class. This classification is formalized in the annual State/EPA Enforcement Memorandum of Understanding (MOU).

Once a violation has been identified, all communications and actions taken by the inspector or case development worker are documented. These may include, but are not limited to:

- Inspections and investigations
- Telephone calls
- Meeting notes
- Complaints
- Correspondence.

The Inspector Supervisor, in coordination with the Enforcement Coordinator, determines the appropriate enforcement response in accordance with established procedures and policy. There are three levels of enforcement, listed in ascending order of escalation:

- 1) Compliance letter, issued by the inspector;
- 2) Issuance of a formal action, pursuant to a Notice of Violation or Consent Administrative Order, initiated by the Enforcement Branch Manager in accordance with established procedures;
- 3) Civil or criminal prosecution in court, initiated by the Legal Division or local prosecuting attorney.

ADEQ's normal response to any violation is the issuance of a compliance letter notifying the facility or generator that he is in violation of specific state or federal requirements. Formal action in the form of a consent administrative order (CAO) is then initiated against SNCs and some NCs. Initiation of the CAO in lieu of a Notice of Violation (NOV) has sometimes caused problems in meeting EPA's criteria for timely enforcement because of the lengthy negotiations involved; but in the Department's experience this policy results in a facility's quicker return to actual compliance.

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 ASB and T&ASB managers, 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 Section. In most cases, the CAO will be fairly generic in format and will incorporate the inspection report by reference. Requirements to correct noncompliance 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. Because the rationale for granting this extreme relief on the amount of a civil penalty is based on the benefits achieved by rapid reduction of any possible risks to human health or the environment brought about by a swift return to compliance, any extension of the 20-day timeframe during which the facility may be eligible for the reduced penalty is inappropriate. The opportunity for expedited settlement and 50% penalty reduction will not be offered to violators who exhibit criminal behavior, extreme negligence, patterns of habitual noncompliance, 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, any penalty reductions at this point will only be considered based on sufficient cause.

Advice and actions by case development workers is limited to the scope of that individual's position. Legal and technical information requests are forwarded to the proper branch or division.

Violators are classified into two groups:

- 1) Significant Noncompliers (SNCs), those who have caused actual exposure or a substantial likelihood of exposure to hazardous wastes and substances, are chronic and/or recalcitrant violators, deviate from the terms of a permit, or substantially deviate from statutory or regulatory requirements;
- 2) Noncompliers (NC's), those who are not a SNC.

Specific criteria for Class I and II violations, and for SNCs and NCs is documented contained in the Enforcement Memorandum of Understanding.

The Arkansas Hazardous Waste Management Act provides civil penalties for violations of the Act or Regulation No. 23 in amounts of up to \$25,000 per day of violation; each succeeding day on which a violation continues constitutes a separate violation.

Criminal Enforcement

Act 1057 of 1991, codified at Ark. Code, Ann. § authorizing the Department to seek criminal enforcement and penalties; and provides for fines of up to \$250,000 and imprisonment for up to 20 years for certain violations (A.C.A. 8-7-204(a), as amended).

A criminal action initiated by the State can result in the imposition of fines or imprisonment. 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.*, as amended by Act 871 of 1999, 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 noncompliance.

Under Act 350, an environmental audit report shall be privileged and shall not be admissible as evidence in any legal action in any civil or administrative legal action including enforcement actions. Act 871 of 1999 amended this provision to specifically exclude immunity for any sort of criminal activity. The 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 or to the public 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 or administrative 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.

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, ADEQ 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, ADEQ 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

Notice Required

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.

Enforcement Remedies:

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.

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.

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.

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.

Data Management

ADEQ maintains several databases tracking the universe of hazardous waste handlers and permitted parties within the state, hazardous waste manifests, and annual hazardous waste generation and disposition. The Department also operates and provides input to the federal Resource Conservation and Recovery Information System (RCRIS) and the Biennial Report System (BRS).

Internal databases include MANIA (manifest tracking and review); EPAIDS (index of hazardous waste generators, transporters, and TSDFs which are located in Arkansas or who ship wastes into Arkansas), and the Annual Report System (used to track waste generation and disposition).

ADEQ maintains the implementer domain of the state's RCRIS database, which is merged weekly with the federal data. In addition, ADEQ operates the FINDS database for Arkansas handlers, assigning and managing the issuance of EPA identification numbers for Arkansas handlers of hazardous wastes and used oil.

SECTION VII

ESTIMATED REGULATED ACTIVITIES (40 CFR 271.6(g))

Arkansas's hazardous waste management program addresses a universe of **709** handlers of hazardous waste who were subject to the state's annual reporting requirements for 1999. This may be further broken down by handler category:

Category	Quantity
Treatment, Storage, and Disposal Facilities	21
Fully-regulated Generators (LQGs)	236
Small Quantity Generators	473
Hazardous Waste Transporters	35
Used Oil Processor/Re-refiner	10
Used Oil Burner	1
Used Oil Marketer	4

The total reportable universe of 709 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.

