

The Commission on Pollution Control and Ecology hereby grants approval for the Department to conduct a public hearing on a draft Regulation No. 7 providing for schedules of civil penalties to be assessed as authorized by the Arkansas Solid Waste Management Act (Section 11 of Act 237 of 1971, as amended; Ark. Stat. Ann. §82-2711), the Arkansas Water and Air Pollution Control Act (Section 9 of Part 1 of Act 472 of 1949, as amended; Ark. Stat. Ann. §82-4213), and the Arkansas Hazardous Waste Management Act (Section 13 of Act 406 of 1979, as amended; Ark. Stat. Ann. §82-4213).

Notice for such hearing shall only be given upon the explicit direction of the Chairman and shall be held concurrently with any such hearing on proposed Regulation No. 8.

COMMISSIONERS

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CHAIRMAN

SUBMITTED BY: Robert Blanz DATE PASSED: 1-27-84

REGULATION NO. 7

STATE OF ARKANSAS
DEPARTMENT OF POLLUTION CONTROL AND ECOLOGY
SCHEDULE OF CIVIL PENALTIES

DRAFT

SECTION 1. AUTHORITY

Pursuant to the provisions of the Arkansas Solid Waste Management Act, (Section 11 of Act 237 of 1971, as amended; Ark. Stat. Ann. §82-2711), the Arkansas Water and Air Pollution Control Act (Section 9 of Part 1 of Act 472 of 1949, as amended; Ark. Stat. Ann. §82-4213), and the Arkansas Hazardous Waste Management Act (Section 13 of Act 406 of 1979, as amended; Ark. Stat. Ann. §82-4213), the Arkansas Commission on Pollution Control and Ecology hereby promulgates this Regulation No. 7 providing for schedules of civil penalties to be assessed for the violation of any provisions of these Acts, or the violation of any regulations issued pursuant to these Acts or for the violations of any order, agreement, or permit, or any part thereof, issued under these Acts.

SECTION 2. DEFINITIONS

When used in this regulation:

(a) "Commission" means the Commission on Pollution Control and Ecology.

(b) "Department" means the Arkansas Department of Pollution Control and Ecology.

(c) "Director" means the Director of the Arkansas Department of Pollution Control and Ecology.

(d) "Waters of the State" means all streams, lakes, marshes, ponds, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this State, or any portion thereof.

(e) "Violation" means the failure to comply with any statute, regulation, order, agreement or MOA, permit, compliance schedule, or any part thereof and includes both acts and omissions.

(f) "Person" means any individual corporation, company, firm, partnership, association, trust, joint stock company, state agency, government instrumentality or agency, institution, county, city, town, or municipal authority or trust, venture, or any other legal entity, however organized.

(g) "Significant environmental impact" means the violation of the Water Quality Standards (ADPC&E, Regulation No. 2, as amended), standards established pursuant to the Safe Drinking Water Act, National Ambient Air Quality Standards, or engaging in activity which results in objectively measurable damages to this State's natural resources or the beneficial uses thereof.

SECTION 3. SOLID WASTE MANAGEMENT SCHEDULE OF CIVIL PENALTIES

The penalty classifications and the civil penalties to be assessed any person for the violation of any provisions of the Arkansas Solid Waste Management Act [Ark. Stat. Ann. §82-2701 et seq.] or the Arkansas Solid Waste Disposal Code (ASWDC) or the violation of any permit, order, or agreement, or any part thereof, are defined as follows:

(a) Class I violations:

- (1) The failure of municipal and/or county governments to develop a "Solid Waste Management System Plan" and/or implement a "Solid Waste Management System" as required by Ark. Stat. §82-2705 - 82-2706;
- (2) The operation of a disposal facility without a permit in violation of Ark. Stat. Ann. §82-2710(b), Section 3 of the ASWDC, or Section 9 of the ASWDC;
- (3) Failure to operate the solid waste management system in accordance with the approved plans and specifications;
- (4) Failure to construct the solid waste management system in accordance with the approved plans and specifications;
- (5) Violation of closure plans or closure regulations;
- (6) Violation of any permit condition resulting in significant environmental impact;
- (7) Leachate, as defined by Section 2(n) of the ASWDC, leaving the disposal site (Ark. Stat. Ann. §82-2710(f));
- (8) Leachate, as defined by Section 2(n) of the ASWDC, entering the waters of the State (Ark. Stat. Ann. §82-2710(f));
- (9) Placing solid waste into the waters of the State in violation of Ark. Stat. Ann. §82-2710(f) or Section 6(f)(12)(c) of the ASWDC;
- (10) Failure to use cover material of the quality described in Section 6(f)(6) of the ASWDC;
- (11) Improper application of daily cover in violation of Section 6(f)(6)(aa) of the ASWDC;

