

On July 21, 1981, the Commission, at a public hearing pursuant to notice properly and timely given, received public comments concerning proposed amendments to the Arkansas Hazardous Waste Management Code. The proposed amendments included the proposed adoption by reference of the regulations and amendments included in 40CFR Parts 260, 261, 262, 263, 264, 265, 266, 267, 122 and 124 as published in the Federal Register on or after May 19, 1980 but prior to February 14, 1981. Other amendments were proposed to clarify the Code's provisions relative to permitting requirements, timing of reports, incineration of acutely hazardous materials, and the manifesting of shipments of polychlorinated biphenyls (PCB's). Additionally, permit fees for transporters were proposed to be amended.

As a result of comments received pursuant to the terms of the public notice announcing the aforementioned hearing, additional amendments, including the correction of typographical errors, were proposed by the staff and submitted for the Commission's consideration.

The Commission finds that the amendments proposed by the staff since the public hearing are not substantial and, hence, the Commission is not required to hold an additional public hearing prior to the consideration and adoption of said amendments, which amendments are described on the attachment.

Having given consideration to the aforementioned proposed amendments to the Arkansas Hazardous Waste Management Code and having given due consideration to related public comments, the Commission hereby adopts the Arkansas Hazardous Waste Management Code, as amended; a copy of said Code being attached to this Minute Order. Furthermore, the Commission hereby orders that the amendments adopted on this date shall be in full force and effect beginning September 1, 1981.

COMMIS-
SIONERS

[Handwritten signatures and initials]
B.B.
KEN
Ralph [unclear] [unclear]
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CHAIRMAN

SUBMITTED BY Jarrell E. Southall DATE PASSED 81-08-21

Proposed amendments to the Arkansas Hazardous Waste Management Code being considered by the Commission today differ from the proposal which was submitted to public hearing on July 21, 1981 in the following aspects:

Section 3

Section 3(a), paragraph two of the previous proposal has been replaced with a new paragraph. The deleted paragraph stated: Any part of the aforementioned federal regulations which have been deferred or for which changes have been proposed after February 13, 1981 by EPA will be used as a guideline by the Department until such time the Regulations are adopted in accordance with the provisions of (e) below.

Section 3(e) of the new proposal has been added.

Section 3(e) of the previous proposal has been redesignated as Section 3(f).

Section 5

The word "or" has been added to the end of subsection (1),(2),(3) of Section 5(b) and the words "or where" has been added to subsection (4)

Subsection 5(b)(5) which stated: "... the distance between the active portion of the facility and any functioning public or private water supply." has been deleted and has been replaced by a new subsection 5(b)(5).

Section 8

The word "may" has been substituted for the word "shall" in the first sentence of Section 8(f).

Section 9

Section 9(a)(1) has been further amended by the addition of the phrase "in accordance with the provisions of this Section 9."

Section 11

The word "basis" has been deleted and "basin" has been inserted in the first sentence of Section 11(c).

Section 12

Section 12(a)(1) has been further amended by the substitution of the word "or" for the word "and" in line 4; by inserting the words "as of March 14, 1979" prior to the word "may" in line 5; by inserting the words "or denied" after the word "issued" in line 6; by deletion of the word "the" after the word "on" in line 8; and by the substitution of the word "forms" for the word "form" in line 8.

Section 16

The word "considered" has been deleted and "coⁿsigned" has been inserted in line 7 of Section 16(b)(7).

PROMULGATED this 21st day of
By ORDER OF THE COMMISSION ON POLLUTE

1981
LAND ECOLOGY

By _____
Chairman

ATTEST:


Jarrell E. Southall
Director

APPROVED:

Frank White, Governor
State of Arkansas

ARKANSAS HAZARDOUS WASTE MANAGEMENT CODE

August 7, 1981

Division of Air and Hazardous Materials

Arkansas Department of Pollution Control and Ecology
8001 National Drive
Little Rock, Arkansas 72209

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Section 1. TITLE and PURPOSE

- (a) The following rules and regulations of the Department of Pollution Control and Ecology of the State of Arkansas, promulgated pursuant to the provisions of the Arkansas Hazardous Waste Management Act of 1979 (Act 406 of 1979) and the Arkansas Resource Reclamation Act of 1979 (Act 1098 of 1979), are hereby known as the ARKANSAS HAZARDOUS WASTE MANAGEMENT CODE and hereinafter called the Hazardous Waste Code.
- (b) It is the purpose of this Code and it is hereby declared to be the policy of this Department (1) to protect the public health and safety, the health of living organisms and the environment, from the effects of improper, inadequate or unsound management of hazardous wastes; (2) to establish a program of regulation over the generation, storage, transportation, treatment, and disposal of hazardous wastes; (3) to insure the safe and adequate management of hazardous wastes within this state; (4) to qualify to adopt, administer, and enforce a hazardous waste program pursuant to the Federal Resource Conservation and Recovery Act (Public Law 94-580 approved October 21, 1976); (5) to afford the people of the State of Arkansas a voice in the permitting of hazardous waste facilities within their respective counties; (6) to establish a statewide program designed to protect society and the environment from the risks and burdens associated with the continued practice of disposing of those forms of hazardous wastes which could otherwise be treated; (7) to encourage the development and utilization of techniques which result in the recovery, reclamation and conservation of resources of the State, including the reclamation and conservation or safeguarding of abandoned hazardous waste disposal sites; (8) to encourage interstate cooperation and interstate agreements which would provide a requisite balance of disposal and treatment facilities among the states and which would reduce the amount of hazardous wastes disposed of in the state, irrespective of the origin of such wastes; and (9) to promote economic growth with environmental concern by establishing a program to assist industries in finding environmentally sound methods of disposing of hazardous wastes.

Section 2. DEFINITIONS

When used in this Code:

- (a) "Act" means the Arkansas Hazardous Waste Management Act of 1979, Act 406 of 1979.
- (b) "Active Portion" means that portion of a facility where treatment, storage, or disposal operations are being or have been conducted after the effective date of this Code, and which is not a closed portion.

- (c) "CFR" means Code of Federal Regulations.
- (d) "Commercial Hazardous Waste Management Facility" means a hazardous waste management facility which does not meet the definition of a "non-commercial hazardous waste facility" as defined in this section.
- (e) "Commission" means the Arkansas Commission on Pollution Control and Ecology.
- (f) "Department" means the Arkansas Department of Pollution Control and Ecology.
- (g) "Director" means the Director of the Arkansas Department of Pollution Control and Ecology.
- (h) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any hazardous waste into or on any land or water so that such hazardous waste or any constituent thereof may directly or indirectly enter the environment or be emitted into the air, or discharged into any soil or waters, including groundwaters.
- (i) "Disposal facility" means a facility or part of a facility at which hazardous waste is intentionally placed into or on any land or water, and at which waste will remain after closure.
- (j) "EPA" means the United States Environmental Protection Agency.
- (k) "EPA Identification Number" means the unique number assigned by the U.S. Environmental Protection Agency and/or the Arkansas Department of Pollution Control and Ecology to each generator, transporter, and to each treatment, storage, or disposal facility.
- (l) "Exempted Hazardous Waste" means hazardous waste which is exempted from the provisions of the Hazardous Waste Code pursuant to the provisions of Section 9 of this Code.
- (m) "Facility Personnel" means the personnel employed by a hazardous waste management facility and who are responsible for, or who supervise, or who engage in the handling, sorting, mixing, treatment, analyzing, or disposal of hazardous wastes and the operation of any equipment or machinery necessary to complete these tasks.
- (n) "Generation" means the act or process which results in the production of waste materials.
- (o) "Hazardous Waste" means 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 judgement 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, or transported, or disposed of or otherwise improperly managed. Such wastes include, but are not limited to those which are radioactive, toxic, corrosive, flammable, irritants, strong sensitizers, or which generate pressure through decomposition, heat, or other means. For purposes of this Hazardous Waste Code only waste defined as hazardous under 40 CFR 261 shall be considered hazardous except that Polychlorinated Biphenyls, as defined in 40 CFR 761, which are transported to treatment or disposal facilities, shall be regulated as hazardous waste under the provisions of Section 16 of this Code and shall be processed in hazardous waste management facilities which comply with the provisions of this Hazardous Waste Code or the provisions of 40 CFR 761, whichever are the most stringent.

