

MINUTE ORDER NO. 87-21

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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 Table of Contents, Sections 3, 5, 10, 11, 12, and 16, Chapter Four, and Section 23.

Promulgated this 25th day of September, 1987.

BY ORDER OF THE COMMISSION ON POLLUTION CONTROL AND ECOLOGY

BY: [Signature]
Chairman

ATTEST:

[Signature]
Director

APPROVED:

[Signature]
Governor

COMMISSIONERS

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CHAIRMAN

SUBMITTED BY: Mike Bates DATE PASSED: 9-25-87

REVISIONS TO THE
ARKANSAS HAZARDOUS WASTE MANAGEMENT CODE
September, 1987

Table of Contents:

- Chapter Two - Section 6 is retitled "Availability of Information and Protection of Trade Secrets",
- Chapter Two - Section 11 is retitled "Fees and Costs",
- Chapter Four - The existing Chapter Four is redesignated as Chapter Five, without modification to the existing language. The proposed Chapter Four establishes regulations under the Remedial Action Trust Fund Act.

Chapter Two -

- Section 3 - The date of final federal regulations to be adopted as indicated in the last sentence of subsection (a) is changed to June 30, 1987; Delisting petitions which were mooted by way of Federal interpretive rule are deleted from subsection (b); the timeframe in the first sentence of subsection (c) for the Department updating the Code is changed to annually.
- Section 5 - The word "Commission" is replaced by "Department" in subsection (a).
- Section 6 - Retitled "Availability of Information and Protection of Trade Secrets"; additional subsections (k)-(m) clarifies the availability of information and procedures if access to information held by the Department is denied.
- Section 10 - The word "Commission" is replaced in subsection (a) with "Department".
- Section 11 - Retitled "Fees and Costs", the fee structure is substantially revised to expand the activities for which fees are charged, to change the way the fees are calculated and to increase fees to more adequately recover costs as provided by the Arkansas Hazardous Waste Management Act.
- Section 12 - Subsection (b)6 is amended by replacing the word "Commission" in the last sentence with "Department"; Subsection (c)(2) is amended by adding "40 CFR 270" after "40 CFR 267", Subsection (c)(6) is deleted.
- Section 16 - Subsection (c)(2)(ii) is corrected the replacing "(A)" with "(c)(2)(i)" in the last sentence, Subsection (c)(3) by deleting "from out-of-state generators" from the first sentence, (c)(3)(ii) is amended by replacing "(A)" with "(c)(3)(i)" in the first sentence and last sentence; subsection (c)(3)(iii) is deleted.

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Revisions to the Arkansas Hazardous Waste Management Code
September, 1987

Chapter Four

This chapter is retitled "Regulations Promulgated Under Act 479 of 1985", Section 21 states the authority, Section 22 is reserved for future rulemaking, Section 23 provides the schedule for fees under the Remedial Action Trust Fund.

Chapter Five

This chapter was formally Chapter Four - The only language change in this Chapter is Section 23 regarding the effective date of the regulations.

In addition to the above, several typographical errors have been corrected.

MB:lms

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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 June 30, 1987.

- (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
Monroe Auto Equipment, Paragould	F006	11/27/85	Vacuum filtered sludge - Permanent Lagoon sludge - Exclusion Denied

- (c) The Director, annually, 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 5. Siting Criteria

In addition to the location standards of 40 CFR 264.18 the following provisions shall be complied with:

(a) No permit shall be issued for a new hazardous waste management facility in which the factor 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 Department specifically finds that the location of such facilities in those areas would not constitute a risk to the public health or environment:

- (1) an active fault zone;
- (2) a "regulatory floodway" as adopted by communities participating in the National Flood 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 to support or would support vegetation typically adapted for life in 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 sub-group modifier of vertic by the criteria of the Soil Conservation Service of the U.S. 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 inplace 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 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:
 - (i) a public road;
 - (ii) pipelines carrying natural gas, fuel oils, or chemicals,

excluding service lines to the facility;

(iii) water and wastewater line, other than the service lines to the facility; and

(iv) power transmission lines, other than service lines to the facility.

(e) 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.