21 treatment, storage, and disposal facilities 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'S RCRA PERMITS					
Permit Number	Facility Name	Facility ID Number	Type of Permit	Effective Date	Fee Due
1-HR 1-HR-1 1-HR-2 1-HR-3	Pine Bluff Arsenal (PC)	AR0213820707	83 Landfill/SI 83 Landfill/SI/BZ EXT 5-10 Years LF/SI/BZ 5YR Rev GWM/83LF/SI	11/13/83 6/11/84 5/13/90 5/30/90	NOV
2-H	Trane (American Std)	ARD990742330	CLOSED	-----	---
3-HR-1	Dow Chemical (Mag)	ARD041580762	CLOSED	-----	---
4-H	US Forgecraft	ARD006341747	CLOSED	-----	---
5-H	Dow Chemical (Rus)	ARD051965416	CLOSED	-----	---

ARKANSAS'S RCRA PERMITS					
Permit Number	Facility Name	Facility ID Number	Type of Permit	Effective Date	Fee Due
6-H	Pine Bluff Arsenal (OP)	AR0213820707	Open Burn/Open Detonation		
7-HR-3	US EPA Incin Res (OP)	AR6140090006	CLOSED	-----	----
8-H	Atlantic Research (OP)	ARD091688283	Open Burn/Open Detonation	7/27/84	JUL
9-HR-1	Pine Bluff Arsenal (OP)	AR0213820707	86 Landfill	7/3/86	NOV
10-HR-4	ENSCO (OP/PC)	ARD069748192	Incineration; Storage (C&T); Surface Impoundment (post closure)	7/88	DEC
11-HR-5	Eastman Chemical (OP)	ARD089234884	Storage (Tank); Incinerator	8/90	AUG
12-HR-1	Sentinel Wood Treating (PC)	ARD047335096	Surface Impoundment (post closure)	12/90	DEC
13-H	Pine Bluff Arsenal (OP)	AR0213820707	Incinerator	10/1/90	NOV
14-HR-1	Lion Oil Company (PC)	ARD000021998	Surface Impoundment (post closure); Land Application	1/25/91	JAN
15-H	Safety Kleen, Ft. Smith (OP)	ARD000709733	CLOSED	-----	----
16-HR-1	Safety Kleen, LR (OP)	ARD054575238	Storage (C&T)	10/91	OCT
17-HR-1	Lucent Technologies (OP)	ARD006341119	CLOSED	-----	C
18-H	GLCC - Main Plant (OP/PC)	ARD043195429	Treatment (Tanks); Landfill (post closure)	11/13/92	NOV
19-H	Pine Bluff Arsenal (OP)	AR0213820707	Storage (C&T)	10/3/93	NOV
20-H	Sporting Goods Prop. (PC)	ARD047353922	Surface Impoundment (post closure)	3/12/99	MAR
21-H	Ash Grove Cement Co (OP)	ARD981512270	Storage (C&T)	7/31/00	JUL
22-H	Albemarle (Ethyl) (OP/PC)	ARD052528809	Storage (C&T); Landfill (post		

ARKANSAS'S RCRA PERMITS					
Permit Number	Facility Name	Facility ID Number	Type of Permit	Effective Date	Fee Due
			closure)		
23-H	Van Waters & Rogers, Jacksonville	ARD071245401	CLOSED	-----	---
24-H	Koppers (PC)	ARD006344824	Surface Impoundment (post closure)	7/94	JUL
25-H	Weyerhaeuser (PC)	ARD067671313	Surface Impoundment (post closure)	4/98	MAR
26-H	Tracor - East Camden (OP)	ARD980867873	Open Burn/Open Detonation	9/30/94	SEP
27-H	Lockheed Martin Vought (OP)	ARD980621155	Open Burn/Open Detonation	9/30/94	SEP
28-H	Rineco (OP)	ARD981057870	Storage (C&T); Tank Treatment	9/30/97	SEP
29-H	Pine Bluff Arsenal (OP)	AR0213820707	Stockpile Incinerator	1/99	JAN
30-H	Reynolds Metals (OP)	ARD006354161	Landfill; Storage (IS); Incineration (IS)	3/99	MAR
31-H	Austin Powder (OP)	ARD093417525	OB/OD		
32-H	U of A Nuclear Landfill (PC)	ARD983285230	Landfill		
33-H	National Technical Systems (OP)	ARD983274002	Incinerator		

Types of Hazardous Waste Management Facilities in Arkansas

Waste Management Activity	Quantity	Facilities in Universe
Commercial Storage/Treatment	1	Safety-Kleen - Little Rock
Noncommercial Storage/Treatment	0	
Land Disposal (UIC)	2	Great Lakes Chemical Albemarle
Landfills	2	Pine Bluff Arsenal Reynolds Metals Company
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

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	Deep well/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

SECTION VIII
COPIES OF STATE FORMS
(40 CFR 271.6(d))

**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

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.”

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.

Arkansas’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 Regulation 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	CAS No. ²	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 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 generator. 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.

II. Standards for Generators

Arkansas generators are subject to the standards, including recordkeeping requirements, set forth in Regulation No. 23 § 262.

ADEQ 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 ADEQ by having an EPA identification Number (or for conditionally exempt generators, by obtaining a State tracking 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, the Department issues a unique State “CXG” identification number to facilitate manifesting and shipping of hazardous wastes. The State also requires small quantity 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 kg per month hazardous waste cutoff 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.

ADEQ 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.