- (12) Improper application of final cover in violation of Section 6(f)(6)(bb) of the ASWDC;
- (13) Failure to maintain cover as required by Section 6(f)(6)(cc) of the ASWDC;
- (14) Accepting unapproved wastes in violation of Section 6(f)(8) of the ASWDC;
- (15) The improper handling of special materials in violation of Section 6(f)(11) of the ASWDC;
- (16) Open burning in violation of Section 6(f)(12)(d) of the ASWDC;
- (17) The failure to provide for proper drainage (Section 6(f)(13) of the ASWDC);
- (18) Engaging in activity which creates an imminent and substantial endangerment to the health of persons in violation of Ark. Stat. Ann. §82-2710(f) or Section 3(b) of the ASWDC;
- (19) Failure to allow the Director or an authorized representative to inspect papers or records or to enter upon any property for the purpose of obtaining information or conducting surveys or investigations in violation of Ark. Stat. Ann. §82-2708(c) and (d);
- (20) Knowingly make any false statement, representation or certification in any application, record, report, plan, or other document filed or required to be maintained;
- (21) To falsify, tamper with or knowingly render inaccurate any monitoring device or method required to be maintained;
- (22) Failure of a nonconforming site to submit the report required in Section 10 of the ASWDC setting forth a detailed program and plan for compliance;
- (23) The inadequate disposal of liquid wastes in violation of Section 7(a) of the ASWDC;
- (24) Failure to properly dispose of residue removed from an incinerator plant in accordance with Section 7(c)(13) of the ASWDC;
- (25) Offering for sale materials resulting from composting or similar processes which contain pathogenic organisms or otherwise fails to meet the requirements of Section 8(c) of the ASWDC; or
- (26) Failure to comply with the requirements of an administrative order (Ark. Stat. Ann. §82-2710(a)).

The amount of any civil penalty assessed for a Class I violation shall not be more than \$5,000.00. Each day of a continuing violation may be deemed a separate violation.

(b) Class II violations:

- (1) Failure to comply with the requirements pertaining to access roads in violation of Section 6(d) of the ASWDC;
- (2) Failure to comply with the security requirements of Section 6(e)(1) of the ASWDC;
- (3) Failure to comply with the emergency provisions of Sections 6(e)(5) or 7(c)(7) of the ASWDC;
- (4) Failure to provide telephone or radio communications in violation of Section 6(e)(4) of the ASWDC;
- (5) Failure to limit access to operating hours in violation of Sections 6(f)(2) or 7(c)(3) of the ASWDC;
- (6) Failure to confine waste to a manageable area as required by Sections 6(f)(3) or 7(c)(4) of the ASWDC;
- (7) Failure to comply with the litter control provisions of Section 6(f)(4) of the ASWDC;
- (8) Failure to comply with the provisions pertaining to the spreading of waste as contained in Section 6(f)(5) of the ASWDC;
- (9) Failure to comply with the compaction requirements of Section 6(f)(5) of the ASWDC;
- (10) Failure to make provisions for backup equipment in violation of Section 6(f)(7) of the ASWDC;
- (11) Failure to control vectors as required by Sections 6(f)(9) or 11(a)(1) of the ASWDC;
- (12) Failure to provide equipment as needed to maintain sanitary conditions in an incinerator plant (Section 7(c)(9) of the ASWDC);
- (13) Failure to maintain records, make reports, install, use and maintain monitoring equipment or methods, or take samples in violation of Ark. stat. Ann. §82-2709(b) or Sections 7(c)(12) or 7(c)(15) of the ASWDC; or
- (14) Violation of any permit condition not otherwise specifically provided for within this Section.

The amount of any civil penalty assessed for a Class II violation shall not be more than \$500.00 for the first violation and not less than \$500.00 or more than \$1,000.00 for any subsequent Class II violations occurring within six (6) months. Each day of a continuing violation may be deemed a separate violation.

(c) Class III violations:

- (1) Failure to post an adequate information sign as required by Section 6(e)(1) or 7(c)(3) of the ASWDC;
- (2) Failure to provide adequate employee facilities as required by Sections 6(e)(3) or 7(c)(2) of the ASWDC;
- (3) Failure to properly control dust or mud as required by Section 6(e) (2) or 7(c)(5) of the ASWDC;
- (4) The unapproved salvaging of wastes in violation of Section 6(f)(10) of the ASWDC;
- (5) Scavenging of wastes in violation of Section 6(f)(12)(a) of the ASWDC;
- (6) Accepting waste from inadequately covered vehicles in violation of Section 12(b) of the ASWDC;
- (7) Failure to keep collection and transportation vehicles clean in violation of Section 12(c) of the ASWDC; or
- (8) Failure to properly store solid waste in accordance with Section 11 of the ASWDC.

The amount of any civil penalty assessed for a Class III violation shall not be more than \$250.00 for the first violation and not less than \$250.00 or more than \$500.00 for any subsequent Class III violations occurring within six (6) months. Each day of a continuing violation may be deemed a separate violation.