- (p) "Hazardous Waste Management" means the systematic control of the generation, collection, source separation, storage, transportation, processing, recovery, disposal and treatment of hazardous waste.
- (q) "Hazardous Waste Management Facility" or "Facility" means any land and appurtenances, thereon and thereto, used for the storage, treatment and/or disposal of hazardous waste, except that solid waste disposal facilities which receive exempted hazardous waste in accordance with the provisions of Section 9 shall not be considered hazardous waste management facilities. Facilities which store hazardous waste on the site of generation for less than ninety (90) days shall not be considered hazardous waste management facilities for purposes of Section 12 of this Code, provided that such facilities perform the requirements provided in 40 CFR 262, Subpart C. (FR, May 19, 1980)
- (r) "Manifest" means the form used for identifying the quantity, composition, and the origin, routing and destination of hazardous waste during its transport.
- (s) "Non-Commercial Hazardous Waste Facility" means a hazardous waste management facility which is constructed and operated to store, treat, and/or dispose of hazardous waste which has been generated by the owners or operators of said facility and which storage, treatment or disposal is not undertaken for profit. A non-commercial hazardous waste facility may accept, at cost or profit, hazardous waste which has been generated by persons other than the owners or operators of said facility, provided that the total amount of such waste does not exceed 5 (five) percent of facility's annual operating capacity and provided that the permit for said facility authorizes the acceptance of such waste for storage, treatment, and/or disposal.

- (t) "Operator" means any individual or individuals charged with the responsibility of managing or operating a hazardous waste management facility, including the responsibility for assuring that the operation of said facility is in accordance with the provisions of this Hazardous Waste Code.
- (u) "On-site" means the same or geographically contiguous property which may be divided by public or private right-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing as opposed to going along, the right-of-way. Non-contiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access, is also considered on-site property.
- (v) "Off-site" means any site which does not meet the definition of "on-site" as defined herein.
- (w) "Permit" means a written permit issued by the Arkansas Transportation Commission authorizing a person to transport hazardous waste (Hazardous Waste Transportation Permit); or a written permit issued by the Arkansas Department of Pollution Control and Ecology authorizing the establishment, construction, operation, and/or maintenance of hazardous waste treatment, disposal, or storage facility or site, or authorizing the transportation of hazardous waste.
- (x) "Permitted Site" means any site used for disposal, treatment or storage of hazardous waste which has a current valid operating permit issued by the Department of Pollution Control and Ecology.
- (y) "Person" means any individual, corporation, company, firm, and partnership, association, trust, joint stock company, joint venture, state, city, town, or municipality or trust venture or any other legal entity, or combination of entities however organized.
- (z) "Site" means any real property located within the boundary of the state of Arkansas which is, has been, or is contemplated to be, used for the purpose of landfills or other facilities used for treatment, storage, disposal, or generation of hazardous wastes.
- (aa) "Shipper" means any person initiating transportation of hazardous waste. A shipper may include a generator or storage, treatment or disposal facility.
- (bb) "Sludge" means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant.

- (cc) "Storage" means the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere.
- (dd) "Transport" means the movement of wastes from the point of generation to any intermediate points, or to the point of ultimate storage, treatment, or disposal.
- (ee) "Treatment" means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste nonhazardous, or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume.
- (ff) "Treatment facility" means a location at which waste is subject to treatment and may include a facility where waste has been generated.
- (gg) "Ultimate Controlling Person" means that person which is not controlled by another person.
- (hh) Unless manifestly inconsistent herewith, other words and phrases used in these regulations shall have the same meaning as used in the Arkansas Hazardous Waste Management Act of 1979 and 40 CFR 260 and 40 CFR 122.3 as published in the Federal Register, May 19, 1980, as amended on or before February 13, 1981.

Section 3. ADOPTION OF FEDERAL REGULATIONS

- (a) Except where manifestly inconsistent with the provisions of the Federal Resource Conservation and Recovery Act (PL 94-580), or with federal regulations adopted pursuant thereto, or with the provisions of this Code, the Department shall have the responsibilities and that authority, with reference to the State of Arkansas, and granted to the Administrator of the United States Environmental Protection Agency under the provision of the following regulations which regulations are hereby adopted and made part of this Code as though set forth herein word for word, and which shall also apply to all persons generating, storing, treating or disposing of hazardous wastes in Arkansas:

- 40 CFR Part 260, Subparts A, B, and C;
- 40 CFR Part 261, Subparts A, B, C, and D;
- 40 CFR Part 262, Subparts A, B, C, D, and E;
- 40 CFR Part 263, Subparts A, B, and C;
- 40 CFR Part 264, Subparts A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, and T.
- 40 CFR Part 265, Subparts A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, and R;
- 40 CFR Part 266, Subparts A and B
- 40 CFR Part 267, Subparts A, B, C, D, E, F, and G.
- 40 CFR Part 122, Subparts A and B;
- 40 CFR Part 124, Subparts A and B

as published in the Federal Register Volume 45,

Whenever the effect of any of the aforesaid regulations is modified by a formal action of the United States Environmental Protection Agency, as evidenced by publication in the Federal Register, the effect of such action, upon its effective date, shall be extended in full force and effect as Interim Provisions of this Code and shall be enforceable as such, provided that the effect of said action does not conflict with the provisions of Act 406. No Interim Provision of this Code shall remain in effect for more than six months, unless the Commission grants an extension after opportunity for public comment as provided in subsection (e) below.

- (b) (Reserved for future federal regulation reference.)
- (c) (Reserved for Future federal regulation reference.)
- (d) In all instances wherein the federal regulations of 40 CFR 260, 261, 262, 263, 264, 265, 266, 267, 122, and 124 refer to the administrator of the United States Environmental Protection Agency, the reference, for purposes of this Code, shall be deemed to mean the Department, unless the context plainly dictates otherwise.
- (e) The Director, within a reasonable time after the effective date of the Interim Provisions of this Code, shall cause a public notice to be published in a newspaper of statewide circulation stating the existence of such Interim Provisions and giving notice of the public's opportunity to comment on the Interim Provisions. Whenever the Director finds that a public hearing should be held to consider the continued application of Interim Provisions or proposed modifications to such Provisions, a notice of public hearing and formal action of the Commission shall follow in the manner described in subsection (f) below.
- (f) Whenever the federal regulations referenced in subsection (a) of this section are amended, modified, revoked, expanded, supplemented, or otherwise changed, such revocation, expansion, supplement or other change shall become part of this Code when:
 - (1) a 30 day notice of public hearing upon the proposed change is published by the Department; and
 - (2) such amendment, modification, revocation, expansion, supplement or other change is adopted by the Commission after public hearing; where a time exceeding 35 days exists between the promulgation of the federal regulation and the next regularly scheduled Commission meeting, the Director, finding sufficient cause for earlier consideration may request the chairman of the Commission to call a special meeting of the Commission to consider the matter.
 - (3) such amendment, modification, revocation, expansion, supplement or other change shall become effective upon adoption by the Commission unless otherwise set out in the resolution adopting such change.

Section 4. VIOLATIONS

Any of the following acts shall be considered a violation of this Hazardous Waste Code and shall be punishable as provided in the Arkansas Hazardous Waste Management Act of 1979 (Act 406 of 1979):

- (a) Failure to comply with the provisions of this Code or with the terms of permits or orders issued hereunder.
- (b) Knowingly to make any false statement, representation, or certification in any application, record, report, plan or other document filed or required to be maintained under this Code, or to falsify, tamper with, or knowingly render inaccurate any monitoring device, testing device, or method required to be maintained under this Code.
- (c) To dispose of hazardous waste at any disposal site or facility within the State of Arkansas other than one for which a permit has been issued by the Department pursuant to this Code.
- (d) To store, collect, transport, treat, or dispose of any hazardous waste contrary to the provisions of this Code or to orders and permits issued under this Code or in such a manner or place as to create or as is likely to be created a public health hazard or to cause or is likely to cause water or air pollution within the meaning of the Arkansas Water and Air Pollution Control Act, as amended (Sections 82-1901 et seq., Ark. Stats. Ann.)