ADEQ 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 ADEQ has adopted Federal 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 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 TSDF, the transporter must have the owner or operator sign and date the manifest. One copy of the manifest remains at the TSDF 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) groundwater 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 TSDFs. 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, ADEQ 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 ADEQ, 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), ADEQ has adopted more stringent requirements for certification of commercial TSD facility operators and personnel.

ADEQ 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.

ADEQ 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 semiannual 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, semisolids, 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 manners 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.

- 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(1)(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.

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. ADEQ 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 Environmental Quality 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:

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 law, 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...

ADEQ 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 by-products 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 ADEQ 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 Environmental Quality has established a Memorandum of Agreement with the Arkansas Department of Health wherein the ADH regulates the radioactive component of mixed wastes, while ADEQ 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 ADEQ 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 ADEQ 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 ((HWSA § 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 ADEQ 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 freestanding 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, ADEQ 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 TSD facility 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 ADEQ 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.

ADEQ 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 TSD. The decision on which steps to include is made on a facility-by-facility basis. ADEQ 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.

ADEQ 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, ADEQ 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 ADEQ 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 ADEQ 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. ADEQ 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 ADEQ 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 ADEQ 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 TSDF 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 nonspecific 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. 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 nonspecific 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 (³15% 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 ADEQ 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 the 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 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.

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 waste streams 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 ADEQ 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 passersby, 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 rulemaking.

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 nonhazardous 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.

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 adopted the provisions of the “Military Munitions Rule” promulgated by EPA in February, 1997 without additional revisions. This rule identifies when conventional and chemical military munitions become a hazardous waste under RCRA, and provide for the safe storage and transport of such waste. In addition, this rule amended existing regulations regarding emergency responses involving both military and nonmilitary munitions and explosives. This amendment clarifies that EPA (and by adoption, the Department) considers immediate or time-critical responses to explosives or munitions emergencies to be an immediate response to a discharge or imminent and substantial threat of a discharge of a hazardous waste under Regulation No. 23 §§ 264.1(g)(8), 265.1(c)(11), and 270.1(c)(3).

In addition, this rule exempts all generators and transporters of hazardous waste, not just the military, from the RCRA manifest system requirements for the transportation of hazardous waste on public or private right-of-ways on or along the border of contiguous properties, under the control of the same person, regardless of whether the contiguous properties are divided by right-of-ways. This exemption arose in the context of military munitions because many military installations are on properties that are split by public roads. This reduces the amount of paperwork for all generators whose property is divided by right-of-ways without loss in protection of public health.

As the munitions rule provides for emergency response to explosive ordnance disposal situations by a number of response organizations, the Department withdrew its previous permit-by-rule for EOD response (§ 270.60(d)) in deference to the provisions of the military munitions rule.

E. Land Disposal Restrictions – Phase IV: Treatment Standards for Wood Preserving Wastes, Paperwork Reduction and Streamlining; Exemptions From RCRA for Certain Processed Materials, and Miscellaneous Hazardous Waste Provisions. 62 FR 25998-26040 (May 12, 1997) (Checklist 157)

Arkansas has adopted without additional amendment this rule which finalizes treatment standards for hazardous waste generated from wood preserving operations and makes a uniform change to the treatment standard for wastes from products of chlorinated aliphatics which carry the F024 waste code. It also 1) revised the land disposal restrictions (LDR) for generators and treatment, storage, and disposal facilities to reduce the accompanying paperwork, 2) finalized the decision to employ polymerization as an alternative treatment method for certain wastes, 3) clarified an exemption for *de minimis* amounts of characteristic wastewaters, and 4) excluded processed circuit boards and scrap metal from RCRA regulation.

F. Hazardous Waste Management System: Testing and Monitoring Activities, Amendment III. 62 FR 52452-32463 (June 13, 1997) (Checklist 158)

Arkansas has adopted this rule, which added and amended the methods identified as Update III to

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 (HWA) (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 constituted 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; 62 (HWA) (Checklist 155)

Arkansas has adopted this 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.

the Third Edition of the EPA-approved test methods manual SW-846 and deleted several obsolete methods from SW-846 and the RCRA regulations. It also incorporated revisions and amendments from Update I, II and III into the test methods. This is the fourth in a series of amendments related to the third edition of SW-846. The original rule was promulgated on August 31, 1993 (58 FR 46040), and along with the first amendment (September 19, 1994; 59 FR 47980) has been previously incorporated into Regulation No. 23.

G. Hazardous Waste Management System; Carbamate Production, Identification and Listing of Hazardous Waste; Land Disposal Restrictions Conformance With the Carbamate Vacatur. 62 FR 32974-32980 (June 17, 1997) (Checklist 159)

Arkansas has adopted this rule, which amended the State regulations to conform with the federal revisions made in response to a federal appeals court ruling (98F.3d 1394) that invalidated EPA regulations listing certain carbamate wastes as hazardous. These regulations also pertain to certain hazardous waste management of carbamate industry wastes under RCRA. The vacated hazardous waste listings and associated regulatory requirements are to be considered as if they were never in effect.