SECTION 4. AIR POLLUTION SCHEDULE OF CIVIL PENALTIES

The penalty classifications and civil penalties to be assessed any person for the violation of any provisions of Part II of the Arkansas Water and Air Pollution Control Act [Ark. Stat. Ann. §82-1931 et seq.], the Arkansas Air Pollution Control Code, Regulations of the Arkansas Plan of Implementation for Air Pollution Control (Regulations of the Plan), Regulations for the Control of Volatile Organic Compounds (VOC), Prevention of Significant Deterioration Supplement to the Arkansas Plan of Implementation for Air Pollution Control (PSD), or the violation of any permit, order, or agreement, or any part thereof, are defined as follows:

(a) Class I violations:

- (1) Failure of existing sources, as defined in Section 3(j) of the VOC, to submit the compliance schedule required in Section 4.5(a)(1) of the VOC;

(b) Class II violations:

- (1) The release of air contaminants by any source which constitutes air pollution within the meaning of §82-1933(2), not otherwise specifically provided for within this Section, in violation of Section 10 of the Arkansas Air Pollution Control Code;
- (2) Violation of a permit condition, emission standard, or compliance schedule not otherwise specifically provided for within this Section;
- (3) Failure to report upset conditions, breakdowns, or submit excess emission reports as required by Section 13 of the Arkansas Air Pollution Control Code, Section 6 of the Regulations of the Plan, or Section 4.8 of the VOC; or
- (4) Failure to comply with Section 5 of the VOC.

The amount of any civil penalty assessed for a Class II violation shall not be more than \$1,000.00 for the first violation and not less than \$1,000.00 or more than \$2,500.00 for any subsequent Class II violations occurring within six (6) months. Each day of a continuing violation may be deemed a separate violation.

(c) Class III violations:

- (1) Failure to maintain monitoring equipment, monitor or sample emissions, use required sampling methods or procedures, maintain required records of emission data, file emissions data, or make reports to ADPC&E as required by Section 7 of the Regulation of the Plan and Section 4.8 of the VOC;
- (2) The failure to sample, make reports, maintain equipment, or maintain records which is not otherwise specifically provided for within this Section.

The amount of any civil penalty assessed for a Class III violation shall not be more than \$500.00 for the first violation and not less than \$500.00 or more than \$1,000.00 for any subsequent Class III violations occurring within six (6) months. Each day of a continuing violation may be deemed a separate violation.

SECTION 5. HAZARDOUS WASTE MANAGEMENT SCHEDULE OF CIVIL PENALTIES

The penalty classifications and the civil penalties to be assessed upon any person for the violation of any provisions of the Arkansas Hazardous Waste Management Act (Ark. Stat. Ann. §82-4201 et seq.), the Arkansas Hazardous Waste Management Code (AHWMC) or the violation of any permit, order, rule, or agreement or any part thereof, are defined as follows:

(a) Class I violations:

- (1) The disposal of hazardous wastes at any disposal site or facility that is not permitted in violation of Section 4(c) of the AHWMC or Ark. Stat. Ann. §82-4212(c);
- (2) Failure of a small quantity generator, as defined in 40 CFR 261.5, to ship or dispose of hazardous waste without complying with Section 9(a) of the AHWMC;
- (3) Receipt, by an owner or operator of a solid waste management facility or hazardous waste management facility, of hazardous wastes without first obtaining written permission to store, treat and/or dispose of hazardous waste from the Department in violation of Section 9(b) of the AHWMC;
- (4) Failure to comply with the container requirements for waste kept onsite by generators for less than 90 days in violation of 40 CFR §262.34(a), as adopted by reference in Section 3 of the AHWMC;
- (5) Failure of a generator to comply with the packaging requirements of Section 16(a)(i) of the AHWMC or 40 CFR §262.30, as adopted by reference in Section 3 of the AHWMC;
- (6) Transporting hazardous wastes without a Hazardous Waste Transportation permit in violation of Section 16(n) of the AHWMC;
- (7) The delivery of hazardous wastes to any facility without interim status or a permit in violation of Section 16(e)(4)(i) of the AHWMC;
- (8) The delivery of hazardous wastes to any transporter not authorized to transport in violation of Section 16(e)(4)(ii) of the AHWMC;
- (9) Failure of a transporter to comply with the manifest in violation of Sections 16(k) or 16(l) of the AHWMC, or 40 CFR §263.21, as adopted by reference in Section 3 of the AHWMC;
- (10) Failure of a transporter to comply with the immediate action and discharge clean-up requirements of Section 16(q) of the AHWMC, or 40 CFR §§263.30 - 263.31, as adopted by reference in Section 3 of the AHWMC;
- (11) Failure of a transporter to instruct employees who will accompany a shipment of hazardous wastes in accordance with the requirements of Section 16(r) of the AHWMC;

