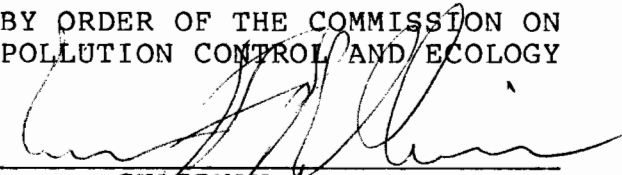


Pursuant to public notice and hearing and after consideration of all comments received, the Commission on Pollution Control and Ecology hereby adopts, as revisions to the Arkansas Hazardous Waste Management Code, the attached revised Sections 3, 12, and 16.

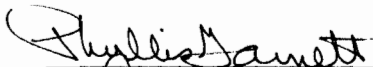
Promulgated this 26th day of September, 1986.

BY ORDER OF THE COMMISSION ON
POLLUTION CONTROL AND ECOLOGY

BY:


CHAIRMAN

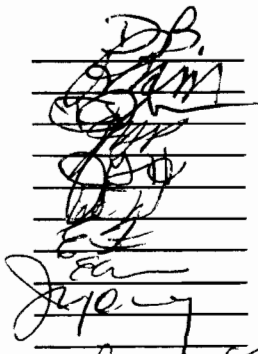
ATTEST:


DIRECTOR

APPROVED:


GOVERNOR

COMMISSIONERS




CHAIRMAN

SUBMITTED BY: John Ward DATE PASSED: 9-26-86

16. "Ultimate Controlling Person" means a person who is not controlled by another person.

- (c) Other words or phrases used in this Chapter shall have the meaning provided in 40 CFR 260.10, 40 CFR 261.3, and 40 CFR 270.2

Section 3. Incorporation of Federal Regulations

- (a) The following regulations promulgated by the U.S. Environmental Protection Agency are hereby adopted as provisions of this Chapter as though set forth herein line for line and word for word with the exception that all references therein to "Administrator", "Regional Administrator", "Director", or "State Director" shall be considered references to the "Director of the Arkansas Department of Pollution Control and Ecology", and all references to the "U.S. Environmental Protection Agency" or "EPA" shall be considered references to the "Arkansas Department of Pollution Control and Ecology"; and all references elsewhere in this Chapter to any of the following regulations shall constitute a reference to the regulation as herein adopted; and provided that the effective date of provisions adopted herein by reference as provisions of this Code shall be the date such provisions are specified as being effective by the Commission in its rulemaking and the effective date of the federal regulations adopted herein shall have no bearing on the effective date of any provisions of this Code:

Title 40 Code of Federal Regulations -

1. Subparts A, B, and C of Part 260; with the exception of the definition of "Act", "Active Portion", "EPA Identification Number", "Existing Hazardous Waste Management Facility", "Hazardous Waste", "Operator" and "Person" set forth in 260.10 (for analogous provisions see Section 2 (a));
2. Subparts A, B, C, and D of Part 261;
3. Subparts A, B, C, D, and E of Part 262; with the exception of 262.20(e) and 262.44
4. Subparts A, B, and C of Part 263;

5. Subparts A, B, C, D, E, F, G, H, I, J, K, L, M, N, and O of Part 264 with the following exceptions: 264.312(b) and 264.314 (for analogous provisions see Section 13(a)(5));
6. Subparts A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, and R of Part 265 with the following exceptions: 265.312(b) and 265.314 (for analogous provisions see Section 13(a)(5));
7. Subparts C, D, E, F, G of Part 266;
8. Subpart B of Part 268;
9. Subparts A, B, C, D, E, F, and G of Part 270 with the following exceptions: the definitions of "Hazardous Waste", "Existing Hazardous Waste Management Facility", "Site", "Person", "Permit", and "Operator" set forth in 270.2 (for analogous provisions see Section 2); 270.10(e) (for analogous provisions see Section 12(a)(1)-(6); 270.12 for analogous provisions see Section 6); 270.51 (no analogous state provisions); 270.70 (for analogous provisions see Section 12(a)(7) and (8)).
10. The definition of "PCB" and "PCB's", "PCB items", "PCB-contaminated electrical equipment" set forth in 761.3;
11. Subparts A of Part 124 with the following exceptions: 124.1, 124.2, 124.3(b), 124.3(d), 124.3(e), 124.4, 124.5(b), 124.5(e), 124.5(g), 124.6(b), 124.9, 124.10(a)(1)(i), 124.10(a)(1)(iv), 124.10(a)(1)(v), 124.12(e), 124.14, 124.15, 124.16, 124.18, 124.19, and 124.21 (see Regulation No. 8 - Administrative Procedures for analogous provisions as referenced in Section 21 of this Code.

