

ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION  
REGULATIONS COMMITTEE MEETING  
Friday, January 25, 2008  
8:30 a.m.

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY  
5301 NORTSHORE DRIVE  
NORTH LITTLE ROCK, ARKANSAS 72118

REVISED AGENDA

- I. Call Meeting to Order - 8:30 a.m.
- II. Roll Call
- III. Approval of December 7, 2007 Regulations Committee Minutes
- IV. Regulation No. 32, Environmental Professional Certification APPENDIX II
  - Docket No. 08-001-R
  - Ryan Benefield for Arkansas Department Of Environmental Quality
  - Minute Order (Initiate)
- V. Regulation No. 23, Hazardous Waste Management APPENDIX III
  - Docket No. 08-002-R
  - Ryan Benefield for Arkansas Department Of Environmental Quality
  - Minute Order (Initiate)
- VI. Regulation No. 9, Fee Regulation APPENDIX VIII
  - Docket No. 07-009-R
  - Jamie Ewing for Arkansas Department of Environmental Quality
  - Minute Order (Adopt)
- VI. Adjourn

**ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION**

**REGULATIONS COMMITTEE MEETING**

**8:30 a.m., Friday, December 7, 2007**

**Arkansas Department of Environmental Quality  
5301 Northshore Drive  
North Little Rock, Arkansas**

**Committee Members Attending:** C. McGrew, T. Schueck, L. Sickel, B. White, and R. Young.

**Members Absent:** S. Henderson.

**Call to Order**

Commissioner Young called the meeting to order at approximately 8:30 a.m.

**Quorum**

Commission Secretary called roll and a quorum was declared.

**Approval of Minutes**

Commissioner Young asked for a motion to approve the minutes of the October meeting. Commissioner Sickel moved to approve the minutes and Commissioner White seconded the motion. The minutes were approved.

**Regulation No. 6, Regulation for State Administration of the National Pollutant Discharge Elimination System (NPDES); Docket No. 07-012-R.**

Commissioner Young called on Ms. Jamie Ewing to explain the proposed changes to Regulation No. 6. She stated that the proposed amendments included revisions based on public comments received by the Department, adding clarifying language, updating agency name changes, and deleting duplicate language. She asked the Committee to recommend adoption of the proposed minute order to the Commission.

Commissioner McGrew moved to recommend to the Commission the adoption of the proposed minute order adopting the amendments. Commissioner White seconded the motion. Commissioner Schueck recused from voting. The motion carried.

**Regulation No. 22, Solid Waste Management Rules; Docket No. 07-012-R.**

Commissioner Young called on Ms. Anne Weinstein to explain the proposed changes to Regulation No. 22. She explained that the proposed changes are to make the regulation conform to the language

## **Regulations Committee Meeting Minutes**

**December 7, 2007**

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set out in Act 1337 of 2003, Act 452 of 2007, and Act 1281 of 2007. The proposed amendments require Class 1 and Class 3 landfill operators to maintain waste receipt records for the weight of waste disposed in the landfill by each waste hauler or generator using the facility and prohibits the disposal of the bulb or tube portion of any electric lighting device containing more than 0.2 milligrams per liter of leachable mercury in landfills. A new section is added which requires the Commission to prioritize and authorize any expenditures from the Landfill Post-Closure Trust Fund in excess of \$50,000 for any formerly un-permitted closed landfill determined by ADEQ to need remedial action. She asked the Committee to recommend adoption of the proposed minute order to the Commission.

Commissioner Schueck moved to recommend to the Commission the adoption of the proposed minute order initiating the rulemaking process. Commissioner McGrew seconded the motion. The motion carried.

### **Adjourn**

There was no other business to come before the committee. Commissioner Young adjourned the meeting.

ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION  
REGULAR COMMISSION MEETING  
Friday, January 25, 2008

9:00 a.m. (or immediately following the Regulations Committee Meeting)

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY  
5301 NORTSHORE DRIVE  
NORTH LITTLE ROCK, ARKANSAS 72118

REVISED AGENDA

- I. Call Meeting to Order - 9:00 a.m.
- II. Roll Call
- III. Approval of December 7, 2007, Commission Meeting Minutes
- IV. Department Reports
  - A. Director's Report
- V. Public Comments
- VI. Commission Reports
  - A. Chair Thomas Schueck
    - 1. Reimbursement and Stipends-2008 APPENDIX I
      - Minute Order
  - B. Regulations Committee - Randy Young
    - 1. Regulation No. 32, Environmental Professional Certification APPENDIX II
      - Docket No. 08-001-R
      - Ryan Benefield for Arkansas Department of Environmental Quality
      - Minute Order (Initiate)
    - 2. Regulation No. 23, Hazardous Waste Management APPENDIX III
      - Docket No. 08-002-R
      - Ryan Benefield for Arkansas Department of Environmental Quality
      - Minute Order (Initiate)
    - 3. Regulation No. 9, Fees Regulation APPENDIX VIII
      - Docket No. 07-009-R
      - Jamie Ewing for Arkansas Department of Environmental Quality
      - Minute Order (Adopt)

VII. Solid Waste Licensing Committee	APPENDIX IV
- Member Appointments	
- Steve Martin for Arkansas Department of Environmental Quality	
- Minute Order	
VII. Administrative Hearing Officer - Michael O'Malley	
A. Settled Cases per Regulation No. 8	APPENDIX V
1. In the Matter of Ozark Interests, Inc.	
- Docket No. 07-012-P	
2. In the Matter of Waste Corporation of Arkansas, Inc.	APPENDIX VI
- Docket No. 07-004-NOV	
B. Annual Case Report	APPENDIX VII
IX. Adjourn	

**ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION**

**REGULAR COMMISSION MEETING**

**9:00 a.m., Friday, December 7, 2007**

**Arkansas Department of Environmental Quality  
5301 Northshore Drive  
North Little Rock, Arkansas**

**Commissioners Attending:** L. Bengal, D. Hendrix, C. McGrew, D. Samples, T. Schueck, J. Shannon, L. Sickel, J. Simpson, W. Thompson, E. Valdez, B. White, and R. Young.

**Commissioners Absent:** S. Henderson

**Visitors:** Peggy Daven, Malvern; Terry Horton, FTN Associates; Lucien Gillham, Arkansas Wildlife Federation; Richard McCarville, Malvern; Ronald Wallace, Malvern; Roger Davis, Davis Rubber Company; Evan Teague, Arkansas Farm Bureau; Bud Daven, Malvern; Bill Cooper, Malvern; Steve Weaver, Pine Bluff Arsenal; Allan Gates, Mitchell Law Firm; Chuck Nestrud, Chisenhall, Nestrud & Julian; Randy Thurman, Arkansas Environmental Federation; Bootsie Ackerman, Fayetteville; Charles Moulton, Attorney General's Office; Walter Wright, Mitchell Law Firm; Ray Cox, Wright, Lindsey & Jennings; and John Peiserich, Perkins & Trotter.

**Call to Order**

Chair Schueck called the meeting to order at 9:00 a.m.

**Quorum**

Commission Secretary called roll and announced that a quorum was present.

**Approval of Minutes**

Chair Schueck asked for a motion approving the minutes for the October 2007 Commission meeting. Commissioner Young made a motion approving the minutes. Commissioner McGrew seconded the motion. The motion passed.

**Director's Report**

Ms. Mary Leath reported that the Arkansas Department of Environmental Quality ("department") has issued two general permits for oil and gas activities and it has been involved in the Joint Performance Review Committee regarding oil and gas activities.

## **Commission Meeting Minutes**

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The Public Service Commission has authorized Swepeco's facility in Hempstead County. The Air Division is still reviewing the public comments and no water and solid waste permit applications have been received from Swepeco.

Regulation No. 2 has been submitted to the Environmental Protection Agency ("EPA") for their approval.

She updated the Commission on the Homeport Land Company case and stated that it has been continued until January or February 2008.

She discussed the loss of Ed Morris and gave a brief overview of his many years with the department.

She announced that this was her last day and stated that Ms. Karen Bassett has been chosen as her replacement. She thanked the Commission for all the work they have done for the environment and how much she had enjoyed working with everybody over the years.

Chair Schueck presented Mary Leath with a plaque thanking her for her many years of service to the State of Arkansas.

### **Public Comments**

Chair Schueck stated that there were several public comments regarding the Southland Septic Service, Inc. case and called on Ms. Peggy Daven to speak first.

### **Peggy Daven**

Mrs. Daven of Malvern, Arkansas discussed Southland's continuous violations on their original property and asked the Commission to uphold the Director's denial of the permit.

Commissioners asked questions and discussion followed.

### **Ronald Wallace**

Mr. Wallace of Malvern, Arkansas stated that his property was adjoining the site where Southland would install the grease trap waste site if the permit were approved and discussed the violations at its other site. He asked the Commission to deny the permit amendment and uphold the Director's decision.

Commissioners asked questions and discussion followed.

## **Commission Meeting Minutes**

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### **Richard McCarville**

Mr. McCarville of Malvern, Arkansas praised Ms. Dawn Guthrie for her hard work on this case and asked the Commission to deny the request for permit amendment.

### **Bill Cooper**

Mr. Cooper of Malvern, Arkansas asked the Commission to deny Southland's request for permit amendment.

Commissioners asked questions. Discussion followed.

### **Bud Daven**

Mr. Daven of Malvern, Arkansas discussed Southland's continuous violations and asked the Commission to uphold the Director's decision to deny the permit amendment.

## **Commission Reports**

### **A. Chair Thomas Schueck**

#### **1. Recognition of Bootsie Ackerman**

Chair Schueck presented Ms. Bootsie Ackerman with a plaque and a resolution thanking her for her many years of service to the Commission.

Commissioner Thompson made a motion to approve the resolution and Commissioner Simpson seconded the motion. The motion was approved.

#### **2. Proposed Commission Meeting Dates-2008**

Chair Schueck asked for a motion to adopt the minute order approving the Commission meeting dates for the year 2008.

Commissioner Young made a motion approving the meeting dates and Commissioner Shannon seconded the motion. The motion was approved. (**Minute Order No. 07-46**).

#### **3. Committee Assignments**

Chair Schueck announced the new committee assignments.

### **B. Regulations Committee - Randy Young**

#### **1. Regulation No. 6, Regulations for State Administration of the National Pollutant Discharge Elimination System (NPDES); Docket No. 07-002-R**

Commissioner Young stated that the Regulations Committee had heard a request from the department to adopt amendments to Regulation No. 6. The proposed regulatory amendments included



## **Commission Meeting Minutes**

**December 7, 2007**

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revisions based on public comments, clarifying language, updating agency names, and deleting duplicate language.

The Committee voted to recommend adoption of the minute order to adopt the changes. Commissioner Young made a motion to adopt the amendments and Commissioner Sickel seconded the motion. The motion passed. (**Minute Order No. 07-47**).

### **2. Regulation No. 22, Solid Waste Management Rules; Docket No. 07-012-R**

Commissioner Young stated that the Regulations Committee had heard a request from the department to initiate rulemaking on Regulation No. 22. The proposed changes are necessary to comply with Act 452 of 2007, Act 1281 of 2007, along with updating clarifying language.

The Committee voted to recommend adoption of the minute order to initiate the rulemaking process. Commissioner Young made a motion to initiate the rulemaking process and Commissioner McGrew seconded the motion. The motion passed. (**Minute Order No. 07-48**).

### **Davis Rubber Company**

Mr. Walter Wright Jr. stated that Davis Rubber Company was requesting an exemption from the \$1.00 waste tire fee and gave a brief overview of the reason for the request.

Commissioners asked questions and discussion followed.

Commissioner Young made a motion to modify the minute order to reflect that the exemption applies to the 429,520 tires currently stored at Cooper Tire in East Camden. Commissioner Shannon seconded the motion. The motion passed. (**Minute Order No. 07-49**).

### **In the Matter of Southland Septic Service, Inc.; Docket No. 06-008-P**

Judge O'Malley reported that there is an oral argument regarding Southland Septic Service, Inc. Order No. 6. Ms. Dawn Guthrie and Mr. Benjamin Jones represent the department and Mr. Al Thomas represents Southland Septic Service, Inc.

Mr. Jones argued that the proposed site is not suitable for soil injection/land application of waste and the permittee did not accurately describe the condition of the disposal site in their permit application. He stated that the Administrative Hearing

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Officer's ("AHO") determination is clearly erroneous and the AHO is confusing legislative authority to act with a standard of review. He closed with the statement that because the AHO's decision was based on a clear error of law, it is void and must be overturned. ADEQ's denial of Southland's permit should be upheld. Therefore, ADEQ respectfully requests that the Commission adopt ADEQ's minute order upholding the Director's decision to deny Southland's permit.

Mr. Al Thomas gave a brief overview of Southland's permit process and asked the Commission to adopt the recommended decision.

Commissioner Sickel moved to amend the minute order submitted by Judge O'Malley. He stated that the first paragraph would stay the same. The second paragraph reads; "Order number six reverses the Arkansas Department of Environmental Quality's final permitting decision denying a permit to Southland and remands the final permitting decision denying a permit to Southland and remands the final permit decision to the director with instructions to reconsider issuing Southland a permit after submission and approval of a site management plan that also contains the same terms and conditions as set forth in the draft permit issued on August 4<sup>th</sup>, 2006" He then stated: "Third paragraph the first sentence will stay the same and I'm assuming the last sentence would be deleted." Commissioner Valdez seconded the motion.

Commissioners asked questions and discussion followed.

Commissioner Shannon made a substitute motion to adopt the minute order that upholds the AHO's Recommended Decision. There was no second to the motion. Discussion followed.

After additional discussion, Commissioner Sickel stated the motion again as follows, "Order number six reverses the Arkansas Department of Environmental Quality's final permitting decision denying a permit to Southland and remands the final permitting decision to the director with instructions to reconsider issuing Southland a permit after submission and approval of site management plan that also contains the same terms and conditions as set forth in the draft permit issued on August 4<sup>th</sup>, 2006, including other pertinent conditions. Pertinent conditions including past performance." Chair Schueck asked for a second and Commissioner Valdez seconded the motion. Discussion

**Commission Meeting Minutes**

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followed. Commissioner Sickel called for the question. The motion passed. (**Minute Order No. 07-50**).

**B. Settled Cases per Regulation No. 8**

**1. In the Matter of William Perry; Docket No. 07-003-NOV**

Judge O'Malley reported that the parties had met and resolved the issues and filed a Consent Administrative Order. The case is settled.

**Adjourn**

There being no further business the meeting was adjourned.

THE NEXT COMMISSION MEETING IS SCHEDULED FOR 9:00 a.m., Friday, January 25, 2008.

**Commission Meeting Minutes**

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**APPROVED MINUTE ORDERS  
REGULAR COMMISSION MEETING**

- 07-46** The Commission adopted a Minute Order adopting the Commission meeting dates for 2008.
- 07-47** The Commission adopted a Minute Order adopting the amendments for Regulation No. 6, Regulations for State Administration of the National Pollutant Discharge Elimination System (NPDES); Docket No. 07-002-R.
- 07-48** The Commission adopted a Minute Order initiating the rulemaking process for Regulation No. 22, Solid Waste Management Rules; Docket No. 07-012-R
- 07-49** The Commission adopted a Minute Order granting Davis Rubber Company an exemption from the \$1.00 waste tire fee.
- 07-50** The Commission adopted a revised Minute Order regarding the Recommended Decision (Order No. 6), In the Matter of Southland Septic Service, Inc.; Docket No. 06-008-P.

**ARKANSAS POLLUTION CONTROL  
AND ECOLOGY COMMISSION**

**LOCATION - SUBJECT  
Authorization of Expense  
Reimbursement and Stipends  
for 2008**

**MINUTE ORDER NO. 08-\_\_**

**PAGE 1 OF 1**

Act 1211 of 1995 (A.C.A. § 25-16-901) defines the term "state board" to mean "commission." Section 2 of Act 1211 of 1995 [A.C.A. § 25-16-902(a) and (b)] allows the Arkansas Pollution Control and Ecology Commission ("Commission") to authorize expense reimbursements for each Commission member performing official Commission duties. The Commission may authorize the expense reimbursement by a majority vote of the total membership of the Commission cast during its first regularly scheduled meeting of each calendar year. The expense reimbursement shall not exceed the rate established for state employees by state travel regulations.

Act 1650 of 2001 and Act 1803 of 2001 (A.C.A. § 25-16-904) allows the Commission to authorize payment to its members of a stipend not to exceed eighty-five dollars (\$85.00) per meeting attended. The Commission may authorize the stipend by a majority vote of the total membership of the Commission cast during its first regularly scheduled meeting of each calendar year. Commission members shall receive no other compensation except as provided in A.C.A. § 25-16-902. In addition, Act 1354 of 1997 (A.C.A. § 25-16-906) excludes a state employee from receiving a stipend.

Based on the statutes cited above and by a majority vote of its total membership, the Commission authorizes the reimbursement of expenses for each of its members performing official Commission duties. In addition, the Commission authorizes payment of an \$85.00 stipend to each eligible Commission member for each meeting attended.

**COMMISSIONERS**

\_\_\_\_\_ **L. Bengal**  
\_\_\_\_\_ **S. Henderson**  
\_\_\_\_\_ **D. Hendrix**  
\_\_\_\_\_ **C. McGrew**  
\_\_\_\_\_ **D. Samples**  
\_\_\_\_\_ **T. Schueck**  
\_\_\_\_\_ **J. Shannon**

\_\_\_\_\_ **L. Sickel**  
\_\_\_\_\_ **J. Simpson**  
\_\_\_\_\_ **W. Thompson**  
\_\_\_\_\_ **E. Valdez**  
\_\_\_\_\_ **B. White**  
\_\_\_\_\_ **R. Young**

\_\_\_\_\_ **SUBMITTED BY: Michael O'Malley PASSED: 01/25/08**  
**Chair**

**BEFORE THE ARKANSAS POLLUTION CONTROL AND ECOLOGY  
COMMISSION**

**IN THE MATTER OF AMENDMENTS TO )  
REGULATION NO. 32, ENVIRONMENTAL )  
PROFESSIONAL CERTIFICATION )**

**DOCKET NO. 08- -R**

**PETITION TO INITIATE RULEMAKING TO AMEND REGULATION NO. 32,  
ENVIRONMENTAL PROFESSIONAL CERTIFICATION**

The Arkansas Department of Environmental Quality (hereinafter “ADEQ” or the “Department”), for its Petition to Initiate Rulemaking to Amend Regulation No. 32, Environmental Professional Certification, states:

1. Act 864 of 2007 (SB 829) established a professional certification program for contractors and consultants who undertake investigation and cleanup of properties contaminated through the illicit manufacture of controlled substances. These statutes were codified at Arkansas Code of 1987, Annotated (Ark. Code, Ann.) Section 8-7-1401 et seq. The Department is proposing amendments to Regulation No. 32 in order to implement the professional certification requirements established by Act 864.
2. The proposed regulatory amendments precipitated by the implementation of Act 864 include:
  - (a) Amending § 32.101 to reflect the revised purpose of the Act and Regulation;
  - (b) Amending § 32.102 to reflect the revised authority for the Regulation;

- (c) Amending the list of definitions at § 32.103 in accordance with those used in Act 864 of 2007;
- (d) Adds a new Chapter 4, establishing certification criteria for Clandestine Laboratory Remediation Contractors;
- (e) Amends § 32.601 to provide for biennial certification renewal for certified Clandestine Laboratory Remediation Contractors;
- (f) Amends § 32.605 to provide for continuing education requirements for certified Clandestine Laboratory Remediation Contractors;
- (g) Amends § 32.606 to establish application and renewal fees for certified Clandestine Laboratory Remediation Contractors (\$200) and to establish a technical review fee for property cleanup plans and related documents;
- (h) Amends § 32.607 to provide a certification statement for certified Clandestine Laboratory Remediation Contractors; and
- (i) Adds a new Chapter 7 to establish disciplinary actions and an appeals procedure for certified Clandestine Laboratory Remediation Contractors

3. Line-by-line details of the proposed revisions are listed at Exhibit “A.”

4. *Compliance with Act 143 of 2007 (formerly Executive Order 05-04):* Act 143 of 2007 is not applicable to rules that are federally mandated, or that substantially codify existing state or federal laws. ADEQ determines that Act 143 of 2007 is not applicable to this proposed rule because the amendments to Regulation No. 32 exclusively codify existing state law

pursuant to Act 864 of 2007. (Ark. Code of 1987, Ann., § 25-15-302(a)(1)(C)).

5. In November and December of 2007 ADEQ initiated a series of meetings with stakeholders to evaluate the impact of adopting the regulatory changes included in this proposal. These stakeholders included the Arkansas Department of Health, the Arkansas State Crime Laboratory, the Arkansas Manufactured Housing Association, the Arkansas Realtors Association, the Arkansas Municipal League, and two consultant firms which currently provide these types of services in Arkansas (Safety & Environmental Associates, Inc. of Little Rock and Meth Lab Cleanup, LLC, of Idaho). The revisions brought forward in this proposal represent the consensus of that stakeholder group.
  
6. Ryan Benefield, Chief, Hazardous Waste Division, will be available to answer questions concerning this proposed rulemaking. A version of the regulation showing the proposed changes is attached as Exhibit “A” and is hereby incorporated by reference. The questionnaire for filing proposed rules and regulations with the Arkansas Legislative Council and Joint Interim Committee is attached at Exhibit “B.” The legislative Financial Impact Statement is attached at Exhibit “C.” A statement concerning compliance with the provisions of Act 143 of 2007 is attached at Exhibit “D.” A copy of the completed economic impact/environmental benefit analysis pursuant to Regulation No. 8.3.5.2 is attached at Exhibit “E.” A copy of the Economic Impact Statement and Regulatory Flexibility Analysis



required by the Arkansas Department of Economic Development pursuant to Act 143 of 2007 is included at Exhibit “F.” A proposed Minute Order which initiates this request is attached at Exhibit “G.”

WHEREFORE, the ADEQ requests that the Commission initiate the rulemaking process, adopt the proposed Minute Order, and promulgate the proposed amendments to Regulation No. 32 for public notice and comment.

Respectfully submitted,

---

J. RYAN BENEFIELD, P.E.  
Chief, Hazardous Waste Division  
Arkansas Department of Environmental Quality  
(501) 682-0831

**EXHIBIT A:**  
**PROPOSED RULE CHANGES**

# Arkansas Pollution Control and Ecology Commission

## Regulation Number 32



# Environmental Professional Certification

Submitted to the Pollution Control & Ecology Commission: January 25, 2008

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# CHAPTER 1: PURPOSE & AUTHORITIES

## Reg.32.101. Purpose.

(A) Pursuant to ~~A.C.A.~~ Arkansas Code Annotated (A.C.A.) § 8-7-1301 *et seq.* (Act 1018 of 2007), to establish and implement a certification program to:

~~(A)~~ (1) Maintain a list of Phase I consultants who meet the minimum qualifications for an environmental professional who undertakes a Phase I environmental site assessment, referred to as “all appropriate inquiry” under the Small Business Liability Relief and Brownfields Revitalization Act, Pub. L. No. 107-118, as it exists on January 1, 2007, or a Phase I environmental site assessment under the American Society for Testing and Materials standard E1527-05 as in effect on January 1, 2007; *and*

~~(B)~~ (2) Require that such consultants demonstrate that they have the qualifications required to undertake such activities.

(B) Pursuant to A.C.A. § 8-7-1401 *et seq.* (Act 864 of 2007), to establish and implement a certification program to:

(1) Certify contractors who choose to undertake the inspection, sampling, remediation, and removal of contaminated materials from properties contaminated through the illicit manufacture of controlled substances;

(2) Require as a condition of certification that such contractors demonstrate they have qualifications required to safely undertake such activities.

## Reg.32.102. Authority.

~~Arkansas Code of 1987, Annotated,~~ A.C.A. §§ 8-7-1301, *et seq.* (Act 1018 of 2007) and §§ 8-7-1401, *et seq.* (Act 864 of 2007) authorizes the Arkansas Pollution Control and Ecology Commission (“Commission”) to adopt rules and regulations necessary for the Arkansas Department of Environmental Quality (“Department”) to implement and effectuate the powers and duties of the Commission as established by the Acts.

## Reg.32.103. Definitions.

The following terms shall have the same meaning when used in this Regulation as established by the Act, unless the context otherwise requires:

(A) “*Certification and listing*” means the review and approval of an individual’s education and relevant experience as prescribed at § 32.301(B) of this regulation and the placement of that individual’s name on the list of certified environmental professionals as required by § 32.101(A) of this regulation.

(B) “*Certified Clandestine Laboratory Remediation Contractor*” means a firm or company that is licensed/certified by the Department pursuant to Section 4 of this regulation, and that performs investigation and remediation of residual

contamination from the manufacture of controlled substances or the storage of chemicals or equipment used in the manufacture of controlled substances.

(C) “Clandestine Laboratory” means a covert or secret illicit operation that uses a combination of apparatus and chemicals to make controlled substances.

~~(B)~~ (D) “Commission” means the Arkansas Pollution Control and Ecology Commission.

(E) “Contaminated” or “Contamination” means polluted by chemical residues of a controlled and/or hazardous substance so that the property is unfit for human habitation or use due to immediate or long term threats to human health or the environment. Property that at one time was contaminated but has been satisfactorily decontaminated according to procedures established by the department is not “contaminated”.

(F) “Contractor” means one or more individuals or commercial entities hired to perform work in accordance with the requirements of § 32.402 of this regulation.

(G) “Controlled Substances” (A.C.A. § 5-64-101(d)) means: “a drug, substance, or immediate precursor in schedules I – VI” of the Arkansas Department of Health list of controlled substances Agency# 007.07.

~~(G)~~ (H) “Department,” or “ADEO” means the Arkansas Department of Environmental Quality, or its successor.

~~(D)~~ (I) “Director” means the Director of the Arkansas Department of Environmental Quality.

(J) “Hazardous Substances” means a hazardous substance as defined by A.C.A. § 8-7-503(6).

(K) “HAZWOPER” means the OSHA Hazardous Waste Operations and Emergency Response course (29 CFR 1910.120(a)(1)(i-v) and (29 CFR 1926.65(a)(1)(i-v)).

(L) “Investigation” means the process of assessing the nature, level, and/or extent of contamination of controlled or hazardous substances.

(M) “Manufacture” (A.C.A. § 5-64-101(m) (Repl. 1997) means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly by extraction from a substance of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis.

(1) “Manufacture” includes any packaging or repackaging of a controlled substance or labeling or re-labeling of a controlled substance’s container.

(2) However, “Manufacture” does not include the preparation or compounding of a controlled substance by an individual for his or her own use, or the preparation, compounding, packaging, or labeling of a controlled substance:

(a) By a practitioner as an incident to his or her administering or dispensing of a controlled substance in the course of his or her professional practice;

or

(b) By a practitioner, or by his or her authorized agent under his or her supervision for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.

(N) “OSHA” means the federal Occupational Safety and Health Administration.

~~(E)~~ (O) “Person” means any individual, corporation, company, firm, partnership, association, trust, joint-stock company or trust, venture, state or federal government or agency, or any other legal entity however organized.

~~(F)~~ **(P)** “*Phase I environmental site assessment*” means an assessment defined as “all appropriate inquiry” under the Small Business Liability Relief and Brownfields Revitalization Act, Pub. L. No. 107-118, and the rules promulgated under that federal act or a Phase I environmental site assessment as that term is used in the American Society for Testing and Materials standard E1527-05 as in effect on January 1, 2007.

~~(G)~~ **(Q)** “*Phase I Consultant*” means a person who performs a Phase I environmental site assessment for a fee or in conjunction with other services for which a fee is charged.

**(R)** “*Property*” means any real or personal property, or segregable part thereof, that is involved in or affected by the unauthorized manufacture, distribution, release, or storage of controlled or hazardous substances. This includes but is not limited to single-family residences, units of multiplexes, condominiums, apartment buildings, manufactured housing, any shop, booth, garden, or storage shed, and all contents of the items referenced in this subsection.

**(S)** “*Property Owner*” means the person holding fee simple title to real property. “Property Owner” also means the person holding title to a manufactured home. With respect to personal property, the term means the person who lawfully owns such property.

~~(H)~~ **(T)** “*Public agency*” means any administrative body, department or agency of government which has official or quasi official status.

~~(I)~~ **(U)** “*Relevant experience*” as used in defining the qualifications of environmental site assessment consultants in this Regulation, means: participation in the performance of all appropriate inquiries investigations, environmental site assessments, or other site investigations that may include environmental analyses, investigations, and remediation which involve the understanding of surface and subsurface environmental conditions and the processes used to evaluate these conditions and for which professional judgment was used to develop opinions regarding conditions indicative of releases or threatened releases of hazardous substances to the subject property. The use of the phrase “*full-time*” within the definition of environmental professional and the definition of relevant experience is meant to require that an individual has accumulated the equivalent of 3, 5, or 10 years of actual working experience in performing environmental site assessments. An individual may accumulate such experience over a longer length of time than the 3, 5, or 10 years, as long as the total time of accumulated experience would be the equivalent of 3, 5, or 10 years of full-time experience. Even after an individual accumulates the required number of years of full-time experience, that individual does not have to conduct environmental site assessments, or all appropriate inquiries investigations, on a full-time basis to continue qualify as an environmental professional.

**(V)** “*Remediation*” means the process of reducing the level of contamination of controlled substances, hazardous substances and/or other hazardous chemicals below the concentrations established by the Department.

## CHAPTER 2: CERTIFICATION AND LISTING PROGRAMS

### Reg. 32.201. Applicability.

(A) The Arkansas Department of Environmental Quality shall:

(1) Maintain and make available to the public a list of Phase I consultants who meet the minimum qualifications for an environmental professional who undertakes a Phase I environmental site assessment, referred to as “all appropriate inquiry” under the provisions of the Small Business Liability Relief and Brownfields Revitalization Act, Pub. L. No. 107-118, and the rules promulgated under that federal act.

(2) [Reserved].

(B) Persons wishing to be placed upon the Department’s list of certified environmental professionals shall meet the education and experience requirements set forth at 40 CFR 312.10 and § 32.301(B) of this regulation, and submit an application for such certification and listing to the Department.

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## CHAPTER 3: PHASE I CONSULTANTS

### Reg.32.301. Certification Criteria for Phase I Consultants.

(A) An applicant seeking certification to be listed as a Phase I Consultant shall submit an application on forms provided by the Department and shall pay the applicable application fees.

(B) Persons seeking certification as a Phase I Consultant shall possess sufficient specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions regarding conditions indicative of releases or threatened releases of hazardous substances on, at, in, or to a property, sufficient to meet the objectives and performance factors for all appropriate inquiries set forth in 40 CFR 312.20; and shall demonstrate this by meeting at least one of the following combinations of education and experience:

- (1) Hold a current Professional Engineer's or Professional Geologist's license or registration; and have the equivalent of three (3) years of full-time relevant experience; *or*
- (2) Have a Bachelor's or higher degree from an accredited institution of higher education in a relevant discipline of engineering or science and the equivalent of five (5) years of full-time relevant experience; *or*
- (3) Have a high school diploma or general equivalency diploma and at least ten (10) years of full-time relevant experience; *or*
- (4) Be licensed or certified by the federal government, a state, tribe, or U.S. territory (or the Commonwealth of Puerto Rico) to perform environmental inquiries as defined in 40 CFR 312.21 and have the equivalent of three (3) years of full-time relevant experience.

(C) Relevant experience shall be demonstrated by the submittal of an application for certification documenting the applicant's experiences and qualifications as prescribed by § 32.301(B) above.

(D) Applicants shall also submit, as part of the application for certification, a Disclosure Statement in accordance with the disclosure statement provisions of APC&EC Regulation No. 8. The Disclosure Statement shall also certify that neither the individual nor the individual's employer have been convicted of or plead guilty to an environmental crime or offense, or any related criminal offense.

(E) The Department may request and review additional relevant information about the applicant or application in order to properly process the application.

(F) Upon demonstration of compliance with the criteria, the applicant shall be eligible for certification and listing as a Phase I Consultant under this subchapter.

## CHAPTER 4: ~~RESERVED~~ CLANDESTINE LABORATORY REMEDIATION CONTRACTORS

### 32.401. Application.

(A) An applicant seeking certification as a Clandestine Laboratory Remediation Contractor shall submit an application on forms provided by the Department and shall pay the applicable application fees in accordance with § 32.606(B) of this regulation.

(B) Applicants shall also submit, as part of the application for certification, a Disclosure Statement in accordance with the disclosure statement provisions of APC&EC Regulation No. 8. The Disclosure Statement shall also certify that neither the individual nor the individual's employer have been convicted of or plead guilty to an environmental crime or offense, or any related criminal offense.

(C) Upon receipt of a complete application, the Department shall either accept or deny the applicant's certification. The Department may revoke the certification of any contractor for cause and collect the forfeited financial assurance of any contractor found to be in violation of A.C.A. §§ 8-7-1401 et seq. Contractors shall also report any changes in their registration information with the Department, such as address, financial assurance and/or liability insurance information within 30 days. Failure to comply fully with the requirements of this section may result in the immediate revocation of certification by the Department.

### 32.402. Certification Criteria for Clandestine Laboratory Remediation Contractors.

(A) Persons seeking certification as a Clandestine Laboratory Remediation Contractor shall have completed the following courses for all employees who perform decontamination and/or cleanup work of former clandestine laboratories:

- (1) Completion of OSHA 40-hour HAZWOPER training (29 CFR 1910.120(e)) and HAZWOPER 8-hour refresher training if it has been more than 12 months since the initial training; and
- (2) Successful completion of an 8-hour training course approved by the Department that encompasses the following areas:
  - (a) Clandestine Drug Laboratory Site Remediation Best Standards and Practices;
  - (b) Hazardous and precautionary measures for initial and subsequent entry into a clandestine drug laboratory site;
  - (c) Preparation of the work plan for remediation of a clandestine drug laboratory;
  - (d) Typical manufacturing methods for controlled substances;
  - (e) Chemical and physical hazards of a clandestine drug laboratory;
  - (f) Typical flammable, combustible, corrosive, and reactive materials used in a clandestine drug laboratory;

- (g) Sampling waste from the remediation of a clandestine drug laboratory;
  - (h) Preparing the final report on the remediation of a clandestine drug laboratory;
  - (i) Potential sharps and biohazards at a clandestine drug laboratory;
  - (j) Proper handling and disposal of wastes from the remediation of a clandestine drug laboratory; and
  - (k) Other potential hazards or dangers that can be associated with a clandestine drug laboratory.
- (3) Supervisory personnel, in addition to the eligibility requirements of §§ 32.402(A)(1-2) above, shall comply with OSHA HAZWOPER supervisor training requirements of 29 CFR 1910.120(e).
- (B) ADEQ may request and review additional information about the applicant or application in order to properly process the application.
- (C) Upon demonstration of compliance with the criteria, the applicant shall be eligible for certification and listing as a Certified Clandestine Laboratory Remediation Contractor under this Regulation.

#### 32.403. Financial Assurance.

(A) Certified Clandestine Laboratory Remediation Contractor shall provide the following financial assurances:

- (1) A certificate of liability insurance issued by an insurance company licensed to do business in Arkansas certifying that the applicant has a general liability insurance policy in an amount of one million dollars (\$1,000,000.00) per incident and two million dollars (\$2,000,000.00) aggregate for personal or property damage that might occur to third parties arising from the performance of regulated services for inhabitable properties by the contractor or his agents;
- (2) Errors and omissions insurance in the amount of one million dollars (\$1,000,000.00) per occurrence for negligent acts committed in the course of a clandestine lab investigation and/or remediation;
- (3) Pollution liability insurance in the amount of three million dollars (\$3,000,000.00); and
- (4) Worker's Compensation and Employer's Liability in statutory limits shall be secured and maintained as required by the laws of the State of Arkansas.

(B) In the event the insurance policy lapses, the applicant must provide a suitable replacement policy prior to the expiration of the existing policy. ADEQ shall be named as the certificate holder.

**CHAPTER 5: [RESERVED]**

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## CHAPTER 6: ADMINISTRATION

### Reg.32.601. Certification Renewal.

(A) Certification and listing under the provisions of this Regulation to an individual shall be valid for two (2) years (or portion thereof) from July 1st of the year the Department adds the individual to the list of certified environmental professionals or Certified Clandestine Laboratory Remediation Contractors.

(B) After June 1 of the second year after the Department adds a ~~person consultant~~ to the list of certified environmental professionals or Certified Clandestine Laboratory Remediation Contractors under the provisions of this Regulation, the ~~person consultant~~ must re-apply to the Department for renewal.

(C) A holder of a certificate who wishes to renew his or her certification shall:

- (1) Submit an application for renewal to the Department 60 days prior to expiration, demonstrating that the consultant continues to meet the applicable qualifications for certification and listing as prescribed in Section 3 and Section 4 at § 3.301(B) of this Regulation, on forms provided by the Department;
- (2) Submit a nonrefundable fee in the form of a money order, cashier's check, or other payment method determined by the Department in the amount set forth at § 32.606 of this Regulation; and
- (3) Complete and submit documentation of continuing education training of the type and amount as set forth at § 32.605 of this Regulation.

**Reg.32.602. Lapsed Certifications.** [Reserved].

**Reg.32.603. Certification by Other States or Organizations.**[Reserved].

**Reg.32.604. Reciprocity Agreements.** [Reserved].

### Reg.32.605. Continuing Education Requirements.

(A) Phase I consultants and Certified Clandestine Laboratory Remediation Contractors shall remain current in their field through participation in continuing education or other activities.

(B) Definitions. As used in this Subsection, the following terms are defined as follows:

- (1) Professional Development Hours (PDH) – A contact hour (nominal) of instruction or presentation. The common denominator for other units of credit.
- (2) Continuing Education Unit (CEU) – Unit of credit customarily used for continuing education courses. One continuing education unit equals ten (10) hours of classroom experience in an approved education course.

- (3) College/Unit Semester/Quarter Hour – Credit for an approved college course.
  - (4) Course/Activity – Any qualifying course or activity with a clear purpose and objective which will maintain, improve, or expand the skills and knowledge relevant to the certified contractor or consultant’s field of practice.
- (C) Requirements:
- (1) Every **certified Phase I** consultant shall be required to report a cumulative of fifteen (15) PDH units per year for each renewal period. If a registrant exceeds the annual requirement in any renewal period, a maximum of fifteen (15) PDH units may be carried forward into the subsequent renewal period.
  - (2) Certified Clandestine Laboratory Remediation Contractors seeking biennial renewal of their certificate shall annually conduct and maintain documentation for, the successful completion of:**
    - (a) At least 8 hours of OSHA HAZWOPER refresher training as prescribed by 29 CFR 1910.120(e); and**
    - (b) At least 8 hours of additional training related to clandestine laboratory investigation or remediation.**
- (D) PDH units may be earned as follows:
- (1) Successful completion of college courses.
  - (2) Successful completion of continuing education courses.
  - (3) Successful completion of correspondence, televised, videotaped, audiotape, and other short courses/tutorials.
  - (4) Presenting or attending qualifying seminars, in-house courses, work shops, or professional, technical, or managerial presentations made at meetings, conventions, or conferences.
- (E) Units – The conversion of other units of credit to PDH Units are as follows:
- (1) 1 College or unit semester course —30 PDH
  - (2) 1 College or unit quarter course —15 PDH
  - (3) 1 Continuing Education Unit — 10 PDH
  - (4) 1 Hour of professional development in course work, seminars, or professional, or management, or technical presentations made at meetings, conventions or conferences: — 1 PDH
  - (5) For teaching items 1 through 4 above, apply a multiple of 2 (teaching credit is valid for teaching a course or seminar for the first time only).
- (F) Determination of Credit – The Department has final authority with respect to approval of courses, credit, PDH value for courses, and other methods of earning credit.
- (1) Credit for college or community college approved courses will be based upon credit established by the college.
  - (2) Credit for qualifying seminars and workshops will be based on one PDH unit for each hour of attendance. Attendance at qualifying programs presented at professional and/or technical society meetings will earn PDH units for the actual time of each program.
  - (3) The types of training and continuing education required by this Chapter which may be eligible for approval include instructional courses, seminars or conferences sponsored by the Department, the Environmental Protection Agency, educational institutions, independent professional or trade associations,

manufacturers, or firms engaged in environmental site assessment or hazardous substance management or remediation.

- (4) Course content must be related to work performed by persons performing environmental site assessment or hazardous substance management or remediation.

(G) **Recordkeeping Requirements. Each Phase I consultant or Certified Clandestine Laboratory Remediation Contractor shall maintain records to document his or her qualifications and continuing education participation.** The responsibility of maintaining records to be used to support credits claimed is the responsibility of the **Phase I consultant or the Certified Clandestine Laboratory Remediation Contractor.** Records required include, but are not limited to:

- (1) A log showing the type of activity claimed, sponsoring organization, location, duration, instructor's or speaker's name, and PDH credits earned; or
- (2) Attendance verification records in the form of completion certificates, or other documents supporting evidence of attendance furnished by the organization sponsoring the approved training or continuing education.

These records must be maintained for a period of three (3) years or in compliance with any applicable state requirements, and copies may be requested by the Department for audit verification purposes.

(H) Exemptions. A **consultant person** may be exempt from the professional development education requirements for one of the following reasons:

- (1) A **consultant person** serving on temporary active duty in the Armed Forces of the United States for a period of time exceeding one hundred twenty (120) consecutive days in a year shall be exempt from obtaining professional development hours required during that year.
- (2) **Consultants Persons** experiencing physical disability, illness, or other extenuating circumstances as reviewed and approved by the Department may be exempt. Supporting documentation must be furnished to the Department.

(I) Noncompliance. The certification of a person who does not satisfy the continuing education requirements at renewal time will be suspended and the certificate holder notified of that status. The Consultant will have six (6) months from the renewal date to satisfy that condition or his or her certification will be revoked.

### **Reg.32.606. Fees.**

(A) Any person who applies to the Department for certification and listing as a Phase I Consultant shall submit as part of that application a money order, cashiers check, or other payment method determined by the Department in the amount of twenty-five dollars (\$25.00) payable to the Department for an application fee.

**(B) Any person who applies to the Department for certification and listing as a Certified Clandestine Laboratory Remediation Contractor shall submit as part of that application, and for each renewal, a money order, cashiers check, or other payment method determined by the Department in the amount of two hundred dollars (\$200.00) payable to the Department for an application fee.**



~~(B)~~ **(C) ADEQ will assess a technical review fee pursuant to APC&EC Regulation No. 23 Section 6(t) for each clandestine lab cleanup project submitted for review to determine whether the property has been satisfactorily remediated and is subsequently eligible for removal from the list of contaminated properties established by A.C.A. § 8-7-1404. The amount of such fee shall not exceed two hundred dollars (\$200.00) per property.**

~~(C)~~ **(D)** Applications or renewals will not be processed by the Department without payment of the fee.

~~(D)~~ **(E)** Fees will be reviewed biennially for potential adjustment to cover the costs of administering the Environmental Professional Certification Program.

(F) The Department will not issue refunds for any fees paid pursuant to this Regulation.

#### **Reg.32.607. Certification Statement.**

(A) All documents, reports, or correspondence created pursuant to activities addressed by this Regulation, whether submitted to the Department or to a client, shall include:

(1) The following certification statement:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision according to a system designed to assure that qualified personnel properly gather and evaluate the information submitted. The information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information; *and*

(2) The signature of the certified **Phase I** consultant or **Certified Clandestine Laboratory Remediation Contractor.**

#### **Reg.32.608. Records Review.**

(A) The Department may inspect any records required to be kept under this Regulation during normal business hours including, but not limited to, the following:

(1) Copies of professional licenses, if applicable;

(2) Copies of certificates or licenses from another state, tribe, U.S. territory, or organization recognized by the Department as substantially equivalent, if applicable; and

(3) Documentation of continuing education requirements pursuant to § 32.605 **of this regulation.**

(B) The Department may establish requirements concerning the information that shall be included in the records.



## CHAPTER 7: ~~[RESERVED]~~ DISCIPLINARY ACTIONS

### 32.701. Disciplinary Actions.

(A) It is unlawful for any person to:

- (1) Make any false statement or representation in any application or certification;
- (2) Render inaccurate and certification issued under this Regulation; or
- (3) Solicit or perform the services for which a certification under this Regulation is required without holding a current and valid certification under this Regulation.

(B) A person certified under the provisions of the Regulation may be subject to disciplinary action, or the certification may be subject to suspension, condition, or revocation if he or she:

- (1) Engages in activities subject to certification under this Regulation and is no longer entitled to that certification by reason of his or her failure to maintain the license or other qualification on which the certification was issued;
- (2) Demonstrably fails to produce acceptable work for specific activities for which the contractor has been certified under this Regulation;
- (3) Practices fraud or deception;
- (4) Does not exercise reasonable care, judgment, or the application of knowledge in the performance of the certified contractor's responsibilities;
- (5) Is incompetent, unable, or unwilling to perform their responsibilities;
- (6) Fails to pay renewal fees;
- (7) Does not meet continuing education requirements; or
- (8) Fails to meet any provision of this Regulation.

(C) If the Department has sufficient evidence that a certified contractor should have his or her certification suspended, conditioned, or revoked, the Director shall provide notice of a final decision under the applicable rules of the Commission. The Director's final decision shall specify the terms of the suspension, condition, or revocation of the certification as a result of the disciplinary actions under this Regulation.

(D) The Director's decision shall be subject to adjudication before the Commission in accordance with administrative procedures adopted by the Commission.

(E) Certifications revoked, suspended, or conditioned shall be subject to the terms outlined in the Director's final decision.

### 32.702. Appeals

A certificate holder or other party with standing may appeal the Director's final decision to the Commission. Such an action shall be conducted as provided for in A.C.A. § 8-4-202 et seq. and in accordance with the Commission's regulations on administrative procedures.

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## CHAPTER 8: SEVERABILITY

### **Reg.32.801. Severability.**

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

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**EXHIBIT B:**

**Questionnaire for Filing  
Proposed Rules and Regulations  
with the  
Arkansas Legislative Council  
and the  
Joint Interim Committee**

**QUESTIONNAIRE  
FOR FILING PROPOSED RULES & REGULATIONS  
WITH THE ARKANSAS LEGISLATIVE COUNCIL AND THE  
JOINT INTERIM COMMITTEE**

**FROM:**

**AGENCY:** Arkansas Department of Environmental Quality  
**DIVISION:** Hazardous Waste Division  
**CONTACT PERSON:** Karen Bassett  
**ADDRESS:** 8001 National Drive, Little Rock, AR 72219  
**PHONE NUMBER:** 682-0744 **FAX NUMBER:** 682-0565

**TO:**

Attention: Donna Davis  
Subcommittee on Administrative Rules and Regulations  
Arkansas Legislative Council  
Room 315, State Capitol  
Little Rock, Arkansas 72201

=====

**1. What is the short title of this rule?** APC&EC Regulation No. 32 (Environmental Professional Certification)

**2. What is the subject of the proposed rule?** Revision of the existing Regulation to incorporate changes necessary by the enactment of Act 864 of 2007 (SB 829) with respect to the certification of individual consultants who perform investigation and cleanup of clandestine drug laboratories.

**3. Is this rule required to comply with federal statute or regulations?** No.  
**If Yes, please provide the federal statute and or regulation citation:**

**4. Was this rule filed under the emergency provisions of the Administrative Procedure Act?** No.  
**If Yes, what is the date of the emergency rule?** N/A  
**When does the emergency rule expire?** N/A  
**Will this emergency rule be promulgated under the regular provisions of the Administrative Procedures Act?** N/A

**5. Is this a new rule?** No – update of existing regulation.  
**Does this repeal an existing rule?** No  
**If yes, please provide a copy of the repealed rule.**

**Is this an amendment to an existing rule?** Yes  
**If yes, please attach a markup showing the changes in the existing rule and a summary of the substantive changes.** Attached.

**6. What State or federal law or regulation grants the authority for this proposed rule?**

Act 864 of 2007 (SB 829), which was codified at Ark. Code, Ann. §§ 8-7-1401 *et seq.*

**7. What is the purpose of this proposed rule? Why is it necessary?** To revise the regulation to conform to the provisions of Act 864 of 2007.

**8. Will a public hearing be held on this proposed rule?** Yes.

**(If yes, state the date, time, and location of the public hearing.** 2:00 p.m., February 27, 2008, in the Commission Room at the Department's headquarters at 5301 Northshore Drive, North Little Rock.

**9. When does the public comment period expire?** 4:30 p.m., March 12, 2008

**10. What is the proposed effective date of this rule?** May, 2008 (10 days following filing, after April 2008 APC&E Commission meeting)

**11. Do you expect this rule be controversial?** No.  
**If yes, please explain.**

**12. Please give the names, addresses, and phone numbers of all persons, groups, organizations, etc. interested in or affected by this proposed rule and the position taken by each.**

Categorize them according to the following:

(A) Those you contacted.

(B) Those who contacted you.

(C) Those whom you anticipate will participate in the public hearing.

<b>NAMES, ADDRESSES, &amp; PHONE NUMBERS</b>	<b>CATEGORY</b>	<b>FOR</b>	<b>AGAINST</b>
Arkansas Department of Health, 4815 W. Markham St., Little Rock, AR 72205, (501) 661-2833	A	X	
Arkansas Realtors Association	A	X	
Arkansas Manufactured Home Association	A	X	
Arkansas State Crime Lab	A	X	
Arkansas Municipal League	A	X	

**EXHIBIT C:**

**Financial Impact Statement**

# Financial Impact Statement

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Department of Environmental Quality  
 DIVISION Hazardous Waste Division  
 PERSON COMPLETING THIS STATEMENT Tom Ezell  
 TELEPHONE NO. 682-0854 FAX NO. 682-0565 EMAIL: ezell@adeq.state.ar.us

To comply with Act 1104 of 1995, please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

**SHORT TITLE OF THIS RULE:**

APC&EC Regulation No. 32 (Environmental Professional Certification)

1. **Does this proposed, amended, or repealed rule or regulation have a financial impact?**  
 Yes   X   No \_\_\_\_\_

2. **If you believe that the development of a financial impact statement is so speculative as to be cost prohibited, please explain.**

*Cost estimate provided below.*

3. **If the purpose of this rule or regulation is to implement a federal rule or regulation, please give the incremental cost for implementing the regulation. Please indicate if the cost provided is the cost of the program.**

<u>Current Fiscal Year (2008)</u>		<u>Next Fiscal Year (2009)</u>	
General Revenue:	N/A	General Revenue:	N/A
Federal Funds:	N/A	Federal Funds:	N/A
Cash Funds:	N/A	Cash Funds:	N/A
Special Revenue:	N/A	Special Revenue:	N/A
Other (Identify):	N/A	Other (Identify):	N/A
Total:	<b>N/A</b>	Total:	<b>N/A</b>

*(This revision is not associated with a federal rule or requirement. Federal funds will not be expended against these program requirements.)*



**4. What is the total estimated cost by fiscal year to any party subject to the proposed, amended, or repealed rule or regulation? Identify the party subject to the proposed regulation, and explain how they are affected.**

<u>Current Fiscal Year (2008)</u>		<u>Next Fiscal Year (2009)</u>	
For each certified consulting firm:		For each certified consulting firm:	
Biennial fee:	\$200.00	Biennial fee:	(paid every other year)
Employee training costs (per employee):	~\$2,300.00	Employee training costs (per continuing employee):	~\$1,500.00
		(per new employee)	~\$2,300.00
		Records maintenance:	~\$500.00
<b>Total:</b>	\$200 plus \$2,300 per employee	<b>Total:</b>	\$700 plus ~\$1,500 to \$2,300 per employee per year

*Estimate reflects the initial certification and renewal fees for each affected company, plus training costs for initial employee certification and continuing education requirements in later years. Approximate amount allocated for maintenance and storage of training records. Based on equivalent certifications in states with similar programs, we estimate approximately 25 to 30 companies may likely be affected by these requirements.*

**5. What is the total estimated cost by fiscal year to the agency to implement this regulation?**

<u>Current Fiscal Year (2008)</u>		<u>Next Fiscal Year (2009)</u>	
Federal Funds:	\$ 0.00	Federal Funds:	\$ 0.00
Special Revenue:	\$80,840.00	Special Revenue:	\$82,861.00
<b>Total:</b>	<b>\$80,840.00</b>	<b>Total:</b>	<b>\$82,861.00</b>

*Estimate includes staffing costs, Department shared resources, and related operational expenses to implement and oversee the statutory program requirements. (Personnel costs calculated at 1.8114 x base salary to account for fringe benefits and shared resources.)*

**EXHIBIT D:**

**Compliance with  
Act 143 of 2007**

## **Compliance with Act 143 of 2007 (formerly Executive Order 05-04)**

Act 143 of 2007 requires that “[b]efore submitting proposed rules for adoption, amendment, or repeal, the agency shall first determine whether the proposed rules affect small businesses.” The agency shall consider “whether a means exists to make the rules less costly for small businesses without compromising the objective of the rules.” If the agency determines that the proposed rule will affect small businesses, the agency must prepare an economic impact statement in accordance with Act 143 of 2007.