Section 5. GENERAL SITING CRITERIA

- (a) No permit shall be issued for a new hazardous waste management facility in which the factors or combination of factors, set forth in subparts (1), (2), (3), (4), and (5) below exist except where the applicant can affirmatively demonstrate and the Commission specifically finds that the location of such facilities in those areas would not constitute a risk to the public health or the environment:
 - (1) an active fault zone;
 - (2) a "regulatory floodway" as adopted by communities participating in the National Flood Insurance Program managed by the Federal Emergency Management Administration and the Arkansas Soil and Water Conservation Commission;
 - (3) a 100-year floodplain;
 - (4) a recharge zone of sole source aquifer designated pursuant to Section 1424 (e) of the Safe Drinking Water Act (PL 93-532);
 - (5) "wetland areas" which are inundated or saturated by surface water or groundwater at a frequency and duration to support, and under normal circumstances do support or

would support, vegetation typically adapted for life in saturated or seasonally saturated soil conditions;

- (b) No permit shall be issued for a hazardous waste landfill facility or surface impoundment if such facility is located in any area in which the Department shall find that a geologic or pedologic factor, or combination of factors, including but not confined to those enumerated in subparts (1), (2), (3), (4) and (5) below, would create any unacceptable risk to the public health or safety due to the nature, design, and/or operation of the facility described in the permit application:
- (1) areas of high earthquake potential; or
 - (2) areas having a soil which would be classified as vertisol or as having a subgroup modifier of vertic by the criteria of the Soil Conservation Service of the United States Department of Agriculture; or
 - (3) areas in which a stratum of limestone or similar rock of an average thickness of more than 1 meter (3 feet) shall lie within 30 meters (99 feet) of the base of the proposed liner system as described in the application for permit; or
 - (4) areas in which the bottom of the landfill's or impoundment's liner system or in-place soil barrier is less than 10 feet above the historically high water table; or where
 - (5) the proximity of a functioning private or public water supply in relationship to any active portion of the facility would constitute an unacceptable risk to the public health or safety.
- (c) No permit shall be issued for the construction or operation of a new commercial hazardous waste landfill if the active portions of such facility are located within one-half (1/2) mile of any occupied dwelling, church, school, hospital, or similarly occupied structure at the time the initial permit application is submitted to the Department by the applicant unless the nature and amounts of hazardous wastes are limited by conditions of permit in such a manner that the applicant can affirmatively demonstrate and the Department finds that a lesser distance will provide adequate margins of safety even under abnormal operating conditions.
- (d) No permit shall be issued for the construction or operation of a commercial hazardous waste landfill disposal facility unless the owner of such facility provides such forms of assurance including an abstract of title showing full fee ownership and all mineral rights thereto, to ensure that said owner has the legal authority to commit such landfill to perpetual security.
- (e) No permit shall be issued for a hazardous waste management facility in which the Department shall find that factors or combination of factors including but not confined to subparts (1) and (2) below, would create an unacceptable risk to the

public health or safety due to the nature, design and/or operation of the facility described in the permit application:

- (1) 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;
- (2) the active portions of such facility are located less than 300 feet from the right-of-way for:
 - (a) a public road;
 - (b) pipelines carrying natural gas, fuel oils, or chemicals, excluding service lines to the facility;
 - (c) water and wastewater line, other than the service lines to the facility; and
 - (d) power transmission lines, other than service lines to the facility.
- (f) No permit shall be issued for the construction or operation of a new hazardous waste management facility unless the location of said facility is such that all performance standards set forth in this Code can be met.
- (g) The provisions of this section 5 shall not apply to treatment facilities which began operation prior to the date of enactment of the Act and which have an existing operating permit from the Department, or to any subsequent modifications to such facilities, provided that the owner of such facility can demonstrate that such modifications do not materially increase that degree of hazards associated with such facility.

Section 6. CONFIDENTIAL INFORMATION

- (a) Any records, reports, or information contained under this Code and any permits, permit applications, and related documentation shall be available to the public for inspection and copying; provided, however, that 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.
- (b) It shall be the responsibility of the person claiming any information as confidential under the provisions of Section (a) above to clearly mark each page containing such information with the word "CONFIDENTIAL" and to submit an affidavit setting forth the reasons that said person believes that such information is entitled to protection.

- (c) 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.
- (d) No information shall be protected as confidential information by the Director unless it is submitted to him in accordance with the provisions of Section (c) above and no information which is submitted in accordance with the provisions of Section (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 materials 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.
- (e) All information which meets the tests of Section (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 Section (c) above does not meet the criteria of Section (d) above, he shall promptly notify the person submitting such information of his finding 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 Section (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 re-submit the information in an acceptable form or appeal the decision of the Director to the Commission.
- (f) 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 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 for internal Department or other use except with the written permission of the Director and of the person who submitted the information to the Department.

- (g) The persons designated by the Director to maintain confidential files as provided shall maintain a log showing the persons who had access to the confidential files and the dates of access.
- (h) 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 at least two weeks prior to such transmittal and provided that such transmittal is made under a continuing restriction of confidentiality.
- (i) 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.

Section 7. CONFLICT OF INTEREST

- (a) No employee of the Department shall have a financial interest in any hazardous waste management facility or in any commercial enterprise engaged in the transportation, treatment, or disposal of hazardous waste or in any business which furnishes real property, plans, labor, material or equipment of hazardous waste management facilities. For purposes of this Section, financial interest of an employee of the Department shall extend to that employee's husband or wife if said husband or wife is a stockholder, an officer or a management official of a commercial entity engaged in any of the activities listed above.
- (b) Payment by the owner or operator of a hazardous waste management facility to the Department pursuant to the provisions of Section 11 (h) shall not be construed to mean the Department personnel serving as on-site inspectors have financial interest in such facility.
- (c) Those persons serving on the Hazardous Waste Technical Advisory Committee are not deemed to be employees of the Department by virtue of that service.

Section 8. HAZARDOUS WASTE TECHNICAL ADVISORY COMMITTEE

- (a) A technical advisory committee, to be known as the "Arkansas Hazardous Waste Technical Advisory Committee" is hereby established, which committee shall be comprised of not less than ten (10) and not more than twenty (20) members nominated by the Director and approved by the Commission. Members shall be nominated upon the basis of their education, training and/or responsibilities in the fields of biology, geology, chemistry, education, engineering, public health, industrial hygiene, transportation, industry, agriculture, hazardous waste management, solid waste management, or other related areas.
- (b) The members of said Committee shall serve without compensation but may be reimbursed for travel expense for meetings authorized by the Director.
- (c) The duties of the Hazardous Waste Technical Advisory Committee shall be to assist and advise the Department in the development of procedures, standards, criteria, and rules and regulations.
- (d) The Hazardous Waste Technical Advisory Committee shall establish its own rules and bylaws for the accomplishment of the duties and functions set out herein and for other such duties as are approved by the Commission, provided that such rules and bylaws shall not be in conflict with the provisions of this Code and the laws of Arkansas.
- (e) The Director shall be furnished copies of minutes of all meetings.
- (f) The Technical Advisory Committee may review any proposed changes in the Code and make recommendations. Additionally, the Committee shall review the Code at least once each three years and shall make recommendations for changes deemed appropriate.

Section 9. EXEMPTIONS

- (a) Except as otherwise provided in this section, persons who generate small quantities of hazardous waste as set out in 40 CFR 261.5, as published in the Federal Register, May 19, 1980, are exempted from the reporting and manifesting requirements of this Code provided that the hazardous waste:
 - (1) is disposed of in a solid waste disposal facility in the State of Arkansas which has been permitted by the Department to dispose of such waste in accordance with the provisions of this section 9;
 - (2) is shipped to a hazardous waste management facility in the State of Arkansas which is permitted by the Department to store, treat, or dispose of such waste;
 - (3) is shipped, pursuant to Section 16 (t) of this Code, to an approved facility outside the State of Arkansas; or