- (12) Transportation of incompatible wastes in one vehicle in violation of Section 16(p) of the AHWMC;
- (13) Causing the transportation of hazardous wastes without first complying with the provisions of Section 16(s) or 16(t) of the AHWMC;
- (14) Failure to comply with the groundwater monitoring requirements of 40 CFR Part 265, Subpart F, as adopted by reference in Section 3 of the AHWMC;
- (15) Failure to comply with the closure and/or post-closure requirements of 40 CFR Part 265, Subpart G as adopted by reference in Section 3 of the AHWMC, or the applicable analogous provisions for each type of facility where closure occurs during the interim status period, i.e., 40 CFR §§265.197, 265.228, 265.258, 265.280, 265.310, 265.351, 265.381, or 265.404, as adopted by reference in Section 3 of the AHWMC;
- (16) Failure to comply with the financial assurance requirements for closure and/or post-closure care in violation of 40 CFR §§265.142 - 265.146, as adopted by reference in Section 3 of the AHWMC;
- (17) Failure to comply with the requirements of 40 CFR §265.147(a), as adopted by reference in Section 3 of the AHWMC, pertaining to sudden accidental liability insurance;
- (18) Failure to comply with the requirements of 40 CFR §265.147(b), as adopted by reference in Section 3 of the AHWMC, if required, pertaining to nonsudden accidental liability insurance;
- (19) Failure to comply with the requirements of 40 CFR §265.148, as adopted by reference in Section 3 of the AHWMC pertaining to the incapacity of owners or operators, generators, or financial institutions;
- (20) Failure to implement the contingency plan in the event of a mishap in violation of 40 CFR §265.51(a), as adopted by reference in Section 3 of the AHWMC;
- (21) Failure to comply with the preparedness and prevention requirements of 40 CFR §§265.31 - 265.35, as adopted by reference in Section 3 of the AHWMC;

- (22) Failure to comply with the general waste analysis requirements of 40 CFR §265.13, as adopted by reference in Section 3 of the AHWMC;
- (23) Failure to comply with the security requirements of 40 CFR §265.14, as adopted by reference in Section 3 of the AHWMC;
- (24) Failure to comply with the requirements of 40 CFR §§265.171 - 265.173, as adopted by reference in Section 3 of the AHWMC, pertaining to the use and management of containers;
- (25) Failure to comply with the requirements of 40 CFR §§265.192 - 265.193, as adopted by reference in Section 3 of the AHWMC, pertaining to tanks;
- (26) Failure to comply with the requirements of 40 CFR §§265.222, 265.223 or 265.225, as adopted by reference in Section 3 of the AHWMC, pertaining to surface impoundments;
- (27) Failure to comply with the requirements of 40 CFR §§265.251 - 265.253, as adopted by reference in Section 3 of the AHWMC, pertaining to waste piles;
- (28) Failure to comply with the requirements of 40 CFR §§265.272, 265.276, or 265.278, as adopted by reference in Section 3 of the AHWMC, pertaining to land treatment;
- (29) Failure to comply with the requirements of 40 CFR §§265.30 or 265.316 as adopted by reference in Section 3 of the AHWMC, pertaining to landfills;
- (30) Failure to comply with the requirements of 40 CFR §§265.341 or 265.345, as adopted by reference in Section 3 of the AHWMC, pertaining to incinerators;
- (31) Failure to comply with the requirements of 40 CFR §§265.373, 265.375 or 265.382, as adopted by reference in Section 3 of the AHWMC, pertaining to thermal treatment;
- (32) Failure to comply with the requirements of 40 CFR §§265.401 or 265.402, as adopted by reference in Section 3 of the AHWMC, pertaining to the chemical, physical and biological treatment;
- (33) Failure to comply with the requirements for ignitable, reactive or incompatible wastes contained in 40 CFR §§265.17, 265.176, 265.177, 265.198, 265.199, 265.229, 265.230, 265.256, 265.257, 265.281, 265.282, 265.312, 265.313, 265.405 or 265.406, as adopted by reference in Section 3 of the AHWMC;

- (34) Failure to comply with the special requirements for liquid wastes contained in 40 CFR §265.314, as adopted by reference in Section 3 of the AHWMC;
- (35) Failure to comply with the special requirements for containers contained in 40 CFR 265.315, as adopted by reference in Section 3 of the AHWMC;
- (36) Engaging in any activity which poses an imminent and substantial hazard to the health of persons or to the environment (Ark. Stat. Ann. §82-4208);
- (37) Store, collect, transport, treat or dispose of any hazardous waste in a manner or place where it causes or is likely to cause water or air pollution within the meaning of the Arkansas Water and Air Pollution Control Act, as amended in violation of Ark. Stat. Ann. §82-4212(d); Section 4(d) of the AHWMC;
- (38) Knowingly make any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained (Ark. Stat. Ann. §82-4212(b); Section 4 of the AHWMC);
- (39) Falsify, tamper with, or knowingly render inaccurate any monitoring device, testing device, or method required to be maintained (Ark. Stat. Ann. §82-4212(b); Section 4 of the AHWMC);
- (40) Failure to allow the Department or any authorized representative to inspect papers or records, or to enter upon property for the purpose of obtaining information or conducting surveys or investigations (Ark. Stat. Ann. §§82-4211(b) and (c));
- (41) Failure to comply with the disposal requirements for bulk liquids, semi-solids, sludges, or municipal refuse contained in Section 13(a)(5) of the AHWMC; or
- (42) Failure to comply with the requirements of an administrative order (Ark. Stat. Ann. §82-4212(a)).