The Act is not applicable to rules that are federally mandated, or that substantially codify existing state or federal laws. ADEQ determines that Act 143 of 2007 is not applicable to this proposed rule because the amendments to Regulation No. 32 included in this proposed rulemaking substantially codify existing state law. (Ark. Code of 1987, Ann., § 25-15-302(a)(1)(C)). This proposal amends Regulation No. 32 specifically in order to conform with the requirements of Act 864 of the 2007 General Assembly.

**EXHIBIT E:**

**ENVIRONMENTAL IMPACT/ECONOMIC  
BENEFIT ANALYSIS**

# **ECONOMIC IMPACT/ENVIRONMENTAL BENEFIT ANALYSIS**

*Answer to best of the proponent's ability, as required by ADPCEC Regulation 8,  
Chapter 3.5*

**APC&EC Regulation No. 32  
(Environmental Professional Certification)  
January, 2008 Update**

## **RULE SUMMARY:**

This revision to Regulation No. 32 implements a certification program under the authority of Act 864 of 2007 (Arkansas Code, Ann. §§ 8-7-1401 *et seq.*) for consultants and/or contractors who address investigation and cleanup at properties which have been contaminated by the illicit manufacture of controlled substances, e.g., clandestine drug laboratories. This revision does not have a corresponding federal rule or requirement.

### **STEP 1: DETERMINATION OF ANALYSIS REQUIREMENT (to be included in petition to initiate rulemaking)**

**1A.** Is the proposal expressly addressed by a Federal requirement?

Yes. See 1B.

**No. Economic Impact/Environmental Benefit Analysis is not required.**

**No.**

**1B.** If 1A is YES, is proposed regulation equivalent, or more stringent, or less stringent than federal requirement?

- If equivalent – Economic Impact/Environmental Benefit Analysis is not required
- If more stringent - Economic Impact/Environmental Benefit Analysis is required
- If less stringent - Economic Impact/Environmental Benefit Analysis is not required, but does require federal agency approval prior to adoption if the proposal is part of an authorized state program.

**STEP 2: THE ANALYSIS**  
**(to be included in petition to initiate rulemaking, if required)**

**2A. ECONOMIC IMPACT**

Not Required.  
( )

**2B. ENVIRONMENTAL BENEFIT**

Not Required.  
( )

**EXHIBIT F:**

**ECONOMIC IMPACT STATEMENT:  
REGULATORY FLEXIBILITY**

**ECONOMIC IMPACT STATEMENT  
OF PROPOSED RULES OR REGULATIONS**

EO 05-04: Regulatory Flexibility

**Department:** Dept. of Environmental Quality

**Division:** Hazardous Waste

**Contact Person:** Tom Ezell

**Date:** January 3, 2008

**Contact Phone:** (501) 682-0854

**Contact E-Mail:** [ezell@adeq.state.ar.us](mailto:ezell@adeq.state.ar.us)

**Title or Subject:** **APC&EC Regulation No. 32 (Environmental Professional Certification)**

**Benefits of the Proposed Rule or Regulation**

1. Explain the need for the proposed change(s). Did any complaints motivate you to pursue regulatory action? If so, please explain the nature of such complaints.

As originally adopted, Regulation No. 32 implemented a certification program under the authority of Act 2141 of 2005 (Arkansas Code, Ann. §§ 8-7-1301 *et seq.*) and as amended by Act 1018 of 2007 for consultants who perform environmental site assessments, site investigations and risk assessment in preparation of site cleanup plans, and contractors who actually carry out site cleanups.

This proposal seeks to revise the regulation to implement requirements for the certification of contractors and consultants who address properties which have been contaminated by the presence and/or operation of clandestine drug laboratories, used for the illicit manufacture of controlled substances. This is a program mandated by the Arkansas General Assembly by the passage of Act 864 of 2007.

2. What are the top three benefits of the proposed rule or regulation?

- Maintains the regulation in conformance with authorizing legislation.
- Establishes a consistent process to ensure that contractors and their employees who undertake the investigation and cleanup of clandestine drug laboratories have the necessary knowledge and safety training and equipment to carry out these activities at minimal risk to human health and the environment; and
- Provides a ready reference for the general public for consultants who have been screened and verified as meeting qualifications to undertake such cleanups.

3. What, in your estimation, would be the consequence of taking no action, thereby maintaining the status quo?

The Department will have failed to comply with the General Assembly's requirement to establish and promulgate appropriate standards pursuant to Act 864 and A.C.A. §8-7-1402(a)(1).

4. Describe market-based alternatives or voluntary standards that were considered in place of the proposed regulation and state the reason(s) for not selecting these alternatives.

As this proposal seeks to incorporate specific state statutory revisions into the regulation, market-based or other alternatives were not considered.



### **Impact of Proposed Rule or Regulation**

5. Estimate the cost to state government of collecting information, completing paperwork, filing, recordkeeping, auditing and inspecting associated with this new rule or regulation.

Staff time and effort to implement the requirements of Act 864 of 2007 in this proposed revision would require approximately a full-time equivalent (FTE) for a Program Support Manager (Class Code 909Z, Grade 22, annual salary \$34,021) and approximately ¼ of a full-time equivalent of an Administrative Assistant I (Class code R009, Grade 15, annual salary \$21,446) to receive, review, and process applications, implement the certification program, provide public outreach and assistance for program-specific issues, review site cleanup submittals, and update a web-based listing of certified contractors and contaminated properties. With multipliers (1.8114) to account for fringe benefits and shared resources used by this position in the Department's currently authorized staffing level, as well as travel and training needed to provide the staff with the appropriate skills and experience to effectively oversee program requirements, costs are estimated at approximately \$80,940 for FY 08 and \$82,861 for FY 09.

6. What types of small businesses will be required to comply with the new rule or regulation? Please estimate the number of small businesses affected.

Contractors and consultants (typically small businesses) which perform investigations and cleanup activities at properties which contain clandestine drug laboratories will be required to comply with the qualification criteria and participation in continuing education as set out in this proposed rule. Based on the number of entities which have sought similar certification in other states with similar programs for addressing clandestine laboratories, we estimate that between 25 to 30 small businesses will seek certification under these requirements.

7. Does the proposed regulation create barriers to entry? If so, please describe those barriers and why those barriers are necessary.

These revisions to Regulation No. 32 create minimum standards and criteria which a contractor or consultant must meet in order to provide investigation and cleanup services where the completion of specific cleanup standards would enable the property owner to receive a letter of no-further-action-required and subsequent deletion of the property from a statewide list of contaminated sites. These criteria will ensure that such cleanups will be carried out in a manner that is protective of human health and the environment as well as provide a level of assurance to the property owner and responsible party that the cleanup will be carried out in an appropriate manner.

8. Explain the additional requirements with which small business owners will have to comply and estimate the costs associated with compliance.

Small business owners who request to be certified as clandestine laboratory remediation contractors would pay an application fee of \$200 once every two years to cover the expense of screening their qualifications and maintenance of the list. These consultants and contractors would also incur training costs for each employee who works at a contaminated site to ensure that the employee has received the appropriate training for personal safety and protection while working with hazardous materials as prescribed by federal OSHA regulations under 29 CFR 1910.120, and have received appropriate job-specific training for entering, investigating, and cleaning up a controlled substance contaminated site. The certification standards concurred upon by participant in the stakeholder group used in the development of these proposed regulations include completion of the OSHA 40-hour HAZWOPER course (approximate cost \$1,000 per student), and at least 8 hours of training focused on controlled substance

contamination (approximate cost \$1,300 per student). Each employee is subsequently required to participate in continuing education is controlled substance site remediation, at a minimum completing 8 hours of OSHA HAZWOPER refresher training (approximate cost \$100 per student) and an additional 8 hours of training in the management and remediation of controlled substance contaminated sites (estimated costs \$1,200 per student).

Employers are required to maintain training records for each on-site worker, and submit these as proof of qualification and participation in required continuing education on a biennial basis. Cost of maintaining such records is estimated at approximately \$500 per year.)

9. State whether the regulation contains different requirements for different-sized entities, and explain why this is, or is not, necessary.

The proposed revisions to Regulation No. 32 do not distinguish or provide different levels of regulation based on the size of the regulated party.

10. Describe your understanding of the ability of small business owners to implement changes required by the proposed regulation.

ADEQ does not anticipate any difficulty for small businesses implementing these revised rules. With the exception of requiring specific training in addressing the problems associated with clandestine drug laboratories, existing state and federal regulations require workers handling hazardous substance to be provided and to comply with the OSHA personnel safety requirements at 29 CFR 1910.120. Discussions within the stakeholder group during the development of this proposal indicate that controlled-substance specific training is readily available and affordable from a variety of providers, both in- and out-of-state.

11. How does this rule or regulation compare to similar rules or regulations in other states or the federal government?

The Regulation No. 32 provisions implementing Act 864 of 2007 are consistent with the qualification criteria established in states which have similar programs. In developing these standards, ADEQ staff and the stakeholder group considered corresponding requirements in neighboring state with specific programs (dealing primarily with meth lab cleanups). These states included Kansas, Missouri, Tennessee, and Arizona. The requirements proposed in this revision to Regulation No. 23 are equivalent to and so not provide a disincentive to any regulated entity.

12. Provide a summary of the input your agency has received from small business or small business advocates about the proposed rule or regulation.

In November and December of 2007 ADEQ initiated a series of meetings with stakeholders to evaluate the impact of adopting the regulatory changes included in this proposal. These stakeholders included the Arkansas Department of Health, the Arkansas State Crime Lab, the Arkansas Manufactured Housing Association, the Arkansas Realtors Association, the Arkansas Municipal League, and two consultant firms which currently provide these types of services in Arkansas (Safety & Environmental Associates, Inc. of Little Rock and Meth Lab Cleanup, LLC, of Idaho). The revisions brought forward in this proposal represent the consensus of that stakeholder group.

**ARKANSAS POLLUTION CONTROL  
AND ECOLOGY COMMISSION**

**LOCATION - SUBJECT**

**Regulation No. 32  
Docket No. 08- -R**

**MINUTE ORDER NO. 08 -**

**PAGE 1 OF 4**

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On January 11, 2008, The Arkansas Department of Environmental Quality ("Department") filed a Petition to Amend Regulation No. 32 (Environmental Professional Certification) (hereafter "Petition"). The Petition has been designated as Docket No. 08-00\_-R.

The Commission's Regulations Committee met on January 25, 2008 to review the Petition. Having considered the Petition, the Regulations Committee recommends the Commission institute a rulemaking proceeding to consider amending Regulation No. 23.

1. The Arkansas Department of Environmental Quality ("Department") shall file an original and two (2) copies and a computer disk in Microsoft Word of all materials required under this Minute Order.

2. Persons submitting written public comments shall submit their written comments to the Department. Within ten (10) business days following the adoption or denial of the proposed rule, the Department shall deliver the originals of all comments to the Commission Secretary.

3. A public hearing shall be conducted on February 27, 2008, at 2:00 p.m. in the Commission Room at the Department's offices at 5301 Northshore Drive North Little Rock.

4. The period for receiving all written comments shall conclude ten (10) business days after the date of the public hearing pursuant to Regulation No. 8, Part 3, Section 3.2.3, unless an extension of time is granted.

5. The Department has filed a Statement of Basis and Purpose as required by Regulation No. 8, Part 3, Section 3.6.2(1), (2) and (3) as a component of this proposed rulemaking.

**ARKANSAS POLLUTION CONTROL  
AND ECOLOGY COMMISSION**

**LOCATION - SUBJECT**

**Regulation No. 32  
Docket No. 08-00\_-R**

**MINUTE ORDER NO. 08 -**

**PAGE 2 OF 4**

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6. The Department shall file, not later than April 11, 2008, a proposed Minute Order deciding this matter.

7. The Department shall seek review of the proposed rule from the Joint Interim Committee on Public Health and Welfare and/or from the Joint Interim Committee on Administrative Rules and Regulations.

8. The Regulations Committee will consider this matter at its April 2008 meeting. Members of the Regulations Committee may ask questions of the Department and any person that made oral or written comments. The Regulations Committee will make a recommendation to the Commission.

9. At its regularly scheduled April 2008 meeting, the presentation of oral statements and legal arguments shall be regulated as follows:

a. The Chair of the Commission will permit members of the public to make a statement to the Commission. No more than three (3) minutes will be allowed for each statement. The period for statements will close at the end of one (1) hour, or sooner if all interested persons have completed their statements. The Chair in his discretion, may extend the one (1) hour public comment period.

ARKANSAS POLLUTION CONTROL  
AND ECOLOGY COMMISSION

LOCATION - SUBJECT

Regulation No. 32  
Docket No. 08-00\_-R

MINUTE ORDER NO. 08 -

PAGE 3 OF 4

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b. At the discretion of the Chair, an attorney representing one or more individuals, a corporation or other legal entity may be permitted five (5) minutes in which to address the Commission.

c. Department legal counsel or other designated Department employee will be permitted ten (10) minutes in which to address the Commission.

d. At the conclusion of all comments, the Chairman will call on each Commissioner for the purpose of asking the attorneys or persons sponsoring comments who are present, any questions they may have. Attorneys will not be permitted to respond or ask follow-up questions of any person questioned by a Commissioner.

After each Commissioner has had an opportunity to ask questions, the Chair will entertain a motion on the matter, allow discussion, and call for a vote of the Commission members.

10. The Commission finds the proposed regulation is exempt from Act 143 of 2007 (formerly Executive Order 05-04) because the proposed rule is federally mandated or it codifies existing state or federal law.

ARKANSAS POLLUTION CONTROL  
AND ECOLOGY COMMISSION

LOCATION - SUBJECT

Regulation No. 32  
Docket No. 08-00\_-R

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The Commission accepts the recommendation of the Regulations Committee and initiates the rulemaking proceeding in Docket No. 08-00 -R effective January 25, 2008. The Commission adopts, without modification, the procedural schedule set forth above.

**COMMISSIONERS:**

_____ L. Bengal	_____ J. Shannon
_____ S. Henderson	_____ L. Sickel
_____ D. Hendrix	_____ J. Simpson
_____ C. McGrew	_____ W. Thompson
_____ D. Samples	_____ E. Valdez
_____ T. Schueck	_____ B. White
	_____ R. Young

\_\_\_\_\_ **SUBMITTED BY:** J.R. Benefield **DATE PASSED:** 1/25/2008  
T. Schueck,  
Chairman



Date:  
Comments/Approval:

By:

12. Present proposed final regulation and minute order to the **Commission** for adoption.

Date:  
Comments/Approval:

By:

13. Send two (2) copies of adopted regulation to **Secretary of State** (regulation goes into effect twenty calendar days after filing).

Date mailed:

15. Provide fifteen (15) copies to the **Arkansas State Library**.

16. Formally submit adopted regulation to **EPA** (if necessary) with Governor's submittal letter.  
Date mailed:

17. Provide (1) record and electronic copies to **ADEQ Legal Division** for Department repository.



# **EXHIBIT H:**

## **Scheduling Minute Order**

**ARKANSAS POLLUTION CONTROL  
AND ECOLOGY COMMISSION**

**LOCATION - SUBJECT**

**Regulation No. 32  
Docket No. 08- -R**

**MINUTE ORDER NO. 08 -**

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**ARKANSAS POLLUTION CONTROL  
AND ECOLOGY COMMISSION**

**LOCATION - SUBJECT**

**Regulation No. 32  
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ARKANSAS POLLUTION CONTROL  
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Regulation No. 32  
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ARKANSAS POLLUTION CONTROL  
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LOCATION - SUBJECT

Regulation No. 32  
Docket No. 08-00\_-R

MINUTE ORDER NO. 08 -

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\_\_\_\_\_ **SUBMITTED BY:** J.R. Benefield **DATE PASSED:** 1/25/2008  
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**BEFORE THE ARKANSAS POLLUTION CONTROL AND ECOLOGY  
COMMISSION**

**IN THE MATTER OF AMENDMENTS TO )  
REGULATION NO. 23, HAZARDOUS )  
WASTE MANAGEMENT )**

**DOCKET NO. 08-\_\_\_-R**

**PETITION TO INITIATE RULEMAKING TO AMEND REGULATION NO. 23,  
HAZARDOUS WASTE MANAGEMENT**

The Arkansas Department of Environmental Quality (hereinafter “ADEQ” or the “Department”), for its Petition to Initiate Rulemaking to Amend Regulation No. 23, Hazardous Waste Management, states:

1. The U.S. Environmental Protection Agency has promulgated specific changes to the hazardous waste management regulations (40 CFR Parts 260-279) published in the *Federal Register* between August 5, 2005, and December 31, 2007, which affect the hazardous waste management program implemented by the Department pursuant to the Hazardous Waste Management Act and the Commission’s Regulation No. 23 (Hazardous Waste Management).
2. Specific regulatory amendments to the federal hazardous waste management program which are proposed for incorporation into Regulation No. 23 include the following *Federal Register* notices:
  - (A) **Hazardous Waste Management System; Standardized Permit for RCRA Hazardous Waste Management Facilities; 70 FR 53420-53478, September 8, 2005.** This federal revision allows for a “standardized permit,” which will be available to noncommercial RCRA treatment, storage, and disposal facilities (TSDFs) otherwise subject to RCRA permitting that generate and then store or non-thermally treat hazardous wastes on-site in tanks, containers, or containment buildings. Standardized permits may also be made available to facilities which receive hazardous wastes generated off-site by a generator belonging to the same parent company or under the same



ownership as the receiving facility, and then store or non-thermally treat these wastes in tanks, containers, or containment buildings. Standardized permits would consist of two parts: a set of standard “one-size-fits-all” conditions which apply uniformly to all facilities using a particular treatment or storage process, and a second, facility-specific portion to address any additional, site-specific requirements applicable to the individual facility. The standardized permit is intended to streamline the permitting process by allowing facilities to obtain and modify permits more easily, while still achieving the same level of environmental protectiveness as individual facility permits.

**(B) Revision of Wastewater Treatment Exemptions for Hazardous Waste Mixtures (“Headworks Exemptions”); 70 FR 57784-57785, October 4, 2005.** This federal revision added benzene and 2-ethoxyethanol to the list of solvents whose mixtures with wastewaters are exempted from the definition of hazardous waste under the federal Resource Conservation and Recovery Act and as previously incorporated in Regulation No. 23. Scrubber waters derived from the combustion of any of these exempted solvents also are included in this exemption. This revision also added an option which allows generators to directly measure solvent chemical levels at the headworks of their wastewater treatment system to determine whether the wastewater mixture is exempt from the definition of hazardous waste. Finally, this revision extended the eligibility for and use of the *de minimis* exemption to other listed hazardous wastes (beyond discarded commercial chemical products) and to non-manufacturing facilities.

**(C) National Emission Standards for Hazardous Air Pollutants: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (Phase I Final Replacement Standards and Phase II); 70 FR 59539-59579, October 12, 2005.** This federal revision finalized the national emission standards for hazardous air pollutants (NESHAP) which apply to hazardous waste combustion facilities (HWCs), i.e., hazardous waste-burning incinerators, cement kilns, lightweight aggregate kilns, industrial, commercial, and institutional boilers and process heaters, and hydrochloric acid production furnaces. This is a multimedia rule which affects both air regulations addressed by 40 CFR 63 and hazardous waste requirements in 40 CFR Parts 264, 265, 266, and 270, and which implements Section 112(d) of the federal Clean Air Act by requiring that HWCs meet HAP emission standards reflecting the performance of the maximum achievable control technology (MACT). This is an amendment to previously promulgated HWC MACT requirements (previously adopted by the Commission) which is neither more nor less stringent than existing requirements, in that it makes explicit the requirement to carry out risk assessments and the imposition of permit conditions necessary to ensure protection of human health and the environment available under provisions of the RCRA omnibus authority and its implementing regulations (Regulation No. 23 § 270.32(b)).

**(D) Resource Conservation and Recovery Act Burden Reduction Initiative; 71 FR 16862-16815, April 4, 2006.** This federal revision implements changes to the RCRA hazardous waste management program to reduce the paperwork burden these requirements impose on the states, EPA, and regulated businesses. EPA estimates that *on a national basis*, the total annual hour savings under this rule would range from 22,000 hours to 37,500 hours per year, and total annual cost savings would range from approximately \$2 million to \$3 million. These revisions are expected to streamline information collection requirements. These revisions retain a number of state-specific requirements in sections of the regulation affected by these changes, to include additional training requirements for hazardous waste facility employees at Sections 264.16(f) and 265.16(f), and the requirement that professional engineers who certify specific facility design plans and construction documents be registered by the state of Arkansas.

**(E) Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Removal of Final Rule; 71 FR 35395-35396, June 20, 2006.** This federal revision amends Section 261, Appendix IX is amended to remove a delisting decision for wastewater treatment sludges generated by the Tokusen, USA facility in Conway, Faulkner County. Changes in the production operations at the facility invalidated the conditions of the delisting, and this delisting decision was withdrawn by EPA.

**(F) Hazardous Waste and Used Oil; Corrections to Errors in the Code of Federal Regulations; 71 FR 40258-40280, July 14, 2006.** This federal revision corrected a variety of errors in the federal hazardous waste and used oil regulations, as a result of printing omissions, typographical errors, misspellings, citations to paragraphs and other references that have been deleted or moved to new locations without correcting the citations, and similar mistakes appearing in numerous final rules published in the *Federal Register* over the past several years. This revision does not create any new or additional regulatory requirements for waste handlers or management facilities.

**(G) Hazardous Waste Management System; Modification of the Hazardous Waste Program; Cathode Ray Tubes; 71 FR 42947-42949, July 28, 2006.** This federal revision provides a conditional exemption from the RCRA definition of solid waste for cathode ray tubes (CRTs) and processed glass from CRTs if these items are recycled under the provisions of this rule. This rule is intended to encourage recycling and reuse of used CRTs and CRT glass, and provides clarification of the regulatory status of CRT and electronic waste processing operations such as that performed by Unicor in Texarkana. Adoption and implementation of this rule does not affect the Commission's provisions for managing these items as well as other consumer electronic items as universal wastes (APC&EC Regulation No. 23 § 273.6); the universal waste management standards continue to be an alternative for managing and disposing of these wastes.

3. The Department is proposing the following state-specific revisions to the state-specific provisions of Regulation No. 23:

(A) **Section 264.18(d)** is amended to account for the recent name change of the Arkansas Natural Resource Conservation Commission.

(B) **Section 264.151** is amended to correct typographic errors and clarify specific terms in the various model instruments for financial assurance. These revisions do not otherwise modify the requirements of these documents or create any new or additional requirements.

4. In August through December of 2007, ADEQ initiated a series of meetings with affected stakeholders to evaluate the impact of adopting (or not adopting) the regulatory changes included in this proposal. These stakeholders included the Arkansas Department of Health, the Arkansas Highway and Transportation Department, Arkansas Department of Emergency Management, and the Arkansas Department of Economic Development, in addition to representatives from the Arkansas Environmental Federation, Audubon Society, and the Arkansas Municipal League. The revisions brought forward in this proposal represent the consensus of that stakeholder group.

5. Line-by-line details of the proposed revisions are listed at Exhibit "A." A detailed discussion of each revision is provided in the Statement of Basis and Purpose, Exhibit "F."

6. *Compliance with Act 143 of 2007 (formerly Executive Order 05-0)4:* The Act is not applicable to rules that are federally mandated, or that substantially codify existing state or federal laws. ADEQ determines that Act 143 of 2007 is not applicable to this proposed rule because the amendments to Regulation No. 23 included in this proposed rulemaking substantially codify existing state and federal regulations. (Ark. Code of 1987, Ann., §

25-15-302(a)(1)(C)). An overview of the projected impact of each specific provision proposed for adoption in this regulation is included in the Economic Impact/Environmental Benefit Analysis at Exhibit “D,” and in the Statement of Basis and Purpose at Exhibit “F.”

7. Ryan Benefield, Chief, Hazardous Waste Division, will be available to answer questions concerning this proposed rulemaking. A version of the regulation showing the proposed changes is attached as Exhibit “A” and is hereby incorporated by reference. (Due to the size of Regulation No. 23, only the specific sections to be amended are addressed at Exhibit “A”. These revisions will be incorporated in the whole of the Regulation at the completion of this rulemaking.) The questionnaire for filing proposed rules and regulations with the Arkansas Legislative Council and Joint Interim Committee is attached at Exhibit “B.” The legislative Financial Impact Statement is attached at Exhibit “C.” A statement concerning compliance with the provisions of Act 143 of 2007 is attached at Exhibit “D.” A copy of the completed economic impact/environmental benefit analysis pursuant to Regulation No. 8.3.5.2 is attached at Exhibit “E.” A copy of the initial Statement and Basis of Purpose is attached at Exhibit “F”. A copy of a regulatory flexibility analysis prepared pursuant to E.O. 05-04 and Act 143 of 2007 is attached at Exhibit “G.” A proposed Minute Order which initiates this request is attached at Exhibit “H.”

WHEREFORE, the ADEQ requests that the Commission initiate the rulemaking process, adopt the proposed Minute Order, and promulgate the proposed amendments to Regulation No. 23 for public notice and comment.

Respectfully submitted,

---

J. RYAN BENEFIELD, P.E.  
Chief, Hazardous Waste Division  
Arkansas Department of Environmental Quality  
(501) 682-0831

**EXHIBIT A:**  
**PROPOSED RULE CHANGES**

**DRAFT**

# **ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION**



## **REGULATION No. 23 HAZARDOUS WASTE MANAGEMENT**

**Presented to the  
Pollution Control and Ecology Commission  
on  
January 25, 2008**

**DRAFT**

**DRAFT**



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COMMISSION**

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Provisions of APC&EC Regulation No. 23 (Hazardous Waste Management), dated December 9, 2005, are amended as itemized below:

**Section 3. AMENDMENT AND UPDATE OF REGULATION No. 23 (HAZARDOUS WASTE MANAGEMENT)**

1. **Section 3(b)** is amended to read as follows:

(b) **Incorporations by Reference.** The regulations listed immediately below, 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 Environmental Quality”; and all references to the “U.S. Environmental Protection Agency” or “EPA” shall be considered references to the “Arkansas Department of Environmental Quality”. 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 Regulation 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 Regulation.

**Title 40 Code of Federal Regulations:**

(1) Appendix IX of Part 261 (with the exception of delisting decisions for Arkansas companies; for analogous provisions, see Reg. 23 § 261 Appendix IX);

(2) Appendix IX of Part 266; and

(3) Subpart 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 also APC&EC Regulation No. 8 (Administrative Procedures) for analogous provisions as referenced in § 270 of this Regulation.)

(4) All as adopted as final rules (including “interim final rules” and “technical amendments”) published in the *Federal Register* by the U.S. Environmental Protection Agency on or before ~~July 1, 2005~~ January 1, 2008.

**Section 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL**

2. **Section 260.10** is amended as follows:

a. In the first sentence of paragraph (2) of the definition of “facility” is revised, and the definitions of “Cathode ray tube,” “CRT collector,” “CRT glass manufacturer,” “CRT processing,” and “Performance Track member facility” is added in alphabetical order to read as follows:

b. In the definition of “*Incompatible waste*,” revise the parenthetical phrase “(See Section 265, appendix V, of this chapter for examples.)” to read “(See appendix V of parts 264 and 265 of this chapter for examples.)”;

**§ 260.10 Definitions.**

\*\*\*\*\*

*Facility* \* \* \*

\*\*\*\*\*

(2) For the purpose of implementing corrective action under § 264.101 or 267.101 of this regulation, all contiguous property under the control of the owner or operator seeking a permit under Subtitle C of RCRA *and/or the Arkansas Hazardous Waste Management Act*. This definition also applies to facilities implementing corrective action under RCRA § 3008(h) *or the Arkansas Remedial Action Trust Fund Act*.

\*\*\*\*\*

**Cathode ray tube or CRT means a vacuum tube, composed primarily of glass, which is the visual or video display component of an electronic device. A used, intact CRT means a CRT whose vacuum has not been released. A used, broken CRT means glass removed from its housing or casing whose vacuum has been released.**

\*\*\*\*\*

**CRT collector means a person who receives used, intact CRTs for recycling, repair, resale, or donation.**

**CRT glass manufacturer means an operation or part of an operation that uses a furnace to manufacture CRT glass.**

**CRT processing means conducting all of the following activities:**

- (1) Receiving broken or intact CRTs; and**
- (2) Intentionally breaking intact CRTs or further breaking or separating broken CRTs; and**
- (3) Sorting or otherwise managing glass removed from CRT monitors.**

\*\*\*\*\*

**Performance Track member facility means a facility that has been accepted by EPA for membership in the National Environmental Performance Track Program**

and is still a member of the Program. The National Environmental Performance Track Program is a voluntary, facility based, program for top environmental performers. Facility members must demonstrate a good record of compliance, past success in achieving environmental goals, and commit to future specific quantified environmental goals, environmental management systems, local community outreach, and annual reporting of measurable results.

\*\*\*\*\*

“Incompatible waste” means a hazardous waste which is unsuitable for:

- (1) Placement in a particular device or facility because it may cause corrosion or decay of containment materials (e.g., container inner liners or tank walls); or
- (2) Commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, mists, fumes, or gases, or flammable fumes or gases.

~~(See Section 265, Appendix V, of this regulation for examples.)~~

(See appendix V of parts 264 and 265 of this chapter for examples.)

\*\*\*\*\*

3. Section 260.11 is amended by

- a. Revising the first sentence in paragraph (a), and
- b. Revising paragraph (c)(1), (c)(3)(xxvii), and (d)(1)

to read as follows:

**§ 260.11 References.**

(a) When used in sections 260 through ~~279~~ 268 of this regulation, the following publications are incorporated by reference. These incorporations by reference were approved by the Director of the *Federal Register* pursuant to 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of approval and a notice of any change in these materials will be published in the Federal Register. Copies may be inspected at the Library, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW. (3403T), Washington, DC 20460, libraryhq@epa.gov; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federalregulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federalregulations/ibr_locations.html).

\*\*\*\*\*

(c) \*\*\*

- (1) “APTI Course 415: Control of Gaseous Emissions,” EPA Publication EPA-450/2-81-005, December 1981, IBR approved for §§ 264.1035, 265.1035, 270.24, 270.25, 270.310(d)(3).

\*\*\*\*\*

(3) \*\*\*

(xxvii) Method 9095B, dated November 2004 and in Update IIIB, IBR approved, section 261, appendix IX, and §§ 264.190, 264.314, 265.190, 265.314, 265.1081, 267.190(a), 268.32.

\*\*\*\*\*

(d) \*\*\*

- (1) “Flammable and Combustible Liquids Code” (1977 or 1981), IBR approved for §§ 264.198, 265.198, 267.202(b).

\*\*\*\*\*

4. Section 260.31 is amended by removing paragraph (b)(2) and redesignating paragraphs (b)(3) through (b)(8) as (b)(2) through (b)(7).

**§ 260.31 Standards and criteria for variances from classification as a solid waste.**

\*\*\*\*\*

(b) The Director may grant requests for a variance from classifying as a solid waste those materials that are reclaimed and then reused as feedstock within the original production process in which the materials were generated if the reclamation operation is an essential part of the production process. This determination will be based on the following criteria:

(1) How economically viable the production process would be if it were to use virgin materials, rather than reclaimed materials;

~~(2) The prevalence of the practice on an industry-wide basis;~~

~~(3)(2)~~ The extent to which the material is handled before reclamation to minimize loss;

~~(4)(3)~~ The time periods between generating the material and its reclamation, and between reclamation and return to the original primary production process;

~~(5)(4)~~ The location of the reclamation operation in relation to the production process;

~~(6)(5)~~ Whether the reclaimed material is used for the purpose for which it was originally produced when it is returned to the original process, and whether it is returned to the process in substantially its original form;

~~(7)(6)~~ Whether the person who generates the material also reclaims it;

~~(8)(7)~~ Other relevant factors.

5. In Section 260.40, amend paragraph (a) by revising the citation “§ 261.6(a)(2)(iv)” to read “§ 261.6(a)(2)(iii)”.

**§ 260.40 Additional regulation of certain hazardous waste recycling activities on a case-by-case basis.**

(a) The Director may decide on a case-by-case basis



that persons accumulating or storing the recyclable materials described in ~~§ 261.6(a)(2)(xi)~~ § 261.6(a)(2) (iii) of this regulation should be regulated under § 261.6 (b) and (c) of this regulation. The basis for this decision is that the materials are being accumulated or stored in a manner that does not protect human health and the environment because the materials or their toxic constituents have not been adequately contained, or because the materials being accumulated or stored together are incompatible. In making this decision, the Director will consider the following factors:

\* \* \* \* \*

6. **Section 260.41** introductory text is amended by revising the citation “§ 261.6(a)(2)(iv)” to read “§ 261.6(a)(2)(iii)”.

**§ 260.41 Procedures for case-by-case regulation of hazardous waste recycling activities.**

The Director will use the following procedures when determining whether to regulate hazardous waste recycling activities described in ~~§ 261.6(a)(2)(xi)~~ § 261.6(a)(2)(iii) under the provisions of § 261.6 (b) and (c), rather than under the provisions of subsection F of section 266 of this regulation.

\* \* \* \* \*

**Section 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE**

7. **Section 261.2 (c)(1)(i)** is amended by revising the reference to “Table I” to read “Table 1” (i.e., revise the letter “I” to be the number “1”).

**§ 261.2 Definition of Solid Waste.**

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(i) Materials noted with an “X” in Column 1 of ~~Table I~~ Table 1 are solid wastes when they are:

\* \* \* \* \*

8. **Section 261.3** is amended by revising paragraphs (a)(2)(iv)(A), (a)(2)(iv)(B), (a)(2)(iv)(D), (a)(2)(iv)(F) and (a)(2)(iv)(G) to read as follows:

**261.3 Definition of hazardous waste.**

(a) \* \* \*

(2) \* \* \*

(iv) \* \* \*

(A) One or more of the following spent solvents listed in § 261.31—benzene, carbon tetrachloride, tetrachloroethylene, trichloroethylene or the scrubber waters derived from the combustion of these spent solvents—Provided, That the maximum total weekly usage of these solvents (other than the amounts that can be demonstrated not to be discharged to wastewater) divided by the average weekly flow of wastewater into the headworks of the facility’s wastewater treatment or pretreatment system does not exceed 1 part per million, OR the total measured concentration of these solvents entering the headworks of the facility’s wastewater treatment system (at facilities subject to regulation under the Clean Air Act, as amended, at 40 CFR Parts 60, 61, or 63, or at facilities subject to an enforceable limit in a federal operating permit that minimizes fugitive emissions), does not exceed 1 part per million on an average weekly basis. Any facility that uses benzene as a solvent and claims this exemption must use an aerated biological wastewater treatment system and must use only lined surface impoundments or tanks prior to secondary clarification in the wastewater treatment system. Facilities that choose to measure concentration levels must file a copy of their sampling and analysis plan with the Director, as the context requires, or an authorized representative (“Director” as defined in § 270.2 of this regulation). A facility must file a copy of a revised sampling and analysis plan only if the initial plan is rendered inaccurate by changes in the facility’s operations. The sampling and analysis plan must include the monitoring point location (headworks), the sampling frequency and methodology, and a list of constituents to be monitored. A facility is eligible for the direct monitoring option once they receive confirmation that the sampling and analysis plan has been received by the Director. The Director may reject the sampling and analysis plan if he/she finds that, the sampling and analysis plan fails to include the above information; or the plan parameters would not enable the facility to calculate the weekly average concentration of these chemicals accurately. If the Director rejects the sampling and analy-

sis plan or if the Director finds that the facility is not following the sampling and analysis plan, the Director shall notify the facility to cease the use of the direct monitoring option until such time as the bases for rejection are corrected; or

(B) One or more of the following spent solvents listed in § 261.31 – methylene chloride, 1,1,1-trichloroethane, chlorobenzene, o- dichlorobenzene, cresols, cresylic acid, nitrobenzene, toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, spent chlorofluorocarbon solvents, 2-ethoxyethanol, or the scrubber waters derived-from the combustion of these spent solvents—Provided that the maximum total weekly usage of these solvents (other than the amounts that can be demonstrated not to be discharged to wastewater) divided by the average weekly flow of wastewater into the headworks of the facility’s wastewater treatment or pretreatment system does not exceed 25 parts per million, OR the total measured concentration of these solvents entering the headworks of the facility’s wastewater treatment system (at facilities subject to regulation under the Clean Air Act as amended, at 40 CFR parts 60, 61, or 63, or at facilities subject to an enforceable limit in a federal operating permit that minimizes fugitive emissions), does not exceed 25 parts per million on an average weekly basis. Facilities that choose to measure concentration levels must file a copy of their sampling and analysis plan with the Director, or an authorized representative (“Director” as defined in § 270.2). A facility must file a copy of a revised sampling and analysis plan only if the initial plan is rendered inaccurate by changes in the facility’s operations. The sampling and analysis plan must include the monitoring point location (headworks), the sampling frequency and methodology, and a list of constituents to be monitored. A facility is eligible for the direct monitoring option once they receive confirmation that the sampling and analysis plan has been received by the Director. The Director may reject the sampling and analysis plan if he/she finds that, the sampling and analysis plan fails to include the above information; or the plan parameters would not enable the facility to cal-

culate the weekly average concentration of these chemicals accurately. If the Director rejects the sampling and analysis plan or if the Director finds that the facility is not following the sampling and analysis plan, the Director shall notify the facility to cease the use of the direct monitoring option until such time as the bases for rejection are corrected; or

\* \* \* \* \*

(D) A discarded hazardous waste, commercial chemical product, or chemical intermediate listed in § 261.31 through 261.33, arising from de minimis losses of these materials ~~from manufacturing operations in which these materials are used as raw materials or are produced in the manufacturing process.~~ For purposes of this paragraph (a)(2)(iv)(D), de minimis losses ~~include those from~~ are inadvertent releases to a wastewater treatment system, including those from normal material handling operations (e.g., spills from the unloading or transfer of materials from bins or other containers, leaks from pipes, valves or other devices used to transfer materials); minor leaks of process equipment, storage tanks or containers; leaks from well maintained pump packings and seals; sample purgings; relief device discharges; discharges from safety showers and rinsing and cleaning of personal safety equipment; and rinsate from empty containers or from containers that are rendered empty by that rinsing. Any manufacturing facility that claims an exemption for de minimis quantities of wastes listed in §§ 261.31 through 261.32, or any nonmanufacturing facility that claims an exemption for de minimis quantities of wastes listed in subsection D of this section must either have eliminated the discharge of wastewaters or have included in its Clean Water Act permit application or submission to its pretreatment control authority the constituents for which each waste was listed (in Section 261, Appendix VII) of this Regulation; and the constituents in the table “Treatment Standards for Hazardous Wastes” in § 268.40 of this Regulation for which each waste has a treatment standard (i.e., Land Disposal Restriction constituents). A facility is eligible to claim the exemption once the permit writer or control authority has been notified of possible de minimis re-

leases via the Clean Water Act permit application or the pretreatment control authority submission. A copy of the Clean Water permit application or the submission to the pretreatment control authority must be placed in the facility's on-site files; or

\* \* \* \* \*

(F) One or more of the following wastes listed in § 261.32 of this Regulation — wastewaters from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K157)—Provided that the maximum weekly usage of formaldehyde, methyl chloride, methylene chloride, and triethylamine (including all amounts that cannot be demonstrated to be reacted in the process, destroyed through treatment, or is recovered, i.e., what is discharged or volatilized) divided by the average weekly flow of process wastewater prior to any dilution into the headworks of the facility's wastewater treatment system does not exceed a total of 5 parts per million by weight OR the total measured concentration of these chemicals entering the headworks of the facility's wastewater treatment system (at facilities subject to regulation under the Clean Air Act as amended, at 40 CFR Parts 60, 61, or 63, or at facilities subject to an enforceable limit in a federal operating permit that minimizes fugitive emissions), does not exceed 5 parts per million on an average weekly basis. Facilities that choose to measure concentration levels must file copy of their sampling and analysis plan with the Director, as the context requires, or an authorized representative ("Director" as defined in § 270.2). A facility must file a copy of a revised sampling and analysis plan only if the initial plan is rendered inaccurate by changes in the facility's operations. The sampling and analysis plan must include the monitoring point location (headworks), the sampling frequency and methodology, and a list of constituents to be monitored. A facility is eligible for the direct monitoring option once they receive confirmation that the sampling and analysis plan has been received by the Director. The Director may reject the sampling and analysis plan if he/she finds that, the sampling and analysis plan fails to include the above information; or the plan param-

eters would not enable the facility to calculate the weekly average concentration of these chemicals accurately. If the Director rejects the sampling and analysis plan or if the Director finds that the facility is not following the sampling and analysis plan, the Director shall notify the facility to cease the use of the direct monitoring option until such time as the bases for rejection are corrected; or

G) Wastewaters derived from the treatment of one or more of the following wastes listed in § 261.32 of this Regulation – organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K156).—Provided, that the maximum concentration of formaldehyde, methyl chloride, methylene chloride, and triethylamine prior to any dilutions into the headworks of the facility's wastewater treatment system does not exceed a total of 5 milligrams per liter OR the total measured concentration of these chemicals entering the headworks of the facility's wastewater treatment system (at facilities subject to regulation under the Clean Air Act as amended, at 40 CFR Parts 60, 61, or 63, or at facilities subject to an enforceable limit in a federal operating permit that minimizes fugitive emissions), does not exceed 5 milligrams per liter on an average weekly basis. Facilities that choose to measure concentration levels must file copy of their sampling and analysis plan with the Director, as the context requires, or an authorized representative ("Director" as defined in § 270.2). A facility must file a copy of a revised sampling and analysis plan only if the initial plan is rendered inaccurate by changes in the facility's operations. The sampling and analysis plan must include the monitoring point location (headworks), the sampling frequency and methodology, and a list of constituents to be monitored. A facility is eligible for the direct monitoring option once they receive confirmation that the sampling and analysis plan has been received by the Director. The Director may reject the sampling and analysis plan if he/she finds that, the sampling and analysis plan fails to include the



above information; or the plan parameters would not enable the facility to calculate the weekly average concentration of these chemicals accurately. If the Director rejects the sampling and analysis plan or if the Director finds that the facility is not following the sampling and analysis plan, the Director shall notify the facility to cease the use of the direct monitoring option until such time as the bases for rejection are corrected.

\* \* \* \* \*

9. Section 261.4 is revised as follows:

- a. In paragraph (a)(9)(iii)(E) to read as follows:
- b. Adding a new paragraph (a)(22), to read as follows:
- c. In paragraph (b)(6)(ii) introductory text, revise “Specific waste” to read “Specific wastes”;
- d. In paragraph (b)(6)(ii)(D), revise “crome” to read “chrome”;
- e. In paragraph (b)(6)(ii)(F), revise “sludes” to read “sludges”, and revise the word “chrometan” to read “chrome tan”;
- f. In paragraph (b)(9), revise “and wood product” to read “and wood products”;
- g. Amend paragraph (b)(15)(v) by changing “As of” to read “After”.
- h. In paragraph (e)(2)(vi), revise the citation “(e)(v)(C)” to read “(e)(2)(v)(C)”;
- i. In paragraph (f)(9) introductory text to read as follows:

**§ 261.4 Exclusions.**

(a) \* \* \*

(9) \* \* \*

(iii) \* \* \*

(E) Prior to operating pursuant to this exclusion, the plant owner or operator prepares a one-time notification stating that the plant intends to claim the exclusion, giving the date on which the plant intends to begin operating under the exclusion, and containing the following language: “I have read the applicable regulation establishing an exclusion for wood preserving wastewaters and spent wood preserving solutions and understand it requires me to comply at all times with the conditions set out in the regulation.” The plant must maintain a copy of that document in its on-site records in its on-site records ~~for a period of no less than 3 years from the date specified in the notice~~ until closure of the facility. The exclusion applies so long as the plant meets all of the conditions. If the plant goes out of compliance with any con-

dition, it may apply to the Director for reinstatement. The Director may reinstate the exclusion upon finding that the plant has returned to compliance with all conditions and that the violations are not likely to recur.

\* \* \* \* \*

(a) \* \* \*

(22) Used cathode ray tubes (CRTs)

(i) Used, intact CRTs as defined in § 260.10 of this regulation are not solid wastes within the United States unless they are disposed, or unless they are speculatively accumulated as defined in § 261.1(c)(8) by CRT collectors or glass processors.

(ii) Used, intact CRTs as defined in § 260.10 of this regulation are not solid wastes when exported for recycling provided that they meet the requirements of Sec. 261.40.

(iii) Used, broken CRTs as defined in § 260.10 of this regulation are not solid wastes provided that they meet the requirements of § 261.39.

(iv) Glass removed from CRTs is not a solid waste provided that it meets the requirements of § 261.39(c).

\* \* \* \* \*

(b) \* \* \*

(6) \* \* \*

\* \* \* \* \*

(ii) ~~Specific waste~~ Specific wastes which meet the standard in paragraphs (b)(6)(i) (A), (B), and (C) (so long as they do not fail the test for the toxicity characteristic for any other constituent, and do not exhibit any other characteristic) are:

\* \* \* \* \*

(D) Sewer screenings generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/~~chrome~~ chrome tan/retan/wet finish; hair save/ chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

\* \* \* \* \*

(F) Wastewater treatment ~~sludes~~ sludges generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/~~chrometan~~ chrome tan /retan/wet finish; and through-the-blue.

\* \* \* \* \*

(9) Solid waste which consists of discarded arsenical-treated wood or wood products which fails the test for the Toxicity Characteristic for Hazard-

ous Waste Codes D004 through D017 and which is not a hazardous waste for any other reason if the waste is generated by persons who utilize the arsenical-treated wood ~~and wood product~~ and wood products for these materials' intended end use.

\*\*\*\*\*

(v) ~~As of~~ After November 21, 2003, leachate or gas condensate from K176, K177, and K178 is no longer exempt if managed in surface impoundment prior to discharge. After February 26, 2007, leachate or gas

\*\*\*\*\*

(e) \*\*\*

(2) \*\*\*

(vi) The generator reports the information required under paragraph ~~(e)(v)(C)~~ (e)(2)(v)(C) of this section in its annual report.

\*\*\*\*\*

(f) \*\*\*

(9) The facility prepares and submits a report to the Director by March 15 of each year, that ~~estimates the number of studies and the amount of waste expected to be used in treatability studies during the current year, and~~ includes the following information for the previous calendar year:

\*\*\*\*\*

10. **Section 261.6** is amended as follows:

a. In paragraph (a)(2)(i), remove the parenthetical phrase "(subsection C)" and add "(Section 266, subsection C)" in its place;

b. In paragraph (a)(2)(ii), remove the parenthetical phrase "(subsection H)" and add "(Section 266, subsection H)" in its place;

c. In paragraph (a)(2)(iii), remove the parenthetical phrase "(subsection F)" and add "(Section 266, subsection F)" in its place;

d. In paragraph (a)(2)(iv), remove the parenthetical phrase "(subsection G)" and add "(Section 266, Subsection G)" in its place;

e. In paragraph (c)(2), revise the word "rcycled" to read "recycled".

**§ 261.6 Requirements for recyclable materials.**

(a) \*\*\*

(2) \*\*\*

(i) Recyclable materials used in a manner constituting disposal ~~(subsection C)~~ (§ 266, subsection C);

\*\*\*\*\*

(ii) Hazardous wastes burned for energy recovery in boilers and industrial furnaces that are not regulated under subsection O of section 264 or 265 of this regulation ~~(subsection~~

~~H)~~ (§ 266, subsection H);

\*\*\*\*\*

(iii) Recyclable materials from which precious metals are reclaimed ~~(subsection F)~~ (§ 266, subsection F);

\*\*\*\*\*

(iv) Spent lead-acid batteries that are being reclaimed ~~(subsection G)~~ (§ 266, subsection G).

\*\*\*\*\*

(c) \*\*\*

(2) Owners or operators of facilities that recycle recyclable materials without storing them before they are ~~reycled~~ recycled are subject to the following requirements, except as provided in paragraph (a) of this section:

\*\*\*\*\*

11. **Section 261.7(a)(1)** is revised to read as follows:

**§ 261.7 Residues of hazardous waste in empty containers.**

(a)(1) Any hazardous waste remaining in either:

- (i) an empty container; or
- (ii) an inner liner removed from an empty container, as defined in paragraph (b) of this section, is not subject to regulation under sections 261 through 265, ~~or Section 267~~, 268, 270 of this Regulation or 40 CFR 124, or to the notification requirements of section 3010 of RCRA.

\*\*\*\*\*

12. **Section 261.21** is amended by revising paragraphs (a)(3) and (a)(4) and adding notes 1 through 4 to the end of the section to read as follows:

**§ 261.21 Characteristic of ignitability.**

(a) \*\*\*

~~(3) It is a flammable compressed gas as defined in 49 CFR 173.115 and as determined by the test methods described in that regulation or equivalent test methods approved by the Director under §§ 260.20 and 260.21.~~

~~(4) It is an oxidizer as defined in 49 CFR 173.127.~~

(3) It is an ignitable compressed gas.

(i) The term "compressed gas" shall designate any material or mixture having in the container an absolute pressure exceeding 40 p.s.i. at 70 °F or, regardless of the pressure at 70 degrees F, having an absolute pressure exceeding 104 p.s.i. at 130 °F; or any liquid flammable material having a

vapor pressure exceeding 40 p.s.i. absolute at 100 °F as determined by ASTM Test D-323.

(ii) A compressed gas shall be characterized as ignitable if any one of the following occurs:

(A) Either a mixture of 13 percent or less (by volume) with air forms a flammable mixture or the flammable range with air is wider than 12 percent regardless of the lower limit. These limits shall be determined at atmospheric temperature and pressure.

The method of sampling and test procedure shall be acceptable to the Bureau of Explosives and approved by the director, Pipeline and Hazardous Materials Technology, U.S. Department of Transportation (see Note 2).

(B) Using the Bureau of Explosives' Flame Projection Apparatus (see Note 1), the flame projects more than 18 inches beyond the ignition source with valve opened fully, or, the flame flashes back and burns at the valve with any degree of valve opening.

(C) Using the Bureau of Explosives' Open Drum Apparatus (see Note 1), there is any significant propagation of flame away from the ignition source.

(D) Using the Bureau of Explosives' Closed Drum Apparatus (see Note 1), there is any explosion of the vapor-air mixture in the drum.

~~(4) It is an oxidizer as defined in 49 CFR 173.127.~~

(4) It is an oxidizer. An oxidizer for the purpose of this subchapter is a substance such as a chlorate, permanganate, inorganic peroxide, or a nitrate, that yields oxygen readily to stimulate the combustion of organic matter (see Note 4).