- (4) is treated or disposed of in on-site solid waste facilities which are permitted in accordance with Act 472 of 1949, as amended, or Act 237 of 1971.
- (b) The owner or operator of a solid waste disposal facility or of a hazardous waste management facility shall not receive, store, treat, or dispose of hazardous waste, whether or not it has been exempted from the reporting requirements applicable to generators as provided by subsection (a) of this section, unless such facility has received written permission to store, treat, and/or dispose of hazardous waste from the Department.
- (c) Whenever the owner or operator of a solid waste disposal facility or of a hazardous waste management facility has reason to believe that the amount of hazardous waste received at said facility from any one person is in excess of the quantities set out in 40 CFR 261.5, as published in the Federal Register, May 19, 1980, said owner or operator shall so inform the Director in writing in accordance with Section 16 (f) (5) of this Code.
- (d) The owner or operator of any solid waste disposal facility for which a permit has been issued under terms of the Arkansas Solid Waste Management Act and which is accepting for disposal hazardous waste from persons exempted under subsections (a) of this section may continue to accept such waste provided that a request is made for modification of said permit to store, treat, or dispose of hazardous waste within a time period established by the Commission for said facility. Nothing in this subsection (d) shall prevent the Department from prohibiting the disposal of such wastes where the Director finds that such disposal would create adverse public health or environmental impacts.
- (e) All requests submitted in accordance with the provisions of Section (d) above shall contain such information as the Commission may require to determine that the ratio of hazardous waste to non-hazardous waste stored, treated, or disposed in the facility for which the request is submitted in accordance with Section (d) above is such that the facility can be safely operated under the provisions of the Arkansas Solid Waste Management Act. Where the Commission finds that the aforesaid ratio and/or the nature, condition, location, or operation of the facility is such that an environmentally safe operation can not be reasonably expected, the Commission shall deny the request for modifications.
- (f) Where the Commission finds that the amount of hazardous waste which is eligible for exemption under subsection (a) of this section exceeds the capacity or capabilities of the disposal facilities owned or operated by the municipality or county, in which such exempted hazardous waste is generated, the Commission shall require that said municipality or county develop a plan

for collecting, storing, treating, and/or disposing of such hazardous waste which plan shall be expeditiously implemented upon approval by the Commission.

- (g) Non-commercial hazardous waste storage facilities on the site where the waste is generated shall be excluded from the siting requirements of this Code except in cases where in the judgment of the Commission unusual public risks would be created by the absence of such siting requirements.
- (h) A farmer disposing of waste pesticides from his own use is not required to comply with the requirements of this Code so long as he complies with 40 CFR 262.51 as published in the Federal Register, May 19, 1980.

Section 10. CERTIFICATION OF OPERATORS: PERSONNEL TRAINING,
PERSONNEL PROCEDURES

- (a) No commercial hazardous waste management facility shall be caused or permitted to operate unless at least one person certified by the Department in accordance with the provisions of Section (b) below, is on duty, or on 15 minutes call, at all times the facility is being operated. Depending upon the size and complexity of the facility, the Commission may require, as a condition of permit, one or more certified operators to be on duty at all times the facility is in operation.
- (b) No person shall be certified by the Department as being qualified to serve as an operator of a commercial hazardous waste management facility unless that person is found to have the following qualifications:
 - (1) is physically capable of performing all tasks reasonably expected of supervisory personnel;
 - (2) has a baccalaureate degree in engineering, physical science, health sciences, or related disciplines or four years of significant demonstrated experience in such fields;
 - (3) has at least four additional years experience in management, engineering or in conducting chemical/physical analysis;
 - (4) has a working familiarity with the principles and requirements relative to industrial hygiene, worker safety, emergency procedures and environmental protection as such principles and requirements relate to the nature of the hazardous waste managed at the facility in which said person is to have, or does have, supervisory responsibility and as such principles and requirements relate to the type storage, treatment, and/or disposal in such facility;
 - (5) has a basic knowledge of the principles of operation and standard operating procedures for all equipment used in

the facility in which said person is to have, or has, supervisory responsibility; and

- (6) is a citizen of the United States, of good moral character with no prior conviction of a felony or a crime of moral turpitude.
- (c) No employee of a hazardous waste management facility shall be assigned the duties of transferring, handling, sorting, mixing, treating or disposing of hazardous waste unless that employee meets the requirements set out in 40 CFR 264.16 (a), (b), and (c) as prescribed in the Federal Register, May 19, 1980.
- (d) No employee of a commercial hazardous waste management facility shall be assigned the duties of transferring, handling, sorting, mixing, treating, or disposing of hazardous waste unless that employee has demonstrated his/her capabilities of:
 - (1) reading and comprehending label instructions, operational procedures, contingency plans and regulatory directives;
 - (2) understanding the basic nature of the materials which he/she is assigned to transfer, handle, sort, mix, treat, or dispose relative to the materials reactivity, toxicity, explosiveness, and flammability; and
 - (3) operating all equipment which he is assigned to operate, including personal safety and emergency equipment.
- (e) The owner or operator of a hazardous waste management facility must maintain the records required in 40 CFR 264.16 (d) as published in the Federal Register, May 19, 1980.
- (f) Owners and/or operators of commercial hazardous waste management facilities shall:
 - (1) maintain complete updated records of all workers assigned to a specific job 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 kept 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 this Code;
 - (4) have their personnel take part in a semi-annual review and update of their initial training in contingency procedures and other hazardous waste management procedures relevant to those operations at which they are employed; and

- (5) have each of their personnel undergo an annual health physical and said personnel's spouses shall be offered an annual health physical, the specifics of which are deemed appropriate by the Department, including health histories, reproductive history, and health histories of all offspring, with records of each of these physicals available to the Department upon request with the written consent of the individual. Consent will be given on a waiver form approved by the Department written in such a fashion as to allow dissemination of information to the Department or to authorized representatives designated in writing by the Department.
- (g) The owner or operator of a hazardous waste management facility shall promptly modify the training required of its employees whenever required to do so upon the direction of the Department or whenever modification in training is required as a condition of permit; provided, however, that preliminary training, approved by the Department, will have been completed prior to commencement of operation of a new hazardous waste management facility or prior to commencement of an operation in an existing facility for which a permit has been issued or modified.

Section 11. FEES

- (a) Any person who applies for a permit for the construction and operation of a hazardous waste management facility shall submit as part of said application a money order or cashiers check payable to the Department for deposit in the State Treasury to cover permit fees for all active portions of the facility as set forth below:
- (1) Commercial Facility:
- (i) Initial permit application fee - \$5000
 - (ii) Five-year permit renewal fee - 5000
 - (iii) Annual permit evaluation fee - 5000
- (2) Non-Commercial Facility:
- (i) Initial permit application fee - \$1000
 - (ii) Five-year permit renewal fee - 1000
 - (iii) Annual permit evaluation fee - 1000
- (3) Annual renewal fees will not be assessed during the years in which the five-year renewal fees are assessed for commercial and non-commercial facilities.
- (b) Each land farm, or landfill for hazardous waste within a facility identified in subsection (a) above shall be assessed an additional fee for each acre, or part thereof, in the following amounts:

- (1) \$1000 per year - active portions of land farms which treat or dispose of waste from more than one generator;
 - (2) \$500 per year - active portions of land farms which treat or dispose of waste from only one generator;
 - (3) \$5000 per year - active portions of commercial landfills;
 - (4) \$1000 per year - active portions of non-commercial landfills; provided, however, that the Commission may assess rates up to \$5000 per year for non-commercial landfills which dispose of complex mixtures of wastes of different types or wastes which are unusually toxic.
- (c) Each vessel or containment basin which has a capacity in excess of one thousand gallons and which is used within a facility identified in subsection (a) above for storage or containment of hazardous waste shall be assessed an additional fee of one dollar per thousand gallons.
- (d) The provisions of subsections (b) and (c) do not apply to impoundments, basins, or other storage devices which are an integral part of wastewater treatment systems required under state or federal laws.
- (e) Fees for hazardous waste management facilities designed and operated for disposal of explosives and/or chemical agents used for military purposes shall be assessed fees established by the Commission upon review of the application for permit submitted pursuant to the provisions of this Code.
- (f) Fees for the modification of permits shall be calculated by the following formula:

$$\text{Fee for modification} = \frac{F \times C_1 + C_2 - 2/3F}{C_1}$$

where F is the initial permit fee as provided in Section (a) above, where C₁ is the annual operating capacity of the facility under terms of the existing permit and where C₂ is the difference between the proposed annual operating capacity and the annual operating capacity under terms of the existing permit.

- (g) Any person who applies to the Department for certification as an operator of a commercial hazardous waste management facility shall submit as part of that application a money order or cashiers check of \$100 payable to the Department for deposit to the State Treasury.

