

MINUTE ORDER NO. 83-50

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On September 8, 1983, the Commission held a public hearing pursuant to notice properly given, to hear public comments on proposed amendments to the Arkansas Hazardous Waste Management Code. The amendments were proposed to include adoption by reference of the federal regulations assigning new section numbers to elements of the permit program to achieve deconsolidation, revision of the section on adoption of federal regulations to allow the State to use federal hazardous waste regulations as minimum guidelines for revisions to the Code, and a proposed additional section that provides that memorandums of agreement with the EPA for state assumption of the federal hazardous waste program would be the sole agreements concerning hazardous waste regulations entered into by the Department.

Two comments were received on the proposed adoption of Section 3(e) that recommended a time frame of 180 days after the date of promulgation for state adoption of federal regulations to maintain state equivalence to the federal program. The State has no objection to this change.

The staff therefore recommends and the Commission hereby approves the adoption of the aforementioned amendments.

The Commission hereby orders that the amendments adopted on this date shall be in full force and effect beginning September 23, 1984.

COMMISSIONERS

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CHAIRMAN

SUBMITTED BY: Sandra Perry, Ph.D. DATE PASSED: 9-23-83

1. Add to Section 2:

(ii) "Interstate agreements or compacts" means any agreement or agreements between the State of Arkansas and another state or states or the federal government, which is entered into with the approval of the Governor in order to carry out the purposes of the Arkansas Resource Reclamation Act (Act 1098 of 1979).

(jj) "Memorandum of Agreement" means the agreement between the U.S. Environmental Protection Agency, as the authorized agent of the federal government, and the Arkansas Department of Pollution Control and Ecology, as the authorized agent of the Governor, for ADPC&E to operate a state hazardous waste program pursuant to the federal Resource Conservation and Recovery Act in Arkansas, in lieu of the federal government, and in accordance with state law and regulations which are equivalent to the federal program.

2. Add a new section:

"Section 20. State/EPA Memorandum of Agreement.

(a) The Memorandum of Agreement (MOA) effectuates the purposes set forth in Act 1098 of 1979 for interstate agreements or compacts. Specifically:

1. Pursuant to the MOA and Arkansas statutes and regulations ADPC&E agrees to manage a program regulating the transportation of hazardous waste within the state so that it is unlawful to transport hazardous waste for disposal within the state without complying with the standards set forth in Sections 3 and 16 of this Code.
2. Pursuant to the MOA and Arkansas statutes and regulations ADPC&E agrees to manage a program regulating the disposal of hazardous waste, so that it is unlawful to dispose of hazardous waste, including that transported from another state, at any facility within this state that is not specifically permitted by ADPC&E to dispose of such waste.
3. Pursuant to the federal Resource Conservation and Recovery Act (RCRA) all other states receiving final authorization of the hazardous waste management program in lieu of the federal government will be required by similar Memorandums of Agreement to enforce the same restrictions on the transportation for disposal of hazardous waste in Arkansas as they are required to enforce on waste transported and/or disposed of within their own state.
4. Pursuant to the MOA and federal laws and regulations EPA agrees that in states which do not enter into similar MOA's, EPA will operate the hazardous waste management program within such state or states in accordance with laws and regulations which are equivalent to those in existence in Arkansas for transportation of hazardous waste for disposal

and disposal of hazardous waste.

(b) Upon execution of the MOA all purposes of Act 1098 of 1979 will be fulfilled with respect to the transportation and disposal of hazardous waste and no other interstate agreements or compacts with respect thereto shall be entered into during the life of the MOA.

3. Delete from Section 3(a):

"shall be extended in full force and effect as interim provisions of this Code and shall be enforceable as such" and substitute:

"shall be used as minimum guidelines in adopting new or revised provisions of this Code".

4. Delete Section 3(e) and add:

The Director, within 180 days after the date of promulgation of any new or revised federal hazardous waste regulations shall conduct State rulemaking procedures to adopt necessary revisions in this Code so as to maintain a State Hazardous Waste Management Program equivalent to the federal program

- (c) "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 non-hazardous, 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 270.2 as published in the Federal Register, May 19, 1980, as amended on or before July 1, 1983.
- (ii) "Interstate agreements or compacts" means any agreement or agreements between the State of Arkansas and another state or states or the federal government, which is entered into with the approval of the Governor in order to carry out the purposes of the Arkansas Resource Reclamation Act (Act 1098 of 1979).
- (jj) "Memorandum of Agreement" means the agreement between the U.S. Environmental Protection Agency, as the authorized agent of the federal government, and the Arkansas Department of Pollution Control and Ecology, as the authorized agent of the Governor, for ADPC&E to operate a state hazardous waste program pursuant to the federal Resource Conservation and Recovery Act in Arkansas, in lieu of the federal government, and in accordance with state law and regulations which are equivalent to the federal program.