(i) An organic compound containing the bivalent -O-O- structure and which may be considered a derivative of hydrogen peroxide where one or more of the hydrogen atoms have been replaced by organic radicals must be classed as an organic peroxide unless:

(A) The material meets the definition of a Class A explosive or a Class B explosive, as defined in § 261.23(a)(8), in which case it must be classed as an explosive, (B) The material is forbidden to be offered for transportation according to 49 CFR 172.101 and 49 CFR 173.21, (C) It is determined that the predominant hazard of the material containing an organic peroxide is other

than that of an organic peroxide, or (D) According to data on file with the Pipeline and Hazardous Materials Safety Administration in the U.S. Department of Transportation (see Note 3), it has been determined that the material does not present a hazard in transportation.

\*\*\*\*\*

Note 1: A description of the Bureau of Explosives' Flame Projection Apparatus, Open Drum Apparatus, Closed Drum Apparatus, and method of tests may be procured from the Bureau of Explosives.

Note 2: As part of a U.S. Department of Transportation (DOT) reorganization, the Office of Hazardous Materials Technology (OHMT), which was the office listed in the 1980 publication of 49 CFR 173.300 for the purposes of approving sampling and test procedures for a flammable gas, ceased operations on February 20, 2005. OHMT programs have moved to the Pipeline and Hazardous Materials Safety Administration (PHMSA) in the DOT.

Note 3: As part of a U.S. Department of Transportation (DOT) reorganization, the Research and Special Programs Administration (RSPA), which was the office listed in the 1980 publication of 49 CFR 173.151a for the purposes of determining that a material does not present a hazard in transport, ceased operations on February 20, 2005. RSPA programs have moved to the Pipeline and Hazardous Materials Safety Administration (PHMSA) in the DOT.

Note 4: The DOT regulatory definition of an oxidizer was contained in § 173.151 of 49 CFR, and the definition of an organic peroxide was contained in paragraph 173.151a. An organic peroxide is a type of oxidizer.

\*\*\*\*\*

13. In Section 261.24, amend paragraph (b) by revising the reference to "Table I" to read "Table 1" (i.e., replace the letter "I" with the number "1").

**§ 261.24 Toxicity characteristic.**

\*\*\*\*\*

(b) A solid waste that exhibits the characteristic of toxicity has the EPA Hazardous Waste Number specified in ~~Table I~~ **Table 1** which corresponds to the toxic contaminant causing it to be hazardous.

\*\*\*\*\*

14. In Section 261.31(a), amend the Table by adding a footnote at the bottom to read as follows: "\* (I,T) should be used to specify mixtures that are ignitable and contain toxic constituents.".

**§ 261.31 Hazardous wastes from non-specific sources.**

(a) \*\*\*

FOOTNOTE: \*(I,T) should be used to specify mixtures containing ignitable and toxic constituents.

\*\*\*\*\*

15. In Section 261.32, amend the Table entries for “K107”, “1,1-dimethyl-hydrazine” by deleting the hyphen to read “1,1-dimethylhydrazine”;

**§ 261.32 Hazardous wastes from specific sources.**

\*\*\*\*\*

K107 Column bottoms from product separation from the production of ~~1,1-dimethyl-hydrazine~~ 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazines.(C,T)

\*\*\*\*\*

16. Section 261.33 is amended as follows:

a. In paragraph (e), revise the phrase “are subject to be the” to read “are subject to the”;

b. In paragraph (e), amend the bracketed Comment by adding a sentence at the end, within the brackets, to read as set forth below;

c. Amend paragraph (f) by revising “manufacturing” to read “manufacturing”.

d. In paragraph (f), amend the bracketed Comment by adding a sentence to the end, within the brackets, to read as set forth below.

e. In the table of paragraph (f), add an entry just above the entry for “U227” (in column 1), “79-00-5” (in column 2), and “1,1,2-Trichloroethane” (in column 3) to read as set forth below.

**§ 261.33 Discarded commercial chemical products, off-specification species, container residues, and spill residues thereof.**

\*\*\*\*\*

(e) The commercial chemical products, manufacturing chemical intermediates or off-specification commercial chemical products or manufacturing chemical intermediates referred to in paragraphs (a) through (d) of this section, are identified as acute hazardous wastes (H) and ~~are subject to be the~~ are subject to the small quantity exclusion defined in § 261.5(e).

\*\*\*\*\*

Comment: For the convenience of the regulated community the primary hazardous properties of these materials have been indicated by the letters T (Toxicity), and R (Reactivity). Absence of a letter indicates that the compound only is listed for acute toxicity. Wastes are first listed in alphabetical order by substance and then listed again in numerical order by Hazardous Waste Number.

\*\*\*\*\*

Hazardous waste No.	Chemical Abstracts No	Substance
---------------------	-----------------------	-----------

\*\*\*\*\*

<u>P001</u> .....	<u>1 81-81-2</u>	<u>2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenylbutyl)-, &amp; salts, when present at concentrations greater than 0.3%</u>
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P001 .....

P002 .....

P002 .....

P003 .....

P003 .....

P004 .....

P004 .....

P005 .....

P005 .....

P006 .....

(R,T)

P007 .....

P007 .....

P008 .....

P008 .....

P009 .....

P009 .....

P010 .....

P011 .....

P011 .....

P012 .....

P012 .....

P013 .....

P014 .....

P014 .....

P015 .....

P016 .....

P016 .....

P017 .....

P017 .....

P018 .....

P018 .....

P020 .....

P020 .....

P021 .....

P021 .....

P022 .....

P023 .....

P023 .....

P024 .....

P024 .....

P026 .....

P026 .....

P027 .....

P027 .....

P028 .....

P028 .....

P029 .....

P029 .....

P030 .....

P031 .....

P031 .....

P033 .....

P033 .....

Warfarin, & salts, when present at concentrations greater than 0.3%

Acetamide, -

(aminothioxomethyl)-

1-Acetyl-2-thiourea

Acrolein

2-Propenal

Aldrin

1,4,5,8-

Dimethanonaphthalene,

1,2,3,4,10,10-hexa-chloro-

1,4,4a,5,8,8a,-hexahydro-,

(1-alpha,4alpha,4abeta-

5alpha,8alpha,8abeta)-

Allyl alcohol

2-Propen-1-ol

Aluminum phosphide

5-(Aminomethyl)-3-

isoxazolol

3(2H)-Isoxazolone, 5-

(aminomethyl)-

4-Aminopyridine

4-Pyridinamine

Ammonium picrate (R)

Phenol, 2,4,6-trinitro-,

ammonium salt (R)

Arsenic acid H3 AsO4

Arsenic oxide As2 O3

Arsenic pentoxide

Arsenic oxide As2 O3

Arsenic trioxide

Barium cyanide

Benzenethiol

Thiophenol

Beryllium powder

Dichloromethyl ether

Methane, oxybis(chloro-

Bromoacetone

2-Propanone, 1-bromo-

Brucine

Strychnidin-10-one, 2,3-

dimethoxy-

Dinoseb

Phenol, 2-(1-methyl

propyl)-4,6-dinitro-

Calcium cyanide

Calcium cyanide Ca(CN)2

Carbon disulfide

Acetaldehyde, chloro-

Chloroacetaldehyde

Benzenamine, 4-chloro-

p-Chloroaniline

1-(o-Chlorophenyl)

thiourea

Thiourea, (2-chloro-

phenyl)-

3-Chloropropionitrile

Propanenitrile, 3-chloro-

Benzene, (chloromethyl)-

Benzyl chloride

Copper cyanide

Copper cyanide Cu(CN)

Cyanides (soluble cyanide

salts), not otherwise

specified

Cyanogen

Ethanedinitrile

Cyanogen chloride

Cyanogen chloride (CN)Cl





<a href="#">P081</a> ..... 55-63-0	<a href="#">1,2,3-Propanetriol, trinitrate (R)</a>	<a href="#">P113</a> ..... 1314-32-5	<a href="#">Thallium oxide <math>Tl_2O_3</math></a>
<a href="#">P082</a> ..... 62-75-9	<a href="#">Methanamine, -methyl-N-nitroso-</a>	<a href="#">P114</a> ..... 12039-52-0	<a href="#">Selenious acid, dithallium(1+) salt</a>
<a href="#">P082</a> ..... 62-75-9	<a href="#">N-Nitrosodimethylamine</a>	<a href="#">P114</a> ..... 12039-52-0	<a href="#">Tetraethyldithio pyrophosphate</a>
<a href="#">P084</a> ..... 4549-40-0	<a href="#">N-Nitrosomethyl vinyl amine</a>	<a href="#">P115</a> ..... 7446-18-6	<a href="#">Thiodiphosphoric acid, tetraethyl ester</a>
<a href="#">P084</a> ..... 4549-40-0	<a href="#">Vinylamine, -methyl-N-nitroso-</a>	<a href="#">P115</a> ..... 7446-18-6	<a href="#">Plumbane, tetraethyl-</a>
<a href="#">P085</a> ..... 152-16-9	<a href="#">Diphosphoramidate, octamethyl-</a>	<a href="#">P116</a> ..... 79-19-6	<a href="#">Tetraethyl lead</a>
<a href="#">P085</a> ..... 152-16-9	<a href="#">Octamethylpyrophosphoramide</a>	<a href="#">P116</a> ..... 79-19-6	<a href="#">Thiosemicarbazide</a>
<a href="#">P087</a> ..... 20816-12-0	<a href="#">Osmium oxide <math>OsO_4</math>, (T-4)-</a>	<a href="#">P118</a> ..... 75-70-7	<a href="#">Methanethiol, trichloro-</a>
<a href="#">P087</a> ..... 20816-12-0	<a href="#">Osmium tetroxide</a>	<a href="#">P118</a> ..... 75-70-7	<a href="#">Trichloromethanethiol</a>
<a href="#">P088</a> ..... 145-73-3	<a href="#">Endothall</a>	<a href="#">P119</a> ..... 7803-55-6	<a href="#">Ammonium vanadate</a>
<a href="#">P088</a> ..... 145-73-3	<a href="#">7-Oxabicyclo[2.2.1]heptane-2,3-dicarboxylic acid</a>	<a href="#">P119</a> ..... 7803-55-6	<a href="#">Vanadic acid, ammonium salt</a>
<a href="#">P089</a> ..... 56-38-2	<a href="#">Parathion</a>	<a href="#">P120</a> ..... 1314-62-1	<a href="#">Vanadium oxide <math>V_2O_5</math></a>
<a href="#">P089</a> ..... 56-38-2	<a href="#">Phosphorothioic acid, O,O-diethyl O-(4-nitrophenyl) ester</a>	<a href="#">P120</a> ..... 1314-62-1	<a href="#">Vanadium pentoxide</a>
<a href="#">P092</a> ..... 62-38-4	<a href="#">Mercury, (acetato-O)phenyl-</a>	<a href="#">P121</a> ..... 557-21-1	<a href="#">Zinc cyanide</a>
<a href="#">P092</a> ..... 62-38-4	<a href="#">Phenylmercury acetate</a>	<a href="#">P121</a> ..... 557-21-1	<a href="#">Zinc cyanide <math>Zn(CN)_2</math></a>
<a href="#">P093</a> ..... 103-85-5	<a href="#">Phenylthiourea</a>	<a href="#">P122</a> ..... 1314-84-7	<a href="#">Zinc phosphide <math>Zn_3P_2</math>, when present at concentrations greater than 10% (R,T)</a>
<a href="#">P093</a> ..... 103-85-5	<a href="#">Thiourea, phenyl-</a>	<a href="#">P123</a> ..... 8001-35-2	<a href="#">Toxaphene</a>
<a href="#">P094</a> ..... 298-02-2	<a href="#">Phorate</a>	<a href="#">P127</a> ..... 1563-66-2	<a href="#">7-Benzofuranol, 2,3-dihydro-2,2-dimethyl-, methylcarbamate,</a>
<a href="#">P094</a> ..... 298-02-2	<a href="#">Phosphorodithioic acid, O,O-diethyl S-[(ethylthio)methyl] ester</a>	<a href="#">P127</a> ..... 1563-66-2	<a href="#">Carbofuran</a>
<a href="#">P095</a> ..... 75-44-5	<a href="#">Carbonic dichloride</a>	<a href="#">P128</a> ..... 315-8-4	<a href="#">Mexacarbonate</a>
<a href="#">P095</a> ..... 75-44-5	<a href="#">Phosgene</a>	<a href="#">P128</a> ..... 315-18-4	<a href="#">Phenol, 4-(dimethylamino)-3,5-dimethyl-, methylcarbamate (ester)</a>
<a href="#">P096</a> ..... 7803-51-2	<a href="#">Hydrogen phosphide</a>	<a href="#">P185</a> ..... 26419-73-8	<a href="#">1,3-Dithiolane-2-carboxaldehyde, 2,4-dimethyl-, O-[(methylamino)-carbonyl] oxime,</a>
<a href="#">P096</a> ..... 7803-51-2	<a href="#">Phosphine</a>	<a href="#">P185</a> ..... 26419-73-8	<a href="#">Tirpate</a>
<a href="#">P097</a> ..... 52-85-7	<a href="#">Famphur</a>	<a href="#">P188</a> ..... 57-64-7	<a href="#">Benzoic acid, 2-hydroxy-, compd. with (3aS-cis)-1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethylpyrrolo[2,3-b]indol-5-yl methylcarbamate ester (1:1)</a>
<a href="#">P097</a> ..... 52-85-7	<a href="#">Phosphorothioic acid, O-[4-[(dimethylamino)sulfonyl]phenyl] O,O-dimethyl ester</a>	<a href="#">P188</a> ..... 57-64-7	<a href="#">Physostigmine salicylate</a>
<a href="#">P098</a> ..... 151-50-8	<a href="#">Potassium cyanide</a>	<a href="#">P189</a> ..... 55285-14-8	<a href="#">Carbamic acid, [(dibutylamino)-thio]methyl-, 2,3-dihydro-2,2-dimethyl-7-benzofuranyl ester</a>
<a href="#">P098</a> ..... 151-50-8	<a href="#">Potassium cyanide <math>K(CN)</math></a>	<a href="#">P189</a> ..... 55285-14-8	<a href="#">Carbosulfan</a>
<a href="#">P099</a> ..... 506-61-6	<a href="#">Argentate(1-), bis(cyano-C)-, potassium</a>	<a href="#">P190</a> ..... 1129-41-5	<a href="#">Carbamic acid, methyl-, 3-methylphenyl ester</a>
<a href="#">P099</a> ..... 506-61-6	<a href="#">Potassium silver cyanide</a>	<a href="#">P190</a> ..... 1129-41-5	<a href="#">Metolcarb</a>
<a href="#">P101</a> ..... 107-12-0	<a href="#">Ethyl cyanide</a>	<a href="#">P191</a> ..... 644-64-4	<a href="#">Carbamic acid, dimethyl-, 1-[(dimethylamino)carbonyl]-5-methyl-1H-pyrazol-3-yl ester</a>
<a href="#">P101</a> ..... 107-12-0	<a href="#">Propanenitrile</a>	<a href="#">P191</a> ..... 644-64-4	<a href="#">Dimetilan</a>
<a href="#">P102</a> ..... 107-19-7	<a href="#">Propargyl alcohol</a>	<a href="#">P192</a> ..... 119-38-0	<a href="#">Carbamic acid, dimethyl-, 3-methyl-1-(1-methylethyl)-pyrazol-5-yl ester</a>
<a href="#">P102</a> ..... 107-19-7	<a href="#">2-Propyn-1-ol</a>	<a href="#">P192</a> ..... 119-38-0	<a href="#">Isolan</a>
<a href="#">P103</a> ..... 630-10-4	<a href="#">Selenourea</a>	<a href="#">P194</a> ..... 23135-22-0	<a href="#">Ethanimidthioic acid, 2-(dimethylamino)-N-[(methylamino)carbonyl]oxy]-2-oxo-, methyl ester</a>
<a href="#">P104</a> ..... 506-64-9	<a href="#">Silver cyanide</a>		
<a href="#">P104</a> ..... 506-64-9	<a href="#">Silver cyanide <math>Ag(CN)</math></a>		
<a href="#">P105</a> ..... 26628-22-8	<a href="#">Sodium azide</a>		
<a href="#">P106</a> ..... 143-33-9	<a href="#">Sodium cyanide</a>		
<a href="#">P106</a> ..... 143-33-9	<a href="#">Sodium cyanide <math>Na(CN)</math></a>		
<a href="#">P108</a> ..... 1 157-24-9	<a href="#">Strychnidin-10-one, &amp; salts</a>		
<a href="#">P108</a> ..... 1 157-24-9	<a href="#">Strychnine, &amp; salts</a>		
<a href="#">P109</a> ..... 3689-24-5	<a href="#">Tetraethyldithiopyro phosphate</a>		
<a href="#">P109</a> ..... 3689-24-5	<a href="#">Thiodiphosphoric acid, tetraethyl ester</a>		
<a href="#">P110</a> ..... 78-00-2	<a href="#">Plumbane, tetraethyl-</a>		
<a href="#">P110</a> ..... 78-00-2	<a href="#">Tetraethyl lead</a>		
<a href="#">P111</a> ..... 107-49-3	<a href="#">Diphosphoric acid, tetraethyl ester</a>		
<a href="#">P111</a> ..... 107-49-3	<a href="#">Tetraethyl pyrophosphate</a>		
<a href="#">P112</a> ..... 509-14-8	<a href="#">Methane, tetranitro-(R)</a>		
<a href="#">P112</a> ..... 509-14-8	<a href="#">Tetranitromethane (R)</a>		
<a href="#">P113</a> ..... 1314-32-5	<a href="#">Thallic oxide</a>		



U031 ..... 71-36-3	1-Butanol (I)	U060 ..... 72-54-8	Benzene, 1,1'-(2,2-dichloroethylidene)bis[4-chloro-
U031 ..... 71-36-3	n-Butyl alcohol (I)	U060 ..... 72-54-8	DDD
U032 ..... 13765-19-0	Calcium chromate	U061 ..... 50-29-3	Benzene, 1,1'-(2,2,2-trichloroethylidene)bis[4-chloro-
U032 ..... 13765-19-0	Chromic acid H <sub>2</sub> CrO <sub>4</sub> , calcium salt	U061 ..... 50-29-3	DDT
U033 ..... 353-50-4	Carbonic difluoride	U062 ..... 2303-16-4	Carbamothioic acid, bis(1-methylethyl)-, S-(2,3-dichloro-2-propenyl) ester
U033 ..... 353-50-4	Carbon oxyfluoride (R.T)	U062 ..... 2303-16-4	Diallate
U034 ..... 75-87-6	Acetaldehyde, trichloro-	U063 ..... 53-70-3	Dibenz[a,h]anthracene
U034 ..... 75-87-6	Chloral	U064 ..... 189-55-9	Benzo[rs]t[pentaphene
U035 ..... 305-03-3	Benzenebutanoic acid, 4-[bis(2-chloroethyl)amino]-	U064 ..... 189-55-9	Dibenzo[a,i]pyrene
U035 ..... 305-03-3	Chlorambucil	U066 ..... 96-12-8	1,2-Dibromo-3-chloropropane
U036 ..... 57-74-9	Chlordane, alpha & gamma isomers	U066 ..... 96-12-8	Propane, 1,2-dibromo-3-chloro-
U036 ..... 57-74-9	4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a-hexahydro-	U067 ..... 106-93-4	Ethane, 1,2-dibromo-
U037 ..... 108-90-7	Benzene, chloro-	U067 ..... 106-93-4	Ethylene dibromide
U037 ..... 108-90-7	Chlorobenzene	U068 ..... 74-95-3	Methane, dibromo-
U038 ..... 510-15-6	Benzeneacetic acid, 4-chloro-alpha-(4-chlorophenyl)-alpha-hydroxy-, ethyl ester	U068 ..... 74-95-3	Methylene bromide
U038 ..... 510-15-6	Chlorobenzilate	U069 ..... 84-74-2	1,2-Benzenedicarboxylic acid, dibutyl ester
U039 ..... 59-50-7	p-Chloro-m-cresol	U069 ..... 84-74-2	Dibutyl phthalate
U039 ..... 59-50-7	Phenol, 4-chloro-3-methyl-	U070 ..... 95-50-1	Benzene, 1,2-dichloro-
U041 ..... 106-89-8	Epichlorohydrin	U070 ..... 95-50-1	o-Dichlorobenzene
U041 ..... 106-89-8	Oxirane, (chloromethyl)-	U071 ..... 541-73-1	Benzene, 1,3-dichloro-
U042 ..... 110-75-8	2-Chloroethyl vinyl ether	U071 ..... 541-73-1	m-Dichlorobenzene
U042 ..... 110-75-8	Ethene, (2-chloroethoxy)-	U072 ..... 106-46-7	Benzene, 1,4-dichloro-
U043 ..... 75-01-4	Ethene, chloro-	U072 ..... 106-46-7	p-Dichlorobenzene
U043 ..... 75-01-4	Vinyl chloride	U073 ..... 91-94-1	[1,1'-Biphenyl]-4,4'-diamine, 3,3'-dichloro-
U044 ..... 67-66-3	Chloroform	U073 ..... 91-94-1	3,3'-Dichlorobenzidine
U044 ..... 67-66-3	Methane, trichloro-	U074 ..... 764-41-0	2-Butene, 1,4-dichloro-(I,T)
U045 ..... 74-87-3	Methane, chloro- (I,T)	U074 ..... 764-41-0	1,4-Dichloro-2-butene (I,T)
U045 ..... 74-87-3	Methyl chloride (I,T)	U075 ..... 75-71-8	Dichlorodifluoromethane
U046 ..... 107-30-2	Chloromethyl methyl ether	U075 ..... 75-71-8	Methane, dichlorodifluoro-
U046 ..... 107-30-2	Methane, chloromethoxy-	U076 ..... 75-34-3	Ethane, 1,1-dichloro-
U047 ..... 91-58-7	beta-Chloronaphthalene	U076 ..... 75-34-3	Ethylidene dichloride
U047 ..... 91-58-7	Naphthalene, 2-chloro-	U077 ..... 107-06-2	Ethane, 1,2-dichloro-
U048 ..... 95-57-8	o-Chlorophenol	U077 ..... 107-06-2	Ethylene dichloride
U048 ..... 95-57-8	Phenol, 2-chloro-	U078 ..... 75-35-4	1, 1-Dichloroethylene
U049 ..... 3165-93-3	Benzenamine, 4-chloro-2-methyl-, hydrochloride	U078 ..... 75-35-4	Ethene, 1,1-dichloro-
U049 ..... 3165-93-3	4-Chloro-o-toluidine, hydrochloride	U079 ..... 156-60-5	1,2-Dichloroethylene
U050 ..... 218-01-9	Chrysene	U079 ..... 156-60-5	Ethene, 1,2-dichloro-, (E)-
U051 ..... 1319-77-3	Creosote	U080 ..... 75-09-2	Methane, dichloro-
U052 ..... 1319-77-3	Cresol (Cresylic acid)	U080 ..... 75-09-2	Methylene chloride
U052 ..... 1319-77-3	Phenol, methyl-	U081 ..... 120-83-2	2,4-Dichlorophenol
U053 ..... 4170-30-3	2-Butenal	U081 ..... 120-83-2	Phenol, 2,4-dichloro-
U053 ..... 4170-30-3	Crotonaldehyde	U082 ..... 87-65-0	2,6-Dichlorophenol
U055 ..... 98-82-8	Benzene, (1-methylethyl)-(I)	U082 ..... 87-65-0	Phenol, 2,6-dichloro-
U055 ..... 98-82-8	Cumene (I)	U083 ..... 78-87-5	Propane, 1,2-dichloro-
U056 ..... 110-82-7	Benzene, hexahydro-(I)	U083 ..... 78-87-5	Propylene dichloride
U056 ..... 110-82-7	Cyclohexane (I)	U084 ..... 542-75-6	1,3-Dichloropropene
U057 ..... 108-94-1	Cyclohexanone (I)	U084 ..... 542-75-6	1-Propene, 1,3-dichloro-
U058 ..... 50-18-0	Cyclophosphamide	U085 ..... 1464-53-5	2,2'-Bioxirane
U058 ..... 50-18-0	2H-1,3,2-Oxazaphosphorin-2-amine, N,N-bis(2-chloroethyl)tetrahydro-, 2-oxide	U085 ..... 1464-53-5	1,2:3,4-Diepoxybutane (I,T)
U059 ..... 20830-81-3	Daunomycin	U086 ..... 1615-80-1	N,N'-Diethylhydrazine
U059 ..... 20830-81-3	5,12-Naphthacenedione, 8-acetyl-10-[(3-amino-2,3,6-trideoxy)-alpha-L-lyxo-hexopyranosyl]oxy]-7,8,9,10-tetrahydro-6,8,11-trihydroxy-1-methoxy-, (8S-cis)-	U086 ..... 1615-80-1	Hydrazine, 1,2-diethyl-
		U087 ..... 3288-58-2	O,O-Diethyl S-methyl dithiophosphate
		U087 ..... 3288-58-2	Phosphorodithioic acid, O,O-diethyl S-methyl ester
		U088 ..... 84-66-2	1,2-Benzenedicarboxylic acid, diethyl ester
		U088 ..... 84-66-2	Diethyl phthalate
		U089 ..... 56-53-1	Diethylstilbestrol
		U089 ..... 56-53-1	Phenol, 4,4'-(1,2-diethyl-



U090 ..... 94-58-6	1,2-ethenediyl)bis-, (E)-	U118 ..... 97-63-2	2-Propenoic acid, 2-methyl-, ethyl ester
U090 ..... 94-58-6	1,3-Benzodioxole, 5-propyl-	U119 ..... 62-50-0	Ethyl methanesulfonate
U091 ..... 119-90-4	Dihydrosafrole	U119 ..... 62-50-0	Methanesulfonic acid, ethyl ester
U091 ..... 119-90-4	[1,1'-Biphenyl]-4,4'-diamine, 3,3'-dimethoxy-	U120 ..... 206-44-0	Fluoranthene
U092 ..... 124-40-3	3,3'-Dimethoxybenzidine	U121 ..... 75-69-4	Methane, trichlorofluoro-
U092 ..... 124-40-3	Dimethylamine (I)	U121 ..... 75-69-4	Trichloromonofluoro-methane
U093 ..... 60-11-7	Methanamine, -methyl-(I)	U122 ..... 50-00-0	Formaldehyde
U093 ..... 60-11-7	Benzenamine, N,N-dimethyl-4-(phenylazo)-	U123 ..... 64-18-6	Formic acid (C,T)
U094 ..... 57-97-6	p-Dimethylamino	U124 ..... 110-00-9	Furan (I)
U094 ..... 57-97-6	azobenzene	U124 ..... 110-00-9	Furfuran (I)
U094 ..... 57-97-6	Benz[a]anthracene, 7,12-dimethyl-	U125 ..... 98-01-1	2-Furancarboxaldehyde (I)
U095 ..... 119-93-7	7,12-Dimethylbenz[a]anthracene	U125 ..... 98-01-1	Furfural (I)
U095 ..... 119-93-7	[1,1'-Biphenyl]-4,4'-diamine, 3,3'-dimethyl-	U126 ..... 765-34-4	Glycidylaldehyde
U096 ..... 80-15-9	3,3'-Dimethylbenzidine	U126 ..... 765-34-4	Oxirane-carboxaldehyde
U096 ..... 80-15-9	alpha, alpha-Dimethylbenzylhydroperoxide (R)	U127 ..... 118-74-1	Benzene, hexachloro-
U096 ..... 80-15-9	Hydroperoxide, 1-methyl-1-phenylethyl-(R)	U127 ..... 118-74-1	Hexachlorobenzene
U097 ..... 79-44-7	Carbamic chloride, dimethyl-	U128 ..... 87-68-3	1,3-Butadiene, 1,1,2,3,4,4-hexachloro-
U097 ..... 79-44-7	Dimethylcarbonyl chloride	U128 ..... 87-68-3	Hexachlorobutadiene
U098 ..... 57-14-7	1,1-Dimethylhydrazine	U129 ..... 58-89-9	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1alpha,2alpha,3beta,4alpha,5alpha,6beta)-Lindane
U098 ..... 57-14-7	Hydrazine, 1,1-dimethyl-	U129 ..... 58-89-9	1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-
U099 ..... 540-73-8	1,2-Dimethylhydrazine	U130 ..... 77-47-4	Hexachlorocyclopentadiene
U099 ..... 540-73-8	Hydrazine, 1,2-dimethyl-	U130 ..... 77-47-4	Ethane, hexachloro-
U101 ..... 105-67-9	2,4-Dimethylphenol	U131 ..... 67-72-1	Hexachloroethane
U101 ..... 105-67-9	Phenol, 2,4-dimethyl-	U131 ..... 67-72-1	Hexachlorophene
U102 ..... 131-11-3	1,2-Benzenedicarboxylic acid, dimethyl ester	U132 ..... 70-30-4	Phenol, 2,2'-methylene bis[3,4,6-trichloro-
U102 ..... 131-11-3	Dimethyl phthalate	U132 ..... 70-30-4	Hydrazine (R,T)
U103 ..... 77-78-1	Dimethyl sulfate	U133 ..... 302-01-2	Hydrofluoric acid (C,T)
U103 ..... 77-78-1	Sulfuric acid, dimethyl ester	U134 ..... 7664-39-3	Hydrogen fluoride (C,T)
U105 ..... 121-14-2	Benzene, 1-methyl-2,4-dinitro-	U134 ..... 7664-39-3	Hydrogen sulfide
U105 ..... 121-14-2	2,4-Dinitrotoluene	U135 ..... 7783-06-4	Hydrogen sulfide H <sub>2</sub> S
U106 ..... 606-20-2	Benzene, 2-methyl-1,3-dinitro-	U135 ..... 7783-06-4	Arsinic acid, dimethyl-
U106 ..... 606-20-2	2,6-Dinitrotoluene	U136 ..... 75-60-5	Cacodylic acid
U107 ..... 117-84-0	1,2-Benzenedicarboxylic acid, dioctyl ester	U136 ..... 75-60-5	Indeno[1,2,3-cd]pyrene
U107 ..... 117-84-0	Di-n-octyl phthalate	U137 ..... 193-39-5	Methane, iodo-
U108 ..... 123-91-1	1,4-Diethyleneoxide	U138 ..... 74-88-4	Methyl iodide
U108 ..... 123-91-1	1,4-Dioxane	U138 ..... 74-88-4	Isobutyl alcohol (I,T)
U109 ..... 122-66-7	1,2-Diphenylhydrazine	U140 ..... 78-83-1	1-Propanol, 2-methyl- (I,T)
U109 ..... 122-66-7	Hydrazine, 1,2-diphenyl-	U141 ..... 120-58-1	1,3-Benzodioxole, 5-(1-propenyl)-
U110 ..... 142-84-7	Dipropylamine (I)	U141 ..... 120-58-1	Isosafrole
U110 ..... 142-84-7	1-Propanamine, N-propyl-(I)	U142 ..... 143-50-0	Kepone
U111 ..... 621-64-7	Di-n-propylnitrosamine	U142 ..... 143-50-0	1,3,4-Metheno-2H-cyclobuta[cd]pentalen-2-one, 1,1a,3,3a,4,5,5,5a,5b,6-decachlorooctahydro-
U111 ..... 621-64-7	1-Propanamine, N-nitroso-N-propyl-	U143 ..... 303-34-4	2-Butenoic acid, 2-methyl-, 7-[[2,3-dihydroxy-2-(1-methoxyethyl)-3-methyl-1-oxobutoxy]methyl]-2,3,5,7a-tetrahydro-1H-pyrrolizin-1-yl ester, [1S-[1alpha(Z),7(2S*,3R*),7alpha]]-Lasiocarpine
U112 ..... 141-78-6	Acetic acid ethyl ester (I)	U143 ..... 303-34-4	Acetic acid, lead(2+) salt
U112 ..... 141-78-6	Ethyl acetate (I)	U144 ..... 301-04-2	Lead acetate
U113 ..... 140-88-5	Ethyl acrylate (I)	U144 ..... 301-04-2	Lead phosphate
U113 ..... 140-88-5	2-Propenoic acid, ethyl ester (I)	U145 ..... 7446-27-7	Phosphoric acid, lead(2+) salt (2:3)
U114 ..... 111-54-6	Carbamodithioic acid, 1,2-ethanediybis-, salts & esters	U145 ..... 7446-27-7	Lead, bis(acetato-O)tetrahydroxytri-
U114 ..... 111-54-6	Ethylenebisdithiocarbamic acid, salts & esters	U146 ..... 1335-32-6	Lead subacetate
U115 ..... 75-21-8	Ethylene oxide (I,T)	U146 ..... 1335-32-6	2,5-Furandione
U115 ..... 75-21-8	Oxirane (I,T)	U147 ..... 108-31-6	
U116 ..... 96-45-7	Ethylenethiourea		
U116 ..... 96-45-7	2-Imidazolidinethione		
U117 ..... 60-29-7	Ethane, 1,1'-oxybis-(I)		
U117 ..... 60-29-7	Ethyl ether (I)		
U118 ..... 97-63-2	Ethyl methacrylate		

U147	108-31-6	Maleic anhydride	U174	55-18-5	N-Nitrosodiethylamine
U148	123-33-1	Maleic hydrazide	U176	759-73-9	N-Nitroso-N-ethylurea
U148	123-33-1	3,6-Pyridazinedione, 1,2-dihydro-	U176	759-73-9	Urea, N-ethyl-N-nitroso-
U149	109-77-3	Malononitrile	U177	684-93-5	N-Nitroso-N-methylurea
U149	109-77-3	Propanedinitrile	U177	684-93-5	Urea, N-methyl-N-nitroso-
U150	148-82-3	Melphalan	U178	615-53-2	Carbamic acid, methyl nitroso-, ethyl ester
U150	148-82-3	L-Phenylalanine, 4-[bis(2-chloroethyl)amino]-	U178	615-53-2	N-Nitroso-N-methylurethane
U151	7439-97-6	Mercury	U179	100-75-4	N-Nitrosopiperidine
U152	126-98-7	Methacrylonitrile (I,T)	U179	100-75-4	Piperidine, 1-nitroso-
U152	126-98-7	2-Propenenitrile, 2-methyl- (I,T)	U180	930-55-2	N-Nitrosopyrrolidine
U153	74-93-1	Methanethiol (I,T)	U180	930-55-2	Pyrrolidine, 1-nitroso-
U153	74-93-1	Thiomethanol (I,T)	U181	99-55-8	Benzenamine, 2-methyl-5-nitro-
U154	67-56-1	Methanol (I)	U181	99-55-8 5-	Nitro-o-toluidine
U154	67-56-1	Methyl alcohol (I)	U182	123-63-7	1,3,5-Trioxane, 2,4,6-trimethyl-
U155	91-80-5	1,2-Ethanediamine, N,N-dimethyl-N'-2-pyridinyl-N'-(2-thienylmethyl)-	U182	123-63-7	Paraldehyde
U155	91-80-5	Methapyrilene	U183	608-93-5	Benzene, pentachloro-
U156	79-22-1	Carbonochloridic acid, methyl ester (I,T)	U183	608-93-5	Pentachlorobenzene
U156	79-22-1	Methyl chlorocarbonate (I,T)	U184	76-01-7	Ethane, pentachloro-
U157	56-49-5	Benz[j]aceanthrylene, 1,2-dihydro-3-methyl-	U184	76-01-7	Pentachloroethane
U157	56-49-5	3-Methylcholanthrene	U185	82-68-8	Benzene, pentachloronitro-
U158	101-14-4	Benzenamine, 4,4'-methylenebis[2-chloro-4,4'-Methylenebis(2-chloroaniline)]	U185	82-68-8	Pentachloronitrobenzene (PCNB)
U159	78-93-3	2-Butanone (I,T)	U186	504-60-9	1-Methylbutadiene (I)
U159	78-93-3	Methyl ethyl ketone (MEK) (I,T)	U186	504-60-9	1,3-Pentadiene (I)
U160	1338-23-4	2-Butanone, peroxide (R,T)	U187	62-44-2	Acetamide, -(4-ethoxyphenyl)-
U160	1338-23-4	Methyl ethyl ketone peroxide (R,T)	U187	62-44-2	Phenacetin
U161	108-10-1	Methyl isobutyl ketone (I)	U188	108-95-2	Phenol
U161	108-10-1	4-Methyl-2-pentanone (I)	U189	1314-80-3	Phosphorus sulfide (R)
U161	108-10-1	Pentanol, 4-methyl-	U189	1314-80-3	Sulfur phosphide (R)
U162	80-62-6	Methyl methacrylate (I,T)	U190	85-44-9	1,3-Isobenzofurandione
U162	80-62-6	2-Propenoic acid, 2-methyl-, methyl ester (I,T)	U190	85-44-9	Phthalic anhydride
U163	70-25-7	Guanidine, -methyl-N'-nitro-N-nitroso-	U191	109-06-8	2-Picoline
U163	70-25-7	MNNG	U191	109-06-8	Pyridine, 2-methyl-
U164	56-04-2	Methylthiouracil	U192	23950-58-5	Benzamide, 3,5-dichloro-N-(1,1-dimethyl-2-propynyl)-
U164	56-04-2	4(1H)-Pyrimidinone, 2,3-dihydro-6-methyl-2-thioxo-	U192	23950-58-5	Pronamide
U165	91-20-3	Naphthalene	U193	1120-71-4	1,2-Oxathiolane, 2,2-dioxide
U166	130-15-4	1,4-Naphthalenedione	U193	1120-71-4	1,3-Propane sultone
U166	130-15-4	1,4-Naphthoquinone	U194	107-10-8	1-Propanamine (I,T)
U167	134-32-7	1-Naphthalenamine	U194	107-10-8	n-Propylamine (I,T)
U167	134-32-7	alpha-Naphthylamine	U196	110-86-1	Pyridine
U168	91-59-8	2-Naphthalenamine	U197	106-51-4	p-Benzoquinone
U168	91-59-8	beta-Naphthylamine	U197	106-51-4	2,5-Cyclohexadiene-1,4-dione
U169	98-95-3	Benzene, nitro-	U200	50-55-5	Reserpine
U169	98-95-3	Nitrobenzene (I,T)	U200	50-55-5	Yohimban-16-carboxylic acid, 11,17-dimethoxy-18-[(3,4,5-trimethoxybenzoyl)oxy]-, methyl ester, (3beta,16beta,17alpha,18beta,20alpha)-
U170	100-02-7	p-Nitrophenol	U201	108-46-3	1,3-Benzenediol
U170	100-02-7	Phenol, 4-nitro-	U201	108-46-3	Resorcinol
U171	79-46-9	2-Nitropropane (I,T)	U202	181-07-2	1,2-Benzisothiazol-3(2H)-one, 1,1-dioxide, & salts
U171	79-46-9	Propane, 2-nitro- (I,T)	U202	181-07-2	Saccharin, & salts
U172	924-16-3	1-Butanamine, N-butyl-N-nitroso-	U203	94-59-7	1,3-Benzodioxole, 5-(2-propenyl)-
U172	924-16-3	N-Nitrosodi-n-butylamine	U203	94-59-7	Safrole
U173	1116-54-7	Ethanol, 2,2'-(nitrosoimino)bis-	U204	7783-00-8	Selenious acid
U173	1116-54-7	N-Nitrosodiethanolamine	U204	7783-00-8	Selenium dioxide
U174	55-18-5	Ethanamine, -ethyl-N-nitroso-	U205	7488-56-4	Selenium sulfide
			U205	7488-56-4	Selenium sulfide SeS <sub>2</sub> (R,T)
			U206	18883-66-4	Glucopyranose, 2-deoxy-2-(3-methyl-3-nitrosoureido)-, D-
			U206	18883-66-4	D-Glucose, 2-deoxy-2-

U206 ..... 18883-66-4	[[methylnitroso amino)- carbonyl]amino]- Streptozotocin	U243 ..... 1888-71-7	Hexachloropropene
U207 ..... 95-94-3	Benzene, 1,2,4,5-tetra chloro-	U243 ..... 1888-71-7	1-Propene, 1,1,2,3,3,3- hexachloro-
U207 ..... 95-94-3	1,2,4,5-Tetrachlorobenzene	U244 ..... 137-26-8	Thioperoxydicarbonic diamide [(H <sub>2</sub> N)C(S)] <sub>2</sub> S <sub>2</sub> , tetramethyl-
U208 ..... 630-20-6	Ethane, 1,1,1,2-tetrachloro-	U244 ..... 137-26-8	Thiram
U208 ..... 630-20-6	1,1,1,2-Tetrachloroethane	U246 ..... 506-68-3	Cyanogen bromide (CN)Br
U209 ..... 79-34-5	Ethane, 1,1,2-tetrachloro-	U247 ..... 72-43-5	Benzene, 1,1'-(2,2,2- trichloroethylidene)bis[4- methoxy-
U209 ..... 79-34-5	1,1,2,2-Tetrachloroethane	U247 ..... 72-43-5	Methoxychlor
U210 ..... 127-18-4	Ethene, tetrachloro-	U248 ..... 81-81-2	2H-1-Benzopyran-2-one, 4- hydroxy-3-(3-oxo-1-phenyl- butyl)-, & salts, when present at concentrations of 0.3% or less
U210 ..... 127-18-4	Tetrachloroethylene	U248 ..... 81-81-2	Warfarin, & salts, when present at concentrations of 0.3% or less
U211 ..... 56-23-5	Carbon tetrachloride	U249 ..... 1314-84-7	Zinc phosphide Zn <sub>3</sub> P <sub>2</sub> , when present at concentra- tions of 10% or less
U211 ..... 56-23-5	Methane, tetrachloro-	U271 ..... 17804-35-2	Benomyl
U213 ..... 109-99-9	Furan, tetrahydro-(I)	U271 ..... 17804-35-2	Carbamic acid, [1- (butylamino)carbonyl]-1H- benzimidazol-2-yl]-, methyl ester
U213 ..... 109-99-9	Tetrahydrofuran (I)	U278 ..... 22781-23-3	Bendiocarb
U214 ..... 563-68-8	Acetic acid, thallium(I+) salt	U278 ..... 22781-23-3	1,3-Benzodioxol-4-ol, 2,2- dimethyl-, methyl carbamate
U214 ..... 563-68-8	Thallium(I) acetate	U279 ..... 63-25-2	Carbaryl
U215 ..... 6533-73-9	Carbonic acid, dithallium(I+) salt	U279 ..... 63-25-2	1-Naphthalenol, methyl carbamate
U215 ..... 6533-73-9	Thallium(I) carbonate	U280 ..... 101-27-9	Barban
U216 ..... 7791-12-0	Thallium(I) chloride	U280 ..... 101-27-9	Carbamic acid, (3-chloro phenyl)-, 4-chloro-2-butynyl ester
U216 ..... 7791-12-0	Thallium chloride TICl	U328 ..... 95-53-4	Benzenamine, 2-methyl-
U217 ..... 10102-45-1	Nitric acid, thallium(I+) salt	U328 ..... 95-53-4	o-Toluidine
U217 ..... 10102-45-1	Thallium(I) nitrate	U353 ..... 106-49-0	Benzenamine, 4-methyl-
U218 ..... 62-55-5	Ethanethioamide	U353 ..... 106-49-0	p-Toluidine
U218 ..... 62-55-5	Thioacetamide	U359 ..... 110-80-5	Ethanol, 2-ethoxy-
U219 ..... 62-56-6	Thiourea	U359 ..... 110-80-5	Ethylene glycol monoethyl ether
U220 ..... 108-88-3	Benzene, methyl-	U364 ..... 22961-82-6	Bendiocarb phenol
U220 ..... 108-88-3	Toluene	U364 ..... 22961-82-6	1,3-Benzodioxol-4-ol, 2,2- dimethyl-, 7-Benzofuranol, 2,3- dihydro-2,2-dimethyl- Carbofuran phenol
U221 ..... 25376-45-8	Benzenediamine, ar-methyl-	U367 ..... 1563-38-8	Carbamic acid, 1H- benzimidazol-2-yl, methyl ester
U221 ..... 25376-45-8	Toluenediamine	U367 ..... 1563-38-8	Carbendazim
U222 ..... 636-21-5	Benzenamine, 2-methyl-, hydrochloride	U372 ..... 10605-21-7	Carbamic acid, phenyl-, 1- methylethyl ester
U222 ..... 636-21-5	o-Toluidine hydrochloride	U372 ..... 10605-21-7	Propham
U223 ..... 26471-62-5	Benzene, 1,3- diisocyanatomethyl- (R,T)	U373 ..... 122-42-9	Carbamothioic acid, dipropyl-, S-(phenylmethyl) ester
U223 ..... 26471-62-5	Toluene diisocyanate (R,T)	U373 ..... 122-42-9	Prosulfocarb
U225 ..... 75-25-2	Bromoform	U387 ..... 52888-80-9	Carbamothioic acid, bis(1- methylethyl)-, S-(2,3,3- trichloro-2-propenyl) ester
U225 ..... 75-25-2	Methane, tribromo-	U389 ..... 2303-17-5	Triallate
U226 ..... 71-55-6	Ethane, 1,1,1-trichloro-	U394 ..... 30558-43-1	A2213
U226 ..... 71-55-6	Methyl chloroform	U394 ..... 30558-43-1	Ethanimidothioic acid, 2- (dimethylamino)-N- hydroxy-2-oxo-, methyl ester
U226 ..... 71-55-6	1,1,1-Trichloroethane	U395 ..... 5952-26-1	Diethylene glycol,
U227 ..... 79-00-5	Ethane, 1,1,2-trichloro-		
U227 ..... 79-00-5	1,1,2-Trichloroethane		
U228 ..... 79-01-6	Ethene, trichloro-		
U228 ..... 79-01-6	Trichloroethylene		
U234 ..... 99-35-4	Benzene, 1,3,5-trinitro-		
U234 ..... 99-35-4	1,3,5-Trinitrobenzene (R,T)		
U235 ..... 126-72-7	1-Propanol, 2,3-dibromo-, phosphate (3:1)		
U235 ..... 126-72-7	Tris(2,3-dibromopropyl) phosphate		
U236 ..... 72-57-1	2,7-Naphthalenedisulfonic acid, 3,3'-[(3,3'-dim- ethyl[1,1'-biphenyl]-4,4'- diyl)bis(azo)bis[5-amino-4- hydroxy]-, tetrasodium salt		
U236 ..... 72-57-1	Trypan blue		
U237 ..... 66-75-1	2,4-(1H,3H)- Pyrimidinedione, 5-[bis(2- chloroethyl)amino]-		
U237 ..... 66-75-1	Uracil mustard		
U238 ..... 51-79-6	Carbamic acid, ethyl ester		
U238 ..... 51-79-6	Ethyl carbamate (urethane)		
U239 ..... 1330-20-7	Benzene, dimethyl- (I,T)		
U239 ..... 1330-20-7	Xylene (I)		
U240 ..... 94-75-7	Acetic acid, (2,4-dichloro phenoxy)-, salts & esters		
U240 ..... 94-75-7	2,4-D, salts & esters		

U395 ..... 5952-26-1

U404 ..... 121-44-8

U404 ..... 121-44-8

U409 ..... 23564-05-8

U409 ..... 23564-05-8

U410 ..... 59669-26-0

U410 ..... 59669-26-0

U411 ..... 114-26-1

U411 ..... 114-26-1

See F027 ..... 93-76-5

See F027 ..... 87-86-5

See F027 ..... 87-86-5

See F027 ..... 58-90-2

See F027 ..... 95-95-4

See F027 ..... 88-06-2

See F027 ..... 93-72-1

See F027 ..... 93-72-1

See F027 ..... 93-76-5

See F027 ..... 58-90-2

See F027 ..... 95-95-4

See F027 ..... 88-06-2

dicarbamate

Ethanol, 2,2'-oxybis-, dicarbamate

Ethanamine, N,N-diethyl-Triethylamine

Carbamic acid, [1,2-phenylenebis(iminocarbonothioyl)]bis-, dimethyl ester

Thiophanate-methyl

Ethanimidothioic acid, N,N'-[thiobis(methylimino)carbonyloxy]]bis-, dimethyl ester

Thiodicarb

Phenol, 2-(1-methylethoxy)-, methylcarbamate

Propoxur

Acetic acid, (2,4,5-trichlorophenoxy)-

Pentachlorophenol

Phenol, pentachloro-

Phenol, 2,3,4,6-tetrachloro-

Phenol, 2,4,5-trichloro-

Phenol, 2,4,6-trichloro-

Propanoic acid, 2-(2,4,5-trichlorophenoxy)-

Silvex (2,4,5-TP)

2,4,5-T

2,3,4,6-Tetrachlorophenol

2,4,5-Trichlorophenol

2,4,6-Trichlorophenol

17. **Section 261.38** is revised as follows:

a. Amend the certification statement in paragraph (c)(1)(i)(C)(4) by revising the citation “261.28(c)(10)” to read “Section 261.38(c)(10)”.

b. **Section 261.38** of subsection D is moved to subsection E.

**§ 261.38 Comparable/Syngas Fuel Exclusion.**

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(i) \* \* \*

(C) \* \* \*

(4) The following statement is signed and submitted by the person claiming the exclusion or his authorized representative: Under penalty of criminal and civil prosecution for making or submitting false statements, representations, or omissions, I certify that the requirements of 40 CFR 261.38 have been met for all waste identified in this notification. Copies of the records and information required at ~~40 CFR 261.28(c)(10)~~ **40 CFR 261.38(c)(10)** are available at the comparable/syngas fuel generator’s facility. Based on my inquiry of the indi-

viduals immediately responsible for obtaining the information, the information is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

\* \* \* \* \*

18. **Section 261** is amended by adding Subsection E to read as follows:

**Subsection E— Exclusions/Exemptions**

§ 261.38 Comparable/Syngas Fuel Exclusion.

**§ 261.39 Conditional Exclusion for Used, Broken Cathode Ray Tubes (CRTs) and Processed CRT Glass Undergoing Recycling.**

**§ 261.40 Conditional Exclusion for Used, Intact Cathode Ray Tubes (CRTs) Exported for Recycling.**

**§ 261.41 Notification and Recordkeeping for Used, Intact Cathode Ray Tubes (CRTs) Exported for Reuse.**

**Subsection E—Exclusions/Exemptions**

\* \* \* \* \*

**§ 261.39 Conditional Exclusion for Used, Broken Cathode Ray Tubes (CRTs) and Processed CRT Glass Undergoing Recycling.**

**Used, broken CRTs are not solid wastes if they meet the following conditions:**

**(a) Prior to processing: These materials are not solid wastes if they are destined for recycling and if they meet the following requirements:**

**(1) Storage. The broken CRTs must be either:**

**(i) Stored in a building with a roof, floor, and walls, or**

**(ii) Placed in a container (i.e., a package or a vehicle) that is constructed, filled, and closed to minimize releases to the environment of CRT glass (including fine solid materials).**

**(2) Labeling. Each container in which the used, broken CRT is contained must be labeled or marked clearly with one of the following phrases: “Used cathode ray tube(s)-contains leaded glass ” or “Leaded glass from televisions or computers.” It must also be labeled: “Do not mix with other glass materials.”**

**(3) Transportation. The used, broken CRTs must be transported in a container meeting the requirements of paragraphs (a)(1)(ii) and (2) of this section.**

**(4) Speculative accumulation and use constituting disposal. The used, broken CRTs are sub-**

ject to the limitations on speculative accumulation as defined in paragraph (c)(8) of this section. If they are used in a manner constituting disposal, they must comply with the applicable requirements of Section 266, Subsection C of this regulation instead of the requirements of this section.

(5) Exports. In addition to the applicable conditions specified in paragraphs (a)(1)-(4) of this section, exporters of used, broken CRTs must comply with the following requirements:

(i) Notify EPA of an intended export before the CRTs are scheduled to leave the United States. A complete notification should be submitted sixty (60) days before the initial shipment is intended to be shipped off-site. This notification may cover export activities extending over a twelve (12) month or lesser period. The notification must be in writing, signed by the exporter, and include the following information:

(A) Name, mailing address, telephone number and EPA ID number (if applicable) of the exporter of the CRTs.