- (h) Whenever the Commission finds that it is in the public interest to require as a condition of permit for the construction and operation of a hazardous waste management facility that one or more representatives of the Department serve as on-site inspectors of said facility's construction or operation, the owner or operator of said facility shall, prior to the Commission's issuance of permit, submit a money order or cashiers check payable to the Department for deposit in the State Treasury in the amount of one-fourth the estimated annual costs to the Department of maintaining such inspectors on-site and shall submit quarterly thereafter a money order or cashiers check payable to the State Treasury in the amount of one-fourth the aforesaid estimated annual costs. Any permit conditioned in accordance with the provisions of this Section shall be automatically voided whenever the permittee fails to submit quarterly payments as herein provided.
- (i) Whenever the Department incurs a cost in excess of \$100 as a result of investigating any violation of this Code or as a result of responding to, and monitoring the effects of, spill of hazardous wastes, including upset conditions within a hazardous waste management facility, the Director may require the person responsible for such violation, spill or upset condition to submit a money order or cashiers check to the Department, payable to the Department for deposit in the State Treasury, in an amount sufficient to recover all costs to the Department associated with the Department's response, investigations, and monitoring activities.
- (j) Fees required under this Section 11 "are for the purpose of recovering the costs of processing permit applications, on-site monitoring and certification of personnel " (Act 406, Section 5(i)) and fees collected under this section shall not be refunded should a permit application or a certification be disapproved pursuant to the provisions of this Code. Nothing in this subsection shall prohibit the Department from crediting unused portions of fees from permitted facilities toward future fees.
- (k) The maximum amount of fees collected annually from any hazardous waste management facility will not exceed the amount shown below for items covered in subsections (a), (b), (c), (e), (f), and (h) of this section:
- | | |
|-------------------------------|----------|
| (1) Commercial facilities | \$20,000 |
| (2) Non-Commercial facilities | 10,000 |
- (l) A financial assessment of the fee system shall be presented to the Commission annually by the Director.
- (m) Any person who applies for a permit for a transportation of hazardous waste within the State of Arkansas shall submit along with the application required in Section 12 of this Code, a money order

or cashiers check in the amount of \$100.00 payable to the Department for deposit in the State Treasury to cover permit fees and costs for 5 years.

- (n) Manifest forms required to be used by Section 16 of this Code shall be purchased from the Department for a fee established by the Commission, which fee shall cover the cost of reproducing, distributing, and processing such manifests.

Section 12. PERMIT PROCEDURES

- (a) Except as provided herein, any owner or operator of an existing hazardous waste management facility and any person proposing to construct a new hazardous waste management facility shall comply with the provisions of 40 CFR 122, Subparts A and B and 40 CFR 124, Subparts A and B.
 - (1) Facilities required to have a permit under the Act, or which are operating under terms of permits issued under 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 of March 14, 1979, may continue in operation until such time as a permit is issued or denied under this Code, provided that the owner or operator of such facility made application on forms provided by the Department for such permit on or before September 14, 1979.
 - (2) Existing non-commercial hazardous waste management facilities which do not comply with the provision of (1) above but which have Interim Status as defined in 40 CFR 122.23 are granted an Interim Permit by Rule of the Commission. The Interim Permit is conditional upon compliance by the owner or operator with the applicable Interim Status Standards. The Interim Permit shall continue until a final permit is issued.
 - (3) Nothing in this Section (12)(a) shall be construed to allow commercial hazardous waste landfill facilities to store, treat, bury, dispose or otherwise process hazardous waste without first obtaining a permit from the Commission under this Code.
 - (4) For each hazardous waste described in response to the requirements of 40 CFR 122.24 (g), the application shall include the name and location of the generator of the wastes.
 - (5) The contingency plan required under Section 122.25 (b) (7) shall include evidence that such plan had been developed

in consultation with the fire department having jurisdiction and by the Mayor or City Manager of the municipality or by the County Judge of the County in which the facility is to be located.

- (6) The procedures required under the provisions of Section 122.25 (a) shall include a full description of all laboratory equipment, sampling procedures and analytical procedures which would be employed to identify, segregate, or locate hazardous waste within the facility.
- (7) The owner of a commercial hazardous waste disposal facility shall provide such long-term financial responsibility as the Commission may deem appropriate, taking into account the nature of the facility and the nature of waste stored, treated or disposed of in such facility. The financial responsibility required under this subsection (a) (6) shall provide funds for claims arising out of injury to persons and property from the release or escape of hazardous waste to the environment during sudden or accidental occurrences and shall provide for reimbursement of expenses incurred by the Department or the State of Arkansas for cleanup, maintenance, monitoring, or such other activities as may be necessary. The financial responsibility required hereunder shall be for such period as determined by the Commission.
- (8) Financial instruments shall be designed to provide, upon failure of the permittee to comply with the provisions of this Code, the Department access to funds for the purpose and in the amount necessary to meet required closure procedures.
- (9) The owner or operator of a hazardous waste disposal facility shall provide contracts, agreements and such other documentation as may be required to demonstrate to the Director's reasonable satisfaction that the waste which is proposed to be disposed of is waste which results 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.
- (10) In conformance with Section 5 of this Code, Part A of the application for commercial hazardous waste landfills shall contain evidence of such forms of assurance, including full fee ownership of lands, and all mineral rights thereto, to ensure that the owner of the landfill for which application is made has the legal authority to commit lands used for the landfill to perpetual security and that said owner has made such legally binding arrangements

as necessary to protect the integrity of the surface and subsurface area of the landfill in perpetuity.

- (11) a permit may not be transferred, issued or modified except with the approval of the Commission, provided, however, emergency authorization may be issued by the Director in accordance with the provision of 40 CFR 122.27.
- (b) No permit shall be issued for the construction, modification or operation of a hazardous waste management facility unless the Commission finds, after public hearings as provided herein, that said construction, modification or operation is or will be in compliance with the provisions of 40 CFR 122, 40 CFR 124, 40 CFR 264, and 40 CFR 265, 266, 267 and the provisions of this Code, whichever is the most stringent. The Commission may establish additional requirements as conditions of permit where it deems such conditions necessary to protect the public health and the environment, including requirements for performance bonds in the amount and in the form that the Commission may deem appropriate.
- (c) The Commission may grant variances in accordance with the provision of Section 14 of the Arkansas Hazardous Waste Management Act of 1979, provided that said variances shall not provide terms less stringent than those set by applicable federal regulations.
- (d) Any person who submits an application for a hazardous waste management facility permit to the Department shall give notice to the public by publishing a notice in the newspaper having largest circulation published in the county in which the facility is, or is proposed to be located, as well as publishing a notice in the newspaper having largest circulation published in each adjoining county. If there is no newspaper published in any of the counties so effected the notice shall be published in the newspaper(s) having the largest circulation in such county or counties. The notice shall contain:
- (1) the name, title, and address of the applicant;
 - (2) the location of the facility, including a description of its boundaries; and
 - (3) the nature of the facility (storage, treatment or disposal) and brief description of how waste is to be stored, treated, or disposed of at the facility.

(e) Upon receipt of an application for permit for a hazardous waste management facility, the Director shall cause the permit to be processed in accordance with the applicable procedures set forth in 40 CFR 124, subparts A and B and in accordance with the provisions of this Code.

(f) The Director may authorize qualified persons interested in a pending application to enter upon the proposed site and make such relevant surveys and tests as the Director authorizes, under such conditions as required by the Director and upon sufficient notice to the applicant. All results of surveys or tests will be provided to both the Department and the permit applicant and all costs of surveys or tests will be borne by the party or parties requesting them.

The Director will further insure (1) that the permit applicant will have an opportunity to make a satisfactory showing (as provided in Section 6 of this Code) that certain information should be treated as confidential, and (2) that any information which could meet criteria for being treated as confidential will not be collected by or disclosed to any individual other than authorized personnel of the Department.

(g) The Director shall determine whether or not an application for permit is complete and shall notify the applicant in writing of such determination within 60 days of receipt for existing facilities, and 30 days of receipt for new facilities of such application. The application shall not be considered as submitted to the Director until it is in complete form.

(h) The Department, within 180 days of receipt of a complete application, shall either issue or deny a permit; provided that, where major modifications are made to the application, that time may be extended by mutual agreement between the Director and the applicant. Nothing in this subsection shall prohibit an applicant from withdrawing his application or from requesting a longer period of consideration.

(i) Prior to drafting the permit for any hazardous waste management facility, the Director may hold a preliminary hearing, for informational purposes, in the area in which the facility is, or is to be located. The hearings may be held by giving no less than ten days notice in the newspaper having the largest circulation in the county in which the facility is, or is proposed to be located, and in the newspaper having the largest circulation in each adjoining county. The notice shall provide: (1) the time, date, and location of the hearing; (2) the purpose of the hearing; and (3) the locations(s) where the

application and all supporting information is available for public review.