(f) the provisions of this Section 5 shall not apply to treatment facilities which began operation prior to the date of enactment of the Act which have an existing operating permit from the Department, or to any subsequent modifications to such facilities, provided that the owner of such facility demonstrate that such modifications do not materially increase that degree of hazards associated with such facility.

Section 10. Certification of Operators: Personnel Training,
Personnel Procedures

In addition to the requirements of 40 CFR 264.15, 264.16, and 265.55 the following provisions shall be complied with:

- (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 subsection (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 Department 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 at being qualified to serve as an operator of a commercial hazardous waste management facility unless the 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).
- (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 material's 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).
- (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 and Costs

(a) Any person who applies for a permit for the construction, operation, and/or post-closure care of a hazardous waste management facility or unit shall submit as part of said application a money order or cashiers check payable to the Department to cover permit fees in accordance with the following schedule(s):

(1) Permits for Construction/Operation -
Commercial Facility:

- (i) Initial permit application fee - \$20,000 plus waste management activity fee (subsection b)
- (ii) Unsolicited application amendment fee (during application review process) - \$500
- (iii) Permit renewal fee - Initial application fee plus waste management activity fee (subsection b)
- (iv) Annual permit evaluation fee - \$10,000 plus waste management activity fee (subsection b)

(2) Permits for Construction/Operation -
Non-Commercial Facility:

- (i) Initial permit application fee - \$5,000 plus waste management activity fee (subsection b)
- (ii) Unsolicited application amendment fee (during application review process) - \$500
- (iii) Permit renewal fee - Initial application fee plus waste management activity fee (subsection b)
- (iv) Annual permit evaluation fee - \$2,500 plus waste management activity fee (subsection b)

(3) Permits for Post-Closure Care Only -
Commercial Facility:

- (i) Initial permit fee - \$2,500
- (ii) Unsolicited application amendment fee (during application review process) - \$250
- (iii) Permit renewal fee - \$2,500
- (iv) Annual permit evaluation fee - \$1,250

(4) Permits for Post-Closure Care Only -
Non-Commercial Facility:

- (i) Initial permit fee - \$1,000
- (ii) Unsolicited application amendment fee (during application review process) - \$100
- (iii) Permit renewal fee - \$1,000
- (iv) Annual permit evaluation fee - \$500

(5) Annual permit evaluation fees will not be assessed during the years in which permit renewal fees are assessed for commercial and non-commercial facilities.

(b) Each hazardous waste management facility or unit in which hazardous wastes are treated, stored or disposed will be assessed an additional fee (unless said fees are specifically excluded in subsections (c) and (d) below) for the type of hazardous waste management activity(ies) being conducted, in accordance with the schedule(s) listed below. Fees addressed by this section shall be assessed and collected with the initial permit application fee, the permit renewal fee, and annual permit evaluation fee and are based on the permitted (or applied for) maximum design capacities (including accumulated solids, where applicable), unless specified otherwise:

(1) Container Storage

- (i) Commercial - \$2.00/100 gallons (or equivalent volume)
- (ii) Non-Commercial - \$1.00/100 gallons (or equivalent volume)

(2) Tank Treatment and/or Storage

- (i) Commercial - \$2.00/1000 gallons (or equivalent volume)
- (ii) Non-Commercial - \$1.00/1000 gallons (or equivalent volume)

(3) Waste Pile Storage and/or Disposal

- (i) Commercial - \$0.25/cubic yard (or equivalent volume)
- (ii) Non-Commercial - \$0.13/cubic yard (or equivalent volume)

(4) Surface Impoundment Treatment, Storage, and/or Disposal

- (i) Commercial - \$5.00/1000 gallons (or equivalent volume)
- (ii) Non-Commercial - \$2.00/1000 gallons (or equivalent volume)

(5) Land Treatment/Land Farm Treatment or Disposal

- (i) Commercial - \$5000/acre
- (ii) Non-Commercial - \$2500/acre
(fee based on active portion only)

(6) Landfill Disposal

- (i) Commercial - \$500/acre feet
- (ii) Non-Commercial - \$250/acre feet
(fee based on active portion only)