(B) The estimated frequency or rate at which the CRTs are to be exported and the period of time over which they are to be exported.

(C) The estimated total quantity of CRTs specified in kilograms.

(D) All points of entry to and departure from each foreign country through which the CRTs will pass.

(E) A description of the means by which each shipment of the CRTs will be transported (e.g., mode of transportation vehicle (air, highway, rail, water, etc.), type(s) of container (drums, boxes, tanks, etc.)).

(F) The name and address of the recycler and any alternate recycler.

(G) A description of the manner in which the CRTs will be recycled in the foreign country that will be receiving the CRTs.

(H) The name of any transit country through which the CRTs will be sent and a description of the approximate length of time the CRTs will remain in such country and the nature of their handling while there.

(ii) Notifications submitted by mail should be sent to the following mailing address: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division,

(Mail Code 2254A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Hand-delivered notifications should be sent to: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, (Mail Code 2254A), Environmental Protection Agency, Ariel Rios Bldg., Room 6144, 1200 Pennsylvania Ave., NW., Washington, DC. In both cases, the following shall be prominently displayed on the front of the envelope: "Attention: Notification of Intent to Export CRTs."

(iii) Upon request by EPA, the exporter shall furnish to EPA any additional information which a receiving country requests in order to respond to a notification.

(iv) EPA will provide a complete notification to the receiving country and any transit countries. A notification is complete when EPA receives a notification which EPA determines satisfies the requirements of paragraph (a)(5)(i) of this section. Where a claim of confidentiality is asserted with respect to any notification information required by paragraph (a)(5)(i) of this section, EPA may find the notification not complete until any such claim is resolved in accordance with 40 CFR 260.2.

(v) The export of CRTs is prohibited unless the receiving country consents to the intended export. When the receiving country consents in writing to the receipt of the CRTs, EPA will forward an Acknowledgment of Consent to Export CRTs to the exporter. Where the receiving country objects to receipt of the CRTs or withdraws a prior consent, EPA will notify the exporter in writing. EPA will also notify the exporter of any responses from transit countries.

(vi) When the conditions specified on the original notification change, the exporter must provide EPA with a written renotification of the change, except for changes to the telephone number in paragraph (a)(5)(i)(A) of this section and decreases in the quantity indicated pursuant to paragraph (a)(5)(i)(C) of this section. The shipment cannot take place until consent of the receiving country to the changes has been obtained (except for changes to information about points of entry and departure and transit countries pursuant to paragraphs (a)(5)(i)(D) and (a)(5)(i)(H) of this section) and the exporter of CRTs receives from EPA a copy of the Acknowledgment of Consent to Export CRTs.



edgment of Consent to Export CRTs reflecting the receiving country's consent to the changes.

(vii) A copy of the Acknowledgment of Consent to Export CRTs must accompany the shipment of CRTs. The shipment must conform to the terms of the Acknowledgment.

(viii) If a shipment of CRTs cannot be delivered for any reason to the recycler or the alternate recycler, the exporter of CRTs must renotify EPA of a change in the conditions of the original notification to allow shipment to a new recycler in accordance with paragraph (a)(5)(vi) of this section and obtain another Acknowledgment of Consent to Export CRTs.

(ix) Exporters must keep copies of notifications and Acknowledgments of Consent to Export CRTs for a period of three years following receipt of the Acknowledgment.

(b) Requirements for used CRT processing: Used, broken CRTs undergoing CRT processing as defined in § 260.10 of this regulation are not solid wastes if they meet the following requirements:

(1) Storage. Used, broken CRTs undergoing processing are subject to the requirement of paragraph (a)(4) of this section.

(2) Processing.

(i) All activities specified in paragraphs (2) and (3) of the definition of "CRT processing" in § 260.10 of this regulation must be performed within a building with a roof, floor, and walls; and

(ii) No activities may be performed that use temperatures high enough to volatilize lead from CRTs.

(c) Processed CRT glass sent to CRT glass making or lead smelting: Glass from used CRTs that is destined for recycling at a CRT glass manufacturer or a lead smelter after processing is not a solid waste unless it is speculatively accumulated as defined in § 261.1(c)(8).

(d) Use constituting disposal: Glass from used CRTs that is used in a manner constituting disposal must comply with the requirements of Section 266, subsection C of this regulation instead of the requirements of this section.

**§ 261.40 Conditional Exclusion for Used, Intact Cathode Ray Tubes (CRTs) Exported for Recycling.**

Used, intact CRTs exported for recycling are not solid wastes if they meet the notice and consent conditions of § 261.39(a)(5), and if they are not speculatively accumulated as defined in § 261.1(c)(8).

**§ 261.41 Notification and Recordkeeping for Used, Intact Cathode Ray Tubes (CRTs) Exported for Reuse.**

(a) Persons who export used, intact CRTs for reuse must send a one-time notification to the Regional Administrator. The notification must include a statement that the notifier plans to export used, intact CRTs for reuse, the notifier's name, address, and EPA ID number (if applicable) and the name and phone number of a contact person.

(b) Persons who export used, intact CRTs for reuse must keep copies of normal business records, such as contracts, demonstrating that each shipment of exported CRTs will be reused. This documentation must be retained for a period of at least three years from the date the CRTs were exported.

**Appendix VII to Section 261—[Amended]**

19. In Section 261 Appendix VII, amend the entries for "F002", "F038", "F039", "K001", and "K073" as follows:

a. In the second column of the "F002" row, revise "trichloroethane" to read "trifluoroethane";

b. In the second column of the "F038" row, add a comma between "benzo(a)pyrene" and "chrysene" to read "benzo(a)pyrene, chrysene";

c. In the second column of the "F039" row, revise the citation "40 CFR 268.43(a)" to read "40 CFR 268.43";

d. In the second column of the "K001" row, revise "creosote" to read "creosote";

e. In the second column of the "K073" row, revise "hexachloroethane" to read "hexachloroethane".

**Appendix VII to Section 261 — Basis for Listing Hazardous Waste**

\* \* \* \* \*

F002 Tetrachloroethylene, methylene chloride, trichloroethylene, 1,1,1-trichloroethane, 1,1,2-trichloroethane, chlorobenzene, 1,1,2-trichloro-1,2,2-trichloroethane ~~trifluoroethane~~ *trifluoroethane*, orthodichlorobenzene, trichlorofluoromethane.

\* \* \* \* \*

F038 Benzene, ~~benzo(a)pyrene-chrysene~~ *benzo(a)pyrene, chrysene*, lead, chromium.

\* \* \* \* \*

F039 All constituents for which treatment standards are specified for multi-source leachate (wastewaters and nonwastewaters) under ~~40 CFR 268.43(a)~~ *40 CFR 268.43*. Table CCW.

\* \* \* \* \*

K001 Pentachlorophenol, phenol, 2-chlorophenol, p-chloro-m-cresol, 2,4-dimethylphenyl, 2,4-dinitrophenol, trichlorophenols, tetrachlorophenols, 2,4-dinitrophenol, ~~creosote~~ *creosote*, chrysene, naphthalene, fluoranthene, benzo(b)fluoranthene, benzo(a)pyrene, indeno(1,2,3-cd)pyrene, benz(a)anthracene, dibenz(a)anthracene, acenaphthalene.

\* \* \* \* \*

K073 Chloroform, carbon tetrachloride, ~~hexachloroethane~~ *hexachloroethane*, trichloroethane, tetrachloroethylene, dichloroethylene, 1,1,2,2-

tetrachloroethane.

\*\*\*\*\*

20. Amend **Section 261 Appendix VIII** by amending the entries for “Allyl chloride”, “Benzidine”, § 1,2-Dichloroethylene”, “Lasiocarpine”, and “Nitrosamines, N.O.S.” to read as follows:

a. In the third column of the “Allyl chloride” row, revise “107-18-6” to read “107-05-1”;

b. In the second column of the “Benzidine” row, amend “-4,41-” by changing the superscript “1” to the symbol “’” to read, “-4,4’-”;

c. In the second column of the “1,2-Dichloroethylene” row, revise “-dichlrol-” to read “-dichloro-”;

d. In the third and fourth columns of the “Lasiocarpine” row, revise “303-34-1” to read “303-34-4”;

e. In the third column of the “Nitrosamines, N.O.S.” row, revise “35576-91-1D” to read “35576-91-1”.

**Appendix VIII — Hazardous Constituents**

\*\*\*\*\*

Allyl chloride	1-Propane, 3-chloro
	<del>107-18-6</del> <u>107-05-1</u>
*****	
Benzidine	[1,1'-Biphenyl]- <del>4,4-</del> <u>4,4'</u> -diamine
92-87-5	U021
*****	
1,2-Dichloroethylene	Ethene, 1,2- <del>dichlrol-</del> <u>dichloro-</u> , (E)-
156-60-5	U079
*****	
Lasiocarpine	2-Butenoic acid, 2-methyl-,
<del>303-34-1</del> <u>303-34-4</u>	U143
	7-[[2,3-dihydroxy-2-(1-methoxyethyl)-3-methyl-1-oxobutoxy]methyl]-
	2,3,5,7atetrahydro-
	1H-pyrrolizin-1-yl ester,
	[1S-[1alpha(Z),7(2S*,3R*),7aalpha]]-

\*\*\*\*\*

Nitrosamines, N.O.S.1

~~35576-91-1D~~35576-91-1

\*\*\*\*\*

21. The entry in **Section 261, Appendix IX** for Tokusen USA, Inc. is removed and revoked as follows:

**Tokusen USA, Inc. Conway, AR**

Dewatered wastewater treatment plant (WWTP) sludge (EPA Hazardous Waste Nos. F006) generated at a maximum annual rate of 670 cubic yards per calendar year after December 31, 2002 and disposed of in a Subtitle D landfill. For the exclusion to be valid, Tokusen must implement a testing program that meets the following Paragraphs:

(1) Delisting Levels: All leachable concentrations for those constituents listed below in (i) and (ii) must not exceed the following levels (mg/l): Tokusen must use an acceptable leaching method, for example SW-846, Method 1311 to measure constituents in the waste leachate, dewatered WWTP sludge

- (i) Inorganic Constituents Antimony-0.360 mg/l; Arsenic-0.0654 mg/l; Barium-51.1 mg/l; Chromium-5.0 mg/l; Cobalt-15.7 mg/l; Copper-7,350 mg/l; Lead-5.0 mg/l; Nickel-19.7 mg/l; Selenium-1.0 mg/l; Silver-2.68 mg/l; Vanadium-14.8

mg/l; Zinc-196 mg/l;

(ii) Organic Constituents 1,4-Dichlorobenzene-3.03 mg/l; Hexachlorobutadiene-0.21 mg/l;

(2) Waste Holding and Handling: Tokusen must store the dewatered WWTP sludge as described in its RCRA permit, or continue to dispose of as hazardous all dewatered WWTP sludge generated, until they have completed verification testing described in Paragraph (3)(A) and (B), as appropriate, and valid analyses show that paragraph (1) is satisfied:

(A) Not used.

(B) Levels of constituents measured in the samples of the dewatered WWTP sludge that do not exceed the levels set forth in Paragraph (1) are non-hazardous. Tokusen can manage and dispose the non-hazardous dewatered WWTP sludge according to all applicable solid waste regulations.

(C) If constituent levels in a sample exceed any of the delisting levels set in Paragraph (1), Tokusen must re-treat the batches of waste used to generate the representative sample until it meets the levels. Tokusen must repeat the analyses of the treated waste.

(D) If the facility has not treated the waste, Tokusen must manage and dispose the waste generated under Subtitle C of RCRA.

(3) Verification Testing Requirements: Tokusen must perform sample collection and analyses, including quality control procedures, using appropriate methods. As applicable to the method-defined parameters concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev.A), 9071B, and 9095B. If the Department and EPA judge the process to be effective under the operating conditions used during the initial verification testing, Tokusen may replace the testing required in Paragraph (3)(A) with the testing required in Paragraph (3)(B). Tokusen must continue to test as specified in Paragraph (3)(A) until and unless notified by EPA and the Department in writing that testing in Paragraph (3)(A) may be replaced by Paragraph (3)(B):

(A) Initial Verification Testing: After EPA and ADEQ grant this final exclusion, Tokusen must do the following:

- (i) Collect and analyze composites of the dewatered WWTP sludge;
- (ii) Make two composites of representative grab samples collected;
- (iii) Analyze the waste, before disposal, for all of the constituents listed in Paragraph 1;
- (iv) Sixty (60) days after this exclusion becomes final, report to EPA and ADEQ the operational and analytical test data, including quality control information.

(B) Subsequent Verification Testing: Following written notification by EPA and the Department, Tokusen may substitute the testing conditions in (3)(B) for (3)(A). Tokusen must continue to monitor operating conditions, and analyze representative samples each quarter of operation during the first year of waste generation using appropriate methods. As applicable to method-defined parameters of concern, analyses requiring the use SW-846 methods incorporated by reference in § 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. The samples must represent the waste generated during the quarter.

(C) Termination of Organic Testing:

- (i) Tokusen must continue testing as required under Paragraph (3)(B) for organic constituents in Paragraph (1)(A)(ii), until the analytical results submitted under Paragraph (3)(B) show a minimum of two consecutive samples below the delisting levels in Paragraph (1)(A)(i), Tokusen may then request that EPA and the Department stop quarterly organic testing. After EPA and ADEQ notify Tokusen in writing, the company may end quar-

terly organic testing:

(ii) Following cancellation of the quarterly testing, Tokusen must continue to test a representative composite sample for all constituents listed in Paragraph (1) annually (by twelve months after final exclusion) using appropriate methods. As applicable to method-defined parameters of concern, analyses requiring the use SW=846 methods incorporated by reference in § 260.11 must be used without substitution. As applicable, the SW=846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B.

(4) Changes in Operating Conditions: If Tokusen significantly changes the process described in its petition or starts any processes that generate(s) the waste that may or could affect the composition or type of waste generated as established under Paragraph (1) (by illustration, but not limitation; changes in equipment or operating conditions of the treatment process); they must notify EPA and the Department in writing; they may no longer handle the waste generated from the new process as nonhazardous until the waste meets the delisting levels set in Paragraph (1) and they have received written approval to do so from EPA and the Department.

(5) Data Submittals: Tokusen must submit the information described below. If Tokusen fails to submit the required data within the specified time or maintain the required records on-site for the specified time, EPA and ADEQ, at their discretion, will consider this sufficient basis to reopen the exclusion as described in Paragraph 6. Tokusen must:

(A) Submit the data obtained through Paragraph 3 to the Region 6 Delisting Program, EPA, 1445 Ross Avenue, Dallas, Texas 75202-2733, Mail Code, (6PD-O) and to the Active Sites Branch, Hazardous Waste Division, ADEQ, 8001 National Drive, Little Rock, AR 72219 within the time specified.

(B) Compile records of operating conditions and analytical data from Paragraph (3), summarized, and maintained on-site for a minimum of five years.

(C) Furnish these records and data when EPA or the State of Arkansas request them for inspection.

(D) A company official having supervisory responsibility should send along with all data a signed copy of the following certification statement, to attest to the truth and accuracy of the data submitted: "Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. If any of this information is determined by EPA or ADEQ in their sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA or ADEQ and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion.

(6) Reopener:

(A) If, anytime after disposal of the delisted waste, Tokusen possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at a level higher than the delisting level allowed by the Director and the Regional Administrator or his delegate in granting the petition, then the facility must report the data, in writing, to the Director and the Regional Administrator or his delegate within 10 days of first possessing or being made aware

of that data:

(B) If the annual testing of the waste does not meet the delisting requirements in Paragraph (1), Tokusen must report the data, in writing, to the Director and the Regional Administrator or his delegate within 10 days of first possessing or being made aware of that data:

(C) If Tokusen fails to submit the information described in paragraphs (5), (6)(A) or (6)(B) or if any other information is received from any source, the Director and/or Regional Administrator or his delegate will make a preliminary determination as to whether the reported information requires Department or Agency action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment.

(D) If the Director, or Regional Administrator or his delegate determines that the reported information does require Department or Agency action, the Director or Regional Administrator or his delegate will notify the facility in writing of the actions the Director, the Regional Administrator or his delegate believe are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed Department or Agency action is not necessary. The facility shall have 10 days from the date of the Director's and/or the Regional Administrator or his delegate's notice to present such information:

(E) Following the receipt of information from the facility described in paragraph (6)(D) or (if no information is presented under paragraph (6)(D)) the initial receipt of information described in paragraphs (5), (6)(A) or (6)(B), the Director or the Regional Administrator or his delegate will issue a final written determination describing the Department and/or Agency actions that are necessary to protect human health or the environment. Any required action described in the Director's or the Regional Administrator or his delegate's determination shall become effective immediately, unless the Director or the Regional Administrator or his delegate provides otherwise.

(7) Notification Requirements: Tokusen must do the following before transporting the delisted waste. Failure to provide this notification will result in a violation of the delisting petition and a possible revocation of the decision:

(A) Provide a one-time written notification to any State Regulatory Agency to which or through which they will transport the delisted waste described above for disposal, 60 days before beginning such activities:

(B) Update the one-time written notification if they ship the delisted waste into a different disposal facility:

## Section 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

22. Section 262.12 is amended by revising paragraph (b) to read as follows:

### § 262.12 EPA identification numbers.

\* \* \* \* \*

(b) A generator who has not received an EPA identification number may obtain one by applying to the Director using the current version of EPA Form 8700-12 (RCRA Subtitle C Site Identification Form) (AR-09-



99R). Upon receiving the request the Director will assign an EPA identification number to the generator.

\*\*\*\*\*

23. Section 262.13 is amended by revising paragraph (f) to read as follows:

§ 262.13 State Requirements for Transportation of Waste from Generators of over 100 kgs per Month.

\*\*\*\*\*

(f). Generators of hazardous wastes newly characterized as TC Toxic using the Toxicity Characteristic Leaching Procedure (TCLP) (40 CFR 261.24) must notify this Department using the current version of EPA Form 8700-12 (RCRA Subtitle C Site Identification Form) (AR-11-91R) and obtain an EPA identification number. Generators who have previously notified the Department of hazardous waste activity and currently have an EPA identification number, but now determine that they produce a TC toxic waste must submit an amended EPA Form 8700-12(AR-09-99R) to the Department notifying that they generate TC toxic wastes in addition to other hazardous wastes previously reported.

\*\*\*\*\*

24. Amend § 262.32(b) after "HAZARDOUS WASTE" paragraph to add Generator's EPA Identification Number \_\_\_\_\_ ." after Generator's Name and Address \_\_\_\_\_ — to read:

§ 262.32 Marking

HAZARDOUS WASTE \* \* \* \* \*
Generator's Name and Address \_\_\_\_\_ .

Generator's EPA Identification Number \_\_\_\_\_ .

Manifest Tracking Number \_\_\_\_\_ .

\*\*\*\*\*

25. Section 262.34 is amended as follows:

a. Amend paragraph (a)(1)(iv) by removing the beginning phrase "The waste is placed in containment buildings" and adding in its place the phrase "In containment buildings".

b. Amend paragraph (j) by adding add "( before or one kg.

§ 262.34 Accumulation time.

\*\*\*\*\*

(a) \* \* \*

(1) \* \* \*

(iv) The waste is placed in containment buildings In containment buildings and the generator complies with subsection DD of § 265, has placed its professional engineer certification that the building complies with the design standards specified in § 265.1101 in the facility's operating record no later than 60 days after the date of initial operation of the unit. After February 18, 1993, certification by an Arkansas-registered professional engineer will be required prior to operation of the unit. The owner or operator shall maintain the following records at the facility:

\*\*\*\*\*

(j) A member of the Performance Track Program who generates 1000 kg or greater of hazardous waste per month (or one kg or more of acute hazardous waste)

\*\*\*\*\*

26. Section 262.53 is amended by revising paragraph (b) to read as follows:

§ 262.53 Notification of intent to export.

\*\*\*\*\*

(b) Notifications submitted by mail should be sent to the following mailing address: Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting, and Data Division (2222A), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Hand-delivered notifications should be sent to: Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting, and Data Division (2222A), Environmental Protection Agency, Ariel Rios Bldg., 12th St. and Pennsylvania Ave., NW., Washington, DC. In both cases, the following shall be prominently displayed on the front of the envelope: "Attention: Notification of Intent to Export."

(b) Notifications submitted by mail should be sent to the following mailing address: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Hand-delivered notifications should be sent to: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, Environmental Protection Agency, Ariel Rios Bldg., Room 6144, 12th St. and Pennsylvania Ave., NW., Washington, DC 20004. In both cases, the following shall be prominently displayed on the front of the envelope: "Attention: Notification of Intent to Export."

\*\*\*\*\*

27. Section 262.54 is amended at paragraph (c) by revising "Special Handling Instructions and Additional Informa-

tion” to read “International Shipments block”.

§ 262.54 Special manifest requirements.

\*\*\*\*\*

(c) In ~~Special Handling Instructions and Additional Information~~ International Shipments block, the primary exporter must check the export box and enter the point of exit (city and State) from the United States;

\*\*\*\*\*

28. Section 262.56 is amended by revising paragraph (b) to read as follows:

§ 262.56 Annual reports.

\*\*\*\*\*

~~(b) Annual reports submitted by mail should be sent to the following mailing address: Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting, and Data Division (2222A), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Hand-delivered reports should be sent to: Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting, and Data Division (2222A), Environmental Protection Agency, Ariel Rios Bldg., 12th St. and Pennsylvania Ave., NW., Washington, DC.~~

(b) Annual reports submitted by mail should be sent to the following mailing address: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Hand-delivered reports should be sent to: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, Environmental Protection Agency, Ariel Rios Bldg., Room 6144, 12th St. and Pennsylvania Ave., NW., Washington, DC 20004.

\*\*\*\*\*

29. Section 262.58 is amended by revising paragraph (a)(1) to read as follows:

§ 262.58 International Agreements.

(a) \*\*\*

~~(1) For the purposes of this Subsection, the designated OECD countries consist of Australia, Austria, Belgium, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, United Kingdom, and the United States:~~

(1) For the purposes of Subsection H, the designated OECD Member countries consist of Australia, Austria, Belgium, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hun-

gary, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Poland, Portugal, the Slovak Republic, South Korea, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States.

\*\*\*\*\*

30. Section 262.81 is amended at paragraph (k) by revising “RCRA Information Center (RIC), 1235 Jefferson-Davis Highway, first floor, Arlington, VA 22203” to read “RCRA Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC 20460”.

§ 262.81 Definitions.

\*\*\*\*\*

(k) “Recovery operations” means activities leading to resource recovery, recycling, reclamation, direct re-use or alternative uses as listed in Table 2.B of the Annex of OECD Council Decision C(88)90(Final) of 27 May 1988, (available from the Environmental Protection Agency, RCRA Information Center (RIC), 1235 ~~Jefferson-Davis Highway, first floor, Arlington, VA 22203~~ RCRA Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC 20460 (Docket # F-94-IEHF-FFFFF) and the Organisation for Economic Co-operation and Development, Environment Directorate, 2 rue Andre Pascal, 75775 Paris Cedex 16, France) which include:

\*\*\*\*\*

31. In Section 262.82, amend paragraph (a)(1)(ii) by revising the phrase “Green-list waste” to read “Green-list wastes”.

§ 262.82 General conditions.

(a) \*\*\*

(1) \*\*\*

(ii) ~~Green-list waste~~ Green-list wastes that are sufficiently contaminated or mixed with amber-list wastes, such that the waste or waste mixture is considered hazardous under U.S. national procedures, are subject to amber-list controls.

\*\*\*\*\*

32. Section 262.83 is amended as follows:

a. Amend paragraph (b)(1)(i) by revising “Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A)” to read “Office of Federal Activities, International Compliance Assurance Division (2254A)”.

b. Revise paragraph (b)(2)(i) to read as follows:

§ 262.83 Notification and consent.

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(i) Notification. At least 45 days prior to commencement of the transfrontier movement, the notifier must provide written notification in English of the proposed transfrontier movement to the Office of Enforcement and Compliance Assurance, ~~Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A)~~ Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, with the words “Attention: OECD Export Notification” prominently displayed on the envelope. This notification must include all of the information identified in paragraph (e) of this section. In cases where wastes having similar physical and chemical characteristics, the same United Nations classification, and the same RCRA waste codes are to be sent periodically to the same recovery facility by the same notifier, the notifier may submit one notification of intent to export these wastes in multiple shipments during a period of up to one year.

\* \* \* \* \*

(2) \* \* \*

~~(i) The notifier must provide EPA the information identified in paragraph (e) of this section in English, at least 10 days in advance of commencing shipment to a pre-approved facility. The notification should indicate that the recovery facility is pre-approved, and may apply to a single specific shipment or to multiple shipments as described in paragraph (b)(1)(i) of this section. This information must be sent to the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, with the words “OECD Export Notification— Pre-approved Facility” prominently displayed on the envelope.~~

(i) The notifier must provide EPA the information identified in paragraph (e) of this section in English, at least 10 days in advance of commencing shipment to a pre-approved facility. The notification should indicate that the recovery facility is pre-approved, and may apply to a single specific shipment or to multiple shipments as described in paragraph (b)(1)(i) of this section.

This information must be sent to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, with the words “Attention: OECD Export Notification—Pre-approved Facility” prominently displayed on the envelope.

\* \* \* \* \*

33. Section 262.84 is amended by revising paragraph (e) to read as follows:

§ 262.84 Tracking document.

\* \* \* \* \*

~~(e) Within 3 working days of the receipt of imports subject to this Subsection, the owner or operator of the U.S. recovery facility must send signed copies of the tracking document to the notifier, to the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, and to the competent authorities of the exporting and transit countries:~~

(e) Within three working days of the receipt of imports subject to this Subsection, the owner or operator of the U.S. recovery facility must send signed copies of the tracking document to the notifier, to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and to the competent authorities of the exporting and transit countries.

\* \* \* \* \*

34. Section 262.87 is amended as follows:

a. In paragraph (a) revise “Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A)”, to read, “Office of Federal Activities, International Compliance Assurance Division (2254A)”;

b. Amend paragraph (a)(5) introductory text by inserting a space in “100kg” and “1000kg” to read “100 kg” and “1000 kg”.

§ 262.87 Reporting and recordkeeping.

(a) Annual reports. For all waste movements subject to this Subsection, persons (e.g., notifiers, recognized traders) who meet the definition of primary exporter in § 262.51 shall file an annual report with the Office of Enforcement and Compliance Assurance, ~~Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A)~~ Office of Federal Activities, International Compliance Assurance

Division (2254A), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, no later than March 1 of each year summarizing the types, quantities, frequency, and ultimate destination of all such hazardous waste exported during the previous calendar year. (If the primary exporter is required to file an annual report for waste exports that are not covered under this Subsection, he may include all export information in one report provided the following information on exports of waste destined for recovery within the designated OECD member countries is contained in a separate section). Such reports shall include the following:

\* \* \* \* \*

(5) In even numbered years, for each hazardous waste exported, except for hazardous waste produced by exporters of greater than ~~100kg~~100 kg but less than ~~1000kg~~1000 kg in a calendar month, and except for hazardous waste for which information was already provided pursuant to § 262.41:

\* \* \* \* \*

35. Section 262 Appendix 1 8700-22 is amended by changing the second “III” Instructions for Owners to “IV” as shown below.

**APPENDIX I TO SECTION 262 — UNIFORM HAZARDOUS WASTE MANIFEST AND INSTRUCTIONS (EPA FORMS 8700-22 AND 8700-22A AND THEIR INSTRUCTIONS) U.S. EPA FORM 8700-22**

**~~III.~~IV. INSTRUCTIONS FOR OWNERS AND OPERATORS OF TREATMENT, STORAGE, AND DISPOSAL FACILITIES**

\* \* \* \* \*

**Section 263 — STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE**

36. Section 263.11 is amended by revising paragraph (b) to read as follows:

**§ 263.11 EPA identification number.**

\* \* \* \* \*

(b) A transporter who has not received an EPA identification number may obtain one by applying to the Director (for Arkansas companies) using the current version of EPA Form 8700-12 (RCRA Subtitle C Site Identification Form) (~~AR-11-91R)(Notification of Regulated Waste Activity)~~). Upon receiving the request, the Director will assign an EPA identification number to the transporter.

\* \* \* \* \*

**Section 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES**

37. In § 264.1, amend paragraph (g)(2) by revising “Subsections C, D, F, or G” to read “Subsections C, F, G, or H”; and revise paragraph (j)(1) to read as follows:

**§ 264.1 Purpose, scope, and applicability.**

\* \* \* \* \*

(g) \* \* \*

(2) The owner or operator of a facility managing recyclable materials described in § 261.6(a) (2), (3) and (4) of this regulation (except to the extent that requirements of this Section are referred to in Section 279 or ~~Subsections C, F, or G~~ Subsections C, F, G, or H of Section 266 of this regulation).

\* \* \* \* \*

(j) The requirements of subsections B, C, and D of this Section and § 264.101 do not apply to remediation waste management sites. (However, some remediation waste management sites may be a part of a facility that is subject to a traditional RCRA permit because the facility is also treating, storing or disposing of hazardous wastes that are not remediation wastes. In these cases, Subsections B, C, and D of this Section, and § 264.101 do apply to the facility subject to the traditional RCRA permit.) Instead of the requirements of subsections B, C, and D of this Section, owners or operators of remediation waste management sites must:

(1) Obtain an EPA identification number by applying to the Director using the current version of Arkansas/EPA Form 8700-12 (RCRA Subtitle C Site Identification Form);

\* \* \* \* \*

**Subsection B—General Facility Standards**

38. Section 264.13, is amended at paragraph (b)(7)(iii)(B) by revising the semicolon at the end of the subsection into a colon.

**§ 264.13 General waste analysis.**

\* \* \* \* \*

(b) \* \* \*

(7) \* \* \*

(iii) \* \* \*

~~(B) Where no treatment standards have been established;~~

(B) Where no treatment standards



have been established:

\* \* \* \* \*

39. Section 264.15 is amended by revising paragraph (b)(4) (the comment to paragraph (b)(4) is unchanged), and adding paragraph (b)(5) to read as follows:

**§ 264.15 General inspection requirements.**

\* \* \* \* \*

(b) \* \* \*

(4) The frequency of inspection may vary for the items on the schedule. However, the frequency should be based on the rate of deterioration of the equipment and the probability of an environmental or human health incident if the deterioration, malfunction, or operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, must be inspected daily when in use, except for Performance Track member facilities, that must inspect at least once each month, upon approval by the Director, as described in paragraph (b)(5) of this section. At a minimum, the inspection schedule must include the items and frequencies called for in §§ 264.174, 264.193, 264.195, 264.226, 264.254, 264.278, 264.303, 264.347, 264.602, 264.1033, 264.1052, 264.1053, 264.1058, and 264.1083 through 264.1089 of this Section, where applicable.

\* \* \* \* \*

(5) Performance Track member facilities that choose to reduce their inspection frequency must:

(i) Submit a request for a Class I permit modification with prior approval to the Director. The modification request must identify the facility as a member of the National Environmental Performance Track Program and identify the management units for reduced inspections and the proposed frequency of inspections. The modification request must also specify, in writing, that the reduced inspection frequency will apply for as long as the facility is a Performance Track member facility, and that within seven calendar days of ceasing to be a Performance Track member, the facility will revert to the non-Performance Track inspection frequency. Inspections must be conducted at least once each month.

(ii) Within 60 days, the Director will notify the Performance Track member facility, in writing, if the request is approved, denied, or if an extension to the 60-day deadline is needed. This notice must be placed in the facility's operating record.

The Performance Track member facility should consider the application approved if the Director does not: deny the application; or notify the Performance Track member facility of an extension to the 60-day deadline. In these situations, the Performance Track member facility must adhere to the revised inspection schedule outlined in its request for a Class 1 permit modification and keep a copy of the application in the facility's operating record.

(iii) Any Performance Track member facility that discontinues their membership or is terminated from the program must immediately notify the Director of their change in status. The facility must place in its operating record a dated copy of this notification and revert back to the non-Performance Track inspection frequencies within seven calendar days.

\* \* \* \* \*

40. Section 264.16 is amended by adding new paragraph (a)(4) to read as follows:

**§ 264.16 Personnel training.**

(a) \* \* \*

(4) For facility employees that receive emergency response training pursuant to Occupational Safety and Health Administration (OSHA) regulations 29 CFR 1910.120(p)(8) and 1910.120(q), the facility is not required to provide separate emergency response training pursuant to this section, provided that the overall facility training meets all the requirements of this section.

\* \* \* \* \*

**Subsection D—Contingency Plan and Emergency Procedures**

41. Section 264.52 is amended by revising paragraph (b) to read as follows:

**§ 264.52 Content of contingency plan.**

\* \* \* \* \*

(b) If the owner or operator has already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan in accordance with 40 CFR Part 112, or 40 CFR Part 1510, or some other emergency or contingency plan, he need only amend that plan to incorporate hazardous waste management provisions that are sufficient to comply with the requirements of this section. The owner or operator may develop one contingency plan which meets all regulatory require-

ments. EPA and the Department recommend that the plan be based on the National Response Team’s Integrated Contingency Plan Guidance (“One Plan”). When modifications are made to non-RCRA provisions in an integrated contingency plan, the changes do not trigger the need for a RCRA permit modification.

\*\*\*\*\*

42. Section 264.56 is amended by removing paragraph (i) and redesignating paragraph (j) as paragraph (i).

**§ 264.56 Emergency procedures.**

\*\*\*\*\*

~~(i) The owner or operator must notify the Director, and appropriate State and local authorities, that the facility is in compliance with paragraph (h) of this section before operations are resumed in the affected area(s) of the facility.~~

~~(j)~~(i) The owner or operator must note in the operating record the time, date, and details of any incident that requires implementing the contingency plan. Within 15 days after the incident, he must submit a written report on the incident to the Director. The report must include:

\*\*\*\*\*

**Subsection E—Manifest System, Recordkeeping, and Reporting**

43. Section 264.73 is amended by revising paragraphs (b) introductory text, (b)(1), (b)(2) (the comment to (b)(2) remains unchanged), (b)(6), (b)(8), and (b)(10), and by adding paragraphs (b)(18) and (b)(19) to read as follows:

**§ 264.73 Operating record.**

\*\*\*\*\*

(b) The following information must be recorded, as it becomes available, and maintained in the operating record until closure of the facility:

(1) A description and the quantity of each hazardous waste received, and the method(s) and date(s) of its treatment, storage, or disposal at the facility as required by Appendix I of this section. This information must be maintained in the operating record until closure of the facility;

(2) The location of each hazardous waste within the facility and the quantity at each location. For disposal facilities, the location and quantity of each hazardous waste must be recorded on a map or diagram of each cell or disposal area. For all facilities, this information must include cross-references to specific manifest document numbers, if the waste was accompanied by a manifest. This information must be maintained in the operating record until closure of the facility.

\*\*\*\*\*

(6) Monitoring, testing or analytical data, and

corrective action where required by Subsection F of this Section and §§ 264.19, 264.191, 264.193, 264.195, 264.222, 264.223, 264.226, 264.252-264.254, 264.276, 264.278, 264.280, 264.302-264.304, 264.309, 264.347, 264.602, 264.1034(c)-264.1034(f), 264.1035, 264.1063(d)-264.1063(i), 264.1064, and 264.1082 through 264.1090 of this Section. Maintain in the operating record for three years, except for records and results pertaining to ground-water monitoring and cleanup which must be maintained in the operating record until closure of the facility.

\*\*\*\*\*

(8) All closure cost estimates under § 264.142, and for disposal facilities, all post-closure cost estimates under § 264.144 of this section. This information must be maintained in the operating record until closure of the facility.

\*\*\*\*\*

(10) Records of the quantities and date of placement for each shipment of hazardous waste placed in land disposal units under an extension to the effective date of any land disposal restriction granted pursuant to § 268.5 of this Regulation, a petition pursuant to § 268.6 of this Regulation, or a certification under § 268.8 of this Regulation, and the applicable notice required by a generator under § 268.7(a) of this Regulation. This information must be maintained in the operating record until closure of the facility.

\*\*\*\*\*

(18) Monitoring, testing or analytical data where required by § 264.347 must be maintained in the operating record for five years.

(19) Certifications as required by § 264.196(f) must be maintained in the operating record until closure of the facility.

\*\*\*\*\*

**Subsection F—Releases From Solid Waste Management Units**

44. Amend Section 264.97 as follows:

a. In paragraph (a)(1) introductory text, revise “background water” to read “background ground water”;

b. In paragraph (a)(1)(i), revise “background quality” to read “background ground-water quality”;

**§ 264.97 General groundwater monitoring requirements.**

\*\*\*\*\*

(a) \*\*\*

(1) Represent the quality of ~~background water~~ background ground water that has not been affected by leakage from a regulated unit;

\*\*\*\*\*

(i) A determination of ~~background quality~~

background ground-water quality may include sampling of wells that are not hydraulically upgradient of the waste management area where:

\*\*\*\*\*

45. Amend Section 264.98 as follows:

a. Amend by revising paragraphs (d), (g)(2), and (g)(3) to read as follows:

b. In paragraph (g)(4)(i), revise “concentration or any” to read “concentration of any”.

**§ 264.98 Detection monitoring program.**

\*\*\*\*\*

(d) The Director will specify the frequencies for collecting samples and conducting statistical tests to determine whether there is statistically significant evidence of contamination for any parameter or hazardous constituent specified in the permit under paragraph (a) of this section in accordance with § 264.97(g). A sequence of at least four samples from each well (background and compliance wells) must be collected at least semi-annually during detection monitoring.

\*\*\*\*\*

(g)\*\*\*

(2) Immediately sample the ground water in all monitoring wells and determine whether constituents in the list of Appendix IX of Section 264 are present, and if so, in what concentration. However, the Director, on a discretionary basis, may allow sampling for a site-specific subset of constituents from the Appendix IX list of this section and other representative/related waste constituents.

(3) For any Appendix IX compounds found in the analysis pursuant to paragraph (g)(2) of this section, the owner or operator may resample within one month or at an alternative site-specific schedule approved by the Director and repeat the analysis for those compounds detected. If the results of the second analysis confirm the initial results, then these constituents will form the basis for compliance monitoring. If the owner or operator does not resample for the compounds in paragraph (g)(2) of this section, the hazardous constituents found during this initial Appendix IX analysis will form the basis for compliance monitoring.

\*\*\*\*\*

(g)

(4)

(i) An identification of the ~~concentration or any~~ concentration of any Appendix IX constituent detected in the ground water at each monitoring well at the compliance point;

\*\*\*\*\*

46. Amend Section 264.99 as follows:

a. Amended by revising paragraphs (f) and (g) to read as follows:

b. Amended by paragraph (h)(2) introductory text, by revising the citation “§ 264.98(h)(5)” to read “§ 264.98(g)(5)”.

**§ 264.99 Compliance monitoring program.**

\*\*\*\*\*

(f) The Director will specify the frequencies for collecting samples and conducting statistical tests to determine statistically significant evidence of increased contamination in accordance with § 264.97(g). ~~A sequence of at least four samples from each well (background and compliance wells) must be collected at least semi-annually during the compliance period of the facility.~~

(g) ~~The owner or operator must analyze samples from all monitoring wells at the compliance point for all constituents contained in Appendix IX of Section 264 at least annually to determine whether additional hazardous constituents are present in the uppermost aquifer and, if so, at what concentration, pursuant to procedures in § 264.98(f). If the owner or operator finds Appendix IX constituents in the ground water that are not already identified in the permit as monitoring constituents, the owner or operator may resample within one month and repeat the Appendix IX analysis. If the second analysis confirms the presence of new constituents, the owner or operator must report the concentration of these additional constituents to the Director within seven days after the completion of the second analysis and add them to the monitoring list. If the owner or operator chooses not to resample, then he or she must report the concentrations of these additional constituents to the Director within seven days after completion of the initial analysis and add them to the monitoring list. Annually, the owner or operator must determine whether additional hazardous constituents from Appendix IX of this section, which could possibly be present but are not on the detection monitoring list in the permit, are actually present in the uppermost aquifer and, if so, at what concentration, pursuant to procedures in § 264.98(f). To accomplish this, the owner or operator must consult with the Director to determine on a case-by-case basis: which sample collection event during the year will involve enhanced sampling; the number of monitoring wells at the compliance point to undergo enhanced sampling; the number of samples to be collected from each of these monitoring wells; and, the specific constituents from Appendix IX of this section for which these samples must be analyzed. If the enhanced sampling event indicates that Appendix IX constituents are present in the ground water that are not already identified in the permit as monitoring constituents, the owner or operator may resample within one month or at an alternative site-specific schedule approved by the Director, and repeat the analysis. If the second analysis confirms the presence of new constituents, the owner or operator must report the concentration of these additional~~

constituents to the Director within seven days after the completion of the second analysis and add them to the monitoring list. If the owner or operator chooses not to resample, then he or she must report the concentrations of these additional constituents to the Director within seven days after completion of the initial analysis, and add them to the monitoring list.

(h) \* \* \* \*

(2) Submit to the Director an application for a permit modification to establish a corrective action program meeting the requirements of § 264.100 within 180 days, or within 90 days if an engineering feasibility study has been previously submitted to the Director under ~~§ 264.98(h)(5)~~ 264.98(g)(5). The application must at a minimum include the following information:

\* \* \* \* \*

47. Section 264.100 is amended by revising paragraph (g) to read as follows:

**§ 264.100 Corrective action program.**

\* \* \* \* \*

(g) The owner or operator must report in writing to the Director on the effectiveness of the corrective action program. The owner or operator must submit these reports ~~semi-annually~~ annually.

\* \* \* \* \*

48. In § 264.101, amend paragraph (d) by revising the phrase “This does not apply” to read “This section does not apply”.

**§ 264.101 Corrective action for solid waste management units.**

\* \* \* \* \*

(d) ~~This does not apply~~ This section does not apply to remediation waste management sites unless they are part of a facility subject to a permit for treating, storing or disposing of hazardous wastes that are not remediation wastes.

\* \* \* \* \*

**Subsection G—Closure and Post-Closure**

49. In § 264.112, amend paragraph (b)(8) by revising the citation “264.110(d)” to read “264.110(c)”.

**§ 264.112 Closure plan; amendment of plan.**

\* \* \* \* \*

(b) \* \* \* \*

(8) For facilities where the Director has applied alternative requirements at a regulated unit under §§ 264.90(f), ~~264.110(d)~~ 264.110(c), and/or § 264.140(d), either the alternative requirements applying to the regulated unit, or a reference to the enforceable document containing those alternative requirements.

\* \* \* \* \*

50. Section 264.113 is amended by revising paragraph (e)(5) to read as follows:

**§ 264.113 Closure; time allowed for closure.**

\* \* \* \* \*

(e) \* \* \* \*

(5) During the period of corrective action, the owner or operator shall provide ~~semi-annual~~ annual reports to the Director that describe the progress of the corrective action program, compile all ground-water monitoring data, and evaluate the effect of the continued receipt of non-hazardous wastes on the effectiveness of the corrective action.

\* \* \* \* \*

51. Section 264.115 is revised to read as follows:

**§ 264.115 Certification of closure.**

Within 60 days of completion of closure of each hazardous waste surface impoundment, waste pile, land treatment, and landfill unit, and within 60 days of the completion of final closure, the owner or operator must submit to the Director, by registered mail, a certification that the hazardous waste management unit or facility, as applicable, has been closed in accordance with the specifications in the approved closure plan.. The certification must be signed by the owner or operator and by an independent qualified Arkansas-registered Professional Engineer. Documentation supporting the Professional Engineer’s certification must be furnished to the Director upon request until he releases the owner or operator from the financial assurance requirements for closure under § 264.143(i).

52. Amend Section 264.116 by revising “landfills cells” to read “landfill cells”.

**§ 264.116 Survey plat.**

No later than the submission of the certification of closure of each hazardous waste disposal unit, the owner or operator must submit to the local zoning authority, or the



authority with jurisdiction over local land use, and to the Director, a survey plat indicating the location and dimensions of ~~landfills-cells~~ landfill cells or other hazardous waste disposal units with respect to permanently surveyed benchmarks. This plat must be prepared and certified by a professional land surveyor. The plat filed with the local zoning authority, or the authority with jurisdiction over local land use, must contain a note, prominently displayed, which states the owner's or operator's obligation to restrict disturbance of the hazardous waste disposal unit in accordance with the applicable Subsection G regulations.  
\* \* \* \* \*

53. In Section 264.118, amend paragraph (c) by revising the citation “§ 264.188(b)(3)” to read “§ 264.118(b)(3)”.

**§ 264.118 Post-closure plan; amendment of plan.**  
\* \* \* \* \*

(c) Until final closure of the facility, a copy of the approved post-closure plan must be furnished to the Director upon request, including request by mail. After final closure has been certified, the person or office specified in ~~§ 264.188(b)(3)~~ § 264.118(b)(3) must keep the approved post-closure plan during the remainder of the post-closure period.  
\* \* \* \* \*

54. Section 264.120 is revised to read as follows:

**§ 264.120 Certification of completion of post-closure care.**

No later than 60 days after completion of the established post-closure care period for each hazardous waste disposal unit, the owner or operator must submit to the Director, by registered mail, a certification that the post-closure care period for the hazardous waste disposal unit was performed in accordance with the specifications in the approved post-closure plan. The certification must be signed by the owner or operator and an independent qualified Arkansas-registered Professional Engineer. Documentation supporting the Professional Engineer's certification must be furnished to the Director upon request until he releases the owner or operator from the financial assurance requirements for post-closure care under § 264.145(i).  
\* \* \* \* \*

**Subsection H—Financial Requirements**

55. In § 264.140, amend paragraph (d)(1) by revising the citation “§ 264.110(d)” to read “§ 264.110(c)”.

**§ 264.140 Applicability.**

\* \* \* \* \*

(d) \* \* \*

(1) Prescribes alternative requirements for the regulated unit under § 264.90(f) and/or ~~§ 264.110(d)~~ § 264.110(c); and  
\* \* \* \* \*

56. In § 264.142, amend paragraph (b)(2) by revising “(2)” to read “(2)”.

**§ 264.142 Cost estimate for closure.**  
\* \* \* \* \*

(b) \* \* \*

~~2)~~ (2) Subsequent adjustments are made by multiplying the latest adjusted closure cost estimate by the latest inflation factor.  
\* \* \* \* \*

57. Amend § 264.143 as follows:

- a. In paragraph (b)(7), revise “then the penal sum” to read “than the penal sum”;
- b. In paragraph (b)(8), revise “as evidence by” to read “as evidenced by”;
- c. Amended by revising paragraph (i) to read as follows:

**§ 264.143 Financial assurance for closure.**

\* \* \* \* \*

(b) \* \* \*

(7) Whenever the current closure cost estimate increases to an amount greater ~~then the penal sum~~ than the penal sum, the owner or operator, within 60 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current closure cost estimate and submit evidence of such increase to the Director, or obtain other financial assurance as specified in this section to cover the increase. Whenever the current closure cost estimate decreases, the penal sum may be reduced to the amount of the current closure cost estimate following written approval by the Director.

(8) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Director. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Director, ~~as evidence by~~ as evidenced by the return receipts.  
\* \* \* \* \*

(i) *Release of the owner or operator from the requirements of this section.* Within 60 days after receiving certifications from the owner or operator and an independent qualified Arkansas-registered Professional Engineer that final clo-

sure has been completed in accordance with the approved closure plan, the Director will notify the owner or operator in writing that he is no longer required by this section to maintain financial assurance for final closure of the facility, unless the Director has reason to believe that final closure has not been in accordance with the approved closure plan. The Director shall provide the owner or operator a detailed written statement of any such reason to believe that closure has not been in accordance with the approved closure plan.  
\*\*\*\*\*

58. Section 264.145 is amended as follows:

- a. In paragraph (d)(6), revise “issued in a amount” to read “issued in an amount”;
- b. In paragraph (f)(11) introductory text, revise “for this section” to read “of this section”; and revise “the direct of higher-tier” to read “the direct or higher-tier”.
- c. Amend by revising paragraph (i) to read as follows:

**§ 264.145 Financial assurance for post-closure care.**

\*\*\*\*\*

(d) \*\*\*\*\*

\*\*\*\*\*

(6) The letter of credit must be ~~issued in a amount~~ issued in an amount at least equal to the current post-closure cost estimate, except as provided in § 264.145(g).

\*\*\*\*\*

(f) \*\*\*\*\*

\*\*\*\*\*

(11) An owner or operator may meet the requirements ~~for this section of this section~~ by obtaining a written guarantee. The guarantor must be ~~the direct of higher-tier~~ the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a “substantial business relationship” with the owner or operator. The guarantor must meet the requirements for owners or operators in paragraphs (f)(1) through (9) of this section and must comply with the terms of the guarantee. The wording of the guarantee must be identical to the wording specified in § 264.151(h). A certified copy of the guarantee must accompany the items sent to the Director as specified in paragraph (f)(3) of this section. One of these items must be the letter from the guarantor’s chief financial officer. If the guarantor’s parent corporation is also the parent corporation of the owner or operator, the letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a “substantial business relationship” with the owner or operator, this letter must describe this “substantial business relationship” and the value received

in consideration of the guarantee. The terms of the guarantee must provide that:

\*\*\*\*\*

(i) *Release of the owner or operator from the requirements of this section.* Within 60 days after receiving certifications from the owner or operator and an independent qualified Arkansas-registered Professional Engineer that the post-closure care period has been completed for a hazardous waste disposal unit in accordance with the approved plan, the Director will notify the owner or operator that he is no longer required to maintain financial assurance for post-closure of that unit, unless the Director has reason to believe that post-closure care has not been in accordance with the approved post-closure plan. The Director shall provide the owner or operator a detailed written statement of any such reason to believe that post-closure care has not been in accordance with the approved post-closure plan.

\*\*\*\*\*

59. Section 264.147 is amended as follows:

- a. Amended by revising paragraph (e) to read as follows:
- b. Amend paragraph (h)(1) by revising “letter or credit” to read “letter of credit”.

**§ 264.147 Liability requirements.**

\*\*\*\*\*

(e) *Period of coverage.* Within 60 days after receiving certifications from the owner or operator and an independent qualified Arkansas-registered Professional Engineer that final closure has been completed in accordance with the approved closure plan, the Director will notify the owner or operator in writing that he is no longer required by this section to maintain liability coverage for that facility, unless the Director has reason to believe that closure has not been in accordance with the approved closure plan.