H. Land Disposal Restrictions Phase III – Emergency Extension of the K088 National Capacity Variance, Amendment. 62 FR 3764-37699 (July 14, 1997) (Checklist 160)

Arkansas has adopted this rule, which extended the national capacity variance for spent potliners from primary aluminum production (Hazardous Waste Number K088) for (3) months, until October 8, 1997. Thus, K088 wastes did not have to be treated to meet LDR treatment standards until October 8, 1997, three months after from the previously established treatment standard effective date of July 8, 1997. Arkansas has additionally adopted *Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Removal of Final Rule*. 62 FR 63458-63463 (December 1, 1997), which implemented EPA's decision to revoke their December, 1991 decision to delist (exclude from management as a hazardous waste) treated K088 (spent potliner) residues from a thermal treatment process used at Reynolds Metals Company's plant near Gum Springs, Arkansas. Treated residues after the date of the federal rule are fully subject to the hazardous waste management requirements of 40 CFR 260-279 and APC&EC Regulation No. 23.

I. Second Emergency Revision of the Land Disposal Restrictions (LDR) Treatment Standards for Listed Hazardous Wastes From Carbamate Production. 62 FR 45568-45573 (August 28, 1997) (Checklist 161)

Arkansas has adopted this emergency revision, which extended by one year the time that alternate carbamate treatment standards are in place. This second rule further extends these alternate treatment standards, because not all of the laboratory standards have been developed. Additionally, there continues to be confusion as to which analytical methods can be used to measure carbamate constituents.

J. Clarification of Standards for Hazardous Waste LDR Treatment Variances. 62 FR 64504-64509 (December 5, 1997)

While the provisions of 40 CFR 268.44 are not delegable to States, Arkansas has adopted this rule, which finalized clarifying amendments to the rule authorizing treatment variances from the national LDR treatment standards, adopting EPA's interpretation that a treatment variance may be granted when treatment of any given waste to the level or by the method specified in the regulations is not appropriate, under either technical or environmental circumstances. This rule also incorporated preamble language from the August 17, 1988 rule (53 FR 31200), requiring public participation for site-specific variances.

40 CFR 268.44 contains two types of variances. The provisions at 40 CFR 268.44(a)-(g) address general treatment standard variances. The authority for such variances is not delegable to States because these variances could result in nationally applicable standards for a new waste treatability group. The provisions at 40 CFR 268.44(h)-(m), on the other hand, address site-specific variances. In the HWIR-Media Proposal (61 FR 18780, 18828, April 29, 1996), EPA clarified that the authority to review and approve this second type of treatment variance could be delegated to the individual States. The amendment to both types of treatment variances addressed by the December 5, 1997 rule are included in this revision. Arkansas has previously adopted 40 CFR 268.44(a)-(g), leaving the authority for these variances with EPA, and is making the indicated amendments to these provisions so that the State's provisions are consistent with their Federal counterparts.

K. Hazardous Waste Treatment, Storage, and Disposal Facilities and Hazardous Waste Generators; Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers. 62 FR 64635-64671 (December 8, 1997) (Checklist 163)

Arkansas has adopted this federal revision, which made clarifying amendments to the Subpart CC standards and provided clarification of certain language in the Federal Register preambles in previous amendments to these rules.

L. Kraft Mill Steam Stripper Condensate Exclusion. 63 FR 18504-18751 (April 15, 1998)
(*Checklist 164*)

Arkansas has adopted this revision, which excluded from regulation under RCRA and Regulation No. 23 the condensates derived from the overhead gases from kraft mill steam strippers which are used to comply with 40 CFR 63.446(e). Without this exclusion, these condensates would be regulated under RCRA because they exhibit the ignitability characteristic, and the boilers burning these condensates for fuel would be subject to emission standards in Reg. No 23 and 40 CFR 266, Subpart H. The scope of this exemption is limited to combustion at the facility generating the condensates. This exclusion is part of a much larger Federal rule that affects both effluent guidelines and air emission standards for specified sections of the pulp and paper industry.

M. Hazardous Waste Identification System; Identification and Listing of Hazardous Waste; Recycled Used Oil Management Standards. 63 FR 24963-24969 (May 6, 1998) (Checklist 166)

Arkansas has adopted this rule, which clarified: 1) when used oil contaminated with PCBs is regulated under the used oil management standards and when it is not, 2) that the requirements applicable to releases of used oil apply in States that are not authorized for the RCRA base program, 3) that mixtures of CESQG wastes and used oil are subject to the used oil management standards irrespective of how that mixture is to be recycled, and 4) that the initial marketer of used oil that meets the used oil fuel specification need only keep a record of a shipment of used oil to the facility to which the initial marketer delivers the used oil. This rule also amended incorrect references to the pre-1992 used oil specifications in the provisions which address hazardous waste fuel produced from, or reclaimed from, oil bearing hazardous wastes from petroleum refining operations.