The amount of any civil penalty assessed for a Class I violation shall not be more than \$25,000.00. Each day of a continuing violation may be deemed a separate violation.

(b) Class II violations:

- (1) Failure to submit a timely Part A application in violation of 40 CFR §§270.1(b) or 270.10, as adopted by reference in Section 3 of the AHWMC;

- (2) Failure to submit a timely Part B application in violation of 40 CFR §270.1(b) or 270.10, as adopted by reference in Section 3 of the AHWMC;
- (3) Failure of a generator to comply with the labeling, marking and/or placarding requirements of Sections 16(a)(2), 16(a)(3) or 16(a)(4) of the AHWMC, or 40 CFR §§262.31 - 262.33, as adopted by reference in Section 3 of the AHWMC;
- (4) Failure of a generator to comply with the requirements of 40 CFR §262.34, as adopted by reference in Section 3 of the AHWMC, pertaining to the accumulation of wastes onsite for 90 days or less;
- (5) Failure of a farmer to comply with the requirements of 40 CFR 262.51, as adopted by reference in Section 3 of the AHWMC, pertaining to waste pesticides;
- (6) Failure to comply with the additional reporting requirements of 40 CFR §§262.43 or 265.77, as adopted by reference in Section 3 of the AHWMC;
- (7) Failure of a generator to prepare a manifest which contains all the information required in Section 16(b) of the AHWMC, or 40 CFR §262.20, as adopted by reference in Section 3 of the AHWMC;
- (8) Failure of a generator or shipper to comply with the exception reporting requirements of Section 16(h) of the AHWMC, or 40 CFR §262.42, as adopted by reference in Section 3 of the AHWMC;
- (9) Failure to comply with the requirements of 40 CFR 262.50, as adopted by Section 3 of the AHWMC, pertaining to international shipments of hazardous wastes;
- (10) Failure to comply with the general manifest requirements of Sections 16(i) or 16(j) of the AHWMC, or 40 CFR §§262.20, 262.30, or 265.71, as adopted by reference in Section 3 of the AHWMC;
- (11) Failure to use the manifest as required by Sections 16(d), 16(e) or 16(f) of the AHWMC, or 40 CFR §262.23, as adopted by reference in Section 3 of the AHWMC;
- (12) Failure of a TSD to maintain records as required by 40 CFR §265.74, as adopted by reference in Section 3 of the AHWMC;
- (13) Failure to notify ADPC&E of receipt of a waste shipment without a required manifest in accordance with the requirements of Section 16(f)(5) of the AHWMC, or 40 CFR §265.76, as adopted by reference in Section 3 of the AHWMC;

- (14) Failure of TSD facility operators to notify ADPC&E and generators of manifest discrepancies in accordance with the requirements of Section 16(f)(5) of the AHWMC, or 40 CFR §265.72, as adopted by reference in Section 3 of the AHWMC;
- (15) Failure of an owner or operator of a solid waste disposal facility or of a hazardous waste management facility to inform the Director in writing of the receipt of an amount of hazardous waste believed to be in excess of the quantities set out in 40 CFR §261.5 in accordance with the requirements of Section 9(c) of the AHWMC;
- (16) Failure to comply with the written operating record requirements of 40 CFR §265.73, as adopted by reference in Section 3 of the AHWMC;
- (17) Failure to comply with the general inspection requirements of 40 CFR §265.15, as adopted by reference in Section 3 of the AHWMC;
- (18) Failure to comply with the inspection and/or monitoring requirements of 40 CFR §§265.147, 265.194, 265.226, 265.347, 265.377 or 265.403, as adopted by reference in Section 3 of the AHWMC;
- (19) Failure to comply with the personnel training requirements of 40 CFR §265.16, as adopted by reference in Section 3 of the AHWMC, or other requirements pertaining to personnel in Section 10 of the AHWMC;
- (20) Failure of a TSD to comply with the requirements of 40 CFR §§265.51(b) - 265.56, as adopted by reference in Section 3 of the AHWMC, pertaining to the contingency plan and emergency procedures;
- (21) Failure of a TSD to make the arrangements with local authorities required in 40 CFR §265.37, as adopted by reference in Section 3 of the AHWMC;
- (22) Failure of a TSD owner or operator to notify a new owner or operator of the regulations before transferring property as required by 40 CFR §265.12(b), as adopted by reference in Section 3 of the AHWMC;
- (23) The treatment, storage or disposal of hazardous waste not specified in Part A of the permit application by a hazardous waste management facility with interim status in violation of 40 CFR §270.71(a)(1), as adopted by reference in Section 3 of the AHWMC;