\*\*\*\*\*

60. Section 264.151 is amended as follows:

- a. In paragraph (a), replace all references of “ADEQ Director” with “Director”.
- b. Delete the word “appropriate” in both instances in Section 16.;
- c. In paragraph (b), in the section “Corporate Surety(ies),” remove the bracket (J) after “State of incorporation”;
- d. In paragraph (g), in the fifth paragraph of the LETTER FROM CHIEF FINANCIAL OFFICER, revise ““nonsudden” of” to read ““nonsudden” or”;
- e. In paragraph (g), in Part B, ALTERNATIVE I item 15., remove the comma after the word “If”;
- f. In paragraph (g), in Part B, ALTERNATIVE II item \*7., remove the underline before the “\$”;
- g-h. In paragraph (h)(2), under the section GUARAN-

TEE FOR LIABILITY COVERAGE, in the

second sentence, revise "or which guarantor" to read "of which guarantor"; and revise the phrase "[either 264.141(h)]" to read "[either 264.141(h) or 265.141(h)]";

i. In paragraph (h)(2), under the section RECITALS, item 13.(a), under the subsection CERTIFICATION OF VALID CLAIM, insert a closing bracket (]) after "[Principal's";

j. Add a "space" between Paragraph (c) and paragraph (d);

k. In paragraph (k), in the section IRREVOCABLE STANDBY LETTER OF CREDIT, insert a closing bracket (]) at the end of the phrase after (2) to read "Grantor's facility or group of facilities.]"

l. In paragraph (l), revise the citations "§ 264.147(h) or § 265.147(h)" to read "§ 264.147(i) or § 265.147(i)";

m. In paragraph (m)(1), change the wording of the second paragraph as follows:

n. In paragraph (m)(1), in the CERTIFICATION OF VALID CLAIM Section 8.(c), revise both instances of "depository" to read "depository";

o. In paragraph (m)(1), Section 10., replace "EPA Regional Administrator" with "Director";

p. In paragraph (m)(1), Section 14., replace "EPA" with "the Director";

q. In paragraph (n)(1), change the wording of the second paragraph as follows:

r.-s. In paragraph (n)(1), under STANDBY TRUST AGREEMENT, in Section 3.(c)(1), revise "employee or" to read "employee of";

t. In paragraph (n)(1), Section 12., third sentence, replace the semicolon after "the appointment" with a comma and replace "EPA Regional Administrator" with "Director";

u. In paragraph (n)(1), add a "space" before Section 16;

v. In paragraph (n)(1), Section 16., second sentence, revise "reasonable" to read "reasonably".

§ 264.151 Wording of the instruments.

(a) \* \* \*

Section 4. Payment for Closure and Post-Closure Care. The Trustee shall make payments from the Fund as the ADEQ Director shall direct, in writing, to provide for the payment of the costs of closure and/or post-closure care of the facilities covered by this Agreement. The Trustee shall reimburse the Grantor or other persons as specified by the ADEQ Director from the Fund for closure and post-closure expenditures in such amounts as the ADEQ Director shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the ADEQ Director specifies in writing.

Section 10. Annual Valuation. The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the ADEQ Director a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the ADEQ Director shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

\* \* \* \* \*

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions.

The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the ADEQ Director, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the ADEQ Director to the Trustee shall be in writing, signed by the ADEQ Director or his designee, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or ADEQ hereunder has occurred.

\* \* \* \* \*

Section 16. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the appropriate Director, or by the Trustee and the appropriate ADEQ Director if the Grantor ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the ADEQ Director, or by the Trustee and the ADEQ Director, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 18. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the ADEQ Director issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

\* \* \* \* \*

(b) \* \* \*

Corporate Surety(ies)  
[Name and address]  
State of incorporation:}

\* \* \* \* \*

(g) \* \* \*

LETTER FROM CHIEF FINANCIAL OFFICER

\* \* \* \* \*

The firm identified above guarantees, through the guarantee specified in subsection H of Regulation No. 23 Sections 264 and 265, liability coverage for [insert "sudden" or "nonsudden" of "nonsudden" or "both sudden and nonsudden"] accidental occurrences at the following facilities

owned or operated by the following: . The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee ; or (3) engaged in the following substantial business relationship with the owner or operator , and receiving the following value in consideration of this guarantee ]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter.]

LETTER FROM CHIEF FINANCIAL OFFICER

Part B, ALTERNATIVE I

\*15. Are at least 90% of assets located in the U.S.? (Yes/No) If; not, complete line 16.

Part B, ALTERNATIVE II

\*7. Tangible net worth (if any portion of the closure or post-closure cost estimates is included in "total liabilities" on your financial statements you may add that portion to this line) = \$\_\_\_\_\_

(h) \* \* \* \* (2) \* \* \*

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of [if incorporated within the United States insert "the State of " and insert name of State; if incorporated outside the United States insert the name of the country in which incorporated, the principal place of business within the United States, and the name and address of the registered agent in the State of the principal place of business], herein referred to as guarantor. This guarantee is made on behalf of [owner or operator] of [business address], which is one of the following: "our subsidiary;" "a subsidiary of [name and address of common parent corporation], or which guarantor of which guarantor is a subsidiary;" or "an entity with which guarantor has a substantial business relationship, as defined in APC&EC Regulation No. 23 § 264.141(h)" "[either No. 23 § 264.141(h) or No. 23 § 265.141(h)]", to any and all third parties who have sustained or may sustain bodily injury or property damage caused by [sudden and/or nonsudden] accidental occurrences arising from operation of the facility(ies) covered by this guarantee.

Recitals

13. \* \* \*

CERTIFICATION OF VALID CLAIM

[Principal]

14. \* \* \*

Signature of witness of notary Signature of witness or notary:

(j) \* \* \*

(c) Whenever requested by the Director of the Arkansas Department of Environmental Quality (ADEQ), the Insurer agrees to furnish to the Director a signed duplicate original of the policy and all endorsements. "SPACE"

(d) Cancellation of the insurance, whether by the insurer, the insured, a parent corporation providing insurance coverage for its subsidiary, or by a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of the hazardous waste management facility, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the Director.

(k) \* \* \*

IRREVOCABLE STANDBY LETTER OF CREDIT

or (2) a valid final court order establishing a judgment against the

principal for bodily injury or property damage caused by a sudden or nonsudden accidental occurrence arising from operation of the principal's facility or group of facilities.]

(l) A surety bond, as specified in § 264.147(h) or § 265.147(h) § 264.147(i) or § 265.147(i) of this regulation, must be worded as follows: except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

(m)(1) \* \* \*

Whereas, the United States Environmental Protection Agency, "EPA," an agency of the United States Government, has established certain regulations applicable to the Grantor Grantor Whereas, the Arkansas Department of Environmental Quality, "ADEQ", an agency of the State of Arkansas, has established certain regulations applicable to the Grantor requiring, requiring that an owner or operator of a hazardous waste management facility or group of facilities must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental and/or nonsudden accidental occurrences arising from operations of the facility or group of facilities.

Section 8. \* \* \*

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

Section 10. Annual Valuations. The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the Director, ADEQ a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the EPA Regional Administrator Director shall constitute a conclusively binding assent by the Grantor barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendments to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the Director to the Trustee shall be in writing, signed by the Director, or his designee, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or ADEQ hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or EPA the Director, except as provided for herein.

(n)(1) . \* \* \*

Whereas the United States Environmental Protection Agency, "EPA," an agency of the United States Government, and the Arkansas Department of Environmental Quality, an agency of the State of Arkansas, have established certain regulations applicable to the Grantor Whereas, the Arkansas Department of Environmental Quality, "ADEQ", an agency



of the State of Arkansas, has established certain regulations applicable to the Grantor requiring, that an owner or operator of a hazardous waste management facility or group of facilities must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental and/or nonsudden accidental occurrences arising from operations of the facility or group of facilities.

\*\*\*\*\*

Section 3. . \* \* \*

(c) \* \* \*

(1) An ~~employee or~~ employee of [insert Grantor] arising from, and in the course of, employment by [insert Grantor]; or

\*\*\*\*\*

(e) \* \* \*

\*\*\*\*\*

(3) Property loaned by [insert Grantor];

\*\*\*\*\*

Section 12. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the ~~EPA Regional Administrator~~ Director and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

\*\*\*\*\*

Section 15. \* \* \*

The Director will agree to termination of the Trust when the owner or operator substitutes alternative financial assurance as specified in this section.

"SPACE"

Section 16. Immunity and indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor and the Director issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses ~~reasonable~~ reasonably incurred in its defense in the event the Grantor fails to provide such defense.

\*\*\*\*\*

**Subsection I—Use and Management of Containers**

61. **Section 264.174** is revised to read as follows:

**§ 264.174 Inspections.**

At least weekly, the owner or operator must inspect areas where containers are stored, ~~looking for leaking containers and for deterioration of containers and the containment system caused by corrosion or other factors. except for Performance Track member facilities, that may conduct inspections at least once each month, upon approval by the Director. To apply for reduced inspection frequencies, the Performance Track member facility must follow the procedures identified in § 264.15(b)(5) of this sec-~~

**tion. The owner or operator must look for leaking containers and for deterioration of containers and the containment system caused by corrosion or other factors.**

[Comment: See §§ 264.15(c) and 264.171 for remedial action required if deterioration or leaks are detected.]

\*\*\*\*\*

**Subsection J—Tank Systems**

62. **Section 264.191** is amended by revising paragraphs (a) and (b)(5)(ii) (the note to paragraph (b)(5)(ii) is unchanged) to read as follows:

**§ 264.191 Assessment of existing tank system's integrity.**

(a) For each existing tank system that does not have secondary containment meeting the requirements of § 264.193, the owner or operator must determine that the tank system is not leaking or is unfit for use. Except as provided in paragraph (c) of this section, the owner or operator must obtain and keep on file at the facility a written assessment reviewed and certified by an independent qualified Arkansas-registered Professional Engineer, in accordance with § 270.11(d) of this Regulation, that attests to the tank system's integrity by January 12, 1988.

(b) \* \* \*

(5) \* \* \*

(ii) For other than non-enterable underground tanks and for ancillary equipment, this assessment must include either a leak test, as described above, or other integrity examination that is certified by an independent qualified Arkansas-registered Professional Engineer in accordance with § 270.11(d) of this Regulation, that addresses cracks, leaks, corrosion, and erosion.

\*\*\*\*\*

63. **Section 264.192** is amended by revising paragraph (a) introductory text and paragraph (b) introductory text to read as follows:

**§ 264.192 Design and installation of new tank systems or components.**

(a) Owners or operators of new tank systems or components must obtain and submit to the Director, at time of submittal of part B information, a written assessment, reviewed and certified by an independent qualified Arkansas-registered Professional Engineer, in accordance with § 270.11(d) of this Regulation, attesting that the tank system has sufficient structural integrity and is acceptable for the storing and treating of hazardous waste. The assessment must show that the foundation, structural support, seams, connections, and

pressure controls (if applicable) are adequately designed and that the tank system has sufficient structural strength, compatibility with the waste(s) to be stored or treated, and corrosion protection to ensure that it will not collapse, rupture, or fail. This assessment, which will be used by the Director to review and approve or disapprove the acceptability of the tank system design, must include, at a minimum, the following information:

\* \* \* \* \*

(b) The owner or operator of a new tank system must ensure that proper handling procedures are adhered to in order to prevent damage to the system during installation. Prior to covering, enclosing, or placing a new tank system or component in use, an independent qualified installation inspector or an independent qualified Arkansas-registered Professional Engineer, either of whom is trained and experienced in the proper installation of tanks systems or components, must inspect the system for the presence of any of the following items:

\* \* \* \* \*

64. Section 264.193 is amended by:

- a. Removing paragraphs (a)(2) through (a)(4);
- b. Redesignating (a)(5) as (a)(2);
- c. Revising paragraphs (a)(1), newly designated (a)(2) to read as follows:
  - d. In paragraph (d)(4), insert a period at the end of the sentence;
  - e. In paragraph (e)(2)(ii), replace the colon with a semi-colon;
  - f. In paragraph (e)(2)(iii), replace the colon with a semi-colon;
  - g. In paragraph (e)(2)(v)(B), revise the citation “§ 262.21” to read “§ 261.23”, and replace the period after the word “vapor” with a semicolon and add the word “and”;
  - h. In paragraph (e)(3)(i), replace the period at the end with a semicolon;
  - i. In paragraph (e)(3)(ii), replace the colon with a semi-colon;
  - j. In paragraph (g)(1)(iii), replace the comma after the word “water” with a semi-colon;
  - k. In paragraph (g)(1)(iv), insert a period at the end of the paragraph;
  - l. In paragraph (g)(2)(i)(A), replace the period with a comma.
  - m. Revising paragraph (i)(2) to read as follows:

**§ 264.193 Containment and detection of releases.**

- (a) \* \* \*
  - (1) For all new and existing tank systems or components, prior to their being put into service.
  - ~~(2) For all existing tank systems used to store or treat EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027, within two years after January 12, 1987;~~

~~(3) For those existing tank systems of known and documented age, within two years after January 12, 1987 or when the tank system has reached 15 years of age, whichever comes later;~~

~~(4) For those existing tank systems for which the age cannot be documented, within eight years of January 12, 1987; but if the age of the facility is greater than seven years, secondary containment must be provided by the time the facility reaches 15 years of age, or within two years of January 12, 1987, whichever comes later; and~~

~~(5)~~(2) For tank systems that store or treat materials that become hazardous wastes, within two years of the hazardous waste listing, or when the tank system has reached 15 years of age, whichever comes later.

\* \* \* \* \*

(d) \* \* \*

\* \* \* \* \*

(4) An equivalent device as approved by the Director.

\* \* \* \* \*

(e) \* \* \*

(2) \* \* \*

\* \* \* \* \*

(ii) Designed or operated to prevent run-on or infiltration of precipitation into the secondary containment system unless the collection system has sufficient excess capacity to contain run-on or infiltration. Such additional capacity must be sufficient to contain precipitation from a 25-year, 24-hour rainfall event.;

(iii) Constructed with chemical-resistant water stops in place at all joints (if any).;

\* \* \* \* \*

(v) \* \* \*

\* \* \* \* \*

(B) Meets the definition of reactive waste under ~~§ 261.21~~ § 261.23 of this regulation, and may form an ignitable or explosive vapor.

\* \* \* \* \*

(3) \* \* \*

(i) Designed as an integral structure (i.e., an inner tank completely enveloped within an outer shell) so that any release from the inner tank is contained by the outer shell.;

\* \* \* \* \*

(ii) Protected, if constructed of metal, from both corrosion of the primary tank interior and of the external surface of the outer shell.;

\* \* \* \* \*

(g) \* \* \*

(1) \* \* \*

\* \* \* \* \*

(iii) The hydrogeologic setting of the facility, including the thickness of soils present

between the tank system and ground water;

\*\*\*\*\*

(iv) All other factors that would influence the quality and mobility of the hazardous constituents and the potential for them to migrate to ground water or surface water.

\*\*\*\*\*

(2) \*\*\*

(i) \*\*\*

(A) The physical and chemical characteristics of the waste in the tank system, including its potential for migration.

\*\*\*\*\*

(i) \*\*\*

(2) For other than non-enterable underground tanks, the owner or operator must either conduct a leak test as in paragraph (i)(1) of this section or develop a schedule and procedure for an assessment of the overall condition of the tank system by an independent qualified Arkansas-registered Professional Engineer. The schedule and procedure must be adequate to detect obvious cracks, leaks, and corrosion or erosion that may lead to cracks and leaks. The owner or operator must remove the stored waste from the tank, if necessary, to allow the condition of all internal tank surfaces to be assessed. The frequency of these assessments must be based on the material of construction of the tank and its ancillary equipment, the age of the system, the type of corrosion or erosion protection used, the rate of corrosion or erosion observed during the previous inspection, and the characteristics of the waste being stored or treated.

\*\*\*\*\*

65. Section 264.195 is amended by:

a. Revising paragraph (b) (the note to paragraph (b) is unchanged);

b. Redesignating existing paragraphs (c) and (d), as paragraphs (g) and (h), respectively;

c. Adding new paragraphs (c) through (f), to read as follows:

§ 264.195 Inspections.

\*\*\*\*\*

(b) The owner or operator must inspect at least once each operating day data gathered from monitoring and leak detection equipment (e.g., pressure or temperature gauges, monitoring wells) to ensure that the tank system is being operated according to its design.

(1) Aboveground portions of the tank system, if any, to detect corrosion or releases of waste;

(2) Data gathered from monitoring and leak detection equipment (e.g., pressure or temperature gauges, monitoring wells) to ensure that the tank system is being operated according to its design;

and

(3) The construction materials and the area immediately surrounding the externally accessible portion of the tank system, including the secondary containment system (e.g., dikes) to detect erosion or signs of releases of hazardous waste (e.g., wet spots, dead vegetation).

[Note: Section 264.15(c) requires the owner or operator to remedy any deterioration or malfunction he finds. Section 264.196 requires the owner or operator to notify the Director within 24 hours of confirming a leak. Also, 40 CFR part 302 may require the owner or operator to notify the National Response Center of a release.]

(c) In addition, except as noted under paragraph (d) of this section, the owner or operator must inspect at least once each operating day:

(1) Above ground portions of the tank system, if any, to detect corrosion or releases of waste.

(2) The construction materials and the area immediately surrounding the externally accessible portion of the tank system, including the secondary containment system (e.g., dikes) to detect erosion or signs of releases of hazardous waste (e.g., wet spots, dead vegetation).

(d) Owners or operators of tank systems that either use leak detection systems to alert facility personnel to leaks, or implement established workplace practices to ensure leaks are promptly identified, must inspect at least weekly those areas described in paragraphs (c)(1) and (c)(2) of this section. Use of the alternate inspection schedule must be documented in the facility's operating record. This documentation must include a description of the established workplace practices at the facility.

(e) Performance Track member facilities may inspect on a less frequent basis, upon approval by the Director, but must inspect at least once each month. To apply for a less than weekly inspection frequency, the Performance Track member facility must follow the procedures described in § 264.15(b)(5).

(f) Ancillary equipment that is not provided with secondary containment, as described in § 264.193(f)(1) through (4), must be inspected at least once each operating day.

~~(e)~~(g) The owner or operator must inspect cathodic protection systems, if present, according to, at a minimum, the following schedule to ensure that they are functioning properly:

(1) The proper operation of the cathodic protection system must be confirmed within six months after initial installation and annually thereafter; and

(2) All sources of impressed current must be inspected and/or tested, as appropriate, at least bi-monthly (i.e., every other month).

[Note: The practices described in the National Association of Corrosion Engineers (NACE) standard, "Recommended Practice (RP-02-85) — Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems," and the American Petroleum Institute (API) Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems," may be used, where applicable, as guidelines in maintaining and inspecting cathodic protection systems.]

(h) The owner or operator must document in the operating record of the facility an inspection of those items in paragraphs (a) through (c) of this section.

66. Section 264.196 is amended by revising paragraph (f) (the notes to paragraph (f) are unchanged) to read as follows:

§ 264.196 Response to leaks or spills and disposition of leaking or unfit-for-use tank systems.

\*\*\*\*\*

(f) Certification of major repairs. If the owner/operator has repaired a tank system in accordance with paragraph (e) of this section, and the repair has been extensive (e.g., installation of an internal liner; repair of a ruptured primary containment or secondary containment vessel), the tank system must not be returned to service unless the owner/operator has obtained a certification by an independent qualified Arkansas-registered Professional Engineer in accordance with § 270.11(d) of this Regulation that the repaired system is capable of handling hazardous wastes without release for the intended life of the system. This certification must be placed in the operating record and maintained until closure of the facility.

\*\*\*\*\*

Subsection K—Surface Impoundments

67. Section 264.221 is amended as follows:
a. In paragraph (c)(1)(i)(B), revise “1x10<sup>-7</sup> cm/sec” to read “1x10<sup>-7</sup> cm/sec”;
b. In paragraph (e)(1), revise “EP toxicity characteristics in” to read “toxicity characteristic in”;
c. In paragraph (e)(2)(i)(B), revise the citation “§ 144.3 of this chapter” to read “Section 270.2”; and add quotation marks around “underground source of drinking water”.

§ 264.221 Design and operating requirements.

\*\*\*\*\*

(c) \*\*\*

(1)(i) \*\*\*

(B) A composite bottom liner, consisting of at least two components. The upper component must be designed and constructed of materials (e.g., a geomembrane) to prevent the migration of hazardous constituents into this component during the active life and post-closure care period. The lower component must be designed and constructed of materials to minimize the migration of hazardous constituents if a breach in the up-

per component were to occur. The lower component must be constructed of at least 3 feet (91 cm) of compacted soil material with a hydraulic conductivity of no more than 1x10<sup>-7</sup> cm/sec.

\*\*\*\*\*

(e) \*\*\*

(1) The monofill contains only hazardous wastes from foundry furnace emission controls or metal casting molding sand, and such wastes do not contain constituents which would render the wastes hazardous for reasons other than the EP toxicity characteristics in toxicity characteristic in § 261.24 of this regulation; and

\*\*\*\*\*

(2)(i) \*\*\*

(B) The monofill is located more than one-quarter mile from an “underground source of drinking water” (as that term is defined in 40 CFR 144.3); and

\*\*\*\*\*

68. Section 264.223 is amended at paragraph (b)(1) by revising “exceedence” to read “exceedance”.

§ 264.223 Response actions.

\*\*\*\*\*

(b) \*\*\*

(1) Notify the Director in writing of the exceedence exceedance within 7 days of the determination;

\*\*\*\*\*

Subsection L—Waste Piles

69. Section 264.251 is amended by revising the introductory text to paragraph (c) to read as follows:

§ 264.251 Design and operating requirements.

\*\*\*\*\*

(c) The owner or operator of each new waste pile unit on which construction commences after January 29, 1992, each lateral expansion of a waste pile unit on which construction commences after July 29, 1992, and each replacement of an existing waste pile unit that is to commence re-use after July 29, 1992 must install two or more liners and a leachate collection and removal system above and between such liners. “Construction commences” is as defined in § 260.10 under “existing facility”.

\*\*\*\*\*

70. At Section 264.251 paragraph (a) revise, “surface impoundment units” to read “waste pile units”;



§ 264.252 Action leakage rate.

(a) The Director shall approve an action leakage rate for ~~surface impoundment units~~ waste pile units subject to § 264.251(c) or (d). The action leakage rate is the maximum design flow rate that the leak detection system (LDS) can remove without the fluid head on the bottom liner exceeding 1 foot. The action leakage rate must include an adequate safety margin to allow for uncertainties in the design (e.g., slope, hydraulic conductivity, thickness of drainage material), construction, operation, and location of the LDS, waste and leachate characteristics, likelihood and amounts of other sources of liquids in the LDS, and proposed response actions (e.g., the action leakage rate must consider decreases in the flow capacity of the system over time resulting from siltation and clogging, rib layover and creep of synthetic components of the system, overburden pressures, etc.).

\*\*\*\*\*

71. In Section 264.259, amend paragraph (b) by removing the comma between the word “and” and “F027”.

§ 264.259 Special requirements for hazardous wastes F020, F021, F022, F023, F026, and F027.

\*\*\*\*\*

(b) The Director may determine that additional design, operating, and monitoring requirements are necessary for piles managing hazardous wastes F020, F021, F022, F023, F026, and; F027 in order to reduce the possibility of migration of these wastes to ground water, surface water, or air so as to protect human health and the environment.

Subsection M—Land Treatment

72. Section 264.280 is amended by revising paragraph (b) to read as follows:

- a. Amend by revising paragraph (b) to read as follows:
- b. In paragraph (c)(7), revise “expect that” to read “except that”;
- c. In paragraph (d), introductory text, revise “closure of post-closure” to read “closure or post-closure”.

§ 264.280 Closure and post-closure care.

\*\*\*\*\*

(b) For the purpose of complying with § 264.115 of this Regulation, when closure is completed the owner or operator may submit to the Director certification by an independent qualified soil scientist, in lieu of an independent qualified Arkansas-registered Professional Engineer, that the facility has been closed in accordance with the specifications in the approved closure plan.

(c) \*\*\*

(7) Continue unsaturated zone monitoring in compliance with § 264.278, ~~expect that~~ except that soil-pore liquid monitoring may be terminated 90 days after the last application of waste to the treatment zone.

\*\*\*\*\*

(d) The owner or operator is not subject to regulation under paragraphs (a)(8) and (c) of this section if the Director finds that the level of hazardous constituents in the treatment zone soil does not exceed the background value of those constituents by an amount that is statistically significant when using the test specified in paragraph (d)(3) of this section. The owner or operator may submit such a demonstration to the Director at any time during the ~~closure of post-closure~~ closure or post-closure care periods. For the purposes of this paragraph:

\*\*\*\*\*

73. In Section 264.283, amend paragraph (a) by removing the comma between the word “and” and “F027”.

§ 264.283 Special requirements for hazardous wastes F020, F021, F022, F023, F026, and F027.

(a) Hazardous Wastes F020, F021, F022, F023, F026 and; F027 must not be placed in a land treatment unit unless the owner or operator operates the facility in accordance with a management plan for these wastes that is approved by the Director pursuant to the standards set out in this paragraph, and in accord with all other applicable requirements of this Section. The factors to be considered are:

\*\*\*\*\*

Subsection N—Landfills

74. In Section 264.301 paragraph (e)(2)(i)(B), revise the citation “§ 144.3 of this chapter” to read “40 CFR 270.2”; and add quotation marks around “underground source of drinking water”.

§ 264.301 Design and operating requirements.

\*\*\*\*\*

(e) \*\*\*

(2)(i) \*\*\*

(B) The monofill is located more than one-quarter mile from an underground source of drinking water (as that term is defined in ~~40 CFR 144.3~~ 40 CFR 270.2); and

\*\*\*\*\*

75. Amend Section 264.302 as follows:

- a. In paragraph (a), revise “surface impoundment units” to read “landfill units”;

b. In paragraph (b), remove the comma after the citation “§ 264.303(c)”.

§ 264.302 Action leakage rate.

(a) The Director shall approve an action leakage rate for ~~surface impoundment units~~ landfill units subject to § 264.301(c) or (d). The action leakage rate is the maximum design flow rate that the leak detection system (LDS) can remove without the fluid head on the bottom liner exceeding 1 foot. The action leakage rate must include an adequate safety margin to allow for uncertainties in the design (e.g., slope, hydraulic conductivity, thickness of drainage material), construction, operation, and location of the LDS, waste and leachate characteristics, likelihood and amounts of other sources of liquids in the LDS, and proposed response actions (e.g., the action leakage rate must consider decreases in the flow capacity of the system over time resulting from siltation and clogging, rib layover and creep of synthetic components of the system, overburden pressures, etc.).

\*\*\*\*\*

(b) To determine if the action leakage rate has been exceeded, the owner or operator must convert the weekly or monthly flow rate from the monitoring data obtained under § 264.303(c); to an average daily flow rate (gallons per acre per day) for each sump. Unless the Director approves a different calculation, the average daily flow rate for each sump must be calculated weekly during the active life and closure period, and monthly during the post-closure care period when monthly monitoring is required under § 264.303(c).

\*\*\*\*\*

76. In Section 264.304, amend paragraph (b)(1) by revising “exceedence” to read “exceedance”.

§ 264.304 Response actions.

(b) \*\*\*

(1) Notify the Director in writing of the ~~exceedence~~ exceedance within 7 days of the determination;

\*\*\*\*\*

77. Section 264.314 is amended by:

- a. Removing paragraph (a);
- b. Redesignating paragraphs (b) through (f) as paragraphs (a) through (e); and,
- c. Revising newly designated paragraphs (a) and newly designated paragraph (e) introductory text to read as follows:
- d. amend paragraph (e)(2) by revising the citation “§ 144.3 of this chapter” to read “40 CFR 270.2”; and by adding quotation marks around “underground source of drinking water”.

§ 264.314 Special requirements for bulk and containerized liquids.

~~(a) The following materials shall not be disposed of in landfills permitted under this Regulation and Regulation:~~

~~(1) Bulk liquids, semisolids and sludges unless, before disposal, such waste is treated or stabilized into cement-like material;~~

~~(2) Containers holding free liquids unless all freestanding liquid has been removed or treated or stabilized into cement-like material; or the container is very small, such as an ampule, or is a lab pack as defined in 264.316 or 265.316, as applicable and is disposed of in accordance with 264.316 or 265.316 as applicable;~~

~~(3) Municipal refuse which is not hazardous waste;~~

~~(4) Ignitable wastes in containers, unless all free liquids therein have been removed or treated and stabilized into cement-like material;~~

~~(b)~~ (a) The placement of bulk or non-containerized liquid hazardous waste or hazardous waste containing free liquids (whether or not sorbents have been added) in any landfill is prohibited. Effective May 8, 1985, the placement of bulk or non-containerized liquid hazardous waste or hazardous waste containing free liquids (whether or not sorbents have been added) in any landfill is prohibited. Before disposal, liquid waste or waste containing free liquids must be treated or stabilized, (e.g. by mixing with a sorbent solid so that free liquids are no longer present and the waste meets the requirements of (a)(1) or (2) above).

~~(e)~~ (b) To demonstrate the absence or presence of free liquids in either a containerized or a bulk waste, the following test must be used: Method 9095B (Paint Filter Liquids Test) as described in “Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,” EPA Publication SW-846, as incorporated by reference in § 260.11 of this regulation.

~~(c)~~ (c) Containers holding free liquids must not be placed in a landfill unless:

- (1) All free-standing liquid:
  - (i) has been removed by decanting, or other methods;
  - (ii) has been mixed with sorbent or solidified so that free-standing liquid is no longer observed; or
  - (iii) has been otherwise eliminated; or

(2) The container is very small, such as an ampule; or

(3) The container is designed to hold free liquids for use other than storage, such as a battery or capacitor; or

(4) The container is a lab pack as defined in § 264.316 and is disposed of in accordance with § 264.316.

~~(e)~~ (d) Sorbents used to treat liquids to be disposed of in landfills must be nonbiodegradable. Nonbiodegradable sor-

bents are materials listed or described in paragraph (e)(1) of this Subsection; or materials that are determined by the Department to be nonbiodegradable through the Section 260 petition process.

(1) Nonbiodegradable sorbents (i) Inorganic minerals, other inorganic materials, and elemental carbon (e.g., aluminosilicates, clays, smectites, Fuller’s earth, bentonite, calcium bentonite, montmorillonite, calcined montmorillonite, kaolinite, micas (illite), vermiculites, zeolites, calcium carbonate (organic-free limestone), oxides/hydroxides, alumina, lime, silica (sand), diatomaceous earth, perlite (volcanic glass), expanded volcanic rock, volcanic ash, cement kiln dust, fly ash, rice hull ash, activated charcoal/activated carbon), or

(ii) High molecular weight synthetic polymers (e.g., polyethylene, high density polyethylene (HDPE), polypropylene, polystyrene, polyurethane, polyacrylate, polynorborene, polyisobutylene, ground synthetic rubber, cross-linked allylstyrene and tertiary butyl copolymers). This does not include polymers derived from biological materials or polymers specifically designed to be degradable; or

(iii) Mixtures of these nonbiodegradable materials.

(2) Tests for nonbiodegradable sorbents. (i) The sorbent material is determined to be nonbiodegradable under ASTM Method G21-70(1984a) - Standard Practice for Determining Resistance of Synthetic Polymer Material to Fungi; or

(ii) The sorbent material is determined to be nonbiodegradable under ASTM Method G22-76 (1984b)-Standard Practice for Determining Resistance of Plastics to Bacteria; or

(iii) The sorbent material is determined to be non-biodegradable under OECD test 301B: [CO<sub>2</sub> Evolution (Modified Sturm Test)].

\*\*\*\*\*

~~(f)(e) Effective November 8, 1985, the placement of any liquid which is not a hazardous waste in a landfill is prohibited unless the owner or operator of such landfill demonstrates to the Director, or the Director determines, that:~~  
**The placement of any liquid which is not a hazardous waste in a landfill is prohibited unless the owner or operator of such landfill demonstrates to the Director, or the Director determines that:**

(1) The only reasonably available alternative to the placement in such landfill is placement in a landfill or unlined surface impoundment, whether or not permitted or operating under interim status, which contains, or may reasonably be anticipated to contain, hazardous waste; and

(2) Placement in such owner or operator’s landfill will not present a risk of contamination of any underground source of drinking water (as that term

is defined in ~~40 CFR 144.3~~ **§ 270.2 of this regulation.**)

\*\*\*\*\*

78. In **Section 264.317**, amend paragraph (a) introductory text by revising “in a landfills” to read “in a landfill”.

**§ 264.317 Special requirements for hazardous wastes F020, F021, F022, F023, F026, and F027.**

(a) Hazardous Wastes F020, F021, F022, F023, F026, and F027 must not be ~~placed in a landfills~~ **in a landfill** unless the owner or operator operates the landfill in accord with a management plan for these wastes that is approved by the Director pursuant to the standards set out in this paragraph, and in accord with all other applicable requirements of this Section. The factors to be considered are:

\*\*\*\*\*

79. **Section 264.340** is amended by revising the first sentence of paragraph (b)(1) and adding paragraph (b)(5) to read as follows:

**§ 264.340 Applicability.**

\*\*\*\*\*

(b) \*\*\*

(1) Except as provided by paragraphs (b)(2) ~~(b)(3), and (b)(4)~~ **through (b)(5)** of this section, the standards of this section **do not apply to a new hazardous waste incineration unit that becomes subject to RCRA permit requirements after October 12, 2005;** or no longer apply when an owner or operator **of an existing hazardous waste incineration unit** demonstrates compliance with the maximum achievable control technology (MACT) requirements of 40 CFR part 63, subsection EEE by conducting a comprehensive performance test and submitting to the Director a Notification of Compliance under 40 CFR §§ 63.1207(j) and 63.1210(d) documenting compliance with the requirements of 40 CFR part 63, subpart EEE. Nevertheless, even after this demonstration of compliance with the MACT standards, RCRA permit conditions that were based on the standards of this regulation will continue to be in effect until they are removed from the permit or the permit is terminated or revoked, unless the permit expressly provides otherwise.

\*\*\*\*\*

**(5) The particulate matter standard of § 264.343(c) remains in effect for incinerators that elect to comply with the alternative to the particulate matter standard of 40 CFR §§ 63.1206(b)(14) and 63.1219(e).**

\*\*\*\*\*

80. Section 264.340 is amended by revising paragraph (b)(1) to read as follows:

§ 264.340 Applicability.

\*\*\*\*\*

(b) Integration of the MACT standards:

(1) Except as provided by paragraphs (b)(2) and (b)(3) of this section, the standards of this section no longer apply when an owner or operator demonstrates compliance with the maximum achievable control technology (MACT) requirements of 40 CFR part 63, subpart EEE by conducting a comprehensive performance test and submitting to the Director a Notification of Compliance under 40 CFR §§ 63.1207(j) and 63.1210(b)(d), documenting compliance with the requirements of 40 CFR part 63, subpart EEE.

\*\*\*\*\*

81. Section 264.343 is amended by revising paragraph (a)(2) to read as follows:

§ 264.343 Performance standards.

(a) \*\*\*

(1) \*\*\*

(2) An incinerator burning hazardous wastes F020, F021, F022, F023, F026, or F027 must achieve a destruction and removal efficiency (DRE) of 99.9999% for each principal organic hazardous constituent (POHC) designated (under § 264.342) in its permit. This performance must be demonstrated on POHCs that are more difficult to incinerate than tetra-, penta-, and hexachlorodibenzo-p-dioxins and dibenzofurans. DRE is determined for each POHC from the equation in § 264.343(a)(1). ~~In addition, the owner or operator of the incinerator must notify the Director of his intent to incinerate hazardous wastes FO20, FO21, FO22, FO23, FO26, or FO27.~~

\*\*\*\*\*

82. Section 264.347 is amended by revising paragraph (d) to read as follows:

§ 264.347 Monitoring and inspections.

\*\*\*\*\*

(d) This monitoring and inspection data must be recorded and the records must be placed in the operating ~~log~~ **record** required by § 264.73 **of this section and maintained in the operating record for five years.**

Subsection S—Special Provisions for Cleanup

83. Amend Section 264.552 as follows:

a. In paragraph (e)(4)(iii), replace the colon at the end of the paragraph with a period;

b. In paragraph (e)(4)(iv)(F), revise the citation “40 CFR 260.11(11)” to read “40 CFR 260.11(a)(11)”;

c. In paragraph (e)(6)(iii)(E), revise “Hydrological” to read “Hydrogeological”.

§ 264.552 Corrective Action Management Units (CAMU).

\*\*\*\*\*

(e) \*\*\*

(4) \*\*\*

(iii) Waste that the Director determines contains principal hazardous constituents must meet treatment standards determined in accordance with paragraph (e)(4)(iv) or (e)(4)(v) of this section.

\*\*\*\*\*

(iv) \*\*\*

(F) Alternatives to TCLP. For metal bearing wastes for which metals removal treatment is not used, the Director may specify a leaching test other than the TCLP (SW-846 Method 1311, ~~40 CFR 260.11(H)~~ **40 CFR 260.11(a)(11)**) to measure treatment effectiveness, provided the Director determines that an alternative leach testing protocol is appropriate for use, and that the alternative more accurately reflects conditions at the site that affect leaching.

\*\*\*\*\*

(6) \*\*\*

(iii) \*\*\*

(E) ~~Hydrological~~ **Hydrogeological** and other relevant environmental conditions at the facility which may influence the migration of any potential or actual releases; and

\*\*\*\*\*

84. Amend Section 264.554 as follows:

a. Amend paragraph (a) introductory text by revising “Director in according” to read “Director according”.

b. Amend by revising paragraph (c)(2) to read as follows:

§ 264.554 Staging piles.

(a) What is a staging pile? A staging pile is an accumulation of solid, non-flowing remediation waste (as defined in § 260.10 of this regulation) that is not a containment building and is used only during remedial operations for temporary storage at a facility. A staging pile must be located within



the contiguous property under the control of the owner/operator where the wastes to be managed in the staging pile originated. Staging piles must be designated by the **Director in-according Director according** to the requirements in this section.

\* \* \* \* \*

(c) \* \* \*

(2) Certification by an independent qualified Arkansas-registered Professional Engineer for technical data, such as design drawings and specifications, and engineering studies, unless the Director determines, based on information that you provide, that this certification is not necessary to ensure that a staging pile will protect human health and the environment; and

\* \* \* \* \*

**Subsection W—Drip Pads**

85. **Section 264.571** is amended by revising paragraphs (a), (b), and (c) to read as follows:

**§ 264.571 Assessment of existing drip pad integrity.**

(a) For each existing drip pad as defined in § 264.570 of this Subsection, the owner or operator must evaluate the drip pad and determine whether it meets all of the requirements of this Subsection, except the requirements for liners and leak detection systems of § 264.573(b). No later than the effective date of this rule, the owner or operator must obtain and keep on file at the facility a written assessment of the drip pad, reviewed and certified by an independent qualified Arkansas-registered Professional Engineer that attests to the results of the evaluation. The assessment must be reviewed, updated and re-certified annually until all upgrades, repairs, or modifications necessary to achieve compliance with all the standards of § 264.573 are complete. The evaluation must document the extent to which the drip pad meets each of the design and operating standards of § 264.573, except the standards for liners and leak detection systems, specified in § 264.573(b).

(b) *For immediate protection of the environment, all existing drip pads, regardless of age, must have an impermeable (as specified at § 264.573(a)(4)(i)) coating or cover in place not later than September 30, 1995.* In addition, the owner or operator must develop a written plan for upgrading, repairing, and modifying the drip pad to meet the requirements of § 264.573(b) and submit the plan to the Director no later than 2 years before the date that all repairs, upgrades, and modifications are complete. This written plan must describe all changes to be made to the drip pad in sufficient detail to document compliance with all the requirements of § 264.573. The plan must be reviewed and certified by an independent qualified Arkansas-registered Professional Engineer.

*Note: A properly installed and maintained drip pad coating which is installed to meet the September 30, 1995 deadline should satisfy the eventual coating option of § 264.573(a)(4).*

(c) Upon completion of all upgrades, repairs, and modifications, the owner or operator must submit to the Director or state Director, the as-built drawings for the drip pad together with a certification by an independent qualified Arkansas-registered Professional Engineer attesting that the drip pad conforms to the drawings.

\* \* \* \* \*

86. Amend **Section 264.573** as follows:

a. In paragraph (a)(1), revise “non-earthern” to read “non-earthen”; and replace the colon at the end of the paragraph with a semicolon;

b. Amend by revising paragraph (a)(4)(ii) and (g) to read as follows:

c. In paragraph (a)(5), revise “perations” to read “operations”;

d. Amend by revising paragraph (g) to read as follows:

e. In paragraph (m)(2) and in paragraph (m)(3) twice, revise “clean up” to read “cleanup”.

**§ 264.573 Design and operating requirements.**

(a) \* \* \*

(1) Be constructed ~~of non-earthern~~ non-earthen materials, excluding wood and non-structurally supported asphalt:

\* \* \* \* \*

(4) \* \* \*

(ii) The owner or operator must obtain and keep on file at the facility a written assessment of the drip pad, reviewed and certified by an independent qualified Arkansas-registered Professional Engineer that attests to the results of the evaluation. The assessment must be reviewed, updated and recertified annually. The evaluation must document the extent to which the drip pad meets the design and operating standards of this section, except for paragraph (b) of this section.

\* \* \* \* \*

(5) Be of sufficient structural strength and thickness to prevent failure due to physical contact, climatic conditions, the stress of daily ~~perations~~ operations, e.g., variable and moving loads such as vehicle traffic, movement of wood, etc.

\* \* \* \* \*

(m) \* \* \*

(2) The Director will review the information submitted, make a determination regarding whether the pad must be removed from service completely or partially until repairs and ~~clean up~~ cleanup are complete and notify the owner or operator of the determination and the underlying rationale in writing.

(3) Upon completing all repairs and ~~clean-up~~ cleanup, the owner or operator must notify the Director in writing and provide a certification signed by an independent, qualified Arkansas-registered professional engineer, that the repairs and ~~clean-up~~ cleanup have been completed according to the written plan submitted in accordance with paragraph (m)(1)(iv) of this section.

\* \* \* \* \*

(g) The drip pad must be evaluated to determine that it meets the requirements of paragraphs (a) through (f) of this section and the owner or operator must obtain a statement from an independent qualified Arkansas-registered Professional Engineer certifying that the drip pad design meets the requirements of this section.

\* \* \* \* \*

87. Section 264.574 is amended by revising paragraph (a) to read as follows:

**§ 264.574 Inspections.**

(a) During construction or installation, liners and cover systems (e.g., membranes, sheets, or coatings) must be inspected for uniformity, damage and imperfections (e.g., holes, cracks, thin spots, or foreign materials). Immediately after construction or installation, liners must be inspected and certified as meeting the requirements in § 264.573 of this Subsection by an independent qualified Arkansas-registered Professional Engineer. This certification must be maintained at the facility as part of the facility operating record. After installation, liners and covers must be inspected to ensure tight seams and joints and the absence of tears, punctures, or blisters.

\* \* \* \* \*

**Subsection AA—Air Emission Standards for Process Vents**

88. Amend § 264.1030(c) by revising “owner and operator receives” to read “owner and operator receive”; and revise “owner and operator is subject” to read “owner and operator are subject”.

**§ 264.1030 Applicability.**

\* \* \* \* \*

(d). Until such date when the ~~owner and operator receives~~ owner and operator receive a final permit incorporating the requirements of this subsection, the ~~owner and operator is subject~~ owner and operator are subject to the requirements of § 265, subsection AA.

\* \* \* \* \*

89. In Section 264.1033, amend paragraph (f)(2)(vii)(B) by replacing the period after the word “regular” with a comma.

**§ 264.1033 Standards: Closed-vent systems and control devices.**

\* \* \* \* \*

(f) \* \* \*

(2) \* \* \*

(vii) \* \* \*

(B) A monitoring device equipped with a continuous recorder to measure a parameter that indicates the carbon bed is regenerated on a regular, , predetermined time cycle.

\* \* \* \* \*

90. Amend Section 264.1035 as follows:

a. In paragraph (c)(4)(i), replace the period after the first instance of “760 °C” with a comma;

b. In paragraph (c)(4)(ii), insert a comma after the word “greater”.

**§ 264.1035 Recordkeeping requirements.**

\* \* \* \* \*

(c) \* \* \*

(4)

(i) For a thermal vapor incinerator designed to operate with a minimum residence time of 0.50 second at a minimum temperature of 760°C, , period when the combustion temperature is below 760°C.

(ii) For a thermal vapor incinerator designed to operate with an organic emission reduction efficiency of 95 weight percent or greater, , period when the combustion zone temperature is more than 28°C below the design average combustion zone temperature established as a requirement of paragraph (b)(4)(iii)(A) of this section.

\* \* \* \* \*

**Subsection BB—Air Emission Standards for Equipment Leaks**

91. In Section 264.1050, amend paragraph (f) by revising the citation “§ 264,1064(g)(6)” to read “§ 264.1064(g)(6)”.

**§ 264.1050 Applicability.**

\* \* \* \* \*

(f) Equipment that contains or contacts hazardous waste with an organic concentration of at least 10 percent by weight

for less than 300 hours per calendar year is excluded from the requirements of §§ 264.1052 through 264.1060 of this subsection if it is identified as required in ~~§ 264.1064(g)(6)~~ § 264.1064(g)(6) of this subsection.

\* \* \* \* \*

92. In **Section 264.1058**, amend paragraph (c)(1) by replacing the period after the second occurrence of the word “detected” with a comma.

**§ 264.1058 Standards: Pumps and valves in heavy liquid service, pressure relief devices in light liquid or heavy liquid service, and flanges and other connectors.**

\* \* \* \* \*

(c) \* \* \*

(1) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected: except as provided in § 264.1059.

\* \* \* \* \*

93. **Section 264.1061** is amended by:

- a. Removing paragraphs (b)(1) and (d); and,
- b. Redesignating paragraphs (b)(2) and (b)(3) as paragraphs (b)(1) and (b)(2).

**§ 264.1061 Alternative standards for valves in gas/vapor service or in light liquid service: percentage of valves allowed to leak.**

\* \* \*

(b) The following requirements shall be met if an owner or operator decides to comply with the alternative standard of allowing 2 percent of valves to leak:

~~(1) An owner or operator must notify the Director that the owner or operator has elected to comply with the requirements of this section.~~

~~(2)~~(1) A performance test as specified in paragraph (c) of this section shall be conducted initially upon designation, annually, and at other times requested by the Director.

~~(3)~~(2) If a valve leak is detected, it shall be repaired in accordance with § 264.1057(d) and (e).

\* \* \*

~~(d) If an owner or operator decides to comply with this section no longer, the owner or operator must notify the Director in writing that the work practice standard described in § 264.1057(a) through (e) will be followed.~~

94. **Section 264.1062** is amended by removing paragraph (a)(2) and redesignating paragraph (a)(1) as paragraph (a).

**§ 264.1062 Alternative standards for valves in**

**gas/vapor service or in light liquid service; skip period leak detection and repair.**

(a)~~(1)~~ An owner or operator subject to the requirements of § 264.1057 may elect for all valves within a hazardous waste management unit to comply with one of the alternative work practices specified in paragraphs (b) (2) and (3) of this section.

~~(2) An owner or operator must notify the Director before implementing one of the alternative work practices:~~

\* \* \* \* \*

**Subsection CC—Air Emission Standards for Tanks, Surface Impoundments, and Containers**

95. Amend **Section 264.1080** as follows:

a. In paragraph (a), revise “Subsections I, J, or K” to read “Subsection “I, J, or K””;

b. In paragraph (c), last sentence, revise “owner and operator is subject” to read “owner and operator are subject”.

**§ 264.1080 Applicability.**

(a) The requirements of this subsection apply to owners and operators of all facilities that treat, store, or dispose of hazardous waste in tanks, surface impoundments, or containers subject to either subsections I, J, or K of this Section except as § 264.1 and paragraph (b) of this section provide otherwise.

\* \* \* \* \*

(c) For the owner and operator of a facility subject to this subsection who received a final permit under RCRA section 3005 prior to December 6, 1996, the requirements of this subsection shall be incorporated into the permit when the permit is reissued in accordance with the requirements of 40 CFR 124.15 or is reviewed in accordance with the requirements of § 270.50(d) of this regulation. Until such date when the permit is reissued in accordance with the requirements of 40 CFR 124.15 or is reviewed in accordance with the requirements of § 270.50(d), the ~~owner and operator is subject~~ owner and operator are subject to the requirements of Section 265, subsection CC.

\* \* \* \* \*

**Subsection DD—Containment Buildings**

96. **Section 264.1100** is amended by revising the introductory text to read as follows:

**§ 264.1100 Applicability.**

The requirements of this Subsection apply to owners or operators who store or treat hazardous waste in units de-

signed and operated under § 264.1101 of this Subsection. ~~These provisions will become effective on February 18, 1993, although owner or operator may notify the Director of his intent to be bound by this Subsection at an earlier time.~~ The owner or operator is not subject to the definition of land disposal in RCRA section 3004(k) provided that the unit:

\*\*\*\*\*

97. Amend **Section 264.1101** as follows:

- a. In paragraph (b)(3)(iii), revise the citation “§ 264.193(d)(1)” to read “§ 264.193(e)(1)”;
- b. Amend by revising paragraph (c)(2) to read as follows:
  - c. In paragraph (c)(3) introductory text, revise “hazardous waste, must repair” to read “hazardous waste, the owner or operator must repair”;
  - d. In paragraph (c)(3)(i), revise “lead” to read “led”;
  - e. Amend by revising paragraph (c)(4) to read as follows:
    - f. In paragraph (d) introductory text, revise “For containment buildings that contain areas both” to read “For a containment building that contains both areas”.

**§ 264.1101 Design and operating standards.**

\*\*\*\*\*

(b) \*\*\*

(3) \*\*\*

(iii) The secondary containment system must be constructed of materials that are chemically resistant to the waste and liquids managed in the containment building and of sufficient strength and thickness to prevent collapse under the pressure exerted by overlaying materials and by any equipment used in the containment building. (Containment buildings can serve as secondary containment systems for tanks placed within the building under certain conditions. A containment building can serve as an external liner system for a tank, provided it meets the requirements of ~~§ 264.193(d)(1)~~ § 264.193(e)(1). In addition, the containment building must meet the requirements of § 264.193(b) and §§ 264.193(c) (1) and (2) to be considered an acceptable secondary containment system for a tank.)

\*\*\*\*\*

(c) \*\*\*

(2) Obtain and keep on-site a certification by an independent qualified Arkansas-registered Professional Engineer that the containment building design meets the requirements of paragraphs (a), (b), and (c) of this section. ~~For units placed into operation prior to February 18, 1993, this certification must be placed in the facility’s operating record (on-site files for generators who are not formally re-~~

~~quired to have operating records) no later than 60 days after the date of initial operation of the unit. After February 18, 1993, PE certification will be required prior to operation of the unit.~~

(3) Throughout the active life of the containment building, if the owner or operator detects a condition that could lead to or has caused a release of ~~hazardous waste, must repair~~ hazardous waste, the owner or operator must repair the condition promptly, in accordance with the following procedures.

- (i) Upon detection of a condition that has ~~lead~~ led to a release of hazardous waste (e.g., upon detection of leakage from the primary barrier) the owner or operator must:

\*\*\*\*\*

(4) Inspect and record in the facility’s operating record, at least once every seven days, except for Performance Track member facilities that must inspect at least once each month, upon approval by the Director, data gathered from monitoring and leak detection equipment as well as the containment building and the area immediately surrounding the containment building to detect signs of releases of hazardous waste. To apply for reduced inspection frequency, the Performance Track member facility must follow the procedures described in § 264.15(b)(5).

\*\*\*\*\*

(d) ~~For containment buildings that contain areas both For a containment building that contains both areas~~ with and without secondary containment, the owner or operator must:

\*\*\*\*\*

98. Amend **Appendix I to Section 264** as follows:

- a. In Table 1, add unit of measure codes for “Pounds”, “Pounds”, “Kilograms”, and “Tons” at the end of the table to read as set forth below; and
- b. In Table 2 at Section 2.(d), revise the line “T75 Tricking filter” to read “T75 Tricking filter”.

**Appendix I to Section 264—Recordkeeping Instructions.**

TABLE 1

\*\*\*\*\*

<u>Pounds</u> .....	<u>P</u>
<u>Short tons</u> .....	<u>T</u>
<u>Kilograms</u> .....	<u>K</u>
<u>Tons</u> .....	<u>M</u>

<sup>1</sup> Single digit symbols are used here for data processing purposes.

\*\*\*\*\*

Table 2.

<del>T75 Tricking filter</del>
<u>T75 Tricking filter</u>

\*\*\*\*\*



# Section 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

99. Section 265.1 paragraph (c)(6), revise “Subsections C, D, F, or G” to read “Subsections C, F, G, or H”.

## § 265.1 Purpose, scope, and applicability.

\*\*\*\*\*

(c) \*\*\*

(6) The owner and operator of a facility managing recyclable materials described in § 261.6 (a) (2), (3) and (4) of this regulation (except to the extent that requirements of this Section are referred to in Section 279 or Subsections ~~C, F, or G~~ C, F, G, or H of Section 266 of this regulation).