- (7) Incineration and other Thermal Treatment (excluding Open Burning/Detonation of Waste Explosives)
 - (i) Commercial - \$500/ton/hr.
 - (ii) Non-Commercial - \$250/ton/hr.
(fee based on waste feed rate)
- (8) Open-Burning/Detonation of Waste Explosives
 - (i) Commercial - \$0.20/lb./hr.
 - (ii) Non-Commercial - \$0.10/lb./hr.
- (9) Other Physical, Chemical, or Biological Treatment (not otherwise addressed in (1) - (8) above)
 - (i) Commercial - \$5.00/100 gallons/day (or equivalent volume)
 - (ii) Non-Commercial - \$2.50/100 gallons/day (or equivalent volume)
- (c) The provisions of subsection (b) do not apply to impoundments, tanks or other treatment or storage devices which are an integral part of wastewater treatment systems required to have an NPDES discharge permit.
- (d) Underground Injection Control (UIC) facilities which are subject to permitting for corrective action under 40 CFR 264.101 and 40 CFR 270.60, but not otherwise subject to permitting as a hazardous waste management facility, shall submit a money order or cashier's check payable to the Department as set forth below:
 - (1) Commercial facility
 - (i) Initial application fee - \$25,000
 - (ii) Permit renewal fee - \$10,000
 - (iii) Annual permit evaluation fee - \$2,500
 - (2) Non-Commercial facility
 - (i) Initial application fee - \$10,000
 - (ii) Permit renewal fee - \$5,000
 - (iii) Annual permit evaluation fee - \$1,500
- (e) Permit modification applications, other than minor modifications as defined in 40 CFR 270.42, must be accompanied by a money order or cashier's check payable to the Department. The fee shall be 50% of the initial permit application fee as set forth in

subsection (a). If additional waste management activities are applied for or operating capacities increased, an additional waste management fee shall be calculated from subsection (b) and added to the modification fee total.

- (f) The maximum annual amount of fees collected for any hazardous waste management facility permit pursuant to provisions of subsections (a), (b), (d), and (e) shall not exceed \$30,000 for non-commercial facilities or \$60,000 for commercial facilities, provided, however, that the Department may require such additional fees to be collected from the owner or operator of a commercial hazardous waste management facility as it deems necessary to compensate it for costs of providing on-site inspectors under subsection (g).
- (g) In addition to fees required by subsections (a)-(e) any facility which as a condition of its permit is required to have on site inspectors shall, prior to the Department's issuance of permit, submit a money order or cashiers check payable to the Department in the amount of one-fourth the estimated annual cost to the Department of maintaining such inspectors and shall submit quarterly thereafter a money order or cashiers check payable to the Department in the amount of one-fourth the aforesaid estimated annual costs. The Department may enter into contractual agreement with qualified engineering and testing firms to conduct inspections as described above.
- (h) 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 initial application and \$25 annually thereafter for renewal of the certification. Non-payment of the renewal fee within thirty (30) days of the anniversary date of issuance will cause automatic termination of the certification.
- (i) Any person who submits a closure plan (partial or final) shall submit as part of said plan a money order or cashiers check payable to the Department to cover closure plan fees as set forth below. The fees associated with this subsection are not applicable to closure plans submitted as part of an application (Part B permit application) for an operational permit.

(1) Container Storage Areas and Tank Units:

- (i) Initial Fee
- (a) Commercial Facility - \$1500/unit
- (b) Non-Commercial Facility -

\$1250/unit

- (ii) Modification Fee
 - (a) Commercial Facility - \$750/unit
 - (b) Non-Commercial Facility - \$625/unit

(2) Incinerator, and other Thermal Treatment Units

- (i) Initial Fee
 - (a) Commercial Facility - \$3000/unit
 - (b) Non-Commercial Facility - \$1500/unit

- (ii) Modification Fee
 - (a) Commercial Facility - \$1500/unit
 - (b) Non-Commercial Facility - \$750/unit

(3) Waste Pile, Land Treatment, Surface Impoundment, and Landfill Units:

- (i) Initial Fee
 - (a) Commercial Facility - \$7000/unit
 - (b) Non-Commercial Facility - \$3500/unit

- (ii) Modification Fee
 - (a) Commercial Facility - \$3500/unit
 - (b) Non-Commercial Facility - \$1750/unit

(j) The maximum closure plan fee collected pursuant to subsection (i) shall not exceed \$5000 for non-commercial facilities or \$10,000 for commercial facilities.