All as adopted as final rules (including interim final rules' and 'technical amendments' by the U.S. Environmental Protection Agency on or before July 17, 1986.

- (b) In addition the following temporary or final waste exclusions resulting from petitions filed with EPA under 40 CFR 260.22 (petitions to amend Part 261 to exclude a waste produced at a particular facility) are hereby adopted as provisions of this Chapter:

Facility Name & Address	Waste Excluded	Date of FR Notice	Exclusion Status
Chamberlain- Featherlite, Inc., Hot Springs	F019	07/16/86	Permanent
Waterloo Ind. Pocahontas	F006	07/17/86	Permanent
Monroe Auto Equipment, Paragould	F006	11/27/85	Vacuum filtered sludge - Permanent Lagoon sludge - Exclusion Denied
Whirlpool Corp., Fort Smith	F006	08/06/81	Temporary
White-Rodgers, Div. of Emerson Elec.	F006	01/28/83	Temporary
National Rejectors Industries	F006	01/28/83	Temporary

- (c) The Director, within 180 days after the date of promulgation of any new or revised federal hazardous waste regulations shall conduct rule making procedures with reference to this Chapter necessary to maintain a State Hazardous Waste Management Program equivalent to the federal program. Such new or revised federal regulations upon the date of their publication as final rules of the U.S. Environmental Protection Agency shall constitute minimum guidelines to the Director in formulating rule making proposals to this Chapter, but shall not be construed to limit or interfere with the adoption of provisions more stringent than federal regulations.

Section 4. Violations

Any of the following acts shall be considered a violation of this Hazardous Waste Management Code and shall be subject to the penalties provided in the Arkansas Hazardous Waste Management Act of 1979 (Act 406 of 1979);

- (a) Failure to comply with the provisions of this Code 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.

- (m) Any person who applies for a permit for 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 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.
- (o) No permit will be issued when indebtedness exists as a result of non-payment of any of the above permit fees.

Section 12. Permits Procedures - Permits by Rule

In addition to the provisions of 40 CFR 124 and 40 CFR 270 which are incorporated by reference in Section 3 of this Chapter and in addition to the other provisions of this Chapter, the Act, and the other requirements imposed by law and regulations applicable thereto, the following provisions apply:

(a) Existing Facilities

- (1) Facilities in existence on March 14, 1979, which are required to have a permit under the Act may continue in operation until such time as a permit is issued or denied under this Chapter and Code, provided that the owner or operator of such facility made application to the Department on the initial state application form on or before September 4, 1979; and provided that such facilities also comply with the other provisions of this Section and the provisions of 40 CFR 270.10 and 270.71-73 which are adopted by reference in Section 3.
- (2) Owners and operators of hazardous waste management facilities, in existence as of the effective date of provisions adopted in this Code which first subject them to compliance with the standards of this Code and 40 CFR 265, must submit Part A of their permit application to the Department no later than (i) six months after the date of publication of regulations in this code which first require them to comply with the standards set forth in this

Code and 40 CFR Part 265, or (ii) thirty days after the date they first become subject to the standards set forth in this Code and 40 CFR Part 265, whichever first occurs.

- (3) The Director may extend the date by which owners and operators of specific classes of existing hazardous waste management facilities must submit their initial state application and/or Part A of their permit application if he finds that (i) there has been substantial confusion as to whether the owners and operators of such facilities were required to file a permit application and (ii) such confusion is attributed to ambiguities in 40 CFR Parts 260, 261 or 265.
- (4) The Director may by administrative order issued under the Act, this Code and Regulation No. 8, extend the date by which the owner or operator of an existing hazardous waste management facility must submit the initial state application and/or Part A of their permit application.
- (5) The Director may require submission of Part B from any facility at any time. Any owner or operator shall be allowed at least six months from the date of request to submit Part B of the application. Any owner or operator of an existing hazardous waste management facility may voluntarily submit Part B of the application at any time.
- (6) Failure to furnish a requested Part B application on time, or to furnish in full the information required by the Part B application, is grounds for termination of interim status.
- (7) Any person who owns or operates an existing hazardous waste management facility shall have interim status and shall be treated as having been issued a permit to the extent he or she has complied with the requirements of Ark. Stat. Ann. 82-4205(c) and paragraph (1) through (5) above, and Section 3010(a) of RCRA.
- (8) If the Department determines that a Part A application is deficient it may notify the owner or operator that he or she is not entitled to interim status. The owner or operator will then be subject to enforcement for operating without a permit.