\*\*\*\*\*

## Subsection B—General Facility Standards

100. In Section 265.12, amend paragraph (a)(1) by revising “of the date of the waste” to read “of the date the waste”.

## § 265.12 Required notices.

(a)(1) The owner or operator of a facility that has arranged to receive hazardous waste from a foreign source must notify the EPA Regional Administrator in writing at least four weeks in advance ~~of the date of the waste~~ of the date the waste is expected to arrive at the facility. Notice of subsequent shipments of the same waste from the same foreign source is not required.

\*\*\*\*\*

101. In Section 265.14, amend paragraph (b)(1) by revising “guards of facility personnel” to read “guards or facility personnel”.

## § 265.14 Security.

\*\*\*\*\*

(b) \*\*\*

(1) A 24-hour surveillance system (e.g., television monitoring or surveillance by ~~guards of facility personnel~~ guards or facility personnel) which continuously monitors and controls entry onto the active portion of the facility; or

\*\*\*\*\*

102. Section 265.15 is amended by revising paragraph (b)(4) and adding paragraph (b)(5) to read as follows:

## § 265.15 General inspection requirements.

\*\*\*\*\*

(b) \*\*\*

(4) The frequency of inspection may vary for the items on the schedule. However, the frequency should be based on the rate of deterioration of the equipment and the probability of an environmental or human health incident if the deterioration, malfunction, or operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, must be inspected daily when in use, except for Performance Track member facilities, that must inspect at least once each month, upon approval by the Director, as described in paragraph (b)(5) of this section. At a minimum, the inspection schedule must include the items and frequencies called for in §§ 265.174, 265.193, 265.195, 265.226, 265.260, 265.278, 265.304, 265.347, 265.377, 265.403, 265.1033, 265.1052, 265.1053, 265.1058, and 265.1084 through 265.1090, where applicable.

(5) Performance Track member facilities that choose to reduce inspection frequencies must:

(i) Submit an application to the Director. The application must identify the facility as a member of the National Environmental Performance Track Program and identify the management units for reduced inspections and the proposed frequency of inspections. Inspections must be conducted at least once each month.

(ii) Within 60 days, the Director will notify the Performance Track member facility, in writing, if the application is approved, denied, or if an extension to the 60-day deadline is needed. This notice must be placed in the facility’s operating record. The Performance Track member facility should consider the application approved if the Director does not: (1) Deny the application; or (2) notify the Performance Track member facility of an extension to the 60-day deadline. In these situations, the Performance Track member facility must adhere to the revised inspection schedule outlined in its application and maintain a copy of the application in the facility’s operating record.

(iii) Any Performance Track member facility that discontinues its membership or is terminated from the program must immediately notify the Director of its change in status. The facility must place in its operating record a dated copy of this notification.

cation and revert back to the non-Performance Track inspection frequencies within seven calendar days.

\*\*\*\*\*

103. Section 265.16 is amended by adding new paragraph (a)(4) to read as follows:

§ 265.16 Personnel training.

(a) \*\*\*

(4) For facility employees that receive emergency response training pursuant to Occupational Safety and Health Administration (OSHA) regulations 29 CFR 1910.120(p)(8) and 1910.120(q), the facility is not required to provide separate emergency response training pursuant to this section, provided that the overall facility training meets all the requirements of this section.

\*\*\*\*\*

104. In Section 265.19, amend paragraph (c)(2) last sentence, by revising “264.254(c)(1)” to read “264.251(c)(1)”.

§ 265.19 Construction quality assurance program.

\*\*\*\*\*

(c) \*\*\*

(2) The CQA program shall include test fills for compacted soil liners, using the same compaction methods as in the full-scale unit, to ensure that the liners are constructed to meet the hydraulic conductivity requirements of §§ 264.221(c)(1), 264.251(c)(1), and 264.301(c)(1) of this regulation in the field. Compliance with the hydraulic conductivity requirements must be verified by using in-situ testing on the constructed test fill. The test fill requirement is waived where data are sufficient to show that a constructed soil liner meets the hydraulic conductivity requirements of §§ 264.221(c)(1), ~~264.254(e)(1)~~ 264.251(c)(1), and 264.301(c)(1) of this regulation in the field.

\*\*\*\*\*

Subsection D—Contingency Plans and Emergency Procedures

105. Section 265.52 is amended by revising paragraph (b) to read as follows:

§ 265.52 Content of contingency plan.

\*\*\*\*\*

(b) If the owner or operator has already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan in accordance with 40 CFR Part 112, or 40 CFR Part 1510 ~~of Chapter V~~, or some other emergency or contingency plan, he need only amend that plan to incorporate hazardous waste management provisions that are sufficient to comply with the requirements of this Section. The owner or operator may develop one contingency plan which meets all regulatory requirements. EPA and the Department recommend that the plan be based on the National Response Team’s Integrated Contingency Plan Guidance (“One Plan”). When modifications are made to non-RCRA provisions in an integrated contingency plan, the changes do not trigger the need for a RCRA permit modification.

\*\*\*\*\*

106. Section 265.56 is revised to read as follows:

§ 265.56 Emergency procedures.

\*\*\*\*\*

(b) Whenever there is a release, fire, or explosion, the emergency coordinator must immediately identify the character, exact source, amount, and ~~a real~~ areal extent of any released materials. He may do this by observation or review of facility records or manifests and, if necessary, by chemical analysis.

\*\*\*\*\*

~~(i) The owner or operator must notify the Director, and appropriate local authorities, that the facility is in compliance with paragraph (h) of this section before operations are resumed in the affected area(s) of the facility.~~

~~(j)~~ (i) The owner or operator must note in the operating record the time, date, and details of any incident that requires implementing the contingency plan. Within 15 days after the incident, he must submit a written report on the incident to the Director. The report must include:

\*\*\*\*\*

Subsection E—Manifest System, Recordkeeping, and Reporting

107. Section 265.73 is amended by revising the introductory text to paragraph (b), (b)(1), (b)(2) (the comment to paragraph (b)(2) is unchanged), (b)(6) (the comment to paragraph (b)(6) is unchanged), (b)(7), and (b)(8) and adding a new (b)(15) to read as follows:

§ 265.73 Operating record.

\*\*\*\*\*

(b) The following information must be recorded, as it becomes available, and maintained in the operating record ~~until closure of the facility~~ for three years unless noted

below:

(1) A description and the quantity of each hazardous waste received, and the method(s) and date(s) of its treatment, storage, or disposal at the facility as required by Appendix I to this Section. This information must be maintained in the operating record until closure of the facility;

(2) The location of each hazardous waste within the facility and the quantity at each location. For disposal facilities, the location and quantity of each hazardous waste must be recorded on a map or diagram of each cell or disposal area. For all facilities, this information must include cross-references to manifest document numbers if the waste was accompanied by a manifest. This information must be maintained in the operating record until closure of the facility;

\* \* \* \* \*

(6) Monitoring, testing or analytical data, and corrective action where required by Subsection F of this section and by §§ 265.19, 265.94, 265.191, 265.193, 265.195, 265.224, 265.226, 265.255, 265.260, 265.276, 265.278, 265.280(d)(1), 265.302, 265.304, 265.347, 265.377, 265.1034(c) through 265.1034(f), 265.1035, 265.1063(d) through 265.1063(i), 265.1064, and 265.1083 through 265.1090 of this regulation. Maintain in the operating record for three years, except for records and results pertaining to ground-water monitoring and cleanup, and response action plans for surface impoundments, waste piles, and landfills, which must be maintained in the operating record until closure of the facility.

\* \* \* \* \*

(7) All closure cost estimates under § 265.142 and, for disposal facilities, all post-closure cost estimates under § 265.144 must be maintained in the operating record until closure of the facility.

(8) Records of the quantities (and date of placement) for each shipment of hazardous waste placed in land disposal units under an extension to the effective date of any land disposal restriction granted pursuant to ~~40-CFR~~ § 268.5 of this Regulation, monitoring data required pursuant to a petition under ~~40-CFR~~ § 268.6 of this Regulation, or a certification under ~~40-CFR~~ § 268.8 of this Regulation, and the applicable notice required by a generator under § 268.7(a) of this Regulation. All of this information must be maintained in the operating record until closure of the facility.

\* \* \* \* \*

(15) Monitoring, testing or analytical data, and corrective action where required by §§ 265.90, 265.93(d)(2), and 265.93(d)(5), and the certification as required by § 265.196(f) must be maintained in the operating record until closure of the facility.

\* \* \* \* \*

- 108. Section **265.76** is revised as follows:
a. In paragraphs (a) through (g) to read as shown:
b. Add paragraph (b) to read:

§ 265.76 Unmanifested waste report.

(a) If a facility accepts for treatment, storage, or disposal any hazardous waste from an off-site source without an accompanying manifest, or without an accompanying shipping paper as described in § 263.20(e)(2) of this regulation, and if the waste is not excluded from the manifest requirement by § 261.5 of this regulation, then the owner or operator must prepare and submit a single copy of a report to the Director within fifteen (15) days after receiving the waste. The unmanifested waste report must contain the following information:

- (1) The EPA identification number, name, and address of the facility;
(2) The date the facility received the waste;
(3) The EPA identification number, name, and address of the generator and the transporter, if available;
(4) A description and the quantity of each unmanifested hazardous waste the facility received;
(5) The method of treatment, storage, or disposal for each hazardous waste;
(6) The certification signed by the owner or operator of the facility or his authorized representative; and
(7) A brief explanation of why the waste was unmanifested, if known.

\* \* \* \* \*

(b) [Reserved]

\* \* \* \* \*

Subsection F—Ground-Water Monitoring

- 109. Section **265.90** is amended as follows:
a. Amend paragraph (d) introductory text by removing the comma after the phrase “he may”.
b. Amend by revising paragraphs (d)(1) and (d)(3) to read as follows

§ 265.90 Applicability.

\* \* \* \* \*

(d) If an owner or operator assumes (or knows) that ground-water monitoring of indicator parameters in accordance with §§ 265.91 and 265.92 would show statistically significant increases (or decreases in the case of pH) when evaluated under § 265.93(b), he may; install, operate, and maintain an alternate ground-water monitoring system (other than the one described in §§ 265.91 and 265.92). If the owner

or operator decides to use an alternate ground-water monitoring system he must:

(1) Within one year after the effective date of these regulations, develop a specific plan, certified by a qualified geologist or geotechnical engineer, which satisfies the requirements of § 265.93(d)(3), for an alternate ground-water monitoring system.

This plan is to be placed in the facility's operating record and maintained until closure of the facility.

\*\*\*\*\*

(3) Prepare a report in accordance with § 265.93(d)(5) and place it in the facility's operating record and maintain until closure of the facility.

\*\*\*\*\*

110. Section 265.93 is amended by revising paragraphs (d)(2) and (d)(5) to read as follows:

**§ 265.93 Preparation, evaluation, and response.**

\*\*\*\*\*

(d)(1) \*\*\*

(2) Within 15 days after the notification under paragraph (d)(1) of this section, the owner or operator must develop a specific plan, based on the outline required under paragraph (a) of this section and certified by a qualified geologist or geotechnical engineer, for a ground-water quality assessment at the facility. This plan must be placed in the facility operating record and be maintained until closure of the facility.

\*\*\*\*\*

(5) The owner or operator must make his first determination under paragraph (d)(4) of this section, as soon as technically feasible, and prepare a report containing an assessment of ground-water quality. This report must be placed in the facility operating record and be maintained until closure of the facility.

\*\*\*\*\*

**Subsection G—Closure and Post-Closure**

111. Amend Section 265.112 paragraph (b)(5), revise “partial and final closure period” to read “partial and final closure periods”;

**§ 265.112 Closure plan; amendment of plan.**

\*\*\*\*\*

(b) \*\*\*

(5) A detailed description of other activities necessary during the ~~partial and final closure period~~

partial and final closure periods to ensure that all partial closures and final closure satisfy the closure performance standards, including, but not limited to, ground-water monitoring, leachate collection, and run-on and run-off control; and

\*\*\*\*\*

112. Section 265.113 is amended by revising paragraph (e)(5) to read as follows:

**§ 265.113 Closure; time allowed for closure.**

\*\*\*\*\*

(e) \*\*\*

\*\*\*\*\*

(5) During the period of corrective action, the owner or operator shall provide ~~semi-annual~~ annual reports to the Director describing the progress of the corrective action program, compile all ground-water monitoring data, and evaluate the effect of the continued receipt of non-hazardous wastes on the effectiveness of the corrective action.

\*\*\*\*\*

113. Section 265.115 is revised to read as follows:

**§ 265.115 Certification of closure.**

Within 60 days of completion of closure of each hazardous waste surface impoundment, waste pile, land treatment, and landfill unit, and within 60 days of completion of final closure, the owner or operator must submit to the Director, by registered mail, a certification that the hazardous waste management unit or facility, as applicable, has been closed in accordance with the specifications in the approved closure plan. The certification must be signed by the owner or operator and by an independent qualified Arkansas-registered Professional Engineer. Documentation supporting the Professional Engineer's certification must be furnished to the Director upon request until he releases the owner or operator from the financial assurance requirements for closure under § 265.143(h).

114. In Section 265.119, amend paragraph (b)(1)(ii) by revising the citation “Subsection G” to read “§ 265, Subsection G”.

**§ 265.119 Post-closure notices.**

\*\*\*\*\*

(b) \*\*\*

(1) \*\*\*

(ii) Its use is restricted under § 265 Subsection G regulations; and

\* \* \* \* \*

115. Section 265.120 is revised to read as follows:

**§ 265.120 Certification of completion of post-closure care.**

No later than 60 days after the completion of the established post-closure care period for each hazardous waste disposal unit, the owner or operator must submit to the Director, by registered mail, a certification that the post-closure care period for the hazardous waste disposal unit was performed in accordance with the specifications in the approved post-closure plan. The certification must be signed by the owner or operator and an independent qualified Arkansas-registered Professional Engineer. Documentation supporting the Professional Engineer’s certification must be furnished to the Director upon request until he releases the owner or operator from the financial assurance requirements for post-closure care under § 265.145(h).

**Subsection H—Financial Requirements**

116. Amend Section 265.140 paragraph (b) introductory text, revise the citation “265.146” to read “265.145”;

**§ 265.140 Applicability.**

\* \* \* \* \*

(b) The requirements of §§ 265.144 and ~~265.146~~265.145 apply only to owners and operators of

\* \* \* \* \*

117. In Section 265.142, amend paragraph (a) by removing “265.178” from the list of sections.

**§ 265.142 Cost estimate for closure.**

(a) The owner or operator must have a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in §§ 265.111 through 265.115 and applicable closure requirements of §§ ~~265.178~~, 265.197, 265.228, 265.258, 265.280, 265.310, 265.351, 265.381 and 265.404.

\* \* \* \* \*

118. Section 265.143 is amended by revising paragraph (h) to read as follows:

**§ 265.143 Financial assurance for closure.**

\* \* \* \* \*

(h) Release of the owner or operator from the require-

ments of this section. Within 60 days after receiving certifications from the owner or operator and an independent qualified Arkansas-registered Professional Engineer that final closure has been completed in accordance with the approved closure plan, the Director will notify the owner or operator in writing that he is no longer required by this section to maintain financial assurance for final closure of the facility, unless the Director has reason to believe that final closure has not been in accordance with the approved closure plan. The Director shall provide the owner or operator a detailed written statement of any such reason to believe that closure has not been in accordance with the approved closure plan.

119. Section 265.145 is amended by revising paragraph (h) to read as follows:

**§ 265.145 Financial assurance for post-closure care.**

\* \* \* \* \*

(h) Release of the owner or operator from the requirements of this section. Within 60 days after receiving certifications from the owner or operator and an independent qualified Arkansas-registered Professional Engineer that the post-closure care period has been completed for a hazardous waste disposal unit in accordance with the approved plan, the Director will notify the owner or operator in writing that he is no longer required to maintain financial assurance for post-closure care of that unit, unless the Director has reason to believe that post-closure care has not been in accordance with the approved post-closure plan. The Director shall provide the owner or operator a detailed written statement of any such reason to believe that post-closure care has not been in accordance with the approved post-closure plan.

120. Amend Section 265.147 as follows:

- a. Amend paragraph (b)(1) by adding paragraphs (i) and (ii) to read as follows:
- b. Amend by revising paragraph (e) to read as follows:

**§ 265.147 Liability requirements.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

**(i) Each insurance policy must be amended by attachment of the Hazardous Waste Facility Liability Endorsement or evidenced by a Certificate of Liability Insurance. The wording of the endorsement must be identical to the wording specified in § 264.151(i). The wording of the certificate of insurance must be identical to the wording specified in § 264.151(j). The owner or operator must submit a signed**



duplicate original of the endorsement or the certificate of insurance to the Director, or Regional Administrators if the facilities are located in more than one Region. If requested by the Director or a Regional Administrator, the owner or operator must provide a signed duplicate original of the insurance policy.

(ii) Each insurance policy must be issued by an insurer which, at a minimum, is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

\*\*\*\*\*

(e) *Period of coverage.* Within 60 days after receiving certifications from the owner or operator and an independent qualified Arkansas-registered Professional Engineer that final closure has been completed in accordance with the approved closure plan, the Director will notify the owner or operator in writing that he is no longer required by this section to maintain liability coverage for that facility, unless the Director has reason to believe that closure has not been in accordance with the approved closure plan.

\*\*\*\*\*

**Subsection I—Use and Management of Containers**

121. Section 265.174 is revised to read as follows:

**§ 265.174 Inspections.**

~~The owner or operator must inspect areas where containers are stored, at least weekly, looking for leaks and for deterioration caused by corrosion or other factors. At least weekly, the owner or operator must inspect areas where containers are stored, except for Performance Track member facilities, that must conduct inspections at least once each month, upon approval by the Director. To apply for reduced inspection frequency, the Performance Track member facility must follow the procedures described in § 265.15(b)(5) of this section. The owner or operator must look for leaking containers and for deterioration of containers and the containment system caused by corrosion or other factors.~~

**Subsection J—Tank Systems**

122. Section 265.191 is amended by revising paragraphs (a) and (b)(5)(ii) (the note to paragraph (b)(5)(ii) is unchanged) to read as follows:

**§ 265.191 Assessment of existing tank system’s integrity.**

(a) For each existing tank system that does not have secondary containment meeting the requirements of § 265.193, the owner or operator must determine that the tank system is not leaking or is unfit for use. Except as provided in paragraph (c) of this section, the owner or operator must obtain and keep on file at the facility a written assessment reviewed and certified by an independent qualified Arkansas-registered Professional Engineer in accordance with § 270.11(d) of this Regulation, that attests to the tank system’s integrity by January 12, 1988.

(b) \*\*\*

(5) \*\*\*

(ii) For other than non-enterable underground tanks and for ancillary equipment, this assessment must be either a leak test, as described above, or an internal inspection and/or other tank integrity examination certified by an independent qualified Arkansas-registered Professional Engineer in accordance with § 270.11(d) of this Regulation that addresses cracks, leaks, corrosion, and erosion.

\*\*\*\*\*

123. Section 265.192 is amended by revising paragraphs (a) introductory text and (b) introductory text to read as follows:

**§ 265.192 Design and installation of new tank systems or components.**

(a) Owners or operators of new tank systems or components must ensure that the foundation, structural support, seams, connections, and pressure controls (if applicable) are adequately designed and that the tank system has sufficient structural strength, compatibility with the waste(s) to be stored or treated, and corrosion protection so that it will not collapse, rupture, or fail. The owner or operator must obtain a written assessment reviewed and certified by an independent qualified Arkansas-registered Professional Engineer in accordance with § 270.11(d) of this Regulation attesting that the system has sufficient structural integrity and is acceptable for the storing and treating of hazardous waste. This assessment must include the following information:

\*\*\*\*\*

(b) The owner or operator of a new tank system must ensure that proper handling procedures are adhered to in order to prevent damage to the system during installation. Prior to covering, enclosing, or placing a new tank system or component in use, an independent, qualified installation inspector or an independent qualified Arkansas-registered Professional Engineer, either of whom is trained and experienced in the proper installation of tank systems, must inspect the system or component for the presence of any of the following items:

\*\*\*\*\*

124. Section 265.193 is amended by:

- a. Removing paragraphs (a)(2) through (a)(4);
- b. Redesignating (a)(5) as (a)(2);
- c. Revising paragraphs (a)(1), newly designated (a)(2) and (i)(2) (the note to (i)(2) is unchanged) to read as follows.
- d. In paragraph (e)(2)(v)(B), revise the citation “§ 262.21” to read “§ 261.23”;

**265.193 Containment and detection of releases.**

(a) \* \* \*

(1) For all new and existing tank systems or components, prior to their being put into service.

~~(2) For all existing tanks used to store or treat EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027, within two years after January 12, 1987;~~

~~(3) For those existing tank systems of known and documentable age, within two years after January 12, 1987, or when the tank systems have reached 15 years of age, whichever comes later;~~

~~(4) For those existing tank system for which the age cannot be documented, within eight years of January 12, 1987; but if the age of the facility is greater than seven years, secondary containment must be provided by the time the facility reaches 15 years of age, or within two years of January 12, 1987, whichever comes later; and~~

(5) (2) For tank systems that store or treat materials that become hazardous wastes, ~~subsequent to January 12, 1987, within the time intervals required in paragraphs (a)(1) through (a)(4) of this section; except that the date that a material becomes a hazardous waste must be used in place of January 12, 1987~~ within 2 years of the hazardous waste listing, or when the tank system has reached 15 years of age, whichever comes later.

\* \* \* \* \*

(i) \* \* \*

(2) For other than non-enterable underground tanks, and for all ancillary equipment, the owner or operator must either conduct a leak test as in paragraph (i)(1) of this section or an internal inspection or other tank integrity examination by an independent qualified Arkansas-registered Professional Engineer that addresses cracks, leaks, and corrosion or erosion at least annually. The owner or operator must remove the stored waste from the tank, if necessary, to allow the condition of all internal tanks surfaces to be assessed.

\* \* \* \* \*

(e) \* \* \*

(2) \* \* \*

(v) \* \* \*

(B) Meets the definition of reactive waste under ~~§ 261.21~~ § 261.23 of this regulation and may form an ignitable or explosive vapor; and

\* \* \* \* \*

125. In Section 265.194, amend paragraphs (b)(1) and (b)(2) by inserting a period after “e.g” in both paragraphs, and in paragraph (b)(1), by revising “discount” to read “disconnect”.

**§ 265.194 General operating requirements.**

\* \* \* \* \*

(b) \* \* \*

(1) Spill prevention controls (e.g., check valves, dry ~~discount~~ disconnect couplings);

(2) Overfill prevention controls (e.g., level sensing devices, high level alarms, automatic feed cut-off, or bypass to a standby tank); and

\* \* \* \* \*

126. Section 265.195 is amended by:

- a. Revising paragraph (a) (the note to paragraph (a) is unchanged);
- b. Redesignating existing paragraphs (b) and (c), as paragraphs (f) and (g), respectively; and,
- c. Adding new paragraphs (b) through (e).

**§ 265.195 Inspections.**

(a) The owner or operator must inspect, where present, at least once each operating day, data gathered from monitoring and leak detection equipment (e.g., pressure or temperature gauges, monitoring wells) to ensure that the tank system is being operated according to its design.

~~(1) Overfill/spill control equipment (e.g., waste-feed cutoff systems, bypass systems, and drainage systems) to ensure that it is in good working order;~~

~~(2) The aboveground portions of the tank system, if any, to detect corrosion or releases of waste;~~

~~(3) Data gathered from monitoring equipment and leak-detection equipment, (e.g., pressure and temperature gauges, monitoring wells) to ensure that the tank system is being operated according to its design; and~~

~~(4) The construction materials and the area immediately surrounding the externally accessible portion of the tank system including secondary containment structures (e.g., dikes) to detect erosion or signs of releases of hazardous waste (e.g., wet spots, dead vegetation);~~

Note: Section 265.15(c) requires the owner or operator to remedy any deterioration or malfunction he finds. Section 265.196 requires the owner or operator to notify the Director

within 24 hours of confirming a release. Also, 40 CFR part 302 may require the owner or operator to notify the National Response Center of a release.

**(b) Except as noted under the paragraph (c) of this section, the owner or operator must inspect at least once each operating day:**

**(1) Overfill/spill control equipment (e.g., waste-feed cutoff systems, bypass systems, and drainage systems) to ensure that it is in good working order;**

**(2) Above ground portions of the tank system, if any, to detect corrosion or releases of waste; and**

**(3) The construction materials and the area immediately surrounding the externally accessible portion of the tank system, including the secondary containment system (e.g., dikes) to detect erosion or signs of releases of hazardous waste (e.g., wet spots, dead vegetation).**

**(c) Owners or operators of tank systems that either use leak detection equipment to alert facility personnel to leaks, or implement established workplace practices to ensure leaks are promptly identified, must inspect at least weekly those areas described in paragraphs (b)(1) through (3) of this section. Use of the alternate inspection schedule must be documented in the facility's operating record. This documentation must include a description of the established workplace practices at the facility.**

**(d) Performance Track member facilities may inspect on a less frequent basis, upon approval by the Director, but must inspect at least once each month. To apply for a less than weekly inspection frequency, the Performance Track member facility must follow the procedures described in § 265.15(b)(5).**

**(e) Ancillary equipment that is not provided with secondary containment, as described in § 265.193(f)(1) through (4), must be inspected at least once each operating day.**

**(f)** The owner or operator must inspect cathodic protection systems, if present, according to, at a minimum, the following schedule to ensure that they are functioning properly:

(1) The proper operation of the cathodic protection system must be confirmed within six months after initial installation, and annually thereafter; and

(2) All sources of impressed current must be inspected and/or tested, as appropriate, at least bi-monthly (i.e., every other month).

Note: The practices described in the National Association of Corrosion Engineers (NACE) standard, "Recommended Practice (RP-02-85) — Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems," and the American Petroleum Institute (API) Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems," may be used, where applicable, as guidelines in maintaining and inspecting cathodic protection systems.

**(g)** The owner or operator must document in the operating record of the facility an inspection of those items in

paragraphs (a) and (b) of this section.

127. Section 265.196 is amended by revising paragraph (f) (the notes to paragraph (f) are unchanged) to read as follows:

**§ 265.196 Response to leaks or spills and disposition of leaking or unfit-for-use tank systems.**

\* \* \* \* \*

(f) *Certification of major repairs.* If the owner/operator has repaired a tank system in accordance with paragraph (e) of this section, and the repair has been extensive (e.g., installation of an internal liner; repair of a ruptured primary containment or secondary containment vessel), the tank system must not be returned to service unless the owner/operator has obtained a certification by an independent qualified Arkansas-registered Professional Engineer in accordance with § 270.11(d) that the repaired system is capable of handling hazardous wastes without release for the intended life of the system. This certification is to be placed in the operating record and maintained until closure of the facility.

\* \* \* \* \*

128. In Section 265.197, amend paragraph (b) by inserting a period after the closing parenthesis of the citation "(265.310)".

**§ 265.197 Closure and post-closure care.**

\* \* \* \* \*

(b) If the owner or operator demonstrates that not all contaminated soils can be practicably removed or decontaminated as required in paragraph (a) of this section, then the owner or operator must close the tank system and perform post-closure care in accordance with the closure and post-closure care requirements that apply to landfills (§ 265.310). In addition, for the purposes of closure, postclosure, and financial responsibility, such a tank system is then considered to be a landfill, and the owner or operator must meet all of the requirements for landfills specified in Subsections G and H of this Section.

\* \* \* \* \*

129. Section 265.201 is amended by:

- a. Revising the paragraph (c) introductory text;
- b. Redesignating paragraph (d) through (f), as paragraphs (f) through (h), respectively; and,
- c. Adding new paragraphs (d) and (e).

**§ 265.201 Special requirements for generators of between 100 and 1,000 kg/mo. that accumulate hazardous waste in tanks.**



\* \* \* \* \*

(c) **Except as noted in paragraph (d) of this section, generators of who accumulate** between 100 and 1,000 kg/mo of hazardous waste in tanks must inspect, where present:

(1) Discharge control equipment (e.g., waste feed cutoff systems, by-pass systems, and drainage systems) at least once each operating day, to ensure that it is in good working order;

(2) Data gathered from monitoring equipment (e.g., pressure and temperature gauges) at least once each operating day to ensure that the tank is being operated according to its design;

(3) The level of waste in the tank at least once each operating day to ensure compliance with § 265.201(b)(3);

(4) The construction materials of the tank at least weekly to detect corrosion or leaking of fixtures or seams; and

(5) The construction materials of, and the area immediately surrounding, discharge confinement structures (e.g., dikes) at least weekly to detect erosion or obvious signs of leakage (e.g., wet spots or dead vegetation).

Note: As required by § 265.15(c), the owner or operator must remedy any deterioration or malfunction he finds.

**(d) Generators who accumulate between 100 and 1,000 kg/mo of hazardous waste in tanks or tank systems that have full secondary containment and that either use leak detection equipment to alert facility personnel to leaks, or implement established workplace practices to ensure leaks are promptly identified, must inspect at least weekly, where applicable, the areas identified in paragraphs (c)(1) through (5) of this section. Use of the alternate inspection schedule must be documented in the facility's operating record. This documentation must include a description of the established workplace practices at the facility.**

**(e) Performance Track member facilities may inspect on a less frequent basis, upon approval by the Director, but must inspect at least once each month. To apply for a less than weekly inspection frequency, the Performance Track member facility must follow the procedures described in § 265.15(b)(5).**

**(f)** Generators of between 100 and 1,000 kg/mo accumulating hazardous waste in tanks must, upon closure of the facility, remove all hazardous waste from tanks, discharge control equipment, and discharge confinement structures.

Note: At closure, as throughout the operating period, unless the owner or operator can demonstrate, in accordance with § 261.3(c) or (d) of this regulation, that any solid waste removed from his tank is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and must manage it in accordance with all applicable requirements of Sections 262, 263, and 265 of this regulation.

**(g)** Generators of between 100 and 1,000 kg/mo must comply with the following special requirements for ignitable or reactive waste:

(1) Ignitable or reactive waste must not be placed in a tank, unless:

(i) The waste is treated, rendered, or mixed before or immediately after placement in a tank so that (A) the resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under § 261.21 or § 261.23 of this regulation, and (B) § 265.17(b) is complied with; or

(ii) The waste is stored or treated in such a way that it is protected from any material or conditions that may cause the waste to ignite or react; or

(iii) The tank is used solely for emergencies.

(2) The owner or operator of a facility which treats or stores ignitable or reactive waste in covered tanks must comply with the buffer zone requirements for tanks contained in Tables 2-1 through 2-6 of the National Fire Protection Association's "Flammable and Combustible Liquids Code," (1977 or 1981) (incorporated by reference, see § 260.11).

**(h)** Generators of between 100 and 1,000 kg/mo must comply with the following special requirements for incompatible wastes:

(1) Incompatible wastes, or incompatible wastes and materials, (see Appendix V for examples) must not be placed in the same tank, unless § 265.17(b) is complied with.

(2) Hazardous waste must not be placed in an unwashed tank which previously held an incompatible waste or material, unless § 265.17(b) is complied with.

## Subsection K—Surface Impoundments

127. Amend § 265.221 as follows:

a. Amend by revising paragraph (a) to read as follows:

b. In paragraph (d)(2)(i)(A), revise "in leaking?" to read "is leaking"; revise "soil it is not" to read "soil is not"; and revise "the owner of operator" to read "the owner or operator";

c. In paragraph (d)(2)(i)(B), revise the citation "§ 144.3 of this chapter" to read "40 CFR 270.2"; and add quotation marks around "underground source of drinking water".

### § 265.221 Design and operating requirements.

(a) The owner or operator of each new surface impoundment unit ~~on which construction commences after January 29, 1992~~, each lateral expansion of a surface impoundment unit ~~on which construction commences after July 29, 1992~~, and each replacement of an existing surface impoundment unit ~~that is to commence reuse after July 29, 1992~~ must install two or more liners and a leachate collection and removal system **above and** between ~~such the~~ liners, and operate the leachate collection and removal system, in accordance with § 264.221(c), unless exempted under §

264.221(d), (e), or (f), of this Regulation. ~~“Construction commences” is as defined in § 260.10 of this regulation under “existing facility.”~~

\* \* \* \* \*

(d) \* \* \*

(2)(i)(A) The monofill has at least one liner for which there is no evidence that such liner ~~in-leak-  
ing is leaking~~. For the purposes of this paragraph the term “liner” means a liner designed, constructed, installed, and operated to prevent hazardous waste from passing into the liner at any time during the active life of the facility, or a liner designed, constructed, installed, and operated to prevent hazardous waste from migrating beyond the liner to adjacent subsurface soil, ground water, or surface water at any time during the active life of the facility. In the case of any surface impoundment which has been exempted from the requirements of paragraph (a) of this section on the basis of a liner designed, constructed, installed, and operated to prevent hazardous waste from passing beyond the liner, at the closure of such impoundment the owner or operator must remove or decontaminate all waste residues, all contaminated liner material, and contaminated soil to the extent practicable. If all contaminated ~~soil it is not~~ soil is not removed or decontaminated, the ~~owner of operator~~ the owner or operator of such impoundment must comply with appropriate postclosure requirements, including but not limited to ground-water monitoring and corrective action;

(B) The monofill is located more than one-quarter mile from an underground source of drinking water (as that term is defined in ~~40 CFR 144.3~~ 40 CFR 270.2); and

\* \* \* \* \*

128. **Section 265.223** titled “Response actions” is redesignated as § 265.224, and § 265.224 titled “Containment system” is redesignated as § 265.223. and the newly designated § 265.224 is amended by revising paragraph (a) to read as follows:

- a. **Section 265.223** is moved to **265.224**.
- b. **Section 265.224** is moved to **Section 265.223**.

129. Amend **Section 265.224** as follows:

- a. Amend by revising paragraph (a) to read as follows:
- b. Amend paragraph (b)(1) by revising “exceedence” to read “exceedance”.

**§ 265.224 Containment system.**

(a) The owner or operator of surface impoundment units

subject to § 265.221(a) ~~must submit a response action plan to the Director when submitting the proposed action leakage rate under § 265.222~~ must develop and keep on site until closure of the facility a response action plan. The response action plan must set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan must describe the actions specified in paragraph (b) of this section.

(b) \* \* \*

(1) Notify the Director in writing of the ~~exceedence~~ exceedance within 7 days of the determination;

\* \* \* \* \*

**Subsection L—Waste Piles**

130. Amend § 265.255 in paragraph (b) by revising “surface impoundment units” to read “waste pile units”.

**§ 265.255 Action leakage rates.**

\* \* \* \* \*

(b) The Director shall approve an action leakage rate for ~~surface impoundment units~~ waste pile units subject to § 265.254. The action leakage rate is the maximum design flow rate that the leak detection system (LDS) can remove without the fluid head on the bottom liner exceeding 1 foot. The action leakage rate must include an adequate safety margin to allow for uncertainties in the design (e.g., slope, hydraulic conductivity, thickness of drainage material), construction, operation, and location of the LDS, waste and leachate characteristics, likelihood and amounts of other sources of liquids in the LDS, and proposed response actions (e.g., the action leakage rate must consider decreases in the flow capacity of the system over time resulting from siltation and clogging, rib layover and creep of synthetic components of the system, overburden pressures, etc.).

\* \* \* \* \*

131. Amend **Section 265.259** as follows:

- a. Amend by revising the first sentence of paragraph (a) to read as follows:
- b. amend paragraph (b)(1) by revising “exceedence” to read “exceedance”.

**§ 265.259 Response actions.**

(a) The owner or operator of waste pile units subject to § 265.254 must ~~submit a response action plan to the Director when submitting the proposed action leakage rate under § 265.255~~ develop and keep on-site until closure of the facility a response action plan. The response action plan must set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan must describe the actions specified in paragraph (b) of

this section.

(b) \* \* \*

(1) Notify the Director in writing of the ~~exceedence~~ exceedance within 7 days of the determination;

\* \* \* \* \*

**Subsection M—Land Treatment**

132. Section 265.280 is amended by revising paragraph (e) to read as follows:

**§ 265.280 Closure and post-closure.**

\* \* \* \* \*

(e) For the purpose of complying with § 265.115, when closure is completed the owner or operator may submit to the Director certification both by the owner or operator and by an independent, qualified soil scientist, in lieu of an independent qualified Arkansas-registered Professional Engineer, that the facility has been closed in accordance with the specifications in the approved closure plan.

\* \* \* \* \*

133. In Section 265.281, amend paragraph (a)(1) by revising the citation “§ 265.21” to read “§ 261.21”.

**§ 265.281 Special requirements for ignitable or reactive waste.**

(a) \* \* \*

(1) The resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under ~~§ 265.21~~ § 261.21 or § 261.23 of this regulation; and

\* \* \* \* \*

**Subsection N—Landfills**

134. Amend Section 265.301 as follows:

a. Amended by revising paragraph (a) to read as follows:

b. In paragraph (d)(1), revise “such waste does not” to read “such wastes do not”; revise the citation “§ 261.4” to read “§ 261.24”; and revise “Hazardous Waste Number” to read “Hazardous Waste Numbers”;

c. In paragraph (d)(2)(i)(B), revise the citation “§ 144.3 of this chapter” to read “§ 270.2”; and add quotation marks around “underground source of drinking water”.

**§ 265.301 Design and operating requirements.**

(a) The owner or operator of each new landfill unit ~~on which construction commences after January 29, 1992~~, each

lateral expansion of a landfill unit ~~on which construction commences after July 29, 1992~~, and each replacement of an existing landfill unit ~~that is to commence reuse after July 29, 1992~~ must install two or more liners and a leachate collection and removal system above and between such liners, and operate the leachate collection and removal systems, ~~in accordance with § 264.301(d), (e), or (f), of this regulation in accordance with § 264.301(c), unless exempted under § 264.301(d), (e), or (f) of this regulation.~~ “Construction commences” is as defined in § 260.10 of this regulation under “existing facility”.

\* \* \* \* \*

(d) \* \* \*

(1) The monofill contains only hazardous wastes from foundry furnace emission controls or metal casting molding sand, and such wastes do not contain constituents which would render the wastes hazardous for reasons other than the toxicity characteristic in § 261.24 of this regulation, with EPA ~~Hazardous Waste Number~~ Hazardous Waste Numbers D004 through D017; and

\* \* \* \* \*

(B) The monofill is located more than one-quarter mile from an underground source of drinking water (as that term is defined in ~~40 CFR 144.3~~ § 270.2 of this regulation); and

\* \* \* \* \*

135. In Section 265.302, amend paragraph (b) by revising “surface impoundment units” to read “landfill units”.

**§ 265.302 Action Leakage rate.**

\* \* \* \* \*

(b) The Director shall approve an action leakage rate for ~~surface impoundment units~~ landfill units subject to § 265.301(a). The action leakage rate is the maximum design flow rate that the leak detection system (LDS) can remove without the fluid head on the bottom liner exceeding 1 foot. The action leakage rate must include an adequate safety margin to allow for uncertainties in the design (e.g., slope, hydraulic conductivity, thickness of drainage material), construction, operation, and location of the LDS, waste and leachate characteristics, likelihood and amounts of other sources of liquids in the LDS, and proposed response actions (e.g., the action leakage rate must consider decreases in the flow capacity of the system over time resulting from siltation and clogging, rib layover and creep of synthetic components of the system, overburden pressures, etc.).

\* \* \* \* \*

136. Amend Section 265.303 as follows:

- a. Amend by revising paragraph (a) to read as follows
- b. Amend paragraph (b)(1) by revising “exceedence”

to read “exceedance”.

§ 265.303 Response actions.

(a) The owner or operator of landfill units subject to § 265.301(a) must ~~submit a response action plan to the Director when submitting the proposed action leakage rate under § 265.302~~ develop and keep on site until closure of the facility a response action plan. The response action plan must set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan must describe the actions specified in paragraph (b) of this section.

(b) \* \* \*

(1) Notify the Director in writing of the ~~exceedence~~ exceedance within 7 days of the determination;

\* \* \* \* \*

137. In Section 265.312, amend paragraph (a)(1) by revising “dissolution or material” to read “dissolution of material”.

§ 265.312 Special requirements for ignitable or reactive waste.

(a) \* \* \*

(1) The resulting waste, mixture, or ~~dissolution or material~~ dissolution of material no longer meets the definition of ignitable or reactive waste under § 261.21 or § 261.23 of this regulation; and

\* \* \* \* \*

138. Section 265.314 is amended by:

- a. Removing paragraph (a);
- b. Redesignating paragraphs (b) through (g) as paragraphs (a) through (f); and,
- c. Revising newly designated paragraph (a), and the introductory text of newly designated paragraph (f) to read as follows:
- d. In paragraph (e)(1)(ii), revise “polysobutylene” to read “polyisobutylene”;
- e. In paragraph (f)(2), revise the citation “§ 144.3 of this chapter” to read “40 CFR 270.2”; and add quotation marks around “underground source of drinking water”.

§ 265.314 Special requirements for bulk and containerized liquids.

~~(a) The following materials shall not be disposed of in landfills permitted under this Regulation and Regulation:~~

~~(1) Bulk liquids, semisolids and sludges unless, before disposal, such waste is treated or stabilized into cement-like material.~~

~~(2) Containers holding free liquids unless all~~

~~freestanding liquid has been removed or treated or stabilized into cement-like material; or the container is very small, such as an ampule, or is a lab pack as defined in 264.316 or 265.316, as applicable and is disposed of in accordance with 264.316 or 265.316 as applicable.~~

~~(3) Municipal refuse which is not hazardous waste:~~

~~(4) Ignitable wastes in containers, unless all free liquids therein have been removed or treated and stabilized into cement-like material.~~

~~(b) (a)~~ Effective May 8, 1985, The placement of bulk or non-containerized liquid hazardous waste or hazardous waste containing free liquids (whether or not sorbents have been added) in any landfill is prohibited. Before disposal, liquid waste or waste containing free liquids must be treated or stabilized, (e.g. by mixing with a sorbent solid so that free liquids are no longer present and the waste meets the requirements of (a)(1) or (2) above).

~~(e) (b)~~ Containers holding free liquids must not be placed in a landfill unless:

- (1) All free-standing liquid,
  - (i) has been removed by decanting, or other methods,
  - (ii) has been mixed with sorbent or solidified so that free-standing liquid is no longer observed; or
  - (iii) had been otherwise eliminated; or

(2) The container is very small, such as an ampule; or

(3) The container is designed to hold free liquids for use other than storage, such as a battery or capacitor; or

(4) The container is a lab pack as defined in § 265.316 and is disposed of in accordance with § 265.316.

~~(d) (c)~~ To demonstrate the absence or presence of free liquids in either a containerized or a bulk waste, the following test must be used: Method 9095B (Paint Filter Liquids Test) as described in “Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,” EPA Publication SW-846, as incorporated by reference in § 260.11 of this regulation.

~~(e) (d)~~ The date for compliance with paragraph (a) of this section is November 19, 1981. The date for compliance with paragraph (c) of this section is March 22, 1982.

~~(f) (e)~~ Sorbents used to treat liquids to be disposed of in landfills must be nonbiodegradable. Nonbiodegradable sorbents are materials listed or described in paragraph (e)(1) of this Subsection; or materials that are determined by the Commission to be nonbiodegradable through the Section 260 petition process.

- (1) Nonbiodegradable sorbents (i) Inorganic minerals, other inorganic materials, and elemental carbon (e.g., aluminosilicates, clays, smectites, Fuller’s earth, bentonite, calcium bentonite, montmorillonite, calcined montmorillonite, kaolinite, mi-



cas (illite), vermiculites, zeolites, calcium carbonate (organic-free limestone), oxides/hydroxides, alumina, lime, silica (sand), diatomaceous earth, perlite (volcanic glass), expanded volcanic rock, volcanic ash, cement kiln dust, fly ash, rice hull ash, activated charcoal/activated carbon), or

(ii) High molecular weight synthetic polymers (e.g., polyethylene, high density polyethylene (HDPE), polypropylene, polystyrene, polyurethane, polyacrylate, polynorborene, ~~polyisobutylene~~, polyisobutylene, ground synthetic rubber, cross-linked allylstyrene and tertiary butyl copolymers). This does not include polymers derived from biological materials or polymers specifically designed to be degradable; or

(iii) Mixtures of these nonbiodegradable materials.

(2) Tests for nonbiodegradable sorbents. (i) The sorbent material is determined to be nonbiodegradable under ASTM Method G21-70(1984a) - Standard Practice for Determining Resistance of Synthetic Polymer Material to Fungi; or

(ii) The sorbent material is determined to be nonbiodegradable under ASTM Method G22-76 (1984b)-Standard Practice for Determining Resistance of Plastics to Bacteria; or

(iii) The sorbent material is determined to be non-biodegradable under OECD test 301B: [CO<sub>2</sub> Evolution (Modified Sturm Test)].

~~(g) (f) Effective November 8, 1985;~~ The placement of any liquid which is not a hazardous waste in a landfill is prohibited unless the owner or operator of such landfill demonstrates to the Director, or the Director determines, that:

(1) The only reasonably available alternative to the placement in such landfill is placement in a landfill or unlined surface impoundment, whether or not permitted or operating under interim status, which contains, or may reasonably be anticipated to contain, hazardous waste; and

(2) Placement in such owner or operator’s landfill will not present a risk of contamination of any underground source of drinking water (as that term is defined in ~~40-CFR-144.3~~ § 270.2 of this regulation).

\*\*\*\*\*

139. At **Section 265.316** paragraph (d), revise “§ 260.10(a)” to read “§ 260.10”.

**§ 265.316 Disposal of small containers of hazardous waste in overpacked drums (“lab packs”).**

\*\*\*\*\*

(d) Incompatible wastes, as defined in ~~§ 260.10(a)~~ § 260.10 of this regulation, must not be placed in the same

outside container.

\*\*\*\*\*

**Subsection Q—Chemical, Physical, and Biological Treatment**

140. In **Section 265.405**, amend paragraph (a)(1) by revising the citation “§ 261.21 or 261.23 or this chapter” to read “§§ 261.21 or 261.23 of this chapter”.

**§ 265.405 Special requirements for ignitable or reactive waste.**

(a) \*\*\*

(1) The waste is treated, rendered, or mixed before or immediately after placement in the treatment process or equipment so that (i) the resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under ~~§ 261.21 or 261.23 or this~~ §§ 261.21 or 261.23 of this regulation, and (ii) § 265.17(b) is complied with; or

\*\*\*\*\*

**Subsection W—Drip Pads**

141. **Section 265.441** is amended by revising paragraphs (a), (b), and (c) to read as follows:

**§ 265.441 Assessment of existing drip pad integrity.**

(a) For each existing drip pad as defined in § 265.440, the owner or operator must evaluate the drip pad and determine that it meets all of the requirements of this Subsection, except the requirements for liners and leak detection systems of § 265.443(b). No later than the effective date of this rule, the owner or operator must obtain and keep on file at the facility a written assessment of the drip pad, reviewed and certified by an independent qualified Arkansas-registered Professional Engineer that attests to the results of the evaluation. The assessment must be reviewed, updated, and re-certified annually until all upgrades, repairs, or modifications necessary to achieve compliance with all the standards of § 265.443 are complete. The evaluation must document the extent to which the drip pad meets each of the design and operating standards of § 265.443, except the standards for liners and leak detection systems, specified in § 265.443(b).

(b) The owner or operator must develop a written plan for upgrading, repairing, and modifying the drip pad to meet the requirements of § 265.443(b), and submit the plan to the Director no later than 2 years before the date that all repairs, upgrades, and modifications are complete. This written plan must describe all changes to be made to the drip pad in suf-

ficient detail to document compliance with all the requirements of § 265.443. The plan must be reviewed and certified by an independent qualified Arkansas-registered Professional Engineer.

(c) Upon completion of all repairs and modifications, the owner or operator must submit to the Director or state Director, the as-built drawings for the drip pad together with a certification by an independent qualified Arkansas-registered Professional Engineer attesting that the drip pad conforms to the drawings.

\*\*\*\*\*

142. Section 265.443 is amended by revising paragraphs (a)(4)(ii) and (g) to read as follows:

**§ 265.443 Design and operating requirements.**

(a) \*\*\*

(4)(i) \*\*\*

(ii) The owner or operator must obtain and keep on file at the facility a written assessment of the drip pad, reviewed and certified by an independent qualified Arkansas-registered Professional Engineer that attests to the results of the evaluation. The assessment must be reviewed, updated and recertified annually. The evaluation must document the extent to which the drip pad meets the design and operating standards of this section, except for paragraph (b) of this section.

\*\*\*\*\*

(g) The drip pad must be evaluated to determine that it meets the requirements of paragraphs (a) through (f) of this section and the owner or operator must obtain a statement from an independent qualified Arkansas-registered Professional Engineer certifying that the drip pad design meets the requirements of this section.

\*\*\*\*\*

143. Section 265.444 is amended by revising paragraph (a) to read as follows:

**§ 265.444 Inspections.**

(a) During construction or installation, liners and cover systems (e.g., membranes, sheets, or coatings) must be inspected for uniformity, damage and imperfections (e.g., holes, cracks, thin spots, or foreign materials). Immediately after construction or installation, liners must be inspected and certified as meeting the requirements of § 265.443 by an independent qualified Arkansas-registered Professional Engineer. This certification must be maintained at the facility as part of the facility operating record. After installation, liners and covers must be inspected to ensure tight seams and joints and the absence of tears, punctures, or blisters.

\*\*\*\*\*

144. In Section 265.445, amend paragraph (b) by revising “post/closure care” to read “post-closure care”.

**§ 265.445 Closure.**

\*\*\*\*\*

(b) If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in paragraph (a) of this section, the owner or operator finds that not all contaminated subsoils can be practically removed or decontaminated, he must close the facility and perform ~~post/closure care~~ post-closure care in accordance with closure and post-closure care requirements that apply to landfills (§ 265.310). For permitted units, the requirement to have a permit continues throughout the ~~postclosure~~ post-closure care period.

\*\*\*\*\*

**Subsection AA—Air Emission Standards for Process Vents**

145. In Section 265.1033, amend paragraph (f)(2)(ii) by replacing the period with a comma after 0.5 °C”.

**§ 265.1033 Standards: Closed-vent systems and control devices.**

\*\*\*\*\*

(f) \*\*\*

(2) \*\*\*

(ii) For a catalytic vapor incinerator, a temperature monitoring device equipped with a continuous recorder. The device shall be capable of monitoring temperature at two locations and have an accuracy of ±1 percent of the temperature being monitored in °C or ±0.5 °C, whichever is greater. One temperature sensor shall be installed in the vent stream at the nearest feasible point to the catalyst bed inlet and a second temperature sensor shall be installed in the vent stream at the nearest feasible point to the catalyst bed outlet.

\*\*\*\*\*

146. Amend Section 265.1035 as follows:

a. In paragraph (b)(2) introductory text, replace the period with a comma after the citation “§ 265.1032”;

b. In paragraph (b)(2)(i), revise “annual throughput end operating hours” to read “annual throughput and operating hours”;

c. In paragraph (c)(4)(i), replace the period with a comma after the first occurrence of “760 °C”.

§ 265.1035 Recordkeeping requirements.

\* \* \* \* \*

(b) \* \* \*

(2) Up-to-date documentation of compliance with the process vent standards in § 265.1032, including:

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(i) Information and data identifying all affected process vents, ~~annual throughput and operating hours~~ annual throughput and operating hours of each affected unit, estimated emission rates for each affected vent and for the overall facility (i.e., the total emissions for all affected vents at the facility), and the approximate location within the facility of each affected unit (e.g., identify the hazardous waste management units on a facility plot plan); and

\* \* \* \* \*

(c) \* \* \*

(4) \* \* \*

(i) For a thermal vapor incinerator designed to operate with a minimum residence time of 0.50 seconds at a minimum temperature of 760°C, ~~1~~ period when the combustion temperature is below 760°C.