- (j) Upon completion of the Department's review of a permit application, a thirty day notice of public hearing shall be given in the manner described in Section (i) above. The notice shall provide:
- (1) the time, date, and location of the hearing;
 - (2) the purpose of the hearing;
 - (3) the name and address of the applicant and the location where the facility is, or is proposed to be, located;
 - (4) the tentative recommendation of the Department;
 - (5) the location(s) where copies of the application, the Department's recommendations and all supporting documentation can be reviewed by the public; and
 - (6) procedures for submitting public comments into the hearing record.
- (k) The public hearing required under subsection (j) above shall be in the area where the facility is or is proposed to be located. A record of hearing shall be made and retained as part of the administrative record of each applicant for review by the Commission.
- (l) Any person who applies for a permit for the transportation of hazardous waste within the State of Arkansas shall submit an application on forms prescribed by the Department. No permit shall be issued by the Department unless the applicant for said permit shall have first received a permit from the Arkansas Transportation Commission.
- (m) In addition to the requirements of 40 CFR 265.119, as published in the Federal Register, May 19, 1980, a permittee shall submit to the Department, as part of the annual permit review process, a plat of any landfill disposal area in which waste has been deposited. Such plat shall clearly delineate the location of all wastes and its type, referenced to established benchmarks.
- (n) Any permit issued pursuant to this Code shall be for a term not to exceed 5 years.

Section 13. PERFORMANCE STANDARDS

- (a) The following standards apply, in addition to those of 40 CFR

264, 265, 266, and 267, to waste management facilities:

- (1) the capacity of hazardous waste storage facilities associated with a treatment facility shall not exceed a volume equal to ninety percent of the permitted daily processing rate of the treatment facility; unless (1) the Commission shall find that a lesser restriction is required to provide adequate protection of public health and safety or (2) the applicant shall affirmatively demonstrate and the Commission finds that the restriction shall unduly inhibit the use of the most acceptable method or methods available for treatment;
- (2) the requirements of subsection (a) (1) of this section shall not apply to waste treatment facilities which are designed and operated to meet state and federal water pollution control regulations;
- (3) each facility shall 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, the provisions of this Code and all applicable state and federal standards concerning air and water quality and that the transfer, handling and storage of materials will 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 facility; and
- (4) 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 Manufacturers 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:

- (i) the generator or the disposer can demonstrate to the satisfaction of the Director that incineration is not technically feasible;
- (ii) it is generally accepted by the scientific community that incineration would not be technically feasible or that incineration would not produce the desired results;

- (iii) incineration would not appreciably reduce the degree of hazard; or
- (iv) 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 (13) (a) (4), 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 hazard components of the waste prior to landfilling.

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

Section 14. HEALTH MONITORING AND HAZARD IDENTIFICATION

- (a) Prior to the operation of a new commercial hazardous waste management facility, the Department may request that the appropriate health agency have a survey conducted, at reasonable cost, to establish baseline health data.

Such survey shall:

- (1) be conducted by a person approved by both the Department and the health agency;
 - (2) investigate the prevalence of those health conditions deemed appropriate by the Department in consultation with the Arkansas Department of Health and other health agencies;
 - (3) be completed among a statistically representative portion of the population located within an area defined as likely to be contaminated on the basis of information describing the type of facility, nature of the operation, type of waste managed, and proximity to major water sources or other likely vehicles for dissemination into the environment.
- (b) Whenever the Department finds that there exists a reasonable probability that emissions from any hazardous waste management facility are related to disease etiology, it shall have conducted pertinent epidemiologic investigations in order to ascertain early identification of unknown health hazards and to effect the appropriate corrective intervention. Such investigation shall be subject to the provisions of Section 11 (i) of this Code and limited to reasonable cost.

- (a) The following information shall be submitted along with Part A of any permit application for a commercial hazardous waste management facility.
- (1) If the permit applicant is not an individual, the nature of its business operations shall be stated for the past five years or for such lesser period as such person and any predecessors thereof shall have been in existence.
 - (2) A chart or listing clearly presenting the identities of the interrelationships among the applicant and all affiliates of the applicant shall be furnished. No affiliate need be identified if its total assets are equal to or less than 1/2 of 1% total assets of the ultimate controlling person affiliated with the applicant. Such chart should indicate or list the percentage of voting securities of each such person which is owned or controlled by the applicant or by any other person. If control of any person is maintained other than by the ownership or control of voting securities, indicate the basis of such control. As to each person specified in such chart or listing indicate the type of organization (e.g. - corporation, trust, partnership) and the state or other jurisdiction of domicile.
 - (3) State the following with respect to (1) the permit application if he or she is an individual or (2) all individuals who are directors, executive officers, or owners of 10% or more of the voting securities of the permit applicant if the applicant is not an individual:
 - (i) name and business address;
 - (ii) present principal business activity, occupation or employment position and office held and the name, principal business and address of any corporation or other organization in which such employment is carried on;
 - (iii) material occupations, positions, offices or employment during the last five years, giving the starting and ending dates of each and the name, principal business and address of any business corporation, position, office or employment was carried on; and
 - (iv) whether or not such individual has ever been convicted in a criminal proceeding (excluding minor traffic violations) during the last 10 years and, if so, giving the date, nature of conviction, name and location of court, and penalty imposed or other disposition of the case.

- (4) The following additional information shall be furnished concerning the ultimate controlling person if different from the applicant:
- (i) the principal executive office address;
 - (ii) the principal business of the person;
 - (iii) the name and address of any person who holds or owns 10% or more of any class of voting security, the class of such security, the number of shares held of record or known to owned, and the percentage of class so held or owned; and
 - (iv) with respect to directors and executive officers of the ultimate controlling person, the individuals name and address, his principal occupation and all offices and positions held during the previous five years and any conviction of crimes other than minor traffic violations during the past ten years.
- (5) The permit applicant shall provide a brief description of any litigation or administration proceedings of the following types, either pending or concluded within the preceding year, to which the applicant (and the ultimate controlling person, if different from the applicant) or any of its directors or executive officers was a party or of which the property of any such person is or was the subject; the names of the parties and the court or agency in which such litigation or proceeding is or was pending shall be given:
- (i) administrative proceedings by government agency or authority concerning environmental violations;
 - (ii) proceedings which may have a material effect upon the solvency of the ultimate holding company, including, but not necessarily limited to, bankruptcy, and receivership; and
 - (iii) criminal proceedings.
- (6) the permit applicant shall disclose on an annual basis any changes in the information requested under subsection (a) (2), (3), (4) and (5) of this section.
- (b) Every person who becomes the owner of 10% or more of any voting security of a permittee or the ultimate controlling person subsequent to the issuance of a permit shall report within 10 days of becoming such owner the information required under (a) (3).
- (c) In addition to the requirements of 40 CFR 122.14, a change of the ultimate controlling authority from one ultimate controlling person to another is deemed a transfer of permit subject to the prior approval of the Department. An application requesting such approval must contain at least the following information:

- (1) a description of the nature, source, and amount of funds or other considerations to be used in effecting the merger or other acquisitions of control;
- (2) the number of percentage of shares of the voting securities which the acquiring person plans to acquire, and the terms of the offer, request, invitation, agreement or acquisition; and
- (3) all information required under subsection (a) of this section concerning the acquiring person.

Section 16. HAZARDOUS WASTE TRANSPORTATION

- (a) Before transporting hazardous waste or offering hazardous waste for transporting off-site, a generator or shipper must:
 - (1) package or otherwise containerize the waste in accordance with applicable U.S. Department of Transportation regulations;
 - (2) label each package and/or container in accordance with applicable U.S. Department of Transportation regulations;
 - (3) mark each package and/or container in accordance with U.S. Department of Transportation regulations;
 - (4) offer the initial transporter the appropriate placards according to U.S. Department of Transportation regulations;
 - (5) prepare a manifest in accordance with this Code, rules of the Arkansas Transportation Commission and EPA regulations before permitting transport of the waste off-site;
 - (6) ascertain, prior to release of the hazardous waste to the transporter for shipment, that the designated and alternative facility to which the shipment is to be made are permitted to accept the waste to be shipped;
 - (7) contact the designated facility, by telephone or other form of communication, giving notice of the nature and extent of the hazardous waste shipment proposed to be made to the designated facility, and receiving authorization from the designated facility for the shipment to be made;
 - (8) ascertain, prior to release of the hazardous waste to the transporter for shipment, that each transporter who may receive and handle the shipment is permitted to haul hazardous wastes of the type and quantities involved under these regulations, the regulations of the Arkansas Transportation Commission and the EPA.