N. Land Disposal Restrictions Phase IV: Final Rule Promulgating Treatment Standards for Metal Wastes and Mineral Processing Wastes; Mineral Processing Secondary Materials and Bevill Exclusion Issues; Treatment Standards for Hazardous Soils, and Exclusion of Recycled Wood Preserving Wastewaters. 63 FR 28555-28604 (May 26, 1998) (Checklists 167A-F)

Arkansas has adopted this rule, which addresses five interrelated areas associated with the land disposal restrictions. First, new land disposal restrictions treatment standards were promulgated for wastes identified as hazardous because they exhibit the toxicity characteristic for metals. The universal treatment standards for 12 metal constituents were also revised. Second, this rule established a land disposal prohibition and treatment standards for a group of newly identified hazardous wastes/mineral processing wastes that exhibits a characteristic of hazardous waste. This group includes not only those mineral processing wastes exhibiting the toxicity characteristic but also mineral processing wastes exhibiting the characteristics of ignitability (D001), corrosivity (D002) or reactivity (D003). Third, this rule amended the provisions defining when secondary materials being recycled are solid waste. Secondary materials from mineral processing which are generated and reclaimed within that industry are not solid wastes unless they are managed in land disposal units before being reclaimed, and are not subject to regulation as hazardous wastes. This rule also addressed issues related to whether materials are within the scope of the Bevill exclusion and allows secondary materials from mineral processing to be co-processed with normal raw materials in beneficiation operations which generate Bevill exempt wastes, without changing the exempt status of the resulting Bevill wastes provided certain requirements are met. Fourth, this rule included amended treatment standards for soil that contains a listed hazardous waste or which exhibits a characteristic of hazardous waste. Finally, this rule clarified certain portions of the land disposal restrictions as well as corrects typographical errors.

In addition to the changes to the land disposal restrictions, this rule clarified that a previously promulgated exclusion from hazardous waste regulation for recycled shredded circuit boards also applies to whole circuit boards under certain conditions. An exclusion from RCRA jurisdiction is provided for certain wood preserving wastewaters and spent wood preserving solutions when recycled.

O. Hazardous Waste Combustors; Revised Standards; Final Rule — Part 1: RCRA Comparable Fuel Exclusion; Permit Modifications for Hazardous Waste Combustion Units; Notification of Intent To Comply; Waste Minimization and Pollution Prevention Criteria for Compliance Extensions. 63 FR 33782- (June 19, 1998) (Checklist 168)

Arkansas has adopted this rule, which excludes, from the regulatory definition of solid waste, fuels produced from a hazardous waste which are comparable to some currently used fossil fuels. It also adds a new RCRA permit modification provision intended to make it easier for combustion facilities to make changes to their existing RCRA permits. Facilities with certain hazardous waste combustion units can use this permit modification provision when adding air pollution control equipment, making other changes in equipment, or making changes in operation needed to comply with upcoming air emission standards. The rule contains additional notification requirements for sources which intend to comply with this rule. Finally, this rule adds allowances for extensions to the compliance period to promote the installation of cost effective pollution prevention technologies.

XV. RCRA Cluster IX (July 1, 1998 through June 30, 1999)

A. Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Recycled Used Oil Management Standards. 63 FR 37780-37782 (July 14, 1998)

Arkansas has adopted this federal amendment which repealed three provisions of the May 6, 1998 direct final rule and restored the federal regulations at these three places to the original language.

B. Hazardous Waste Management System; Identification and Listings of Hazardous Waste; Petroleum Refining and Process Wastes; Land Disposal Restrictions for Newly Identified Wastes. 63 FR 42109-42189 (August 6, 1998) (Checklist 169)

Arkansas has adopted this federal revision which added four new waste streams from petroleum refining and production to the list of hazardous wastes (new waste codes K169, K170, K171, and K172); and made specific changes in order to promote the sound recycling of oil-bearing residuals. Specifically, this rule excluded certain recycled secondary materials from the definition of solid wastes. These materials include oil-bearing residuals from petroleum refineries when they are inserted into the petroleum refining process, oil from associated

petrochemical facilities inserted into the petroleum refining process, and spent caustic from liquid treating operations when used as a feedstock to make certain chemical products. This rule also clarified an existing exclusion for recovered oil from certain petroleum industry sources. Finally, this rule applied the universal treatment standards under the Land Disposal Restrictions program to the four newly-listed wastestreams in this rule. The listed wastes must be treated to meet these treatment standards prior to land disposal.

C. Hazardous Waste Recycling; Land Disposal Restrictions. 63 FR 46331-46334 (August 31, 1998) (Checklist 170)

Arkansas has adopted this federal revision which amended the May 26, 1998, Phase IV Land Disposal Restrictions rule which, among other things, addressed metal-bearing hazardous wastes which exhibited the characteristic of toxicity. This amendment created an exception to the May 26, 1998 rule only insofar as it applies to zinc micronutrient fertilizers which are produced from these toxicity characteristic hazardous wastes

D. Emergency Revision of the Land Disposal Restriction (LDR) Treatment Standards for Listed Hazardous Wastes from Carbamate Production. 63 FR 47409-47418 (September 4, 1998) (Checklist 171)