### 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 regulation which regulations are hereby adopted and made part of this Code as though set forth herein word for word, and which shall apply to all persons generating, storing, 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, and O;
- 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 270;
- 40 CFR Part 124, Subparts A and B as published in the Federal Register Volume 45, No. 98, Monday, May 19, 1980, as amended, or or before July 1, 1983; provided that the following portions of 40 CFR are excepted from adoption in this Code: 124.1; 124.3(d),(e); 124.4; 124.5(e); 124.5(g); 124.10(a),(1),(iv); 124.12(b); 124.12(d); 124.12(e); 124.14; 124.15; 124.16; 124.17(b); 124.20; 124.21; 264.312(b); 264.314(a),(1),(b),(3); 265.312(b); 265.314(a),(1),(b),(3).

Whenever the effect of any of the aforecited 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 used as minimum guidelines in adopting new or revised provisions of this Code, provided that the effect of said action does not conflict with the provisions of Act 406.

- (b) Adoption of temporary and/or final waste exclusions resulting from petitions filed with EPA under 40 CFR 260.22 (petitions to amend Part 261 to exclude a waste product produced at a particular facility):

<u>Facility Name &amp; Address</u>	<u>Waste Excluded</u>	<u>Date of FR Notice</u>	<u>Exclusion Status</u>
Monroe Auto Equipment, Paragould	F006	Dec. 31, 1980	Temporary
Whirlpool Corp., Fort Smith	F006	Aug. 6, 1981	Temporary
Bekaert Steel Wire Corp.,	K063	Dec. 16, 1980	Temporary
White-Rodgers, Div. of Emerson Electric	F006	Jan. 28, 1983	Temporary
National Rejector Industries	F006	Jan. 28, 1983	Temporary

- (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, 270, 122, and 124 refer to 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 180 days after the date of promulgation of any new or revised federal hazardous waste regulations shall conduct State rulemaking procedures to adopt necessary revisions in this Code so as to maintain a State Hazardous Waste Management Program equivalent to the federal program.
- (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 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.

Section 20. STATE/EPA MEMORANDUM OF AGREEMENT

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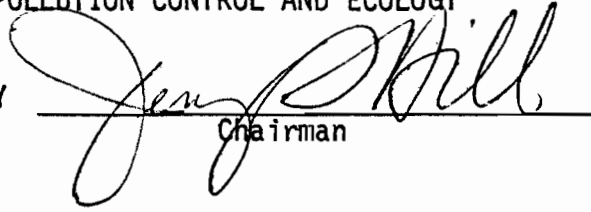
- (b) Upon execution of the MOA all purposes of Act 1098 of 1979 will be fulfilled with respect to the transportation and disposal of hazardous waste and no other interstate agreements or compacts with respect thereto shall be entered into during the life of the MOA.

Adoption of Federal Regulations  
(March 2, 1983-July 1, 1983)

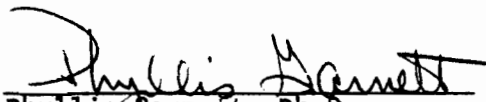
- March 15, 1983     40 CFR Part 261.  
Corrections (typographical) to the February 23, 1983 Identification and listing of hazardous waste.
- March 29, 1983     40 CFR 123 and 262.  
EPA amends the international shipment requirements to make a minor technical correction. 40 CFR 262.50 and 123.34 incorrectly states the address to which the international shipment notices must be sent. The agency amends both these sections to reflect the correct address.
- April 1, 1983     40 CFR Parts 122, 123, 124, 260, 261, 262, 263, 264, 270 and 271.  
This rule reorganizes the presentation of permit program requirements, but makes no substantive changes to any of the affected sections. The EPA is simply physically deconsolidating its Consolidated Permit Regulations. The intent is to make the regulations easier to understand and to use.  
---Part 122 is split into portions applicable specifically to RCRA (new part 270).  
---Part 123 is split into portions applicable specifically to RCRA (new part 271).  
---Part 124 remains applicable to all permit programs and is modified only as necessary to revise the cross references to former Parts 122 and 123.
- April 8, 1983     40 CFR Part 261.  
This is an amendment to Appendix III of 40 CFR Part 261 (Chemical Analysis Test Methods) by realigning the lists of test methods and assigning new method numbers. There are no substantive changes.
- June 30, 1983     40 CFR Parts 124, 261, 264, 265, 270, and 271.  
This amendment corrects minor typographical errors, incorrect cross references and similar technical errors. This rule makes no substantive changes to the permit requirements.

PROMULGATED THIS 23RD DAY OF SEPTEMBER 1983  
BY ORDER OF THE COMMISSION ON POLLUTION CONTROL AND ECOLOGY

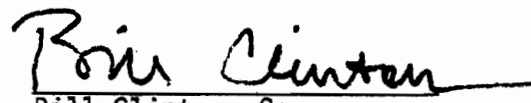
BY

  
Chairman

ATTEST:

  
Phyllis Garnett, Ph.D.  
Director

APPROVED:

  
Bill Clinton, Governor  
State of Arkansas