- (9) Nothing in this Section 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 Department under this Chapter and Code.

(b) Permit Applications - General

- (1) For each hazardous waste described in response to the requirements of 40 CFR 270.13(i), the application shall include the name and location of the generator of the wastes.
- (2) The contingency plan required under 40 CFR 270.14 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.
- (3) The procedures required under the provisions of 40 CFR 270.14(b) 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.
- (4) The owner of a commercial hazardous waste disposal facility shall provide 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 paragraph 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 or maintenance, monitoring or such other activities as may be necessary. The financial responsibilities required hereunder shall be for such period as determined by the Commission.
- (5) 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.

(6) 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.

(7) 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 the 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 the largest circulation published in each adjoining county. If there is no newspaper published in any of the counties so affected the notice shall be published in the newspaper(s) having the largest circulation in such county or counties. The notice shall contain:

(i) the name, title and address of the applicant;

(ii) the location of the facility, including a description of its boundaries; and

(iii) 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.

(c) Permit Issuance

(1) A permit may not be transferred, issued or modified except with the approval of the Department, provided, however, emergency authorization may be issued by the Director in accordance with the provisions of 40 CFR 270.61 - 270.63.

- (2) No permit shall be issued for the construction, modification or operation of a hazardous waste management facility unless the Department finds, after public hearings as provided herein, that said construction, modification or operation is, or will be, in compliance with the provisions of this Chapter and Code including those provisions of 40 CFR 124, 40 CFR 264, 40 CFR 265, and 40 CFR 267 incorporated herein. The Department may establish additional requirements as conditions of permit where it deems such conditions necessary to protect the public health and the environment.
- (3) The Department may grant variances in accordance with the provisions 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 the federal regulations incorporated in Section 3 or, as to such federal regulations as are not incorporated therein, terms less stringent than provisions of this Chapter and Code analogous to such federal regulations.
- (4) 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 of 40 CFR 124, Subpart A incorporated herein and in accordance with the provisions of this Code.
- (5) 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 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.

- (6) The Director shall determine whether or not an application for permit is complete and should 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.
- (7) No permit shall be issued for a commercial hazardous waste management facility unless a public hearing is held in accordance with the provisions of subparagraph (9) below. No permit for non-commercial hazardous waste management facilities shall be issued unless the Department first gives a 45 day opportunity for public comment as provided in 40 CFR 124.10. Where written objection to the issuance of a permit for a non-commercial hazardous waste management facility is filed within the 45 day comment period, no permit shall be issued unless a public hearing is held in accordance with the provisions of subparagraph (9) below.
- (8) Prior to drafting the permit for any hazardous waste management facility, the Department may hold a preliminary hearing, for information purposes, in the area in which the facility is, or is to be located. The hearing may be held by giving no less than ten (10) days notice in the newspaper having the largest circulation in the county in which the facility is, or is proposed to be located and 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 location(s) where the application and all supporting information is available for public review.
- (9) A 45 day notice of public hearing on the draft permit shall be given in the manner described in subparagraph (8) above. The notice shall provide:
 - (i) the time, date and location of the hearing;
 - (ii) the purpose of the hearing;

- (iii) the name and address of the applicant and the location where the facility is, or is proposed to be located;
 - (iv) the tentative recommendation of the Department;
 - (v) the location(s) where copies of the application, the Department's recommendations and all supporting documentation can be reviewed by the public; and
 - (vi) procedures for submitting public comments into the hearing record.
- (10) The public hearing required under subparagraph (9) 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 application for review by the Commission.
- (11) 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.
- (12) In addition to the requirement of 40 CFR 265.119, 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.

Section 13. Performance Standards.

- (a) In addition to the provisions of 40 CFR 264, 265, and 270 incorporated herein and the other provisions of this Chapter and Code, the following standards apply to hazardous waste management facilities:

- (ii) proceeding 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 ten (10) days of becoming such owner the information required under (a)(3).
 - (c) In addition to the requirements of 40 CFR 270.14, 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 affecting the merger or other acquisitions of control;
 - (2) the number and percentage or 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

In addition to the provisions of 40 CFR 262, 263, 264, Subpart E and 265 Subpart E which are adopted by reference in Section 3, the following provisions apply to the transportation of hazardous wastes in Arkansas:

(a) REQUIREMENTS FOR THE TRANSPORTATION OF PCB'S:

In addition to the hazardous waste determination set forth in 262.11 a person who generates a solid waste must also determine if the waste constitutes 'PCB's', 'PCB items', 'PCB transformers', or 'PCB contaminated electrical equipment' as those terms are defined in 40 CFR 761.3. Such waste is a hazardous waste for purposes of transportation in the State of Arkansas and must comply with the following:

- (1) each generator or transporter of PCB wastes as determined in 16(a) who has not otherwise obtained an EPA identification number pursuant to 262.12 must not transport or offer for transportation PCB wastes without having received a "PCB identification number" from ADPC&E;
- (2) 40 CFR Part 262 Subparts A, B, C, D, and E except 262.12, and 262.41 as adopted by reference in Section 3, except that PCB generators are exempt from the waste minimization statement;
- (3) 40 CFR Part 263 Subpart A, B, and C as adopted by reference in Section 3;
- (4) 40 CFR Part 264 Subpart E only, except 264.75 as adopted by reference in Section 3;
- (5) 40 CFR Part 265 Subpart E only, except 265.75 as adopted by reference in Section 3;
- (6) all the provisions of subsections (b) and (c) of this Section 16.

(b) TRANSPORTATION OF WASTE FROM GENERATORS OF
OVER 100 KGS A MONTH:

In addition to the hazardous waste determination set forth in 40 CFR 262.11 a person who generates any hazardous waste which is part of a total quantity of hazardous waste greater than 100 kilograms during a calendar month shall comply with all state and federal manifesting and transportation requirements and the provisions of subsection (c) below as well as all provisions of 40 CFR 261.5 as adopted by reference in Section 3, except that a small quantity generator must notify EPA of hazardous waste activity in order to obtain an EPA identification number.

(c) ADDITIONAL REQUIREMENTS FOR THE TRANSPORTATION OF HAZARDOUS WASTES IN ARKANSAS (INCLUDING PCB'S AND WASTES FROM GENERATORS OF 100+ KGS PER MONTH):

(1) The following items shall be completed as State manifest reporting requirements: (the following instructions refer to items A-K on the Uniform Hazardous Waste Manifest):

(A) ITEM B: If an EPA identification number is not required the PCB identification number assigned by ADPC&E.

(B) ITEMS C & E: The Transportation Permit numbers issued by the Arkansas Transportation Commission and the ADPC&E.

(C) ITEMS D & F: The phone number of the transporter.

(D) ITEM H: The phone number of the designated facility.

(E) ITEM I: The EPA Waste Code or the letters "PCB" for PCB shipments.

(F) ITEM J: The name, address and I.D. number of an alternate treatment, storage or disposal facility (if any).

(G) ITEM K: Emergency response contact (individual's name and telephone number).

(2) Each generator in Arkansas must:

A) provide the Department a final copy of each manifest within 10 days of the end of the month in which the generator received its final copy from the treatment, storage or disposal facility (T.S.D.F.).

B) for each manifest that shows a weight difference of more than 10% between the initial and final weights, attach documentation which shows that the weight variance has been resolved between the generator and the T.S.D.F. This documentation will remain with the generator's copy of the manifest and should not be submitted to the Department with the manifest required in (A) of this subsection.

- C) provide a discrepancy report to the Department containing the information required by 40 CFR 265.72 for those shipments to an out-of-state T.S.D.F. involving significant discrepancies as defined by 40 CFR 265.72.
- 3) Each person in Arkansas who accepts wastes from out-of-state generators for the purpose of treating, storage or disposing must:
- A) provide the Department a final copy of each manifest with 10 days of the end of the month in which the out-of-state shipment was received.
 - B) for each manifest identified in (A) of this subsection that shows a weight difference of more than 10% between the initial and final weights attach documentation which shows that the weight variance has been resolved between the T.S.D.F. and the generator. This documentation will remain with the T.S.D.F.'s copy of the manifest and should not be submitted to the Department with the manifest copy required in (A) of this subsection.
 - (C) provide an exception report to the Department containing the information required by 40 CFR 262.42 for those shipments received from out-of-state generators for which an exception as defined by 40 CFR 262.42 has occurred.
- (5) In addition to the requirements for immediate action in the event of a discharge during transportation required by 40 CFR 263.30 as adopted by reference in Section 3, an air, rail, highway or water transporter who has discharged hazardous waste in the State of Arkansas shall also take the following actions:
- (A) give immediate notice to the Arkansas State Police and to the principal office or designated of the transporter.
 - (B) submit a copy of the written report required by 49 CFR 171.16 and 262.30(c) (2) to ADPC&E simultaneously with its submission to the federal Department of Transportation.
- (6) All persons who transport hazardous waste in or through any part of the State of Arkansas shall first obtain permits for such activity from the Arkansas Transportation Commission and from ADPC&E. Such permits shall be applied for in the form and manner required by Section 12(m).