Arkansas has adopted this federal rule, which revised the waste treatment standards applicable to 40 waste constituents associated with the production of carbamate wastes. The rule sets final alternative treatment standards for seven specific carbamate waste constituents for which there are no available analytical standards. This action, effective September 4, 1998, extended indefinitely the alternative treatment standards for the seven hazardous waste constituents and deleted the treatment standard for one additional constituent for which available analytical methods have not been shown to achieve reliable measurements. This rule also deleted these eight waste constituents as underlying hazardous constituents. In addition, because the temporary alternative standards for 40 carbamate waste constituents expired automatically on August 26, 1998, this rule also clarified and restated that numerical treatment standards for these 32 carbamate waste constituents will once again be effective. This rule allows generators the ability to identify all underlying hazardous constituents reasonably expected to be present in their wastes at the point of generation, and allows waste treaters to certify that wastes have been treated in compliance with applicable land disposal restrictions. Faced with the inability to demonstrate waste and treatment residual content through analytical testing, these facilities face potential shutdown or curtailment of operations. The effective date of the treatment standards for the wastes specified in Reg. 23 § 261.33 as P185, P191, P192, P197, U364, U394, and U395 is August 26, 1998; the existing alternative standards of § 268.40 (g) continue to apply until March 4, 1999; and the numerical standards specified in § 268.40 for the wastes specified in § 261.32 as K156-K159, and K161, and in § 261.33 as P127, P128, P185, P188-P192, P194, P196-P199, P201-P205, U271, U278-U280, U364, U367, U372, U373, U387, U389, U394-U395, U404, and U409-U411 and the numerical standards associated with the waste constituents in § 268.48 are effective March 4, 1999.

E. Characteristic Slags Generated from Thermal Recovery of Lead by Secondary Lead Smelters; Land Disposal Restrictions; Extension of Compliance Date. 63 FR 48124-48127 (September 9, 1998) (Checklist 172)

Arkansas has adopted this federal revision, which issued an extension of the compliance date until November 26, 1998 for a limited portion of the Phase IV Final Rule, published on May 26, 1998 (63 FR 28556), which, in part, amended the Land Disposal Restriction (LDR) treatment standards for metal-bearing hazardous wastes exhibiting the toxicity characteristic. EPA extended the date for treatment standards only for secondary lead slags exhibiting the toxicity characteristic for one or more metals that are generated from thermal recovery of lead-bearing wastes (principally batteries.) In the interim, the slags affected by this extension remain subject to the treatment standards for toxicity characteristic metals promulgated in the Third Third Final Rule (55 FR 22520; June 1, 1990) and codified at Reg. No. 23 § 268.40.

F. Land Disposal Restrictions: Treatment Standards for Spent Potliners From Primary Aluminum Reduction (K088) 63 FR 51253-51267 (September 24, 1998) (Checklist 173)

Arkansas has adopted this federal revision establishing new treatment standards for spent potliners from primary aluminum reduction (EPA hazardous waste: K088) under the Land Disposal Restrictions (LDR) program. The purpose of the LDR program, authorized by the Resource Conservation and Recovery Act (RCRA), is to minimize threats to human health and the environment due to land disposal of hazardous wastes. As a result of this rule, spent potliners are prohibited from land disposal unless the wastes have been treated in compliance with the numerical standards contained in this rule. These treatment standards are necessary to minimize threats to human health and the environment from exposure to hazardous constituents which may potentially leach from landfills to groundwater.

G. Standards Applicable to Owners and Operators of Closed and Closing Hazardous Waste Management Facilities; Post-Closure Permit Requirement; Closure Process. 63 FR 56709-56735 (October 22, 1998) (Checklist 174)

Arkansas has adopted this federal revision, which amends the requirements for post-closure permits at hazardous waste management facilities so as to allow EPA and the Department to use a variety of authorities to impose requirements on non-permitted land disposal units which require post-closure care. The ADEQ and EPA now have the ability to use alternative mechanisms such as RCRA § 3008(h) or § 7003 orders, unilateral or consent administrative orders, closure plans, or other enforceable documents to require and achieve remedial and cleanup actions in lieu of requiring the facility to apply for a post-closure permit.

Secondly, for all facilities, this rule amends the regulations governing closure of land-based units that have released hazardous constituents in order to allow certain waste management units to be addressed through the corrective action program; e.g., EPA and the Department have the discretion to use corrective action requirements, rather than closure requirements, to address releases at these units. This flexibility reduces the potential for confusion and inefficiency which

would otherwise result from an attempt to apply two different regulatory requirements to the same situation.

This rule primarily provides a tool to establish clean-up requirements and remedial actions at “recalcitrant” facilities where the previous post-closure permit requirements have proven ineffective; for example, at facilities which cannot obtain a post-closure permit because they cannot meet the criteria for RCRA financial assurance or cannot meet groundwater monitoring requirements, or facilities which prove to be reluctant or uncooperative during the permitting process. It does not offer an optional, “easier” alternative to obtaining a RCRA post-closure permit for most facilities.

The decision to employ an alternative mechanism in lieu of a post-closure permit at any specific facility is at the sole discretion of the permitting authority — either EPA or the Department. (63 FR 56717) Under federal authority this decision is not subject to challenge; under State authority the decision is subject to Commission review under the provisions of Regulation No. 8. As implemented, the alternative mechanism is most applicable to new facilities entering the post-closure permitting universe as well as facilities where problems prevent or seriously hinder the issuance of a post-closure permit. Facilities that have previously been issued a post-closure permit will remain in the permit track. Facilities that have submitted a Part B application for a post-closure permit are not excluded from being addressed under this rule, however most facilities that have made substantial progress toward obtaining a permit will fare better by remaining in the post-closure permit track.