\* \* \* \* \*

Subsection BB—Air Emission Standards for Equipment Leaks

147. Section 265.1061 is amended by removing paragraphs (b)(1) and (d), and redesignating paragraphs (b)(2) and (b)(3) as paragraphs (b)(1) and (b)(2).

§ 265.1061 Alternative standards for valves in gas/vapor service or in light liquid service; percentage of valves allowed to leak.

(a) An owner or operator subject to the requirements of § 265.1057 may elect to have all valves within a hazardous waste management unit comply with an alternative standard which allows no greater than 2 percent of the valves to leak.

(b) The following requirements shall be met if an owner or operator decides to comply with the alternative standard of allowing 2 percent of valves to leak:

~~(1) An owner or operator must notify the Director that the owner or operator has elected to comply with the requirements of this section.~~

(2) (1) A performance test as specified in paragraph (c) of this section shall be conducted initially upon designation, annually, and at other times requested by the Director.

~~(3) (2)~~ If a valve leak is detected, it shall be repaired in accordance with § 265.1057 (d) and (e).

(c) \* \* \* \* \*

~~(d) If an owner or operator decides no longer to comply with this section, the owner or operator must notify the Director in writing that the work practice standard described in § 265.1057 (a) through (e) will be followed.~~

148. Section 265.1062 is amended by removing paragraph (a)(2) and redesignating paragraph (a)(1) as paragraph (a).

§ 265.1062 Alternative standards for valves in gas/vapor or in light liquid service; skip period leak detection and repair.

(a) ~~(1)~~ An owner or operator subject to the requirements of § 265.1057 may elect for all valves within a hazardous waste management unit to comply with one of the alternative work practices specified in paragraphs (b) (2) and (3) of this section.

~~(2) An owner or operator must notify the Director before implementing one of the alternative work practices.~~

149. In § 265.1063, amend paragraph (b)(4)(ii) by replacing the period in “10.000” with a comma.

§ 265.1063 Test methods and procedures.

\* \* \* \* \*

(b) \* \* \*

(4) \* \* \*

(ii) A mixture of methane or n-hexane and air at a concentration of approximately, but less than, 10,000 ppm methane or n-hexane.

\* \* \* \* \*

SubSection CC—Air Emission Standards for Tanks, Surface Impoundments, and Containers

150. In Section 265.1080, amend paragraph (a) by revising the citation “Subsections I, J, or K” to read “Subsection I, J, or K”.

§ 265.1080 Applicability.

(a) The requirements of this subsection apply to owners and operators of all facilities that treat, store, or dispose of hazardous waste in tanks, surface impoundments, or containers subject to either ~~subsections I, J, or K~~ subsection I, J, or K of this Section except as § 265.1 and paragraph (b) of this section provide otherwise.

\* \* \* \* \*



151. In Section 265.1085, amend paragraph (h)(3) introductory text, by revising “under either or the following” to read “under either of the following”.

§ 265.1085 Standards: Tanks.

\*\*\*\*\*  
(h) \*\*\*

(3) Whenever a hazardous waste is in the tank, the tank shall be operated as a closed system that does not vent to the atmosphere except ~~under either or the following~~ under either of the following conditions as specified in paragraph (h)(3)(i) or (h)(3)(ii) of this section.

\*\*\*\*\*

152. In Section 265.1090, amend paragraph (f)(1) by revising the citation “§ 265.1084(c)(2)(i)” to read “§ 265.1083(c)(2)(i)”.

§ 265.1090 Recordkeeping requirements.

\*\*\*\*\*  
(f) \*\*\*

(1) For tanks, surface impoundments, or containers exempted under the hazardous waste organic concentration conditions specified in § 265.1083(c)(1) or or ~~§ 265.1084(c)(2)(i)~~ § 265.1083(c)(2)(i) through (c)(2)(vi) of this subsection, the owner or operator shall record the information used for each waste determination (e.g., test results, measurements, calculations, and other documentation) in the facility operating log. If analysis results for waste samples are used for the waste determination, then the owner or operator shall record the date, time, and location that each waste sample is collected in accordance with applicable requirements of § 265.1084 of this subsection.

\*\*\*\*\*

Subsection DD—Containment Buildings

153. Amend Section 265.1035 as follows:

a. amended by revising the introductory text to read as follows:

b. amend paragraph (d) by revising “permit” to read “prevent”.

§ 265.1100 Applicability.

The requirements of this Subsection apply to owners or operators who store or treat hazardous waste in units designed and operated under § 265.1101 of this subsection. ~~These provisions became effective on February 18, 1993, although the owner or operator may notify the Director of his intent~~

~~to be bound by this subsection at an earlier time.~~ The owner or operator is not subject to the definition of land disposal in RCRA section 3004(k) provided that the unit:

\*\*\*\*\*

(d) Has controls as needed to ~~permit~~ prevent fugitive dust emissions; and

\*\*\*\*\*

154. Amend Section 265.1101 as follows:

a. In paragraph (b)(3)(iii), revise the citation “§ 265.193(d)(1)” to read “§ 265.193(e)(1)”;

b. Amend revising paragraphs (c)(2) to read as follows:

c. In paragraph (c)(3) introductory text, revise “hazardous waste, must repair” to read “hazardous waste, the owner or operator must repair”;

d. Amend revising paragraphs (c)(4) to read as follows:

e. In paragraph (d) introductory text, revise “For containment” to read “For a containment”.

§ 265.1101 Design and operating standards.

\*\*\*\*\*

(b) \*\*\*

(3) \*\*\*

(iii) The secondary containment system must be constructed of materials that are chemically resistant to the waste and liquids managed in the containment building and of sufficient strength and thickness to prevent collapse under the pressure exerted by overlaying materials and by any equipment used in the containment building. (Containment buildings can serve as secondary containment systems for tanks placed within the building under certain conditions. A containment building can serve as an external liner system for a tank, provided it meets the requirements of ~~§ 265.193(d)(1)~~ § 265.193(e)(1). In addition, the containment building must meet the requirements of § 265.193 (b) and (c) to be considered an acceptable secondary containment system for a tank.)

\*\*\*\*\*

(c) \*\*\*

(2) Obtain and keep on-site a certification by an independent qualified Arkansas-registered Professional Engineer that the containment building design meets the requirements of paragraphs (a), (b), and (c) of this section.

\*\*\*\*\*

(3) Throughout the active life of the containment building, if the owner or operator detects a condition that could lead to or has caused a release of ~~hazardous waste, must repair~~ hazardous waste, the owner or operator must repair the condition promptly, in accordance with the following proce-

dures.

\*\*\*\*\*

(4) Inspect and record in the facility’s operating record at least once every seven days, **except for Performance Track member facilities, that must inspect up to once each month, upon approval of the director**, data gathered from monitoring and leak detection equipment as well as the containment building and the area immediately surrounding the containment building to detect signs of releases of hazardous waste. **To apply for reduced inspection frequency, the Performance Track member facility must follow the procedures described in § 265.15(b)(5).**

\*\*\*\*\*

(d) ~~For containment~~ **For a containment** building that contains both areas with and without secondary containment, the owner or operator must:

\*\*\*\*\*

155. Amend **Appendix I to Section 265** as follows:

a. In Table 1, add unit of measure codes for “Pounds,” “Short tons,” “Kilograms,” and “Tons” at the end of the table to read as set forth below;

b. In Table 2, Section 2.(d), revise “T75 Tricking filter” to read “T75 Tricking filter”;

c. In Table 2, Section 4., revise the heading “Miscellaneous (Subsection X)” to read “Miscellaneous”;

**Appendix I — Recordkeeping Instructions**

Table 1

\*\*\*\*\*

Unit of measure	Code1
Gallons	G
Gallons per Hour	E
Gallons per Day	U
Liters	L
Liters per Hour	H
Liters per Day	V
Short Tons per Hour	D
Metric Tons per Hour	W
Short Tons per Day	N
Metric Tons per Day	S
Pounds per Hour	J
Kilograms per Hour	R
Cubic Yards	Y
Cubic Meters	C
Acres	B
Acre-feet	A
Hectares	Q
Hectare-meter	F
Btu’s per Hour	I
<b><u>Pounds</u></b>	<b><u>P</u></b>
<b><u>Short tons</u></b>	<b><u>T</u></b>
<b><u>Kilograms</u></b>	<b><u>K</u></b>
<b><u>Tons</u></b>	<b><u>M</u></b>

\*\*\*\*\*

Table 2.

Handling Codes for Treatment, Storage and Disposal Methods

\*\*\*\*\*

2. Treatment

\*\*\*\*\*

(d) Biological Treatment

\*\*\*\*\*

~~T75 Tricking filter~~

**T75 Tricking filter**

\*\*\*\*\*

4. ~~Miscellaneous (Subsection X)~~ **Miscellaneous**

\*\*\*\*\*

156. In the table in **Appendix V to Section 265**, under the Group 1–A column, revise the phrase “Alkaline caustic liquids” to read “Alkaline caustic liquids”; and revise “Lime sludge and other corrosive alkalines” to read “Lime sludge and other corrosive alkalies”.

\*\*\*\*\*

**Appendix V — Examples of Potentially Incompatible Waste**

**Group 1-A**

\*\*\*\*\*

~~Akaline caustic liquids~~ **Alkaline caustic liquids**

\*\*\*\*\*

157. Amend **Appendix VI to Section 265** as follows:

a. In the entry “Dichlorvos (DDVP)”, revise the CAS No. “62737” to read “62–73–7”;

b. In the entry “Ethylene thiourea (2-imidazolidinethione)” revise the CAS No. “9–64–” to read “96–45–7”;

c. In the entry “Neopentyl glycol (dimethylolpropane)” revise “dimethylolpropane” to read “dimethylpropane”;

d. In the entry “1,3-Propane sulfone”, revise “sulfone” to read “sultone”.

**Appendix VI to Section 265 — Compounds With Henry’s Law Constant Less Than 0.1 Y/X**

\*\*\*\*\*

Dichlorvos (DDVP).....~~62737~~**62–73–7**

\*\*\*\*\*

Ethylene thiourea (2-imidazolidinethione)..... ~~9-64-5796-~~**45-7**

\*\*\*\*\*

Neopentyl glycol (~~dimethylolpropane~~ **dimethylpropane**)..... 126-30-7

\*\*\*\*\*

1,3-Propane ~~sulfone~~ **sultone**..... 1120-71-4

\*\*\*\*\*

# Section 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

158. In § 266.80, amend the Table in paragraph (a) by inserting, in the third column, a comma after “(except for § 262.11)” in all four instances and change “undernotification” to read under notification.

## § 266.80 Applicability and requirements.

\*\*\*\*\*

(a)

Then you \*\*\*

#3

are exempt from Reg. 23 262 (except for 262.11), 263, 264, 265, 266, 270, and the provisions ~~undernotification~~ under notification requirements at section 3010 of RCRA.

#5

are exempt from Reg. 23 Sections 262 (except for 262.11), 263, 264, 265, 266, 270, and the notification requirements at section 3010 of RCRA.

\*\*\*\*\*

159. Amend Section 266.100 as follows:

a. Revise the first sentence of paragraph (b)(1) and adding paragraphs (b)(3) and (b)(4) to read as follows:

b. In paragraph (d)(2)(iv), revise “266.212” to read “266.112”;

c. In paragraph (d)(3)(i)(A), revise “appendix IX” to read “appendix XI”;

## § 266.100 Applicability.

\*\*\*\*\*

(b) \*\*\*

(1) Except as provided by paragraphs (b)(2), ~~(b)(3), and (b)(4)~~ of this section, the standards of this section ~~no longer apply when an affected source demonstrates compliance with the maximum achievable control technology (MACT) requirements of 40 CFR Part 63, subpart EEE, by conducting a comprehensive performance test and submitting to the Director a Notification of Compliance under 40 CFR §§ 63.1207(j) and 63.1210(b) documenting compliance with the requirements of 40 CFR Part 63, subpart EEE. Nevertheless, even after this demonstration of compliance with the MACT standards, RCRA permit conditions that were based on the standards of this part will con-~~

~~tinue to be in effect until they are removed from the permit or the permit is terminated or revoked, unless the permit expressly provides otherwise.~~ do not apply to a new hazardous waste boiler or industrial furnace unit that becomes subject to RCRA permit requirements after October 12, 2005; or no longer apply when an owner or operator of an existing hazardous waste boiler or industrial furnace unit demonstrates compliance with the maximum achievable control technology (MACT) requirements of 40 CFR part 63, subpart EEE by conducting a comprehensive performance test and submitting to the Director a Notification of Compliance under 40 CFR §§ 63.1207(j) and 63.1210(d) documenting compliance with the requirements of 40 CFR part 63, subpart EEE.

\*\*\*\*\*

(2) \*\*\*\*

(iv) The standards for regulation of residues of ~~§ 266.212~~ § 266.112; and

\*\*\*\*\*

(3) If you own or operate a boiler or hydrochloric acid production furnace that is an area source under 40 CFR § 63.2 and you elect not to comply with the emission standards under 40 CFR §§ 63.1216, 63.1217, and 63.1218 for particulate matter, semivolatile and low volatile metals, and total chlorine, you also remain subject to:

(i) Section 266.105—Standards to control particulate matter;

(ii) Section 266.106—Standards to control metals emissions, except for mercury; and

(iii) Section 266.107—Standards to control hydrogen chloride and chlorine gas.

(4) The particulate matter standard of § 266.105 remains in effect for boilers that elect to comply with the alternative to the particulate matter standard under 40 CFR §§ 63.1216(e) and 63.1217(e).

\*\*\*\*\*

(d) \*\*\*

(3) \*\*\*

(i) \*\*\*

(A) A waste listed in ~~appendix IX~~ appendix XI of this section must contain recoverable levels of lead, a waste listed in Appendix XII of this section must contain recoverable levels of nickel or chromium, a waste listed in Appendix XIII of this section must contain recoverable levels of mercury and contain less than 500 ppm of Section 261, Appendix VIII organic constituents, and baghouse bags used to capture metallic dusts emitted by steel manufacturing must contain recov-

erable levels of metal; and  
\* \* \* \* \*

160. Amend **Section 266.102** as follows:

- a. In paragraph (a)(2)(vi), revise “(Corrective Action)” to read “(Releases from Solid Waste Management Units)”;
- b. In paragraph (e)(3)(i)(E), revise the citation “§ 266.111(b)” to read “§ 266.105(a)”;
- c. In paragraph (e)(5)(i)(C), revise “chlorine” to read “chlorine”; and revise “feedstocks” to read “feedstocks”;
- d. In paragraph (e)(6)(ii)(B)(2), revise “of preceding” to read “of the preceding”;
- e. In paragraph (e)(8)(iii), revise “values” to read “valves”.
- f. Amend by revising paragraph (e)(10) to read as follows:

**§ 266.102 Permit standards for burners.**

- (a) \* \* \*
  - (2) \* \* \*
    - (vi) In subsection F (~~Corrective Action Releases from Solid Waste Management Units~~), §§ 264.90 and 264.101; \* \* \* \* \*
- (e) \* \* \*
  - (3)(i) \* \* \*
    - (E) Such other operating requirements as are necessary to ensure that the particulate standard in § ~~266.111(b)~~ **§ 266.105(a)** is met. \* \* \* \* \*
  - (5) \* \* \*
    - (i) \* \* \*
      - (C) A sampling and analysis program for total chloride and chlorine for the hazardous waste, other fuels, and industrial furnace ~~feedstocks~~ **feedstocks**; \* \* \* \* \*
  - (6) \* \* \*
    - (ii) \* \* \*
      - (B) \* \* \*
        - (2) The rolling average for the selected averaging period is defined as the arithmetic mean of one hour block averages for the averaging period. A one hour block average is the arithmetic mean of the one minute averages recorded during the 60- minute period beginning at one minute after the beginning of ~~pre- ceding of the preceding~~ clock hour; and \* \* \* \* \*
  - (8) \* \* \*
    - (iii) The boiler or industrial furnace and as-

sociated equipment (pumps, ~~values~~ **valves**, pipes, fuel storage tanks, etc.) must be subjected to thorough visual inspection when it contains hazardous waste, at least daily for leaks, spills, fugitive emissions, and signs of tampering.  
\* \* \* \* \*

(10) Recordkeeping. The owner or operator must ~~keep~~ **maintain** in the operating record of the facility all information and data required by this section ~~until closure of the facility~~ **for five years.**  
\* \* \* \* \*

161. Amend **Section 266.103** as follows:

- a. In paragraph (a)(4)(vii), revise the citation “265.147–265.151” to read “265.147–265.150”;
- b. In paragraph (b)(2)(v)(B)(2), revise “meterological” to read “meteorological”;
- c. In paragraph (b)(5)(ii)(A), revise “on a hourly” to read “on an hourly”;
- d. Revise paragraphs (c)(1)(i) introductory text to read as follows:
  - e. In paragraph (c)(1)(ii)(A)(2), revise “feedsteams” to read “feedstreams”;
  - f. Revise paragraphs (c)(1)(ix) introductory text to read as follows:
    - g. In paragraph (c)(1)(ix)(A), revise “ration” to read “ratio”;
    - h. In paragraph (c)(4)(iv)(C)(1), revise “on a hourly” to read “on an hourly”;
    - i. Amend by revising paragraph (d) to read as follows:
    - j. In paragraph (g)(1)(i), revise “on a hourly” to read “on an hourly”.
    - k. Amend by revising paragraph (k) to read as follows:

**§ 266.103 Interim status standards for burners.**

- (a) \* \* \*
  - (4) \* \* \*
    - (vii) In subsection H (Financial requirements), §§ 265.141, 265.142, 265.143, and ~~265.147-265.151~~ **265.147–265.150**, except that States and the Federal government are exempt from the requirements of subsection H; and \* \* \* \* \*
- (b) \* \* \*
  - (2) \* \* \*
    - (v) \* \* \*
      - (B) \* \* \*
        - (2) Source of ~~meterological~~ **meteo- rological** data; \* \* \* \* \*
- (5) \* \* \*
  - (ii)
    - (A) The feed rate of each metal shall be

limited at any time to ten times the feed rate

that would be allowed ~~on a hourly~~ on an hourly rolling average basis;

\*\*\*\*\*

(c) \*\*\*

(1) \*\*\*

~~(i) Feed rate of total hazardous waste and (unless complying with the Tier I or adjusted Tier I metals feed rate screening limits under § 266.1~~

(i) Feed rate of total hazardous waste and (unless complying with the Tier I or adjusted Tier I metals feed rate screening limits under § 266.106(b) or (e)), pumpable hazardous waste;

\*\*\*\*\*

(ii) \*\*\*

(A) \*\*\*

(2) Industrial furnaces that must comply with the alternative metals implementation approach under paragraph (c)(3)(ii) of this section must specify limits on the concentration of each metal in the collected particulate matter in lieu of feed rate limits for total ~~feedstreams~~ feedstreams;

\*\*\*\*\*

~~(ix) For systems using wet scrubbers, including wet ionizing scrubbers (unless complying with Tier I or Adjusted Tier I metals feed rate screening limits under § 266.106(b) or (e) and the total chlorine and chloride feed rate screening limits under § 266.107(b)(1) or (e));~~ (ix) For systems using wet scrubbers, including wet ionizing scrubbers (unless complying with the Tier I or Adjusted Tier I metals feed rate screening limits under § 266.106(b) or (e) and the total chlorine and chloride feed rate screening limits under § 266.107(b)(1) or (e));

(A) Minimum liquid to flue gas ~~ration~~ ratio;

\*\*\*\*\*

(4) \*\*\*

(iv) \*\*\*

(C) \*\*\*

(I) The feed rate of each metal shall be limited at any time to ten times the feed rate that would be allowed ~~on a hourly~~ on an hourly rolling average basis;

\*\*\*\*\*

(d) *Periodic Recertifications.* The owner or operator must conduct compliance testing and submit to the Director a recertification of compliance under provisions of paragraph

(c) of this section within ~~three~~ five years from submitting the previous certification or recertification. If the owner or operator seeks to recertify compliance under new operating conditions, he/she must comply with the requirements of paragraph (c)(8) of this section.

\*\*\*\*\*

(g) \*\*\*

(1) \*\*\*

(i) If compliance with the combustion chamber temperature limit is based ~~on a hourly~~ on an hourly rolling average, the minimum temperature during the compliance test is considered to be the average over all runs of the lowest hourly rolling average for each run;

or  
\*\*\*\*\*

(k) *Recordkeeping.* The owner or operator must keep in the operating record of the facility all information and data required by this section ~~until closure of the boiler or industrial furnace unit.~~ for five years.

\*\*\*\*\*

162. In **Section 266.106**, amend paragraph (d)(1) by deleting the second appearance of the phrase “dispersion modeling to predict the maximum annual average off-site ground level concentration for each”.

**§ 266.106 Standards to control metals emissions.**

\*\*\*\*\*

(d) \*\*\*

(1) General. Conformance with the Tier III metals controls must be demonstrated by emissions testing to determine the emission rate for each metal. In addition, conformance with either the Tier III or Adjusted Tier I metals controls must be demonstrated by air dispersion modeling to predict the maximum annual average off-site ground level concentration for each ~~dispersion modeling to predict the maximum annual average off-site ground level concentration for each~~ metal, and a demonstration that acceptable ambient levels are not exceeded.

\*\*\*\*\*

163. Amend § 266.109 paragraph (a)(2)(ii), revise “constituent” to read “constituent” in both instances;

**§ 266.109 Low risk waste exemption.**

(a) \*\*\*

(2) \*\*\*

(ii) Calculate reasonable, worst case emission rates for each ~~constituent~~ constituent identified in paragraph (a)(2)(i) of this section by assuming the device achieves 99.9 percent destruction and removal efficiency.



That is, assume that 0.1 percent of the mass weight of each ~~constituent~~ constituent fed to the device is emitted.  
\* \* \* \* \*

**Subsection N—Conditional Exemption for Low-Level Mixed Waste Storage, Treatment, Transportation and Disposal.**

164. Amend **Section 266** by revising the Subsection heading to read as set forth above.

~~**Subsection N—Conditional Exemption for Low-Level Mixed Waste Storage and Disposal**~~  
**Subsection N—Conditional Exemption for Low-Level Mixed Waste Storage, Treatment, Transportation and Disposal.**  
\* \* \* \* \*

165. Amend **Section 266, Appendix III** column headings by revising “Cl<sub>2</sub>” to read “Cl<sub>2</sub>,” three times, and by revising “HCl” to read “HCl” three times (i.e., revise the “1” (one) to be a lower-case letter L in all six cases).

**Appendix III-Tier II Emission Rate Screening Limits for Free Chlorine and Hydrogen Chloride Noncomplex terrain Complex terrain**  
\* \* \* \* \*

~~Cl<sub>2</sub> (g/hr) HCl (g/hr) Cl<sub>2</sub> (g/hr) HCl (g/hr) Cl<sub>2</sub> (g/hr) HCl (g/hr)~~  
Cl<sub>2</sub> (g/hr) HCl (g/hr) Cl<sub>2</sub> (g/hr) HCl (g/hr) Cl<sub>2</sub> (g/hr) HCl (g/hr)  
\* \* \* \* \*

166. Amend **Section 266, Appendix IV** by Revising the entry “Maleic Anyhdride” to read “Maleic Anhydride”;

**Appendix IV-Reference Air Concentrations\***  
\* \* \* \* \*  
~~Maleic Anyhdride~~ Maleic Anhydride  
\* \* \* \* \*

167. Amend **Section 266, Appendix V** as follows:  
a. Revise the third column heading “Unit risk (m3/?g)” to read “Unit risk (m3/g)”;  
b. Revise the fourth column heading “RsD (?g/m3)” to read “RsD (g/m3)”;  
c. Revise the entry “Benxene” to read “Benzene”;  
d. Revise the entry “Hexachlorodibenxo-p-dioxin (1,2 Mixture)” to read “Hexachlorodibenzo-p-dioxin (1,2 Mixture)”.

**Appendix V-Risk Specific Doses (10<sup>5</sup>)**  
\* \* \* \* \*  
Unit risk

~~(m3/ug)~~  
Unit risk (m3/g)  
\* \* \* \* \*  
~~RsD~~  
~~(ug/m3)~~  
RsD (g/m3)  
\* \* \* \* \*  
~~Benxene~~ Benzene  
\* \* \* \* \*  
~~Hexachlorodibenxo-p-dioxin(1,2 Mixture)~~ Hexachlorodibenzo-p-dioxin (1,2 Mixture)  
\* \* \* \* \*

168. Amend **Section 266, Appendix VI** by revising the first column heading “Flow rate (m<sup>3</sup>/s)” to read “Flow rate (m<sup>3</sup>/s)”.

**Appendix VI-Stack Plume Rise**  
\* \* \* \* \*  
~~Flow rate (m3/s)~~  
Flow rate (m3/s)  
\* \* \* \* \*

169. Amend **Section 266, Appendix XIII** at item number 14 by revising “levels or mercury” to read “levels of mercury”.

**Appendix XIII to Section 266 - Mercury Bearing Wastes That May Be Processed in Exempt Mercury Recovery Units**  
\* \* \* \* \*  
~~Recoverable levels or mercury~~ levels of mercury contained in soil  
\* \* \* \* \*

170. **Section 267** is added to read as follows:

**Section 267—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE FACILITIES OPERATING UNDER A STANDARDIZED PERMIT**

**Subsection A—General**  
267.1 What are the purpose, scope and applicability of this section?  
267.2 What is the relationship to interim status standards?  
267.3 How does this section affect an imminent hazard action?

**Subsection B—General Facility Standards**  
267.10 Does this subsection apply to me?  
267.11 What must I do to comply with this subsection?  
267.12 How do I obtain an identification number?  
267.13 What are my waste analysis requirements?  
267.14 What are my security requirements?  
267.15 What are my general inspection requirements?

- 267.16 What training must my employees have?
- 267.17 What are the requirements for managing ignitable, reactive, or incompatible wastes?
- 267.18 What are the standards for selecting the location of my facility?

Subsection C—Preparedness and Prevention

- 267.30 Does this subsection apply to me?
- 267.31 What are the general design and operation standards?
- 267.32 What equipment am I required to have?
- 267.33 What are the testing and maintenance requirements for the equipment?
- 267.34 When must personnel have access to communication equipment or an alarm system?
- 267.35 How do I ensure access for personnel and equipment during emergencies?
- 267.36 What arrangements must I make with local authorities for emergencies?

Subsection D—Contingency Plan and Emergency Procedures

- 267.50 Does this subsection apply to me?
- 267.51 What is the purpose of the contingency plan and how do I use it?
- 267.52 What must be in the contingency plan?
- 267.53 Who must have copies of the contingency plan?
- 267.54 When must I amend the contingency plan?
- 267.55 What is the role of the emergency coordinator?
- 267.56 What are the required emergency procedures for the emergency coordinator?
- 267.57 What must the emergency coordinator do after an emergency?
- 267.58 What notification and recordkeeping must I do after an emergency?

Subsection E Manifest System, Recordkeeping, Reporting, and Notifying

- 267.70 Does this subsection apply to me?
- 267.71 Use of the manifest system.
- 267.72 Manifest discrepancies.
- 267.73 What information must I keep?
- 267.74 Who sees the records?
- 267.75 What reports must I prepare and to whom do I send them?
- 267.76 What notifications must I make?

Subsection F—Releases from Solid Waste Management Units

- 267.90 Who must comply with this section?
- 267.91–267.100 [Reserved]
- 267.101 What must I do to address corrective action for solid waste management units?

Subsection G—Closure

- 267.110 Does this subsection apply to me?
- 267.111 What general standards must I meet when I stop operating the unit?
- 267.112 What procedures must I follow?
- 267.113 Will the public have the opportunity to comment on the plan?
- 267.114 [Reserved]
- 267.115 After I stop operating, how long until I must close?
- 267.116 What must I do with contaminated equipment, structure, and soils?
- 267.117 How do I certify closure?

Subsection H—Financial Requirements

- 267.140 Who must comply with this subsection, and briefly, what do they have to do?
- 267.141 Definitions of terms as used in this subsection.
- 267.142 Cost estimate for closure.
- 267.143 Financial assurance for closure.
- 267.144–267.146 [Reserved]
- 267.147 Liability requirements.
- 267.148 Incapacity of owners or operators, guarantors, or financial institutions.
- 267.149 [Reserved]

- 267.150 State assumption of responsibility.
- 267.151 Wording of the instruments

Subsection I—Use and Management of Containers

- 267.170 Does this subsection apply to me?
- 267.171 What standards apply to the containers?
- 267.172 What are the inspection requirements?
- 267.173 What standards apply to the container storage areas?
- 267.174 What special requirements must I meet for ignitable or reactive waste?
- 267.175 What special requirements must I meet for incompatible wastes?
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Subsection A—General

§ 267.1 What are the purpose, scope and applicability of this section?

(a) The purpose of this section is to establish minimum national standards which define the acceptable management of hazardous waste under a Section 270, subsection J standardized permit.

(b) This section applies to owners and operators of facilities who treat or store hazardous waste under a



Section 270, subsection J standardized permit, except as provided otherwise in Section 261, subsection A, or Section 264.1(f) and (g) of this Regulation.

### § 267.2 What is the relationship to interim status standards?

If you are a facility owner or operator who has fully complied with the requirements for interim status—as defined in Section 3005(e) of RCRA and Section 270.70 of this Regulation—you must comply with the regulations specified in Section 265 of this Regulation instead of the regulations in this section, until final administrative disposition of the standardized permit application is made, except as provided under Section 264, subsection S.

### § 267.3 How does this section affect an imminent hazard action?

Notwithstanding any other provisions of this section, enforcement actions may be brought pursuant to section 7003 of RCRA.

## Subsection B—General Facility Standards

### § 267.10 Does this subsection apply to me?

This subsection applies to you if you own or operate a facility that treats or stores hazardous waste under a Section 270, subsection J standardized permit, except as provided in § 267.1(b) of this Regulation.

### § 267.11 What must I do to comply with this subsection?

To comply with this subsection, you must obtain an EPA identification number, and follow the requirements below for waste analysis, security, inspections, training, special waste handling, and location standards.

### § 267.12 How do I obtain an EPA identification number?

You must apply to the Department for an EPA identification number following the current notification procedures and using forms as provided by the Department. You may obtain these forms by contacting the Department, or from the ADEQ web site at <http://www.adeg.state.ar.us>

### § 267.13 What are my waste analysis requirements?

(a) Before you treat or store any hazardous wastes, you must obtain a detailed chemical and physical analysis of a representative sample of the wastes. At a minimum, the analysis must contain all the information needed to treat or store the waste to comply with this section and Section 268 of this Regulation.

(1) You may include data in the analysis that was developed under Section 261, and published or documented data on the hazardous waste or on hazardous waste generated from similar processes.

(2) You must repeat the analysis as necessary to ensure that it is accurate and up to date. At a minimum, you must repeat the analysis if the process or operation generating the hazardous wastes has changed.

(b) You must develop and follow a written waste analysis plan that describes the procedures you will follow to comply with paragraph (a) of this section. You must keep this plan at the facility. If you receive wastes generated from off-site, and are eligible for a standardized permit, you also must have submitted the waste analysis plan with the Notice of Intent. At a minimum, the plan must specify all of the following:

(1) The hazardous waste parameters that you will analyze and the rationale for selecting these parameters (that is, how analysis for these parameters will provide sufficient information on the waste's properties to comply with paragraph (a) of this section).

(2) The test methods you will use to test for these parameters.

(3) The sampling method you will use to obtain a representative sample of the waste to be analyzed. You may obtain a representative sample using either:

(i) One of the sampling methods described in appendix I of Section 261; or

(ii) An equivalent sampling method.

(4) How frequently you will review or repeat the initial analysis of the waste to ensure that the analysis is accurate and up to date.

(5) Where applicable, the methods you will use to meet the additional waste analysis requirements for specific waste management methods as specified in §§ 264.17, 264.1034(d), 264.1063(d), and 264.1083.

### § 267.14 What are my security requirements?

(a) You must prevent, and minimize the possibility for, livestock and unauthorized people from entering the active portion of your facility.

**(b) Your facility must have:**

(1) A 24-hour surveillance system (for example, television monitoring or surveillance by guards or facility personnel) that continuously monitors and controls entry onto the active portion of the facility; or

(2) An artificial or natural barrier (for example, a fence in good repair or a fence combined with a cliff) that completely surrounds the active portion of the facility; and

(3) A means to control entry, at all times, through the gates or other entrances to the active portion of the facility (for example, an attendant, television monitors, locked entrance, or controlled roadway access to the facility).

(c) You must post a sign at each entrance to the active portion of a facility, and at other prominent locations, in sufficient numbers to be seen from any approach to this active portion. The sign must bear the legend "Danger—Unauthorized Personnel Keep Out." The legend must be in English and in any other language predominant in the area surrounding the facility (for example, facilities in counties bordering the Canadian province of Quebec must post signs in French, and facilities in counties bordering Mexico must post signs in Spanish), and must be legible from a distance of at least 25 feet. You may use existing signs with a legend other than "Danger—Unauthorized Personnel Keep Out" if the legend on the sign indicates that only authorized personnel are allowed to enter the active portion, and that entry onto the active portion can be dangerous.

**§ 267.15 What are my general inspection requirements?**

(a) You must inspect your facility for malfunctions and deterioration, operator errors, and discharges that may be causing, or may lead to:

(1) Release of hazardous waste constituents to the environment; or

(2) A threat to human health. You must conduct these inspections often enough to identify problems in time to correct them before they result in harm to human health or the environment.

(b) You must develop and follow a written schedule for inspecting, monitoring equipment, safety and emergency equipment, security devices, and operating and structural equipment (such as dikes and sump pumps) that are important to preventing, detecting, or responding to environmental or human health hazards.

(1) You must keep this schedule at the facility.

(2) The schedule must identify the equipment and devices you will inspect and what problems you look for, such as malfunctions or deterioration of equipment (for example, inoperative

sump pump, leaking fitting, etc.).

(3) The frequency of your inspections may vary for the items on the schedule. However, the frequency should be based on the rate of deterioration of the equipment and the probability of an environmental or human health incident if the deterioration, malfunction, or any operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, must be inspected daily when in use. At a minimum, the inspection schedule must include the items and frequencies required in §§ 267.174, 267.193, 267.195, 267.1103, and §§ 264.1033, 264.1052, 264.1053, 264.1058, and 264.1083 through 264.1089, where applicable.

(c) You must remedy any deterioration or malfunction of equipment or structures that the inspection reveals in time to prevent any environmental or human health hazard. Where a hazard is imminent or has already occurred, you must take remedial action immediately.

(d) You must record all inspections. You must keep these records for at least three years from the date of inspection. At a minimum, you must include the date and time of the inspection, the name of the inspector, a notation of the observations made, and the date and nature of any repairs or other remedial actions.

**§ 267.16 What training must my employees have?**

(a) Your facility personnel must successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of this section. You must ensure that this program includes all the elements described in the documents that are required under paragraph (d)(3) of this section.

(1) A person trained in hazardous waste management procedures must direct this program, and must teach facility personnel hazardous waste management procedures (including contingency plan implementation) relevant to their employment positions.

(2) At a minimum, the training program must be designed to ensure that facility personnel are able to respond effectively to emergencies by including instruction on emergency procedures, emergency equipment, and emergency systems, including all of the following, where applicable:

(i) Procedures for using, inspecting, repairing, and replacing facility emergency and monitoring equipment

(ii) Key parameters for automatic waste feed cut-off systems.

(iii) Communications or alarm systems.

(iv) Response to fires or explosions.

(v) Response to ground water contamination incidents.

(vi) Shutdown of operations.

(b) Facility personnel must successfully complete the program required in paragraph (a) of this section within six months after the date of their employment or assignment to a facility, or to a new position at a facility, whichever is later. Employees hired after the effective date of your standardized permit must not work in unsupervised positions until they have completed the training requirements of paragraph (a) of this section.

(c) Facility personnel must take part in an annual review of the initial training required in paragraph (a) of this section.

(d) You must maintain the following documents and records at your facility:

(1) The job title for each position at the facility related to hazardous waste management, and the name of the employee filling each job;

(2) A written job description for each position listed under paragraph (d)(1) of this section. This description must include the requisite skill, education, or other qualifications, and duties of employees assigned to each position;

(3) A written description of the type and amount of both introductory and continuing training that will be given to each person filling a position listed under paragraph (d)(1) of this section;

(4) Records that document that facility personnel have received and completed the training or job experience required under paragraphs (a), (b), and (c) of this section.

(e) You must keep training records on current personnel until your facility closes. You must keep training records on former employees for at least three years from the date the employee last worked at your facility. Personnel training records may accompany personnel transferred within your company.

(f) Additionally, you must meet the following requirements:

(1) No employee may be assigned the duties of transferring, handling, sorting, mixing, treating or disposing of hazardous waste unless that employee meets the requirements set out in § 267.16 (a), (b) and (c) above.

(2) No employee may be assigned the duties of transferring, handling, sorting, mixing, treating or disposing of hazardous waste unless that employee has demonstrated his/her capabilities of:

(i) Reading and comprehending label instructions, operational procedures, contingency plans and regulatory directives;

(ii) 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

(iii) Operating all equipment which he/she is assigned to operate, including personal safety and emergency equipment.

(3) You must promptly modify the training required of your 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, shall 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.

**§ 267.17 What are the requirements for managing ignitable, reactive, or incompatible wastes?**

(a) You must take precautions to prevent accidental ignition or reaction of ignitable or reactive waste by following these requirements:

(1) You must separate these wastes and protect them from sources of ignition or reaction such as: open flames, smoking, cutting and welding, hot surfaces, frictional heat, sparks (static, electrical, or mechanical), spontaneous ignition (for example, from heat-producing chemical reactions), and radiant heat.

(2) While ignitable or reactive waste is being handled, you must confine smoking and open flames to specially designated locations.

(3) "No Smoking" signs must be conspicuously placed wherever there is a hazard from ignitable or reactive waste.

(b) If you treat or store ignitable or reactive waste, or mix incompatible waste or incompatible wastes and other materials, you must take precautions to prevent reactions that:

(1) Generate extreme heat or pressure, fire or explosions, or violent reactions.

(2) Produce uncontrolled toxic mists, fumes, dusts, or gases in sufficient quantities to threaten human health or the environment.

(3) Produce uncontrolled flammable fumes or gases in sufficient quantities to pose a risk of fire or explosions.

(4) Damage the structural integrity of the device or facility.

(5) Threaten human health or the environment in any similar way.

(c) You must document compliance with paragraph (a) or (b) of this section. You may base this documentation on references to published scientific or engineering

literature, data from trial tests (for example bench scale or pilot scale tests), waste analyses (as specified in § 267.13), or the results of the treatment of similar wastes by similar treatment processes and under similar operating conditions.

**§ 267.18 What are the standards for selecting the location of my facility?**

(a) You may not locate portions of new facilities where hazardous waste will be treated or stored within 61 meters (200 feet) of a fault that has had displacement in Holocene time.

(1) “Fault” means a fracture along which rocks on one side have been displaced with respect to those on the other side.

(2) “Displacement” means the relative movement of any two sides of a fault measured in any direction.

(3) “Holocene” means the most recent epoch of the Quaternary period, extending from the end of the Pleistocene to the present.

Note to paragraph (a)(3): Procedures for demonstrating compliance with this standard are specified in Section 270.14(b)(11) of this Regulation. Facilities which are located in political jurisdictions other than those listed in appendix VI to Section 264, are assumed to be in compliance with this requirement.

(b) If your facility is located in a 100-year flood plain, it must be designed, constructed, operated, and maintained to prevent washout of any hazardous waste by a 100-year flood.

(1) “100-year flood plain” means any land area that is subject to a one percent or greater chance of flooding in any given year from any source.

(2) “Washout” means the movement of hazardous waste from the active portion of the facility as a result of flooding.

(3) “100-year flood” means a flood that has a one percent chance of being equaled or exceeded in any given year.

**Subsection C—Preparedness and Prevention**

**§ 267.30 Does this subsection apply to me?**

This subsection applies to you if you own or operate a facility that treats or stores hazardous waste under a Section 270, subsection J standardized permit, except as provided in § 267.1(b).

**§ 267.31 What are the general design and operation standards?**

You must design, construct, maintain, and operate your

facility to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water that could threaten human health or the environment.

**§ 267.32 What equipment am I required to have?**

Your facility must be equipped with all of the following, unless none of the hazards posed by waste handled at the facility could require a particular kind of equipment specified below:

(a) An internal communications or alarm system capable of providing immediate emergency instruction (voice or signal) to facility personnel.

(b) A device, such as a telephone (immediately available at the scene of operations) or a hand-held two-way radio, capable of summoning emergency assistance from local police departments, fire departments, or State or local emergency response teams.

(c) Portable fire extinguishers, fire control equipment (including special extinguishing equipment, such as that using foam, inert gas, or dry chemicals), spill control equipment, and decontamination equipment.

(d) Water at adequate volume and pressure to supply water hose streams, or foam-producing equipment, or automatic sprinklers, or water spray systems.

**§ 267.33 What are the testing and maintenance requirements for the equipment?**

You must test and maintain all required facility communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment, as necessary, to assure its proper operation in time of emergency.

**§ 267.34 When must personnel have access to communication equipment or an alarm system?**

(a) Whenever hazardous waste is being poured, mixed, spread, or otherwise handled, all personnel involved in the operation must have immediate access to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, unless the device is not required under § 267.32.

(b) If just one employee is on the premises while the facility is operating, that person must have immediate access to a device, such as a telephone (immediately available at the scene of operation) or a hand-held two-way radio, capable of summoning external emergency assistance, unless not required under § 267.32.



**§ 267.35 How do I ensure access for personnel and equipment during emergencies?**

You must maintain enough aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, as appropriate, considering the type of waste being stored or treated.

**§ 267.36 What arrangements must I make with local authorities for emergencies?**

(a) You must attempt to make the following arrangements, as appropriate, for the type of waste handled at your facility and the potential need for the services of these organizations:

(1) Arrangements to familiarize police, fire departments, and emergency response teams with the layout of the facility, properties of hazardous waste handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to and roads inside the facility, and possible evacuation routes.

(2) Agreements designating primary emergency authority to a specific police and a specific fire department where more than one police and fire department might respond to an emergency, and agreements with any others to provide support to the primary emergency authority.

(3) Agreements with State emergency response teams, emergency response contractors, and equipment suppliers.

(4) Arrangements to familiarize local hospitals with the properties of hazardous waste handled at the facility and the types of injuries or illnesses that could result from fires, explosions, or releases at the facility.

(b) If State or local authorities decline to enter into such arrangements, you must document the refusal in the operating record.

**Subsection D—Contingency Plan and Emergency Procedures**

**§ 267.50 Does this subsection apply to me?**

This subsection applies to you if you own or operate a facility that treats or stores hazardous waste under a Section 270, subsection J standardized permit, except as provided in § 267.1(b).

**§ 267.51 What is the purpose of the contingency**

**plan and how do I use it?**

(a) You must have a contingency plan for your facility. You must design the plan to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water.

(b) You must implement the provisions of the plan immediately whenever there is a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment.

**§ 267.52 What must be in the contingency plan?**

(a) Your contingency plan must:

(1) Describe the actions facility personnel will take to comply with §§ 267.51 and 267.56 in response to fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water at the facility.

(2) Describe all arrangements agreed upon under § 267.36 by local police departments, fire departments, hospitals, contractors, and state and local emergency response teams to coordinate emergency services.

(3) List names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator (see § 267.55), and you must keep the list up to date. Where more than one person is listed, one must be named as primary emergency coordinator and others must be listed in the order in which they will assume responsibility as alternates.

(4) Include a current list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment), where this equipment is required. In addition, you must include the location and a physical description of each item on the list, and a brief outline of its capabilities.

(5) Include an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. You must describe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes (in cases where the primary routes could be blocked by releases of hazardous waste or fires).

(b) If you have already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan under 40 CFR part 112, or some other emergency or contingency plan, you need only amend that plan to incorporate haz-

ardous waste management provisions that will comply with the requirements of this section.

**§ 267.53 Who must have copies of the contingency plan?**

(a) You must maintain a copy of the plan with all revisions at the facility; and

(b) You must submit a copy with all revisions to all local police departments, fire departments, hospitals, and state and local emergency response teams that may be called upon to provide emergency services.

**§ 267.54 When must I amend the contingency plan?**

You must review, and immediately amend the contingency plan, if necessary, whenever:

(a) The facility permit is revised.

(b) The plan fails in an emergency.

(c) You change the facility (in its design, construction, operation, maintenance, or other circumstances) in a way that materially increases the potential for fires, explosions, or releases of hazardous waste or hazardous waste constituents, or changes the response necessary in an emergency.

(d) You change the list of emergency coordinators.

(e) You change the list of emergency equipment.

**§ 267.55 What is the role of the emergency coordinator?**

At least one employee must be either on the facility premises or on call at all times (that is, available to respond to an emergency by reaching the facility within a short period of time) who has the responsibility for coordinating all emergency response measures. This emergency coordinator must be thoroughly familiar with all aspects of the facility's contingency plan, all operations and activities at the facility, the location and characteristics of waste handled, the location of all records within the facility, and the facility layout. In addition, this person must have the authority to commit the resources needed to carry out the contingency plan.

**§ 267.56 What are the required emergency procedures for the emergency coordinator?**

(a) Whenever there is an imminent or actual emergency situation, the emergency coordinator (or his designee when the emergency coordinator is on call) must immediately:

(1) Activate internal facility alarm or commu-

nication systems, where applicable, to notify all facility personnel, and

(2) Notify appropriate State or local agencies with designated response roles if their help is needed.

(b) Whenever there is a release, fire, or explosion, the emergency coordinator must:

(1) Immediately identify the character, exact source, amount, and areal extent of any released materials. He may do this by observation or review of facility records or manifests, and, if necessary, by chemical analysis.

(2) Assess possible hazards to human health or the environment that may result from the release, fire, or explosion. This assessment must consider both direct and indirect effects of the release, fire, or explosion. For example, the assessment would consider the effects of any toxic, irritating, or asphyxiating gases that are generated, or the effects of any hazardous surface water run-off from water or chemical agents used to control fire and heat-induced explosions.

(c) If the emergency coordinator determines that the facility has had a release, fire, or explosion which could threaten human health, or the environment, outside the facility, he must report his findings as follows:

(1) If his assessment indicates that evacuation of local areas may be advisable, he must immediately notify appropriate local authorities. He must be available to help appropriate officials decide whether local areas should be evacuated; and

(2) He must immediately notify either the government official designated as the on-scene coordinator for that geographical area, or the National Response Center (using their 24-hour toll-free number 800/ 424-8802). The report must include:

(i) Name and telephone number of the reporter.

(ii) Name and address of facility.

(iii) Time and type of incident (for example, a release or a fire).

(iv) Name and quantity of material(s) involved, to the extent known.

(v) The extent of injuries, if any.

(vi) The possible hazards to human health or the environment outside the facility.

(d) During an emergency, the emergency coordinator must take all reasonable measures necessary to ensure that fires, explosions, and releases do not occur, recur, or spread to other hazardous waste at the facility. These measures must include, where applicable, stopping processes and operations, collecting and containing release waste, and removing or isolating containers.

(e) If the facility stops operations in response to a fire, explosion, or release, the emergency coordinator

must monitor for leaks, pressure buildup, gas generation, or ruptures in valves, pipes, or other equipment, when appropriate.

**§ 267.57 What must the emergency coordinator do after an emergency?**

(a) Immediately after an emergency, the emergency coordinator must provide for treating, storing, or disposing of recovered waste, contaminated soil or surface water, or any other material that results from a release, fire, or explosion at the facility.

(b) The emergency coordinator must ensure that, in the affected area(s) of the facility:

(1) No waste that may be incompatible with the released material is treated, stored, or disposed of until cleanup procedures are completed.

(2) All emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed.

**§ 267.58 What notification and recordkeeping must I do after an emergency?**

(a) You must notify the Director, and other appropriate State and local authorities, that the facility is in compliance with § 267.57(b) before operations are resumed in the affected area(s) of the facility.

(b) You must note the time, date, and details of any incident that requires implementing the contingency plan in the operating record. Within 15 days after the incident, you must submit a written report on the incident to the Director. You must include the following in the report:

(1) The name, address, and telephone number of the owner or operator.

(2) The name, address, and telephone number of the facility.

(3) The date, time, and type of incident (e.g., fire, explosion).

(4) The name and quantity of material(s) involved.

(5) The extent of injuries, if any.

(6) An assessment of actual or potential hazards to human health or the environment, where this is applicable.

(7) The estimated quantity and disposition of recovered material that resulted from the incident.

**Subsection E—Recordkeeping, Reporting, and Notifying**

**§ 267.70 Does this subsection apply to me?**

This subsection applies to you if you own or operate a facility that stores or non-thermally treats a hazardous waste under a Section 270, subsection J standardized permit, except as provided in § 267.1(b). In addition, you must comply with the manifest requirements of Section 262 of this Regulation whenever a shipment of hazardous waste is initiated from your facility.

**§ 267.71 Use of the manifest system.**

(a) If a facility receives hazardous waste accompanied by a manifest, the owner or operator, or his agent, must:

(1) Sign and date each copy of the manifest to certify that the hazardous waste covered by the manifest was received;

(2) Note any significant discrepancies in the manifest (as defined in § 267.72(a)) on each copy of the manifest;

(3) Immediately give the transporter at least one copy of the signed manifest;

(4) Within 30 days after the delivery, send a copy of the manifest to the generator; and

(5) Retain at the facility a copy of each manifest for at least three years from the date of delivery.

(b) If a facility receives, from a rail or water (bulk shipment) transporter, hazardous waste which is accompanied by a shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator’s certification, and signatures), the owner or operator, or his agent, must:

(1) Sign and date each copy of the manifest or shipping paper (if the manifest has not been received) to certify that the hazardous waste covered by the manifest or shipping paper was received;

(2) Note any significant discrepancies (as defined in § 267.72(a)) in the manifest or shipping paper (if the manifest has not been received) on each copy of the manifest or shipping paper. Note that the Commission does not intend that the owner or operator of a facility whose procedures under § 267.13(c) include waste analysis must perform that analysis before signing the shipping paper and giving it to the transporter. Section 267.72(b), however, requires reporting an unreconciled discrepancy discovered during later analysis.

(3) Immediately give the rail or water (bulk shipment) transporter at least one copy of the manifest or shipping paper (if the manifest has not been received);

(4) Within 30 days after the delivery, send a



copy of the signed and dated manifest to the generator; however, if the manifest has not been received within 30 days after delivery, the owner or operator, or his agent, must send a copy of the shipping paper signed and dated to the generator. Note that § 262.23(c) of this Regulation requires the generator to send three copies of the manifest to the facility when hazardous waste is sent by rail or water (bulk shipment); and

(5) Retain at the facility a copy of the manifest and shipping paper (if signed in lieu of the manifest at the time of delivery) for at least three years from the date of delivery.

(c) Whenever a shipment of hazardous waste is initiated from a facility, the owner or operator of that facility must comply with the requirements of section 262 of this Regulation. The Commission notes that the provisions of § 262.34 are applicable to the on-site accumulation of hazardous wastes by generators. Therefore, the provisions of § 262.34 only apply to owners or operators who are shipping hazardous waste which they generated at that facility.

(d) Within three working days of the receipt of a shipment subject to Section 262, subsection H, the owner or operator of the facility must provide a copy of the tracking document bearing all required signatures to the notifier, to the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and to competent authorities of all other concerned countries. The original copy of the tracking document must be maintained at the facility for at least three years from the date of signature.