- (24) Employing processes by a hazardous waste management facility with interim status which is not specified in Part A of its permit application in violation of 40 CFR §270.71(a)(2), as adopted by reference in Section 3 of the AHWMC;
- (25) A hazardous waste management facility with interim status, exceeding the design capacities in Part A of its permit application in violation of 40 CFR §270.71(a)(3), as adopted by reference in Section 3 of the AHWMC;
- (26) The transfer of hazardous waste received by a transporter for transport, into a tank or container other than one used in the transportation of waste, without first obtaining a storage facility permit in violation of Section 16(o) of the AHWMC;
- (27) Failure of an owner or operator of any permitted facility or site to maintain records, make reports, install, use and maintain monitoring equipment or methods, take samples, or perform tests as the Director requires in violation of Ark. Stat. Ann. §82-4211(a); or
- (28) Failure to comply with the recordkeeping requirements of 40 CFR §§265.279 or 265.309, as adopted by reference in Section 3 of the AHWMC.

The amount of any civil penalty assessed for a Class II violation shall not be more than \$1,000.00 for the first violation and not less than \$1,000.00 or more than \$15,000.00 for any subsequent Class II violations occurring within six (6) months. Each day of a continuing violation may be deemed a separate violation.

(c) Class III violations:

- (1) Failure to submit biennial reports in accordance with Section 13(a)(b) of the AHWMC, or 40 CFR §§262.41 or 265.75, as adopted by reference in Section 3 of the AHWMC;
- (2) Failure to comply with the recordkeeping requirements of Section 16(g) of the AHWMC, or 40 CFR §§262.40, 263.22 or 270.10(i), as adopted by reference in Section 3 of the AHWMC;
- (3) Failure to comply with the signatory requirements of 40 CFR §270.11, as adopted by reference in Section 3 of the AHWMC;
- (4) Failure to contact and receive authorization from the facility designated to receive the shipment of hazardous wastes in violation of Section 16(a)(7) of the AHWMC;

- (5) Failure of a generator to supply enough copies of the manifest as required by Section 16(c) of the AHWMC, or 40 CFR §262.22, as adopted by reference by Section 3 of the AHWMC;
- (6) Failure of a generator to determine if the solid waste it generates is a hazardous waste as required in 40 CFR §262.11, as adopted by reference in Section 3 of the AHWMC; or
- (7) Failure of a TSD owner or operator to comply with the notice requirements of 40 CFR §265.12(a), as adopted by reference in Section 3 of the AHWMC.

The amount of any civil penalty assessed for a Class III violation shall not be more than \$1,000.00 for the first violation and not less than \$1,000.00 or more than \$5,000.00 for any subsequent Class III violations occurring within six (6) months. Each day of a continuing violation may be deemed a separate violation.

SECTION 6. WATER POLLUTION SCHEDULE OF CIVIL PENALTIES

The penalty classifications and the civil penalties to be assessed any person for the violation of any provisions of Part I of the Arkansas Water and Air Pollution Control Act (Ark. Stat. Ann. §82-1901, et seq.) Regulation No. 1, Regulation No. 2, Regulation No. 4, Regulation No. 5, Regulation No. 6 or the violation of any permit, order, rule or agreement or any part thereof, are defined as follows:

(a) Class I violations:

- (1) To construct, install, modify or operate any disposal system or any part thereof, or any extension or addition thereto that will discharge into any of the waters of the State without a permit, in violation of Subdivision 2 of Ark. Stat. Ann. §82-1908;
- (2) To construct, install, or operate any building, plant, works, establishment or facility or any extension or modification thereof or addition thereto, the operation of which would result in discharge of any wastes into the waters of the State or would otherwise alter the physical, chemical or biological properties of any waters of the State without a permit, in violation of Subdivision 2 of Ark. Stat. Ann. §82-1908;
- (3) To construct or use any new outlet for the discharge of any wastes into the waters of the State without a permit in violation of Subdivision 2 of Ark. Stat. Ann. §82-1908;
- (4) To discharge sewage, industrial waste, or other wastes into any of the waters of the State without a permit in violation of Subdivision 2 of Ark. Stat. Ann. §82-1908;