Typically, an “alternative mechanism” to a post-closure permit as allowed by this rule will be an enforcement action — either a consent order equivalent in scope, force, and effect to a federal § 3008(h) order, or an emergency order equivalent in scope, force, and effect to a federal § 7003 unilateral administrative order. A review of extant consent administrative orders and voluntary cleanup plans currently in effect or under negotiation between the Department and various facilities indicate that none of these orders or plans would satisfy EPA’s minimum criteria for an “enforceable document” to be used in lieu of a permit.

In order to meet the minimum criteria for an “enforceable document” to be used in lieu of a post-closure permit, the order or other agreement must contain the following, nonnegotiable elements:

- Require the submission of information listed at § 270.28;
- Impose requirements for groundwater monitoring pursuant to § 264, Subsection F;
- Impose facility-wide corrective action pursuant to § 264.101, (e.g., equivalent to the scope of Module XII(B) of a final permit);
- Implement post-closure care of the regulated unit pursuant to § 264, Subsection G;
- Impose financial assurance requirements for post-closure pursuant to §264 Subsection H;
- Provide for public notice, participation, and comment pursuant to § 265.121(b); and
- Provide for stipulated penalties and/or injunctive authorities in instances of noncompliance with the conditions set forth in the order or other enforceable document.

The regulated unit will be considered to have interim status and will be subject to the interim status management standards throughout the implementation of post-closure activities (with the

exception of the requirements of § 265.121 which require compliance with specific management standards equivalent to those for finally-permitted facilities).

H. Hazardous Remediation Waste Management Requirements (HWIR-Media) 63 FR 65873-65947 (November 30, 1998) (Checklist 175)

Arkansas has adopted this federal revision, which provides revised standards for the management of contaminated remediation wastes which are treated, stored, or disposed of during clean-up actions conducted pursuant to the scope of Regulation No. 23. There are five major changes. First, the process for obtaining a permit is streamlined and made faster and easier by allowing the use of an approved Remedial Action Plan (RAP); secondly the obtaining and implementation of a Remedial Action Plan does not subject the owner or operator to facility-wide corrective action; the rule creates a new type of waste management unit to be known as a "staging pile" that allows more flexibility in storing remediation wastes during the course of the cleanup; the rule excludes dredged materials from regulation under Subtitle C of RCRA and Regulation No. 23 provided that they are managed under an appropriate permit under the Marine Protection, Research, and Sanctuaries Act or the Clean Water Act; and lastly it simplifies the process for the State to obtain federal delegation when it updates its hazardous waste management program to incorporate revisions to the federal RCRA regulations.

This rule retains the previous provisions for the use of corrective action management units and temporary units for the management of remediation wastes.

I. Universal Waste Rule (Hazardous Waste Management System; Modification of the Hazardous Waste Recycling Regulatory Program. 63 FR 71225-71230 (December 24, 1998), (Checklist 176)

Arkansas has adopted this federal amendment, which corrects errors that appeared in the Universal Waste Rule which was published in the Federal Register (FR) on May 11, 1995 (60 FR 25492). This amendment creates no new regulatory requirements; rather, it makes three corrections to the regulations governing management of spent lead-acid batteries that are reclaimed; corrects the definition of a small quantity universal waste handler; and clarifies the export requirements which apply to destination facilities when destination facilities act as universal waste handlers.

J. Hazardous Waste Treatment, Storage, and Disposal Facilities and Hazardous Waste Generators; Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers. 64 FR 3381-3391 (January 21, 1999), (Checklist 177)

Arkansas has adopted this technical amendment and correction to the Subpart CC provisions action, which made additional clarifying amendments to certain regulatory text and reestablishes certain regulatory provisions that were previously contained in the rules and later inadvertently removed in the several amendments to the Subpart CC regulations since their initial

promulgation in 1996.

K. Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Petroleum Refining Process Wastes; Exemption for Leachate from Non-Hazardous Waste Landfills. 64 FR 6806-6814 (February 11, 1999), (Checklist 178)

Arkansas has adopted this federal amendment temporarily defers from the definition of hazardous waste landfill leachate and landfill gas condensate derived from previously disposed wastes that now meet the listing descriptions of one or more of the recently added petroleum refinery wastes (waste codes K169, K170, K171, and K172, promulgated August 6, 1998, 63 FR 42110). Pending further study of this issue, EPA provides this deferral to landfill leachate and gas condensate that is subject to regulation under the Clean Water Act (CWA). EPA also stipulates that as one condition of this deferral, this leachate may not ordinarily be managed in surface impoundments or otherwise placed on the land after February 13, 2001.

L. Land Disposal Restrictions Phase IV: Treatment Standards for Wood Preserving Wastes, Treatment Standards for Metal Wastes, Zinc Micronutrient Fertilizers, Carbamate Treatment Standards, and K088 Treatment Standards. 64 FR 25407-25417 (May 11, 1999) (Checklist 179)

Arkansas has adopted this federal revision, which corrects and clarifies five related rules which EPA published on May 12, 1997, May 26, 1998, August 31, 1998, September 4, 1998, and September 24, 1998. On May 12, 1997, EPA published regulations promulgating Land Disposal Restrictions (LDR) treatment standards for wood preserving wastes, as well as reducing the paperwork burden for complying with LDRs. On May 26, 1998, EPA published regulations promulgating LDR treatment standards for metal-bearing wastes, as well as amending the LDR treatment standards for soil contaminated with hazardous waste, and amending the definition of which secondary materials from mineral processing are considered to be wastes subject to the LDRs. On August 31, 1998, EPA published an administrative stay of the metal-bearing waste treatment standards as they apply to zinc micronutrient fertilizers. On September 4, 1998, EPA published an emergency revision of the LDR treatment standards for hazardous wastes from the production of carbamate wastes. On September 24, 1998, EPA published revised treatment standards for spent aluminum potliners from primary aluminum production. The Commission has (on July 23, 1999) previously adopted these changes in its Regulation No. 23. This revision adopts and incorporates technical corrections and clarifications to these final regulations which were subsequently published by EPA.