(k) Whenever the Department incurs an expense as a result of investigating any violation of this Code or as a result of responding to and monitoring the effects of, spills of hazardous waste, including upset conditions within a hazardous waste management facility or other location which generates or handles hazardous waste, the Director may require the person responsible for such violation, spill or upset condition to submit a money order or cashier's check to the Department associated with the Department's response, investigations and monitoring activities. The charges associated with this subsection (k) shall be in addition to any fees specified elsewhere in this Section 11.

(l) 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 \$250 payable to the Department to cover permit fees and costs for five (5) years.

- (m) Manifest forms to be used by Section 16 of this Code shall be purchased from the Department for a fee of \$2.00 per manifest, for the purpose of offsetting the cost of reproducing, distributing and processing such manifests.
- (n) Fees collected under this Section shall not be refunded should a permit application or certification be disapproved pursuant to the provisions of this Code or voluntarily withdrawn by the applicant. Nothing in this subsection shall prohibit the Department from crediting unused portions of fees from permitted facilities towards future fees.
- (o) All fees pursuant to this Section 11 are due and payable in accordance with each subsection. A late fee of ten (10) percent of the total fee shall be charged for any fees unpaid after forty-five (45) days of the due date. Unless otherwise specified, the due date shall be the date indicated on the invoice from the Department. No permit will be issued when indebtedness exists as a result of non-payment of any of the above fees. Continued refusal to pay the required fees after a reasonable notice shall constitute a violation of this Code and shall be grounds for legal action by the Department, which may include permit revocation.
- (p) A financial assessment of the fee system shall be presented to the Commission annually by the Director.

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.

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 and 40 CFR 270, 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 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) 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.

- (7) 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.
- (8) A 45 day notice of public hearing on the draft permit shall be given in the manner described in subparagraph (7) 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

- (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 Department.
- (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

- (vi) procedures for submitting public comments into the hearing record.
- (9) The public hearing required under subparagraph (8) 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.
- (10) 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.
- (11) 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 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 "PCBs", "PCB items", "PCB transformers", or "PCB contaminated electrical equipment" as those terms are defined in 40 CFR 761.2. 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 subsection (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 OVER 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):

- (i) ITEM B: If an EPA identification number is not required the PCB identification number assigned by ADPC&E.
- (ii) ITEMS C & E: The Transportation Permit numbers issued by the Arkansas Transportation Commission and the ADPC&E.
- (iii) ITEMS D & F: The phone number of the transporter.
- (iv) ITEM H: The phone number of the designated facility.
- (v) ITEM I: The EPA Waste Code or the letters "PCB" for PCB shipments.
- (vi) ITEM J: The name, address and I.D. number of an alternate treatment, storage or disposal facility (if any).
- (vii) ITEM K: Emergency response contact (individual's name and telephone number).

(2) Each generator in Arkansas must:

- (i) 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.).
- (ii) 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 (c)(2)(i) of this subsection.

- (iii) 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 for the purpose of treating, storage or disposing must:
- (i) provide the Department a final copy of each manifest with 10 days of the end of the month in which the shipment was received.
 - (ii) for each manifest identified in (c)(3)(i) 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 (c)(3)(i) of this subsection.
- (4) 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:
- (i) give immediate notice to the Arkansas State Police and to the principal office or designated of the transporter.
 - (ii) submit a copy of the written

report required by 49 CFR 171.16 and 263.30(c)(2) to ADPC&E simultaneously with its submission to the federal Department of Transportation.