- (5) To cause pollution, as defined in Subdivision 5 of Ark. Stat. Ann. §82-1902, of any of the waters of the State in violation of Subdivision 1 of Ark. Stat. Ann. §82-1908;
- (6) Violation of permit limits or conditions which cause "pollution," as defined in Subdivision 5 of Ark. Stat. Ann. §82-1902, or which result in significant environmental impact;
- (7) By-passing of the disposal system;
- (8) Failure to allow the Department or any authorized representative to inspect papers or records or to enter upon property for the purpose of obtaining information or conducting surveys or investigations in violation of Ark. Stat. Ann. §82-1905;
- (9) Knowingly make any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained in violation of Subdivision 1 of Ark. Stat. Ann. §82-1908;
- (10) To falsify, tamper with or knowingly render inaccurate any monitoring device or method required to be maintained in violation of Subdivision 1 of Ark. Stat. Ann. §82-1908;
- (11) Allowing saltwater or other oil field wastes produced by oil or gas wells in any new field or pool, as defined by Section 3(f) of Regulation No. 1, to escape or be discharged to the ground or in any other manner which results in the flow of said wastes into any of the waters of the State whether by natural drainage, seepage, overflow or otherwise, in violation of Section 4 of Regulation No. 1;
- (12) Operation of any oil or gas well in a new field or pool, as defined by Section 3(f) of Regulation No. 1, without having applied for and obtained a disposal permit, in violation of Section 6 of Regulation No. 1;
- (13) Operation of any oil or gas well in violation of the terms and conditions of a disposal permit for such wells, in violation of Section 6 of Regulation No. 1;
- (14) Violation of the water quality standards contained in Sections 5 or 6 of Regulation No. 2; or
- (15) Failure to comply with the requirements of an Administrative Order in violation of Subdivision 1 of Ark. Stat. Ann. §82-1908.

The amount of any civil penalty assessed for a Class I violation shall not be more than \$5,000.00. Each day of a continuing violation may be deemed a separate violation.

(b) Class II violations:

- (1) To place or cause to be placed any sewage, industrial waste or other wastes in a location where it is likely to cause pollution, as defined in Subdivision 5 of Ark. Stat. Ann. §82-1902, of any waters of the State in violation of Subdivision 1 of Ark. Stat. Ann. §82-1908;
- (2) To increase in volume or strength any sewage, industrial waste or other wastes in excess of the permissive discharges specified under any existing permit, in violation of Subdivision 2(c) of Ark. Stat. Ann. §82-1908;
- (3) Violation of any permit limits or conditions not otherwise specifically provided for within this Section; or
- (4) Failure to report any increase in the volume or other oil field wastes produced by any well for which a disposal permit under Regulation No. 1 has been issued, in violation of Section 7 of Regulation No. 1.

The amount of any civil penalty assessed for a Class II violation shall not be more than \$1,000.00 for the first violation and not less than \$1,000.00 or more than \$3,000.00 for any subsequent Class II violations occurring within six (6) months. Each day of a continuing violation may be deemed a separate violation.

(c) Class III violations:

- (1) Failure to establish and maintain records, make reports, install, use, and maintain monitoring equipment or methods, or to take samples as required by the Director in violation of Subdivision 1 of Ark. Stat. Ann. §82-1905;
- (2) The failure to comply with any other reporting or record-keeping requirements not otherwise specifically provided for within this Section; or
- (3) Failure to post at the site of an oil or gas well or tank battery, a permanent sign bearing the name of the operator, the lease, legal description of the location, and the permit number as required by Section 6 of Regulation No. 1.

The amount of any civil penalty assessed for a Class III violation shall not be more than \$500.00 for the first violation and not less than \$500.00 or more than \$2,500.00 for any subsequent Class III violations occurring within six (6) months. Each day of a continuing violation may be deemed a separate violation.

SECTION 7. UNDERGROUND INJECTION CONTROL SCHEDULE OF CIVIL PENALTIES

The penalty classifications and the civil penalties to be assessed any person for the violation of any provisions of Part I of the Arkansas Water and Air Pollution Control Act (Ark. Stat. Ann. §82-1901 et seq.), the Arkansas Underground Injection Control Code (AUIC Code) or the violation of any permit, order, rule or agreement or any part thereof, are defined as follows:

(a) Class I violations:

- (1) The construction, installation, alteration, modification, or operation of any underground injection facility without a permit in violation of Section 4(a) of the AUIC Code;
- (2) The construction, installation, or operation of a Class IV well as defined in Section 5(d) of the AUIC Code, in violation of Section 4(b) of the AUIC Code;
- (3) Construction, installation, alteration, modification, or operation of any underground injection facility contrary to the terms and conditions of a permit in violation of Section 4(c) of the AUIC Code which has a significant environmental impact;
- (4) Underground injection not authorized by permit or rule issued under the UIC program in violation of 40 CFR §§144.11 or 144.31, as adopted by reference in Section 3 of the AUIC Code;
- (5) Conducting any injection activity in a manner that allows the movement of fluid containing any contaminant into underground sources of drinking water, if the presence of that contaminant may cause a violation of any primary drinking water regulation under 40 CFR Part 142 or may otherwise adversely affect the health of persons in violation of 40 CFR §144.12(a), as adopted by reference in Section 3 of the AUIC Code;
- (6) Failure of an owner or operator of any well used to inject hazardous waste required to be accompanied by a manifest or delivery document to comply with the notification, identification number, manifest, reporting, operating record, personnel training or certification of closure requirements contained in 40 CFR §144.14(c), as adopted by reference in Section 3 of the AUIC Code;
- (7) Failure to comply with the plugging and abandoning requirements for Class I and Class III wells contained in 40 CFR §146.10, as adopted by reference in Section 3 of the AUIC Code;