M. Guidelines Establishing Test Procedures for the Analysis of Oil and Grease and Non-Polar Material Under the Clean Water Act and Resource Conservation and Recovery Act. 64 FR 26315-26327 (May 14, 1999); (Checklist 180)

Arkansas has adopted this federal revision, which approved use of EPA Method 1664, Revision A: N-Hexane Extractable Material (HEM; Oil and Grease) and Silica Gel Treated N-Hexane

Extractable Material (SGT-HEM; Non-polar Material) by Extraction and Gravimetry (hereafter Method 1664) for use in EPA's Clean Water Act (CWA) programs. This action also deleted Method 9070, added revised Method 9071B, and incorporates Method 1664 by reference for use in EPA's Resource Conservation and Recovery Act (RCRA) programs. Method 1664 is also approved for determination of nonpolar material (NPM) as silica gel treated n-hexane extractable material (SGT-HEM) to support phaseout of use of CFC-113 for determination of NPM in EPA's CWA and RCRA programs.

XVI. RCRA Cluster X (July 1, 1999 through June 30, 2000)

A. Hazardous Waste Management System; Modification of the Hazardous Waste Program; Hazardous Waste Lamps. 64 FR 36465-36490 (July 6, 1999); (Checklist 181)

Arkansas has adopted this federal revision, which added hazardous waste lamps to the list of universal wastes regulated under the Resource Conservation and Recovery Act (RCRA). Handlers of universal wastes are subject to less stringent standards for storing, transporting, and collecting these wastes.

This rule provides for the management of intact fluorescent lamps (and other electric lamps which display a characteristic of a hazardous waste) under the provisions of the universal waste management program in Section 273 of Regulation No. 23. As universal wastes, generators of these lamps may accumulate them for up to one (1) year before being required to ship them for ultimate treatment, recycling, or disposal. Universal waste lamps will not count as hazardous waste generated for the purpose of compliance and generator status, nor will they be subject to inclusion in the annual hazardous waste report. Universal waste lamps may be shipped for treatment, storage, recycling, or disposal using a common carrier instead of a permitted hazardous waste transporter, and a hazardous waste manifest for universal waste lamps would not be required. Universal waste lamps, at the end of their accumulation, must still be shipped to a permitted hazardous waste treatment storage, or disposal facility, or to a recycler with the necessary permits and controls in place to effectively manage, recycle, or properly dispose of these items. Designation as a universal waste still does *not* permit these lamps to be disposed in a Subtitle D landfill, rather this designation is intended to facilitate their proper management and divert most, if not all of them to recycling or the appropriate disposal facility.

The universal waste designation applies only to unbroken, intact lamps. Coordination with and information gathering from existing fluorescent lamp recyclers in the area serving Arkansas generators indicates that the recyclers are set up to receive and process intact lamps. Broken lamps and related debris can be treated in these facilities, but require special (usually manual) processing and increases the risk and exposure to workers. Likewise, the EPA report on mercury emissions from lamp disposal specifically addressed the crushing of lamps during the transportation and treatment process, and recommended that measures be established to prevent, as much as possible, the breakage of lamps prior to their introduction into the actual recycling process. This distinction between intact lamps and broken lamp debris is not intended to preclude any handler from treating and managing their waste lamps by crushing; however the

crushed lamp residue would not enjoy the benefit of being managed under Section 273 and would be subject to a waste determination pursuant to § 262.11, and appropriate management measures based upon the result of that waste determination. As above, this distinction is made in order to encourage the accumulation and forwarding of these wastes to recycling, and to provide a regulatory and economic incentive to recycle the intact lamps.

EPA's final rule for universal waste electric lamps considers crushing spent lamps to constitute treatment of a hazardous waste (64 FR 36477-36478). EPA believes (and the Commission and Department concur) that universal waste handlers, who are not subject to the full RCRA waste management standards, should not treat hazardous waste. Therefore, under the federal rule, and the state incorporation in today's rule, both small and large quantity handlers of universal waste lamps are prohibited from diluting or treating universal waste lamps except by responding to releases as provided in Regulation No. 23 § 273.17 and § 273.37. Prohibitions for small quantity handlers are found in Regulation No. 23 § 273.11 and for large quantity handlers in § 273.31. The prohibition against treatment specifically includes a prohibition of crushing of lamps.

Experience has also shown that crushing lamps often results in a significant change in the characteristics of this wastestream, since much of the metal vapor which leads to the hazardous characteristic is released during the crushing process. Therefore crushed and/or broken lamp residues could differ significantly in the degree of their hazard to health and the environment. A separate waste determination under § 262.11 is called for, and the broken residues handled under RCRA Subtitle C or Subtitle D as may be appropriate.