- (5) 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(c)(10)).
- (6) Any generator who ships any hazardous waste to any location in Arkansas for storage, treatment, or disposal must obtain a Manifest from ADPC&E and use only such Manifests as issued by ADPC&E for such shipments.
- (7) In addition to all of the requirements hereof, all transportation of hazardous wastes in Arkansas shall conform to the regulations of the Arkansas Transportation Commission.
- (8) Generators may not assign hazardous wastes to unpermitted transporters and T.S.D.F.'s may not accept hazardous wastes from unpermitted transporters without authorization from this Department.
- (9) A generator may not ship a hazardous waste to a T.S.D.F. unless the T.S.D.F. has a permit or has interim status or is approved to receive such a waste. A generator may not list a non-approved T.S.D.F. as the alternate T.S.D.F. when manifesting. If a RCRA facility, the alternate T.S.D.F. must have a permit or interim status to receive such waste.
- (10) A T.S.D.F. may not accept hazardous waste without a generator EPA or PCB number on the manifest unless prior authorization has been obtained from this Department.

CHAPTER FOUR: REGULATIONS PROMULGATED UNDER ACT 479 OF 1985

Section 21. Authority:

The regulations under this Chapter are promulgated pursuant to the Remedial Action Trust Fund Act of 1985 (Act 479 of 1985, as amended, Ark. Stat. Ann. § 82-4712 et. seq.).

Section 22. (Reserved)

Section 23. Fees on the Generation of Hazardous Wastes

(a) On or before April 1 of each year:

- (1) Every person who generated hazardous wastes in Arkansas during the preceeding calender year; and
- (2) Every person who accepted for treatment, storage, or disposal in Arkansas during the preceeding calender year hazardous wastes generated outside the State shall report the total amount of such hazardous wastes generated or accepted to the Director on forms prescribed by the Department.

(b) Every person required to report wastes pursuant to subsection (a) above shall be assessed a fee, based upon the combined total of such wastes, to be paid to the Department on or before July 1 of each year. These fees shall be calculated and paid according to the following schedule:

<u>Category</u>	<u>Pounds Generated</u>	<u>Annual Fee</u>
1	0 to 29,999	0
2	30,000 to 99,999	\$750.00
3	100,000 to 199,999	\$1,500.00
4	200,000 to 299,999	\$3,000.00
5	300,000 to 399,999	\$5,000.00
6	400,000 to 499,999	\$7,500.00
7	500,000 and above	\$10,000.00

Section 24: (Reserved)

Section 25: (Reserved)

MINUTE ORDER NO. 37-21

PAGE 1 OF 1

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 Table of Contents, Sections 3, 5, 10, 11, 12, and 16, Chapter Four, and Section 23.

Promulgated this 25th day of September, 1987.

BY ORDER OF THE COMMISSION ON POLLUTION CONTROL AND ECOLOGY

BY: [Signature]
Chairman

ATTEST:

[Signature]
Director

APPROVED:

[Signature]
Governor

COMMISSIONERS

[Signature]
[Signature]
[Signature]
[Signature]
[Signature]
[Signature]

SECRETARY OF STATE
GILLEN MCGUEN
OCT 2 11 08 AM '87

[Signature]
CHAIRMAN

SUBMITTED BY: Mike Bates DATE PASSED: 9-25-87

**ARKANSAS POLLUTION CONTROL AND
ECOLOGY COMMISSION**

RESOLUTION

July 24, 1987

RESOLUTION: In appreciation for meritorious service and accomplishments as Deputy Director of the Arkansas Pollution Control and Ecology Commission.

WHEREAS, Dr. Robert E. Blanz has for the past seven years worked for the betterment of the citizenry of the State of Arkansas in the capacity of Deputy Director for Program Operations and has served with great distinction, and

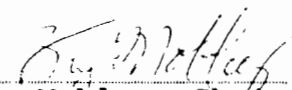
WHEREAS, he has worked diligently to advise, assist and support municipal, industrial, agricultural and mining interests in their efforts to comply with Arkansas' water quality goals, objectives and standards, and

WHEREAS, his commitment to work in harmony with the Commission Director, Commission members, and staff is deeply appreciated, now

THEREFORE, BE IT RESOLVED, that the Arkansas Pollution Control and Ecology Commission, assembled in Little Rock, Arkansas, on July 24, 1987, be in unanimous accord in publicly expressing its sincere appreciation for outstanding accomplishments during his tenure of employment, and

BE IT FURTHER RESOLVED, that this Commission regrets the loss of service of Dr. Blanz, but wishes him the best of success in future endeavors.


.....
Dr. Phyllis Moore, Director


.....
Bryce Mobley, Chairman