- (8) Failure to comply with 40 CFR §§146.12 or 146.32, as adopted by reference in Section 3 of the AUIC Code, pertaining to the construction requirements for Class I and Class III wells;
- (9) Failure to comply with the operating requirements of 40 CFR §146.13(a) or 146.33(a), as adopted by reference in Section 3 of the AUIC Code;
- (10) Failure to maintain financial responsibility and resources to close, plug and abandon the underground injection operation;
- (11) Failure to submit evidence of financial responsibility to the Director;
- (12) Continuing injection operations when any Class I or Class III well or injection project lacks mechanical integrity;
- (13) Failure to allow the Director or an authorized representative to enter and inspect the facility's records, equipment, operation and/or to monitor or to take samples;
- (14) Knowingly make any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained;
- (15) To falsify, tamper with or knowingly render inaccurate any monitoring device or method required to be maintained;
or
- (16) Failure to comply with the requirements of an Administrative Order.

The amount of any civil penalty assessed for a Class I violation shall not be more than \$5,000.00. Each day of a continuing violation may be deemed a separate violation.

(b) Class II violations:

- (1) Failure of an owner or operator of existing Class I or Class III wells to comply with the requirements contained in 40 CFR §144.21(c) within one year after authorization, in violation of 40 CFR §144.21(c), as adopted by reference in Section 3 of the AUIC Code;
- (2) Failure of owners or operators of all injection wells authorized by rule to comply with the inventory requirements of 40 CFR §§144.28 or 146.52, as adopted by reference in Section 3 of the AUIC Code;
- (3) Failure to comply with any terms and conditions of a permit not otherwise specifically provided for within this Section;

- (4) Failure to comply with the monitoring requirements of 40 CFR §146.13(b) or 146.33(b), as adopted by reference in Section 3 of the AUIC Code; or
- (5) Failure to comply with the reporting requirements of 40 CFR §§146.13(c) or 146.33(c), as adopted by reference in Section 3 of the AUIC Code.

The amount of any civil penalty assessed for a Class II violation shall not be more than \$2,500.00. Each day of a continuing violation may be deemed a separate violation.

(c) Class III violations:

- (1) Failure to comply with the information requirements contained in 40 CFR §144.31(e), as adopted by reference in Section 3 of the AUIC Code;
- (2) Failure to comply with the recordkeeping requirements of 40 CFR §144.31(f), as adopted by reference in Section 3 of the AUIC Code;
- (3) Failure to comply with signatory requirements of 40 CFR §144.32, as adopted by reference in Section 3 of the AUIC Code;
- (4) Failure to comply with the requirements of 40 CFR §144.38, as adopted by reference in Section 3 of the AUIC Code, pertaining to the transfer of permits; or
- (5) Failure to comply with any other recordkeeping, reporting, monitoring, or sampling requirements not otherwise specifically provided for within this Section.

The amount of civil penalty assessed for a Class III violation shall not be more than \$2,500.00. Each day of a continuing violation may be deemed a separate violation.

SECTION 8. AGGRAVATING AND MITIGATING FACTORS

In determining the amount of a civil penalty to be assessed hereunder, the Director may consider the following factors:

- (a) Whether the cause of a violation was an unavoidable accident;
- (b) The violator's cooperativeness and efforts to correct the violation for which a penalty is to be assessed;
- (c) The history of a violator in taking all feasible steps or procedures necessary or appropriate to correct any violations;
- (d) The violator's history of previous violations within the last six months regardless of whether or not any administrative, civil, or criminal proceeding was commenced therefore;

(e) The degree of risk or harm to public health or the environment;
or

(f) Whether the cause of a violation was an intentional act of the violator.

SECTION 9. CONTINUING VIOLATIONS

- (1) Each day of a continuing violation may be deemed a separate violation for the purpose of penalty assessments.
- (2) A separate penalty will be assessed for each day of a continuing violation only when the violator is notified by ADPC&E, either orally or in writing, of the violation except where (a) the violation is the result of intentional conduct, act, or omission; or (b) the violator has concealed or attempted to conceal the violation; or (c) the violation is a Class I violation.
- (3) Where the violation is a continuing violation and (a) the violation is the result of intentional conduct, act, or omission; or (b) the violator has concealed or attempted to conceal the violation; or (c) the violation is a Class I violation, then a separate penalty may be assessable up to the maximum amount for each day that the violation has occurred.

SECTION 10. WHEN PENALTY PAYABLE

A civil penalty shall be due and payable thirty (30) days after any order becomes final as provided for in Ark. Stat. Ann. §82-1906, Subdivision 1 or if any order is appealed and affirmed on appeal, it shall be enforceable as a judgment at law.

SECTION 11. EFFECTIVE DATE

This Regulation shall be in full force and effect as of the date of its promulgation.

Promulgated the _____ day of _____, 1984.

by ORDER OF THE COMMISSION ON POLLUTION CONTROL AND ECOLOGY

Chairman

Attest:

Director

Approved:

Bill Clinton, Governor
State of Arkansas