- (b) No generator or other shipper in the State of Arkansas shall offer for transportation any hazardous waste unless accompanied by a completed manifest as herein provided. The manifest must contain all of the following information:
- (1) a manifest document number;
 - (2) the generator's name, mailing address, telephone number, EPA identification number, if any, and Department identification number, if any;
 - (3) the name, EPA identification number and Department identification number, if any, of each transporter; and the transporter's Arkansas Transportation Commission permit number.
 - (4) the name, address, EPA identification number and Department identification number of the designated facility and an alternate facility to which the waste is to be delivered;
 - (5) the description of the waste (e.g. proper shipping name, etc.) required by regulations of the U.S. Department of Transportation in 49 CFR 172.101, 172.202, and 172.203;
 - (6) the total quantity of each hazardous waste by units of weight or volume, and the type and number of containers as loaded into or onto the transport vehicle;
 - (7) the following certification must appear on the manifest:
"This is to certify that the above named materials are properly classified, described, packaged, marked, and labeled, and are in proper condition for transportation according to the applicable regulations of the Department of Transportation, the EPA and the Arkansas Department of Pollution Control and Ecology, and have been consigned to the licensed hazardous waste transporter named herein on this date."
- (c) Manifests shall consist of at least the number of copies which will provide the generator, each transporter, and the owner or operator of the designated facility with one copy each of the manifest for their records, and one copy to be returned to the generator by the designated facility owner or operator after completion of the shipment. In addition, two copies will be forwarded to the Arkansas Department of Pollution Control and Ecology as hereinafter provided.
- (d) The shipper shall:
- (1) obtain a manifest form from the Department of Pollution Control and Ecology for use if the hazardous waste shipment is destined for a treatment/storage/disposal facility in this state. If the shipment is destined for a facility in another state and that state has promulgated or

authorized a form for a manifest or shipping papers, then the generator may use the State's forms. If the state of the receiving facility has no official form for manifest or shipping papers, then the generator shall use the manifest or shipping paper form prescribed by the Department of Pollution Control and Ecology;

- (2) fully complete the manifest and sign a certification on the manifest by hand stating that the information contained in the manifest is true, accurate and complete;
 - (3) obtain on the manifest document the handwritten signature of the initial transporter and date of acceptance by it;
 - (4) retain a copy;
 - (5) forward by regular United States mail with sufficient postage one copy of the manifest signed by the generator and the initial transporter as provided in (a) and (b) above to the Arkansas Department of Pollution Control and Ecology within two (2) working days from the date of release (to the initial transporter) of the hazardous waste described in the manifest;
 - (6) release to the transporter the original and remaining copies of the manifest, which shall thereafter accompany the hazardous waste shipment to its destination;
 - (7) require, contractually or otherwise, a facility located in another state to which the waste is to be delivered to complete and return the manifest to the generator and the Department in accordance with the facility operator requirements of this Regulation. It shall not be a violation by, or a liability of, the generator if the receiving facility fails to return the completed manifest, except that the generator must file an Exception Report with the Department as provided in subsection (h) of this section.
- (e) The transporter shall:
- (1) not accept hazardous waste from a generator or other shipper unless it is accompanied by a manifest prepared and signed by the shipper in accordance with subsection (d) (2) of this section;
 - (2) sign and date the manifest acknowledging acceptance of the hazardous waste from the shipper before transporting the hazardous waste. The transporter must return a signed copy to the generator before leaving the shipper's property with the shipment;

- (3) retain all remaining copies of the manifest received by it from the shipper with the hazardous waste shipment;
 - (4) deliver hazardous waste shipments only to:
 - (i) facilities which are permitted to receive and store, treat, or dispose of such shipments under the laws of the State of Arkansas and the regulations of the Arkansas Department of Pollution Control and Ecology, or in the event such disposal facility is located within another state, under the laws and regulations of the state within which said facility is located, and under the laws of the United States of America and the regulations of the United States Environmental Protection Agency; or
 - (ii) a subsequent transporter of the shipment who is authorized by the United States Department of Transportation and the EPA to transport the shipment. If any part of the shipment by subsequent transporter is to be in the State of Arkansas, then the subsequent transporter must also be authorized to transport the shipment by the Arkansas Transportation Commission and the Department.
 - (5) obtain the signature on the manifest of an authorized representative of the facility or any subsequent transporter who may receive the hazardous waste shipment for further transport, acknowledging receipt of said shipment from the original transporter; and
 - (6) deliver three (3) copies of the manifest to the facility which is to accept delivery of the hazardous waste. After obtaining the signature of an authorized representative of the facility on the manifest as provided in subsection (f) (1), below, the transporter shall retain one (1) copy of the manifest in its records as evidence of delivery to a permitted facility.
- (f) The treatment/storage/disposal facility shall:
- (1) acknowledge receipt, by authorized representative, of the delivery to it of the hazardous waste shipment by signing all copies of the manifest tendered to it by the final transporter, and return to the transporter one (1) copy of the manifest after signature;

- (2) submit by the 10th of the month following the reporting month or at such other intervals as may from time to time be provided by the Department, a copy of each completed, signed manifest received by it during the preceding month to the Arkansas Department of Pollution Control and Ecology regardless of the state of origin of shipment of the waste shown in the manifest;
- (3) return the original copy of each completed, signed manifest to the shipper of the hazardous waste shipment within ten (10) days after receipt of the shipment by the facility;
- (4) provide manifest forms approved by the Department whenever possible, to shippers originating shipment from other states to the facilities located in the State of Arkansas. If the shipment originated from a shipper in another state, and the facility shall require, contractually or otherwise, a shipper in another state to use the manifest form approved by the Department, and in any event, to comply with the requirements of subsection (d) of this section;
- (5) a facility may accept for treatment, storage, or disposal hazardous waste from an off-site source without an accompanying manifest or shipping paper, or which is not identical in nature or quantity to the waste described in the accompanying manifest subject to the following conditions:
 - (i) the permit for the facility issued by the Department authorizes the facility to accept the type of waste which is not manifested, and
 - (ii) in the event that the quantity of such manifested waste from any one source exceeds in the aggregate the minimum amount provided in Section 9 (a) of these regulations, then the owner or operator of the facility must prepare and submit a report to the Director within fifteen (15) days after receiving such waste, which must include the following information:
 - (1) the EPA and the Department identification number, name and address of the facility;
 - (2) the date the facility received the waste;
 - (3) the EPA and the Department identification number, if any, and the name and address of the generator and the transporter of the waste, if available;
 - (4) a description and the quantity of each unmanifested hazardous waste received;

- (5) the method of treatment, storage, or disposal for each hazardous waste;
- (6) a brief explanation of why the waste was unmanifested, if known; and
- (7) a certification as to the accuracy of the information signed by the owner or operator of the facility or his authorized representative.

The report form prescribed by the EPA in 40 CFR 264.76 may be used by the facility in making the report to the Director.

- (g) Every person who releases hazardous waste to a hazardous waste transporter, every person who accepts hazardous waste from a transporter, and every hazardous waste transporter shall retain a copy of the manifest as a record of all hazardous waste transactions for a period of three (3) years, and such reports shall be made available at reasonable times for inspection and photocopying by the Arkansas Department of Pollution Control and Ecology.
- (h) If the shipper of the hazardous waste shipment has not received a signed copy of the manifest for the shipment from the primary or alternative disposal/storage/treatment facility within thirty-five (35) days of the date of receipt of the waste by the initial transporter, the shipper shall contact the transporter and/or the designated facility to determine the status of the shipment and the manifest. If, within forty-five days of date of acceptance by the initial transporter, the shipper has not received a final signed copy of the manifest from the designated facility, the shipper must file an Exception Report with the Arkansas Department of Pollution Control and Ecology. The Exception Report must consist of a copy of the manifest as signed by the transporter upon receipt of the shipment from the shipper and a cover letter to the Department describing the shipper's efforts to locate the shipment and the remaining copies of the manifest, and the results of those efforts. If a facility other than the primary or alternative designated facility returns the manifest acknowledging final receipt of the shipment, an Exception Report must be filed by the shipper outlining the reasons for delivery of the shipment to such undesignated facility. In the event of a shipment which originates in the State of Arkansas, to a facility in another state in which the manifest has not been returned to the generator within the time limit set forth above, the Department will, upon receipt of the Exception Report, notify its counterpart agency in the state in which the facility is located and in the state in which the shipment may have been delivered, or to EPA in the event that the facility is located in a state which is not authorized by EPA to administer the Resource Conservation and Recovery Act Program, of the fact that the manifest has not been completed and the whereabouts of the shipment is unknown.

- (i) The requirements of subsection (d) (6) of this section do not apply to rail or water (bulk shipment) transporter if:
- (1) the hazardous waste is delivered by rail or water to a designated facility;
 - (2) the waste is shipped in bulk rather than in individual containers or packages;
 - (3) a shipping paper containing all information required on the manifest (excluding the EPA numbers, generator certification, and signatures) accompanies the hazardous waste;
 - (4) the transporter obtains the date and handwritten signature of the owner or operator of the designated facility on either the manifest or the shipping paper;
 - (5) the person delivering the hazardous waste to the initial rail or water transporter obtains the date of delivery and signature of the rail or water transporter on the manifest or shipping paper and forwards it by mail to the designated facility (and with a copy to the Department of Pollution Control and Ecology) within two (2) working days thereafter;
 - (6) a copy of the shipping paper or manifest is retained by each rail or water transporter.
- (j) Transporters who transport hazardous waste out of the United States must:
- (1) indicate on the manifest the date the hazardous waste left the United States and the name and address of the facility to which the waste was delivered;
 - (2) sign the manifest and retain one copy; and
 - (3) return a signed copy of the manifest to the shipper and a copy to the Department of Pollution Control and Ecology.
- (k) The transporter must deliver the entire quantity of hazardous waste which he has accepted from the shipper or a transporter to:
- (1) the designated facility listed on the manifest;
 - (2) the alternate designated facility, if the hazardous waste cannot be delivered to the designated facility because emergency prevents delivery;
 - (3) the next designated transporter; or
 - (4) the place outside the United States designated by the transporter.

- (l) If the hazardous waste cannot be delivered in accordance with subsection (k) of this section, the transporter must contact the shipper for further directions and must revise the manifest according to the shipper's instructions.
- (m) No person shall transport any hazardous waste over any public highway within the State of Arkansas without having received an EPA identification number and a Department of Pollution Control and Ecology identification number.
- (n) No person shall transport over any public highway within the state any hazardous waste without having in force current Hazardous Waste Transportation permits issued by the Arkansas Transportation Commission and by the Arkansas Department of Pollution Control and Ecology authorizing such activity by such person.
- (o) No transporter shall transfer any hazardous waste received by it for transport into a tank or container other than one to be used in the transportation of the waste without first obtaining a storage facility permit pursuant to these regulations.
- (p) No transporter shall permit the transportation of incompatible waste in any one vehicle.
- (q) In the event of a discharge of hazardous waste during transportation:
 - (1) the transporter must immediately contact the National Response Center, the Arkansas State Police and the principal office of the carrier and take appropriate action to protect the public health and safety and the environment;
 - (2) the Arkansas State Police will immediately notify the Office of Emergency Services who will contact the Arkansas Transportation Commission officials and officials of the Arkansas Department of Pollution Control and Ecology;
 - (3) if a discharge of hazardous waste occurs during transportation and a Federal or State official, acting within the scope of his official responsibilities, determines that immediate removal of the waste is necessary to protect human health or the environment, that official may authorize the removal of the waste by transporters, who do not have an EPA identification number or a Hazardous Waste Transportation permit, provided that no, or insufficient numbers of, authorized transporters are available;
 - (4) an air, rail, highway, or water transporter who has discharged hazardous waste must also give notice as required by subsection (l) above; and

- (5) a transporter must contain, clean up, neutralize and/or remove hazardous waste discharge that occurs during transportation or take such actions that may be required or approved by Federal, State, or local officials so that hazardous waste discharge no longer presents a hazard to human health or the environment. A written report of discharge must be submitted by the transporter to the U.S. Department of Transportation and to the Arkansas Department of Pollution Control and Ecology within ten (10) days following the date of discharge.
- (r) All transporters shall, before permitting commencement of any shipment of hazardous waste instruct the employee(s) of the transporter who will accompany the shipment in the hazardous characteristics of the material(s) being shipped, and in the proper action to be taken by such employee(s) with regard to the waste material(s) in event of a discharge during shipment. The transporter shall also furnish the employee(s) with the equipment to enable the employee(s) to take appropriate emergency action to protect the public health and safety and the environment.
- (s) No person shall cause or permit the transportation of hazardous waste into the State of Arkansas unless the following provisions are met:
- (1) No person shall cause or permit hazardous waste to be transported into the State of Arkansas for purpose of disposal except where such waste is to be disposed of in a facility permitted under this Code and where the facility's permit specifically authorizes the disposal of said waste;
 - (2) No person shall cause or permit hazardous waste to be transported into the State of Arkansas for purposes of disposal without first having received written authority from the Department of Pollution Control and Ecology;
 - (3) No person shall cause or permit the transportation of hazardous waste into the State of Arkansas without first reporting to the Department of Pollution Control and Ecology the nature and amount of wastes, the origin and destination of the wastes and the means by which wastes are to be transported.
- Such reporting shall be accomplished in a form and at a frequency prescribed by the Department of Pollution Control and Ecology based on the amounts of waste and the frequency of shipments.
- (t) No person shall cause or permit the transportation of hazardous waste out of the State of Arkansas unless the following provisions are met:

- (1) No person shall cause or permit the transportation of hazardous waste out of the State of Arkansas without first reporting to the Department the nature and amount of wastes, the origin and destination of the wastes and the means by which wastes are to be transported. Such reporting shall be accomplished in a form and at a frequency prescribed by the Department of Pollution Control and Ecology based on the amounts of waste and the frequency of shipments.
- (2) No person shall cause or permit hazardous waste to be transported out of the State of Arkansas for purposes of disposal without first having received written authority from the Department of Pollution Control and Ecology. Such authority shall be conditioned upon the presentation of evidence that the state to which the waste is to be shipped is agreeable to the disposal of such waste within its borders.

Section 17. EFFECT OF FEDERAL REGULATIONS

- (a) Any rules, regulations, standards, procedures, and permit conditions adopted and imposed by the Department shall not be less stringent than the regulations promulgated or revised by the United States Environmental Protection Agency pursuant to the Federal Resource Conservation and Recovery Act of 1976.
- (b) Where the Commission issues variances pursuant to Section 14 of the Act, such variances shall not provide terms less stringent than those set by federal regulations as in subsection (a) of this section.
- (c) Nothing in this section shall prohibit the Department from imposing any rule, regulation, standard, procedure, or permit condition which is more stringent than the federal regulations in subsection (a) of this section when such rule, regulation, standard, procedure, or permit condition is required as a part of this Code or the Act or when the Department finds such stringency is necessary to protect the public health or the environment.

Section 18. SEVERABILITY

If any provision of this Code or the application thereof is held invalid, such invalidity shall not affect other provisions of this Code which can be given effect without the invalid provision or application and to this end the provisions of this Code are declared to be severable.

Section 19. EFFECTIVE DATE

- (a) Except as provided within this Section 19, the effective date

of any provision of this Code shall be the effective date of the federal regulations cited in Section 3 of this Code.

- (b) Prior to the effective date of the federal regulations cited in Section 3 of this Code, the Commission may establish compliance schedules requiring that hazardous waste management facilities which are found to be in violation of the Arkansas Water and Air Pollution Control Act, as amended, the Arkansas Solid Waste Management Act, or regulations promulgated pursuant thereto, comply with such provisions of this Code as the Commission determines to be appropriate to correct such violations.
- (c) Unless otherwise prohibited by a federal regulation the Commission, upon petition by the owner of an existing or proposed hazardous waste management facility, may permit such facility to operate under the terms of this Code until such time of the effective date of the federal regulations cited under Section 3 of this Code; provided, however, that the owner of the facility agrees in writing within sixty days of the effective date of said federal regulations, to submit to the Commission plans for achieving prompt compliance with such federal regulations and for taking such other corrective actions as may be required by the Commission.