#### § 267.72 Manifest discrepancies.

(a) Manifest discrepancies are differences between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity or type of hazardous waste a facility actually receives. Significant discrepancies in quantity are:

(1) For bulk waste, variations greater than 10 percent in weight; and

(2) For batch waste, any variation in piece count, such as a discrepancy of one drum in a truckload. Significant discrepancies in type are obvious differences which can be discovered by inspection or waste analysis, such as waste solvent substituted for waste acid, or toxic constituents not reported on the manifest or shipping paper.

(b) Upon discovering a significant discrepancy, the owner or operator must attempt to reconcile the discrepancy with the waste generator or transporter (e.g., with telephone conversations). If the discrepancy is not re-

solved within 15 days after receiving the waste, the owner or operator must immediately submit to the Director a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping paper at issue.

#### § 267.73 What information must I keep?

(a) You must keep a written operating record at your facility.

(b) You must record the following information, as it becomes available, and maintain the operating record until you close the facility:

(1) A description and the quantity of each type of hazardous waste generated, and the method(s) and date(s) of its storage and/or treatment at the facility as required by Appendix I of Section 264;

(2) The location of each hazardous waste within the facility and the quantity at each location;

(3) Records and results of waste analyses and waste determinations you perform as specified in §§ 267.13, 267.17, and Sections 264.1034, 264.1063, 264.1083, and 268.7;

(4) Summary reports and details of all incidents that require you to implement the contingency plan as specified in § 267.58(b));

(5) Records and results of inspections as required by § 267.15(d) (except you need to keep these data for only three years);

(6) Monitoring, testing or analytical data, and corrective action when required by subsection F of this section and §§ 267.191, 267.193, 267.195, and Sections 264.1034(c) through 264.1034(f), 264.1035, 264.1063(d) through 264.1063(i), 264.1064, 264.1088, 264.1089, and 264.1090;

(7) All closure cost estimates under § 267.142;

(8) Your certification, at least annually, that you have a program in place to reduce the volume and toxicity of hazardous waste that you generate to the degree that you determine to be economically practicable; and that the proposed method of treatment or storage is that practicable method currently available to you that minimizes the present and future threat to human health and the environment;

(9) For an on-site treatment facility, the information contained in the notice (except the manifest number), and the certification and demonstration, if applicable, required by you under Section 268.7 of this Regulation; and

(10) For an on-site storage facility, the information in the notice (except the manifest number), and the certification and demonstration, if applicable, required by you under § 268.7.

(11) For an off-site treatment facility, a copy

of the notice, and the certification and demonstration, if applicable, required by the generator or the owner or operator under § 268.7 or § 268.8;

(12) For an off-site storage facility, a copy of the notice, and the certification and demonstration, if applicable, required by the generator or the owner or operator under § 268.7 or § 268.8.

#### **§ 267.74 Who sees the records?**

(a) You must furnish all records, including plans, required under this section upon the request of any officer, employee, or representative of ADEQ who is duly designated by the Director, and make them available at all reasonable times for inspection.

(b) The retention period for all records required under this section is extended automatically during the course of any unresolved enforcement action involving the facility or as requested by the Director.

#### **§ 267.75 What reports must I prepare and to whom do I send them?**

You must prepare an annual report and other reports listed in paragraph (b) of this section.

(a) Annual report. You must prepare and submit a single copy of an annual report to the Director by March 1 of each year. The annual report must be submitted on forms as provided by the Department. The report must cover facility activities during the previous calendar year and must include:

- (1) The EPA identification number, name, and address of the facility;
- (2) The calendar year covered by the report;
- (3) The method of treatment or storage for each hazardous waste;
- (4) The most recent closure cost estimate under § 267.142;
- (5) A description of the efforts undertaken during the year to reduce the volume and toxicity of generated waste.
- (6) A description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for the years prior to 1984.
- (7) The certification signed by you.

(b) Additional reports. In addition to submitting the biennial reports, you must also report to the Director:

- (1) Releases, fires, and explosions as specified in § 267.58(b);
- (2) Facility closures specified in § 267.117; and
- (3) As otherwise required by subsections I, J, and DD of this section and Section 264, subsec-

tions AA, BB, CC.

(c) For off-site facilities, the EPA identification number of each hazardous waste generator from which the facility received a hazardous waste during the year; for imported shipments, the report must give the name and address of the foreign generator;

(d) A description and the quantity of each hazardous waste the facility received during the year. For off-site facilities, this information must be listed by EPA identification number of each generator.

#### **§ 267.76 What notifications must I make?**

Before transferring ownership or operation of a facility during its operating life, you must notify the new owner or operator in writing of the requirements of this section and Section 270, subsection J.

#### **Subsection F—Releases from Solid Waste Management Units**

#### **§ 267.90 Who must comply with this section?**

This subsection applies to you if you own or operate a facility that treats or stores hazardous waste under a Section 270, subsection J standardized permit, except as provided in § 267.1(b), or unless your facility already has a permit that imposes requirements for corrective action under Section 264.101 of this Regulation.

#### **§ 267.91–267.100 [Reserved]**

#### **§ 267.101 What must I do to address corrective action for solid waste management units?**

(a) You must institute corrective action as necessary to protect human health and the environment for all releases of hazardous waste or constituents from any solid waste management unit at the facility, regardless of the time at which waste was placed in such unit.

(b) The Director will specify corrective action in the supplemental portion of your standardized permit in accordance with this section and Section 264, subsection S of this Regulation. The Director will include in the supplemental portion of your standardized permit schedules of compliance for corrective action (where corrective action cannot be completed prior to issuance of the permit) and assurances of financial responsibility for completing corrective action.

(c) You must implement corrective action beyond the facility property boundary, where necessary to protect human health and the environment, unless you demonstrate to the satisfaction of the Director that, despite your best efforts, you were unable to obtain the necessary permission to undertake such actions. You are not relieved

of all responsibility to clean up a release that has migrated beyond the facility boundary where off -site access is denied. On-site measures to address such releases will be determined on a case-by-case basis. You must provide assurances of financial responsibility for such corrective action.

(d) You do not have to comply with this section if you are the owner or operator of a remediation waste site unless your site is part of a facility that is subject to a permit for treating, storing, or disposing of hazardous wastes that are not remediation wastes.

**Subsection G—Closure**

**§ 267.110 Does this subsection apply to me?**

This subsection applies to you if you own or operate a facility that treats or stores hazardous waste under a Section 270, subsection J standardized permit, except as provided in § 267.1(b).

**§ 267.111 What general standards must I meet when I stop operating the unit?**

You must close the storage and treatment units in a manner that:

- (a) Minimizes the need for further maintenance; and
- (b) Controls, minimizes, or eliminates, to the extent necessary to protect human health and the environment, post-closure escape of hazardous waste, hazardous constituents, leachate, contaminated run-off, or hazardous waste decomposition products to the ground or surface waters or to the atmosphere; and
- (c) Meets the closure requirements of this subsection and the requirements of §§ 267.176, 267.201, and 267.1108. If you determine that, when applicable, the closure requirements of § 267.201(tanks) or § 267.1108 (containment buildings) cannot be met, then you must close the unit in accordance with the requirements that apply to landfills (§ 264.310). In addition, for the purposes of post-closure and financial responsibility, such a tank system or containment building is then considered to be a landfill, and you must apply for a post-closure care permit in accordance with Section 270 of this Regulation.

**§ 267.112 What procedures must I follow?**

- (a) To close a facility, you must follow your approved closure plan, and follow notification requirements.
  - (1) Your closure plan must be submitted at the time you submitted your Notice of Intent to operate under a standardized permit. Final issuance of the standardized permit constitutes approval of the closure plan, and the plan be-

comes a condition of the RCRA standardized permit.

(2) The Director’s approval of the plan must ensure that the approved plan is consistent with §§ 267.111 through 267.115, 267.176, 267.201, and 267.1108.

(b) Satisfy the requirements for content of closure plan. The closure plan must identify steps necessary to perform partial and/or final closure of the facility. The closure plan must include, at least:

- (1) A description of how each hazardous waste management unit at the facility subject to this subsection will be closed following § 267.111.
- (2) A description of how final closure of the facility will be conducted in accordance with § 267.111. The description must identify the maximum extent of the operations which will be unclosed during the active life of the facility.
- (3) An estimate of the maximum inventory of hazardous wastes ever on site during the active life of the facility and a detailed description of the methods you will use during partial and /or final closure, such as methods for removing, transporting, treating, storing, or disposing of all hazardous wastes, and identification of the type(s) of off-site hazardous waste management units to be used, if applicable.
- (4) A detailed description of the steps needed to remove or decontaminate all hazardous waste residues and contaminated containment system components, equipment, structures, and soils during partial or final closure. These might include procedures for cleaning equipment and removing contaminated soils, methods for sampling and testing surrounding soils, and criteria for determining the extent of decontamination required to satisfy the closure performance standard;
- (5) A detailed description of other activities necessary during the closure period to ensure that partial or final closure satisfies the closure performance standards.
- (6) A schedule for closure of each hazardous waste management unit, and for final closure of the facility. The schedule must include, at a minimum, the total time required to close each hazardous waste management unit and the time required for intervening closure activities that allow tracking of progress of partial or final closure.
- (7) For facilities that use trust funds to establish financial assurance under § 267.143 and that are expected to close prior to the expiration of the permit, an estimate of the expected year of final closure.

(c) You may submit a written notification to the Director for a permit modification to amend the closure

plan at any time prior to the notification of partial or final closure of the facility, following the applicable procedures in 40 CFR 124.211.

(1) Events leading to a change in the closure plan, and therefore requiring a modification, may include:

(i) A change in the operating plan or facility design;

(ii) A change in the expected year of closure, if applicable; or

(iii) In conducting partial or final closure activities, an unexpected event requiring a modification of the approved closure plan.

(2) The written notification or request must include a copy of the amended closure plan for review or approval by the Director. The Director will approve, disapprove, or modify this amended plan in accordance with the procedures in 40 CFR 124.211, 270.320 of this Regulation, and Regulation No. 8.

(d) Notification before final closure.

(1) You must notify the Director in writing at least 45 days before the date that you expect to begin final closure of a treatment or storage tank, container storage area, or containment building.

(2) The date when you “expect to begin closure” must be no later than 30 days after the date that any hazardous waste management unit receives the known final volume of hazardous wastes.

(3) If your facility’s permit is terminated, or if you are otherwise ordered, by judicial decree or final order under section 3008 of RCRA, to cease receiving hazardous wastes or to close, then the requirements of this paragraph (d) do not apply. However, you must close the facility following the deadlines established in § 267.115.

§ 267.113 Will the public have the opportunity to comment on the plan?

(a) The Director will provide you and the public, when the draft standardized permit is public noticed, the opportunity to submit written comments on the plan and to the draft permit as allowed by Regulation No. 8. The Director will also, in response to a request or at his/her own discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning the closure plan, and the permit.

(b) The Director will give public notice of the hearing 30 days before it occurs. Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined.

§ 267.114 [Reserved]

§ 267.115 After I stop operating, how long until I must close?

(a) Within 90 days after the final volume of hazardous waste is sent to a unit, you must treat or remove from the unit all hazardous wastes following the approved closure plan.

(b) You must complete final closure activities in accordance with the approved closure plan within 180 days after the final volume of hazardous wastes is sent to the unit. The Director may approve an extension of 180 days to the closure period if you comply with all applicable requirements for requesting a modification to the permit and demonstrate that:

(1) The final closure activities will take longer than 180 days to complete due to circumstances beyond your control, excluding ground water contamination; and

(2) You have taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed, but not operating hazardous waste management unit or facility, including compliance with all applicable permit requirements.

(3) The demonstration must be made at least 30 days prior to the expiration of the initial 180-day period.

(c) Nothing in this section precludes you from removing hazardous wastes and decontaminating or dismantling equipment in accordance with the approved final closure plan at any time before or after notification of final closure.

§ 267.116 What must I do with contaminated equipment, structure, and soils?

You must properly dispose of or decontaminate all contaminated equipment, structures, and soils during the partial and final closure periods. By removing any hazardous wastes or hazardous constituents during partial and final closure, you may become a generator of hazardous waste and must handle that waste following all applicable requirements of Section 262 of this Regulation.

§ 267.117 How do I certify closure?

Within 60 days of the completion of final closure of each unit under a Section 270 subsection J standardized permit, you must submit to the Director, by registered mail, a certification that each hazardous waste management unit or facility, as applicable, has been closed following the specifications in the closure plan. Both you and an independent qualified Arkansas-registered professional engineer must sign the certification. You must furnish



documentation supporting the independent registered professional engineer's certification to the Director upon request until he releases you from the financial assurance requirements for closure under § 267.143(i).

#### Subsection H—Financial Requirements

#### § 267.140 Who must comply with this subsection, and briefly, what do they have to do?

(a) The regulations in this subsection apply to owners and operators who treat or store hazardous waste under a standardized permit, except as provided in § 267.1(b), or § 267.140(d) below.

(b) The owner or operator must:

(1) Prepare a closure cost estimate as required in § 267.142;

(2) Demonstrate financial assurance for closure as required in § 267.143; and

(3) Demonstrate financial assurance for liability as required in § 267.147.

(c) The owner or operator must notify the Director if the owner or operator is named as a debtor in a bankruptcy proceeding under Title 11 (Bankruptcy), U.S. Code (See also § 267.148).

(d) States and the Federal government are exempt from the requirements of this subsection.

#### § 267.141 Definitions of terms as used in this subsection.

(a) Closure plan means the plan for closure prepared in accordance with the requirements of § 267.112.

(b) Current closure cost estimate means the most recent of the estimates prepared in accordance with § 267.142 (a), (b), and (c).

(c) [Reserved]

(d) Parent corporation means a corporation which directly owns at least 50 percent of the voting stock of the corporation which is the facility owner or operator; the latter corporation is deemed a "subsidiary" of the parent corporation.

(e) [Reserved]

(f) The following terms are used in the specifications for the financial tests for closure and liability coverage. The definitions are intended to assist in the understanding of these regulations and are not intended to limit the meanings of terms in a way that conflicts with generally accepted accounting practices:

"Assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity.

"Current plugging and abandonment cost estimate" means the most recent of the estimates prepared in accordance with 40 CFR 144.62(a),

(b), and (c).

"Independently audited" refers to an audit performed by an independent certified public accountant in accordance with generally accepted auditing standards.

"Liabilities" means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

"Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets would not include intangibles such as goodwill and rights to patents or royalties.

(g) In the liability insurance requirements, the terms bodily injury and property damage shall have the meanings given these terms by applicable State law. However, these terms do not include those liabilities which, consistent with standard industry practices, are excluded from coverage in liability policies for bodily injury and property damage. The Commission intends the meanings of other terms used in the liability insurance requirements to be consistent with their common meanings within the insurance industry. The definitions given below of several of the terms are intended to assist in the understanding of these regulations and are not intended to limit their meanings in a way that conflicts with general insurance industry usage.

"Accidental occurrence" means an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured.

"Legal defense costs" means any expenses that an insurer incurs in defending against claims of third parties brought under the terms and conditions of an insurance policy.

"Sudden accidental occurrence" means an occurrence which is not continuous or repeated in nature.

(h) "Substantial business relationship" means the extent of a business relationship necessary under applicable State law to make a guarantee contract issued incident to that relationship valid and enforceable. A "substantial business relationship" must arise from a pattern of recent or ongoing business transactions, in addition to the guarantee itself, such that a currently existing business relationship between the guarantor and the owner or operator is demonstrated to the satisfaction of the Director.

#### § 267.142 Cost estimate for closure.

(a) The owner or operator must have at the facility a

detailed written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in §§ 267.111 through 267.115 and applicable closure requirements in §§ 267.176, 267.201, 267.1108.

(1) The estimate must equal the cost of final closure at the point in the facility's active life when the extent and manner of its operation would make closure the most expensive, as indicated by the closure plan (see § 267.112(b)); and

(2) The closure cost estimate must be based on the costs to the owner or operator of hiring a third party to close the facility. A third party is a party who is neither a parent nor a subsidiary of the owner or operator. (See definition of parent corporation in § 267.141(d).) The owner or operator may use costs for onsite disposal if he can demonstrate that on-site disposal capacity will exist at all times over the life of the facility.

(3) The closure cost estimate may not incorporate any salvage value that may be realized with the sale of hazardous wastes, or non-hazardous wastes, facility structures or equipment, land, or other assets associated with the facility at the time of partial or final closure.

(4) The owner or operator may not incorporate a zero cost for hazardous wastes, or non-hazardous wastes that might have economic value.

(b) During the active life of the facility, the owner or operator must adjust the closure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with § 267.143. For owners and operators using the financial test or corporate guarantee, the closure cost estimate must be updated for inflation within 30 days after the close of the firm's fiscal year and before submission of updated information to the Director as specified in § 267.143(f)(2)(iii). The adjustment may be made by recalculating the maximum costs of closure in current dollars, or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross Domestic Product published by the U.S. Department of Commerce in its Survey of Current Business, as specified in paragraphs (b)(1) and (2) of this section. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

(1) The first adjustment is made by multiplying the closure cost estimate by the inflation factor. The result is the adjusted closure cost estimate.

(2) Subsequent adjustments are made by multiplying the latest adjusted closure cost estimate by the latest inflation factor.

(c) During the active life of the facility, the owner or operator must revise the closure cost estimate no later than 30 days after the Director has approved the request to modify the closure plan, if the change in the closure

plan increases the cost of closure. The revised closure cost estimate must be adjusted for inflation as specified in § 267.142(b).

(d) The owner or operator must keep the following at the facility during the operating life of the facility: The latest closure cost estimate prepared in accordance with paragraphs (a) and (c) of this section and, when this estimate has been adjusted in accordance with paragraph (b) of this section, the latest adjusted closure cost estimate.

#### § 267.143 Financial assurance for closure.

The owner or operator must establish financial assurance for closure of each storage or treatment unit that he owns or operates. In establishing financial assurance for closure, the owner or operator must choose from the financial assurance mechanisms in paragraphs (a), (b), (c), (d), (e), (f), and (g) of this section. The owner or operator can also use a combination of mechanisms for a single facility if they meet the requirement in paragraph (h) of this section, or may use a single mechanism for multiple facilities as in paragraph (i) of this section. The Director will release the owner or operator from the requirements of this section after the owner or operator meets the criteria under paragraph (j) of this section.

(a) Closure Trust Fund. Owners and operators can use the "closure trust fund," that is specified in Sections 264.143(a)(1) and (2), and 264.143(a)(6)–(11) of this Regulation. For purposes of this paragraph, the following provisions also apply:

(1) Payments into the trust fund for a new facility must be made annually by the owner or operator over the remaining operating life of the facility as estimated in the closure plan, or over 3 years, whichever period is shorter. This period of time is hereafter referred to as the "pay-in period."

(2) For a new facility, the first payment into the closure trust fund must be made before the facility may accept the initial storage. A receipt from the trustee must be submitted by the owner or operator to the Director before this initial storage of waste. The first payment must be at least equal to the current closure cost estimate, divided by the number of years in the pay-in period, except as provided in paragraph (h) of this section for multiple mechanisms. Subsequent payments must be made no later than 30 days after each anniversary date of the first payment. The owner or operator determines the amount of each subsequent payment by subtracting the current value of the trust fund from the current closure cost estimate, and dividing this difference by the number of years remaining in the pay-in period. Mathematically, the formula is Next Payment =

(Current Closure Estimate ÷ Current Value of the Trust Fund) Divided by Years Remaining in the Pay-In Period.

(3) The owner or operator of a facility existing on the effective date of this paragraph can establish a trust fund to meet this paragraph's financial assurance requirements. If the value of the trust fund is less than the current closure cost estimate when a final approval of the permit is granted for the facility, the owner or operator must pay the difference into the trust fund within 60 days.

(4) The owner or operator may accelerate payments into the trust fund or deposit the full amount of the closure cost estimate when establishing the trust fund. However, he must maintain the value of the fund at no less than the value that the fund would have if annual payments were made as specified in paragraph (a)(2) or (a)(3) of this section.

(5) The owner or operator must submit a trust agreement with the wording specified in § 264.151(a)(1).

(b) Surety Bond Guaranteeing Payment into a Closure Trust Fund. Owners and operators can use the "surety bond guaranteeing payment into a closure trust fund," as specified in § 264.143(b) of this Regulation, including the use of the surety bond instrument specified at § 264.151(b), and the standby trust specified at § 264.143(b)(3).

(c) Surety Bond Guaranteeing Performance of Closure. Owners and operators can use the "surety bond guaranteeing performance of closure," as specified in § 264.143(c), the submission and use of the surety bond instrument specified at § 264.151(c), and the standby trust specified at § 264.143(c)(3).

(d) Closure Letter of Credit. Owners and operators can use the "closure letter of credit" specified in § 264.143(d), the submission and use of the irrevocable letter of credit instrument specified in § 264.151(d), and the standby trust specified in § 264.143(d)(3).

(e) Closure Insurance. Owners and operators can use "closure insurance," as specified in § 264.143(e), utilizing the certificate of insurance for closure specified at § 264.151(e).

(f) Corporate financial test. An owner or operator that satisfies the requirements of this paragraph may demonstrate financial assurance up to the amount specified in this paragraph:

(1) Financial component.

(i) The owner or operator must satisfy one of the following three conditions:

(A) A current rating for its senior unsecured debt of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; or

(B) A ratio of less than 1.5 comparing

total liabilities to net worth; or

(C) A ratio of greater than 0.10 comparing the sum of net income plus depreciation, depletion and amortization, minus \$10 million, to total liabilities.

(ii) The tangible net worth of the owner or operator must be greater than:

(A) The sum of the current environmental obligations (see paragraph (f)(2)(i)(A)(1) of this section), including guarantees, covered by a financial test plus \$10 million, except as provided in paragraph (f)(1)(ii)(B) of this section.

(B) \$10 million in tangible net worth plus the amount of any guarantees that have not been recognized as liabilities on the financial statements provided all of the environmental obligations (see paragraph (f)(2)(i)(A)(1) of this section) covered by a financial test are recognized as liabilities on the owner's or operator's audited financial statements, and subject to the approval of the Director.

(iii) The owner or operator must have assets located in the United States amounting to at least the sum of environmental obligations covered by a financial test as described in paragraph (f)(2)(i)(A)(1) of this section.

(2) Recordkeeping and reporting requirements.

(i) The owner or operator must submit the following items to the Director:

(A) A letter signed by the owner's or operator's chief financial officer that:

(1) Lists all the applicable current types, amounts, and sums of environmental obligations covered by a financial test. These obligations include both obligations in the programs which EPA directly operates and obligations where EPA has delegated authority to a State or approved a State's program. These obligations include, but are not limited to:

(i) Liability, closure, post-closure and corrective action cost estimates required for hazardous waste treatment, storage, and disposal facilities under §§ 264.101, 264.142, 264.144, 264.147, 265.142, 265.144, and 265.147 of this Regulation;

(ii) Cost estimates required



for municipal solid waste management facilities under 40 CFR 258.71, 258.72, and 258.73;

(iii) Current plugging cost estimates required for UIC facilities under 40 CFR 144.62;

(iv) Cost estimates required for petroleum underground storage tank facilities under 40 CFR 280.93;

(v) Cost estimates required for PCB storage facilities under 40 CFR 761.65;

(vi) Any financial assurance required under, or as part of an action undertaken under, the Comprehensive Environmental Response, Compensation, and Liability Act; and

(vii) Any other environmental obligations that are assured through a financial test.

(2) Provides evidence demonstrating that the firm meets the conditions of either paragraph (f)(1)(i)(A) or (f)(1)(i)(B) or (f)(1)(i)(C) of this section and paragraphs (f)(1)(ii) and (f)(1)(iii) of this section.

(B) A copy of the independent certified public accountant's unqualified opinion of the owner's or operator's financial statements for the latest completed fiscal year. To be eligible to use the financial test, the owner's or operator's financial statements must receive an unqualified opinion from the independent certified public accountant. An adverse opinion, disclaimer of opinion, or other qualified opinion will be cause for disallowance, with the potential exception for qualified opinions provided in the next sentence. The Director may evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the Director deems that the matters which form the basis for the qualification are insufficient to warrant disallowance of the test. If the Director does not allow use of the test, the owner or operator must provide alternate financial assurance that meets the requirements of this section within 30 days after the notification of disallowance.

(C) If the chief financial officer's let-

ter providing evidence of financial assurance includes financial data showing that the owner or operator satisfies paragraph (f)(1)(i)(B) or (f)(1)(i)(C) of this section that are different from data in the audited financial statements referred to in paragraph (f)(2)(i)(B) of this section or any other audited financial statement or data filed with the SEC, then a special report from the owner's or operator's independent certified public accountant to the owner or operator is required. The special report shall be based upon an agreed upon procedures engagement in accordance with professional auditing standards and shall describe the procedures performed in comparing the data in the chief financial officer's letter derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of that comparison, and the reasons for any differences.

(D) If the chief financial officer's letter provides a demonstration that the firm has assured for environmental obligations as provided in paragraph (f)(1)(ii)(B) of this section, then the letter shall include a report from the independent certified public accountant that verifies that all of the environmental obligations covered by a financial test have been recognized as liabilities on the audited financial statements, how these obligations have been measured and reported, and that the tangible net worth of the firm is at least \$10 million plus the amount of any guarantees provided.

(ii) The owner or operator of a new facility must submit the items specified in paragraph (f)(2)(i) of this section to the Director at least 60 days before placing waste in the facility.

(iii) After the initial submission of items specified in paragraph (f)(2)(i) of this section, the owner or operator must send updated information to the Director within 90 days following the close of the owner or operator's fiscal year. The Director may provide up to an additional 45 days for an owner or operator who can demonstrate that 90 days is insufficient time to acquire audited financial statements. The updated information must consist of all items specified in paragraph (f)(2)(i) of this section.

(iv) The owner or operator is no longer required to submit the items specified in this paragraph (f)(2) of this section or comply with the requirements of this paragraph (f) when:

(A) The owner or operator substitutes alternate financial assurance as specified in this section that is not subject to these recordkeeping and reporting requirements; or

(B) The Director releases the owner or operator from the requirements of this section in accordance with paragraph (j) of this section.

(v) An owner or operator who no longer meets the requirements of paragraph (f)(1) of this section cannot use the financial test to demonstrate financial assurance. Instead an owner or operator who no longer meets the requirements of paragraph (f)(1) of this section, must:

(A) Send notice to the Director of intent to establish alternate financial assurance as specified in this section. The owner or operator must send this notice by certified mail within 90 days following the close the owner or operator's fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements of this section.

(B) Provide alternative financial assurance within 120 days after the end of such fiscal year.

(vi) The Director may, based on a reasonable belief that the owner or operator may no longer meet the requirements of paragraph (f)(1) of this section, require at any time the owner or operator to provide reports of its financial condition in addition to or including current financial test documentation as specified in paragraph (f)(2) of this section. If the Director finds that the owner or operator no longer meets the requirements of paragraph (f)(1) of this section, the owner or operator must provide alternate financial assurance that meets the requirements of this section.

(g) Corporate Guarantee.

(1) An owner or operator may meet the requirements of this section by obtaining a written guarantee. The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guar-

antor must meet the requirements for owners or operators in paragraph (f) of this section and must comply with the terms of the guarantee. The wording of the guarantee must be identical to the wording in § 264.151(h). The certified copy of the guarantee must accompany the letter from the guarantor's chief financial officer and accountants' opinions. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter from the guarantor's chief financial officer must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee.

(2) For a new facility, the guarantee must be effective and the guarantor must submit the items in paragraph (g)(1) of this section and the items specified in paragraph (f)(2)(i) of this section to the Director at least 60 days before the owner or operator places waste in the facility.

(3) The terms of the guarantee must provide that:

(i) If the owner or operator fails to perform closure at a facility covered by the guarantee, the guarantor will:

(A) Perform, or pay a third party to perform closure (performance guarantee); or

(B) Establish a fully funded trust fund as specified in paragraph (a) of this section in the name of the owner or operator (payment guarantee).

(ii) The guarantee will remain in force for as long as the owner or operator must comply with the applicable financial assurance requirements of this subsection unless the guarantor sends prior notice of cancellation by certified mail to the owner or operator and to the Director. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Director as evidenced by the return receipts.

(iii) If notice of cancellation is given, the owner or operator must, within 90 days following receipt of the cancellation notice by the owner or operator and the Director, obtain alternate financial assurance, and submit documentation for that alternate financial assurance to the Director. If the owner or operator fails to provide alternate financial assurance and obtain the written approval of such alternative assurance from

the Director within the 90-day period, the guarantor must provide that alternate assurance in the name of the owner or operator and submit the necessary documentation for the alternative assurance to the Director within 120 days of the cancellation notice.

(4) If a corporate guarantor no longer meets the requirements of paragraph (f)(1) of this section, the owner or operator must, within 90 days, obtain alternative assurance, and submit the assurance to the Director for approval. If the owner or operator fails to provide alternate financial assurance within the 90-day period, the guarantor must provide that alternate assurance within the next 30 days, and submit it to the Director for approval.

(5) The guarantor is no longer required to meet the requirements of this paragraph (g) when:

(i) The owner or operator substitutes alternate financial assurance as specified in this section; or

(ii) The owner or operator is released from the requirements of this section in accordance with paragraph (j) of this section.

(h) Use of Multiple Financial Mechanisms. An owner or operator may use more than one mechanism at a particular facility to satisfy the requirements of this section. The acceptable mechanisms are trust funds, surety bonds guaranteeing payment into a trust fund, letters of credit, insurance, the financial test, and the guarantee, except owners or operators cannot combine the financial test with the guarantee. The mechanisms must be as specified in paragraphs (a), (b), (d), (e), (f), and (g) respectively of this section, except it is the combination of mechanisms rather than a single mechanism that must provide assurance for an amount at least equal to the cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or letter of credit, he may use the trust fund as the standby trust for the other mechanisms. A single trust fund can be established for two or more mechanisms. The Director may use any or all of the mechanisms to provide for closure of the facility.

(i) Use of a financial mechanism for multiple facilities. An owner or operator may use a financial mechanism for multiple facilities, as specified in § 264.143(h) of this Regulation.

(j) Release of the owner or operator from the requirements of this section. Within 60 days after receiving certifications from the owner or operator and an independent Arkansas-registered professional engineer that final closure has been completed in accordance with the approved closure plan, the Director will notify the owner or operator in writing that the owner or operator is no longer required by this section to maintain financial as-

surance for final closure of the facility, unless the Director has reason to believe that final closure has not been completed in accordance with the approved closure plan. The Director shall provide the owner or operator with a detailed written statement of any such reasons to believe that closure has not been conducted in accordance with the approved closure plan.

#### § 267.144–267.146 [Reserved]

#### § 267.147 Liability requirements.

(a) Coverage for sudden accidental occurrences. An owner or operator of a hazardous waste treatment or storage facility, or a group of such facilities, must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage for sudden accidental occurrences in the amount of at least \$1 million per occurrence with an annual aggregate of at least \$2 million, exclusive of legal defense costs. This liability coverage may be demonstrated as specified in paragraphs (a)(1) through (a)(7) of this section:

(1) Trust fund for liability coverage. An owner or operator may meet the requirements of this section by obtaining a trust fund for liability coverage as specified in 40 CFR 264.147(j).

(2) Surety bond for liability coverage. An owner or operator may meet the requirements of this section by obtaining a surety bond for liability coverage as specified in 40 CFR 264.147(i).

(3) Letter of credit for liability coverage. An owner or operator may meet the requirements of this section by obtaining a letter of credit for liability coverage as specified in 40 CFR 264.147(h).

(4) Insurance for liability coverage. An owner or operator may meet the requirements of this section by obtaining liability insurance as specified in 40 CFR 264.147(a)(1).

(5) Financial test for liability coverage. An owner or operator may meet the requirements of this section by passing a financial test as specified in paragraph (f) of this section.

(6) Guarantee for liability coverage. An owner or operator may meet the requirements of this section by obtaining a guarantee as specified in paragraph (g) of this section.

(7) Combination of mechanisms. An owner or operator may demonstrate the required liability coverage through the use of combinations of mechanisms as allowed by 40 CFR 264.147(a)(6).

(8) An owner or operator shall notify the Director in writing within 30 days whenever:

(i) A claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in paragraphs (a)(1) through (a)(7) of this section; or

(ii) A Certification of Valid Claim for bodily injury or property damages caused by a sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is entered between the owner or operator and third-party claimant for liability coverage under paragraphs (a)(1) through (a)(7) of this section; or

(iii) A final court order establishing a judgment for bodily injury or property damage caused by a sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under paragraphs (a)(1) through (a)(7) of this section.

(b)–(d) [Reserved]

(e) Period of coverage. Within 60 days after receiving certifications from the owner or operator and an independent Arkansas-registered professional engineer that final closure has been completed in accordance with the approved closure plan, the Director will notify the owner or operator in writing that he is no longer required by this section to maintain liability coverage from that facility, unless the Director has reason to believe that closure has not been in accordance with the approved closure plan.

(f) Financial test for Liability Coverage. An owner or operator that satisfies the requirements of this paragraph (f) may demonstrate financial assurance for liability up to the amount specified in this paragraph (f):

(1) Financial component.

(i) If using the financial test for only liability coverage, the owner or operator must have tangible net worth greater than the sum of the liability coverage to be demonstrated by this test plus \$10 million.

(ii) The owner or operator must have assets located in the United States amounting to at least the amount of liability covered by this financial test.

(iii) An owner or operator who is demonstrating coverage for liability and any other environmental obligations, including closure under § 267.143(f), through a financial test must meet the requirements of § 267.143(f).

(2) Recordkeeping and reporting requirements.

(i) The owner or operator must submit the following items to the Director:

(A) A letter signed by the owner's or operator's chief financial officer that provides evidence demonstrating that the firm meets the conditions of paragraphs (f)(1)(i) and (f)(1)(ii) of this section. If the firm is providing only liability coverage through a financial test for a facility or facilities with a permit under § 267, the letter should use the wording in § 267.151(b). If the firm is providing only liability coverage through a financial test for facilities regulated under part 267 and also Section 264 or Section 265, it should use the letter in § 264.151(g). If the firm is providing liability coverage through a financial test for a facility or facilities with a permit under § 267, and it assures closure costs or any other environmental obligations through a financial test, it must use the letter in § 267.151(a) for the facilities issued a permit under § 267.

(B) A copy of the independent certified public accountant's unqualified opinion of the owner's or operator's financial statements for the latest completed fiscal year. To be eligible to use the financial test, the owner's or operator's financial statements must receive an unqualified opinion from the independent certified public accountant. An adverse opinion, disclaimer of opinion, or other qualified opinion will be cause for disallowance, with the potential exception for qualified opinions provided in the next sentence. The Director may evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the Director deems that the matters which form the basis for the qualification are insufficient to warrant disallowance of the test. If the Director does not allow use of the test, the owner or operator must provide alternate financial assurance that meets the requirements of this section (§ 267.147) within 30 days after the notification of disallowance.

(C) If the chief financial officer's letter providing evidence of financial assurance includes financial data showing that the owner or operator satisfies paragraphs (f)(1)(i) and (ii) of this section that are different from data in the audited financial statements referred to



in paragraph (f)(2)(i)(B) of this section or any other audited financial statement or data filed with the SEC, then a special report from the owner's or operator's independent certified public accountant to the owner or operator is required. The special report shall be based upon an agreed upon procedures engagement in accordance with professional auditing standards and shall describe the procedures performed in comparing the data in the chief financial officer's letter derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of that comparison, and the reasons for any differences.

(ii) The owner or operator of a new facility must submit the items specified in paragraph (f)(2)(i) of this section to the Director at least 60 days before placing waste in the facility.

(iii) After the initial submission of items specified in paragraph (f)(2)(i) of this section, the owner or operator must send updated information to the Director within 90 days following the close of the owner or operator's fiscal year. The Director may provide up to an additional 45 days for an owner or operator who can demonstrate that 90 days is insufficient time to acquire audited financial statements. The updated information must consist of all items specified in paragraph (f)(2)(i) of this section.

(iv) The owner or operator is no longer required to submit the items specified in this paragraph (f)(2) or comply with the requirements of this paragraph (f) when:

(A) The owner or operator substitutes alternate financial assurance as specified in this section that is not subject to these recordkeeping and reporting requirements; or

(B) The Director releases the owner or operator from the requirements of this section in accordance with paragraph (j) of this section.

(v) An owner or operator who no longer meets the requirements of paragraph (f)(1) of this section cannot use the financial test to demonstrate financial assurance. An owner or operator who no longer meets the requirements of paragraph (f)(1) of this section, must:

(A) Send notice to the Director of intent to establish alternate financial as-

surance as specified in this section. The owner or operator must send this notice by certified mail within 90 days following the close of the owner or operator's fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements of this section.

(B) Provide alternative financial assurance within 120 days after the end of such fiscal year.

(vi) The Director may, based on a reasonable belief that the owner or operator may no longer meet the requirements of paragraph (f)(1) of this section, require at any time the owner or operator to provide reports of its financial condition in addition to or including current financial test documentation as specified in paragraph (f)(2) of this section. If the Director finds that the owner or operator no longer meets the requirements of paragraph (f)(1) of this section, the owner or operator must provide alternate financial assurance that meets the requirements of this section.

(g) Guarantee for liability coverage. (1) Subject to paragraph (g)(2) of this section, an owner or operator may meet the requirements of this section by obtaining a written guarantee, hereinafter referred to as "guarantee." The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor must meet the requirements for owners or operators in paragraphs (f)(1) through (f)(3) of this section. The wording of the guarantee must be identical to the wording specified in 40 CFR 264.151(h)(2). A certified copy of the guarantee must accompany the items sent to the Director as specified in paragraph (f)(2) of this section. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, this letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee.

(i) If the owner or operator fails to satisfy a judgment based on a determination of liability for bodily injury or property damage to third parties caused by sudden accidental occurrences arising from the operation guarantee, or fails to pay an amount agreed to in settlement of claims arising from or alleged to arise from such injury

or damage, the guarantor will do so up to the limits of coverage.

(ii) [Reserved]

(2)(i) In the case of corporations incorporated in the United States, a guarantee may be used to satisfy the requirements of this section only if the Attorneys General or Insurance Commissioners of the State in which the guarantor is incorporated, and each State in which a facility covered by the guarantee is located, have submitted a written statement to EPA that a guarantee executed as described in this section and § 264.151(h)(2) is a legally valid and enforceable obligation in that State.

(ii) In the case of corporations incorporated outside the United States, a guarantee may be used to satisfy the requirements of this section only if:

(A) The non-U.S. corporation has identified a registered agent for service of process in each State in which a facility covered by the guarantee is located and in the State in which it has its principal place of business; and

(B) The Attorney General or Insurance Commissioner of each State in which a facility covered by the guarantee is located and the State in which the guarantor corporation has its principal place of business, has submitted a written statement to EPA that a guarantee executed as described in this section and § 264.151(h)(2) is a legally valid and enforceable obligation in that State.

#### § 267.148 Incapacity of owners or operators, guarantors, or financial institutions.

(a) An owner or operator must notify the Director by certified mail of the commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming the owner or operator as debtor, within 10 days after commencement of the proceeding. A guarantor of a corporate guarantee as specified in §§ 267.143(g) and 267.147 (g) must make such a notification if he is named as debtor, as required under the terms of the corporate guarantee (§ 264.151(h)).

(b) An owner or operator who fulfills the requirements of § 267.143 or § 267.147 by obtaining a trust fund, surety bond, letter of credit, or insurance policy will be deemed to be without the required financial assurance or liability coverage in the event of bankruptcy of the trustee or issuing institution, or a suspension or revocation of the authority of the trustee institution to act as trustee or of the institution issuing the surety bond, letter of credit, or insurance policy to issue such instruments.

The owner or operator must establish other financial assurance or liability coverage within 60 days after such an event.

#### § 267.149 [Reserved]

#### § 267.150 State assumption of responsibility.

(a) If a State either assumes legal responsibility for an owner's or operator's compliance with the closure care or liability requirements of this section or assures that funds will be available from State sources to cover those requirements, the owner or operator will be in compliance with the requirements of § 267.143 or § 267.147 if the Director determines that the State's assumption of responsibility is at least equivalent to the financial mechanisms specified in this subsection. The Director will evaluate the equivalency of State guarantees principally in terms of: Certainty of the availability of funds for the required closure care activities or liability coverage; and the amount of funds that will be made available. The Director may also consider other factors as he deems appropriate. The owner or operator must submit to the Director a letter from the State describing the nature of the State's assumption of responsibility together with a letter from the owner or operator requesting that the State's assumption of responsibility be considered acceptable for meeting the requirements of this subsection. The letter from the State must include, or have attached to it, the following information: The facility's EPA Identification Number, name, and address, and the amount of funds for closure care or liability coverage that are guaranteed by the State. The Director will notify the owner or operator of his determination regarding the acceptability of the State's guarantee in lieu of financial mechanisms specified in this subsection. The Director may require the owner or operator to submit additional information as is deemed necessary to make this determination. Pending this determination, the owner or operator will be deemed to be in compliance with the requirements of § 267.143 or § 267.147, as applicable.

(b) If a State's assumption of responsibility is found acceptable as specified in paragraph (a) of this section except for the amount of funds available, the owner or operator may satisfy the requirements of this subsection by use of both the State's assurance and additional financial mechanisms as specified in this subsection. The amount of funds available through the State and Federal mechanisms must at least equal the amount required by this subsection.

#### § 267.151 Wording of the instruments.

(a) The chief financial officer of an owner or operator of a facility with a standardized permit who uses a financial test to demonstrate financial assurance for that

facility must complete a letter as specified in § 267.143(f) of this Regulation. The letter must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

I am the chief financial officer of [name and address of firm]. This letter is in support of this firm's use of the financial test to demonstrate financial assurance for closure costs, as specified in [insert "subsection H of Regulation No. 23 § 267" or the citation to the corresponding state regulation]. This firm qualifies for the financial test on the basis of having [insert "a current rating for its senior unsecured debt of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's" or "a ratio of less than 1.50 comparing total liabilities to net worth" or "a ratio of greater than 0.10 comparing the sum of net income plus depreciation, depletion and amortization, minus \$10 million, to total liabilities."]

This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

[If this firm qualifies on the basis of its bond rating fill in the requested information: "This firm has a rating of its senior unsecured debt of "[insert the bond rating] "from" [insert "Standard and Poor's" or "Moody's"].

Complete Line 1, Total Liabilities below and then skip the remaining questions in the next section and resume completing the form at the section entitled Obligations Covered by a Financial Test or Corporate Guarantee.]

[If this firm qualifies for the financial test on the basis of its ratio of liabilities to net worth, or sum of income, depreciation, depletion, and amortization to net worth, please complete the following section.]

- \*1. Total Liabilities ..... \$
\*2. Net Worth ..... \$
\*3. Net Income ..... \$
\*4. Depreciation ..... \$
\*5. Depletion (if applicable) ..... \$
\*6. Amortization ..... \$
\*7. Sum of Lines 3., 4., 5. & 6 ..... \$

[If the above figures are taken directly from the most recent audited financial statements for this firm insert "The above figures are taken directly from the most recent audited financial statements for this firm." If they are not, insert "The following items are not taken directly from the firms most recent audited financial statements" [insert the numbers of the items and attach an explanation of how they were derived.]

[Complete the following calculations]

- 8. Line 1. ??Line 2. = .....
9. Line 7. ??Line 1. = .....
Is Line 8. less than 1.5? Yes No
Is Line 9 greater than 0.10? ..... Yes No

[If you did not answer Yes to either of these two questions, you cannot use the financial test and need not complete this letter. Instead, you must notify the permitting authority for the facility that you intend to establish alternate financial assurance as specified in 40 CFR 267.143. The owner or operator must send this notice by certified mail within 90 days following the close of the owner or operator's fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements of this section. The owner or operator must also provide alternative financial assurance within 120 days after the end of such fiscal year.]

Obligations Covered by a Financial Test or Corporate Guarantee [On the following lines list all obligations that are covered by a

financial test or a corporate guarantee extended by your firm. You may add additional lines and leave blank entries that do not apply to your situation.]

Hazardous Waste Facility Name and ID State Closure Post-Closure Corrective Action

Hazardous Waste Third Party Liability \$
Municipal Waste Facilities State Closure Post-Closure Corrective Action

Underground Injection Control State Plugging Action

Petroleum Underground Storage Tanks

PCB Storage Facility Name and ID State Closure

Any financial assurance required under, or as part of an action undertaken under, the Comprehensive Environmental Response, Compensation, and Liability Act.

Site name State Amount \$

Any other environmental obligations that are assured through a financial test.

Table with columns Name and Amount. Rows include \*10. Total of all amounts, \*11. Line 10 + \$10,000,000 =, \*12. Total Assets, \*13. Intangible Assets, \*14. Tangible Assets, \*15. Tangible Net Worth, \*16. Assets in the United States, and two comparison questions.

[You must be able to answer Yes to both these questions to use the financial test for this facility.]

I hereby certify that the wording of this letter is identical to the wording specified in 40 CFR 267.151 as such regulations were constituted on the date shown immediately below.

[Signature]
[Name]
[Title]
[Date]

[After completion, a signed copy of the form must be sent to the permitting authority of the state or territory where the facility is located. In addition, a signed copy must be sent to every authority who (1) requires a demonstration through a financial test for each of the other obligations in the letter that are assured through a financial test, or (2) accepts a guarantee for an obligation listed in this letter.]

(b)The chief financial officer of an owner or operator of a facility with a standardized permit who use a financial test to demonstrate financial assurance only for third party liability for that (or other standardized permit) facility(ies) must complete a letter as specified in Section 267.147(f) of this Regulation. The letter must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

I am the chief financial officer of [name and address of firm]. This letter is in support of this firm's use of the financial test to demonstrate



financial assurance for third party liability, as specified in [insert “sub-section H of 40 CFR section 267” or the citation to the corresponding state regulation]. This firm qualifies for the financial test on the basis of having tangible net worth of at least \$10 million more than the amount of liability coverage and assets in the United States of at least the amount of liability coverage.

This firm [insert “is required” or “is not required”] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm’s independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

[Please complete the following section.]

- \*1. Total Assets ..... \$ \_\_\_\_\_
- \*2. Intangible Assets ..... \$ \_\_\_\_\_
- \*3. Tangible Assets (Line 1\Line 2) ..... \$ \_\_\_\_\_
- \*4. Total Liabilities ..... \$ \_\_\_\_\_
- 5. Tangible Net Worth (Line 3\Line 4) ..... \$ \_\_\_\_\_
- \*6. Assets in the United States ..... \$ \_\_\_\_\_
- 7. Amount of liability coverage ..... \$ \_\_\_\_\_
- Is Line 5 At least \$10 million greater than Line 7? ..... Yes No
- Is Line 6 at least equal to Line 7? ..... Yes No

[You must be able to answer Yes to both these questions to use the financial test for this facility.]

I hereby certify that the wording of this letter is identical to the wording specified in 40 CFR 267.151 as such regulations were constituted on the date shown immediately below.

[Signature] \_\_\_\_\_  
 [Name] \_\_\_\_\_  
 [Title] \_\_\_\_\_  
 [Date] \_\_\_\_\_

[After completion, a signed copy of the form must be sent to the permitting authority of the state or territory where the facility(ies) is(are) located.]

**Subsection I—Use and Management of Containers**

**§ 267.170 Does this subsection apply to me?**

This subsection applies to you if you own or operate a facility that treats or stores hazardous waste in containers under a 40 CFR section 270 subsection J standardized permit, except as provided in § 267.1(b).

**§ 267.171 What standards apply to the containers?**

Standards apply to the condition of the containers, to the compatibility of waste with the containers, and to the management of the containers.

(a) Condition of containers. If a container holding hazardous waste is not in good condition (for example, it exhibits severe rusting or apparent structural defects) or if it begins to leak, you must either:

(1) Transfer the hazardous waste from this container to a container that is in good condition; or

(2) Manage the waste in some other way that complies with the requirements of this section.

(b) Compatibility of waste with containers. To ensure that the ability of the container to contain the waste is not impaired, you must use a container made of or lined with materials that are compatible and will not react with the hazardous waste to be stored.

(c) Management of containers. (1) You must always keep a container holding hazardous waste closed during storage, except when you add or remove waste.

(2) You must never open, handle, or store a container holding hazardous waste in a manner that may rupture the container or cause it to leak.

**§ 267.172 What are the inspection requirements?**

At least weekly, you must inspect areas where you store containers, looking for leaking containers and for deterioration of containers and the containment system caused by corrosion or other factors.

**§ 267.173 What standards apply to the container storage areas?**

(a) You must design and operate a containment system for your container storage areas according to the requirements in paragraph (b) of this section, except as otherwise provided by paragraph (c) of this section.

(b) The design and operating requirements for a containment system are:

(1) A base must underlie the containers that is free of cracks or gaps and is sufficiently impervious to contain leaks, spills, and accumulated precipitation until the collected material is detected and removed.

(2) The base must be sloped or the containment system, must be otherwise designed and operated to drain and remove liquids resulting from leaks, spills, or precipitation, unless the containers are elevated or are otherwise protected from contact with accumulated liquids.

(3) The containment system must have sufficient capacity to contain 10% of the volume of containers, or the volume of the largest container, whichever is greater. This requirement does not apply to containers that do not contain free liquids.

(4) You must prevent run-on into the containment system unless the collection system has sufficient excess capacity, in addition to that required in paragraph (b)(3) of this section, to contain the liquid.

(5) You must remove any spilled or leaked

waste and accumulated precipitation from the sump or collection area as promptly as is necessary to prevent overflow of the collection system.

(c) Except as provided in paragraph (d) of this section, you do not need a containment system as defined in paragraph (b) of this section for storage areas that store containers holding only wastes with no free liquids, if:

(1) The storage area is sloped or is otherwise designed and operated to drain and remove liquid resulting from precipitation; or

(2) The containers are elevated or are otherwise protected from contact with accumulated liquid.

(d) You must have a containment system defined by paragraph (b) of this section for storage areas that store containers holding FO20, FO21, FO22, FO23, FO26, and FO27 wastes, even if the wastes do not contain free liquids.

#### **§ 267.174 What special requirements must I meet for ignitable or reactive waste?**

You must locate containers holding ignitable or reactive waste at least 15 meters (50 feet) from your facility property line. You must also follow the general requirements for ignitable or reactive wastes that are specified in § 267.17(a).

#### **§ 267.175 What special requirements must I meet for incompatible wastes?**

(a) You must not place incompatible wastes, or incompatible wastes and materials (see appendix V to Section 264 for examples), in the same container, unless you comply with § 267.17(b).

(b) You must not place hazardous waste in an unwashed container that previously held an incompatible waste or material.

(c) You must separate a storage container holding a hazardous waste that is incompatible with any waste or with other materials stored nearby in other containers, piles, open tanks, or surface impoundments from the other materials, or protect the containers by means of a dike, berm, wall, or other device.

#### **§ 267.176 What must I do when I want to stop using the containers?**

You must remove all hazardous waste and hazardous waste residues from the containment system. You must decontaminate or remove remaining containers, liners, bases, and soil containing, or contaminated with, hazardous waste or hazardous waste residues.

#### **§ 267.177 What air emission standards apply?**

You must manage all hazardous waste placed in a container according to the requirements of subsections AA, BB, and CC of 40 CFR section 264. Under a standardized permit, the following control devices are permissible: Thermal vapor incinerator, catalytic vapor incinerator, flame, boiler, process heater, condenser, and carbon absorption unit.

#### **Subsection J—Tank Systems**

#### **§ 267.190 Does this subsection apply to me?**

This subsection applies to you if you own or operate a facility that treats or stores hazardous waste in above-ground or on-ground tanks under a 40 CFR section 270 subsection J standardized permit, except as provided in § 267.1(b).

(a) You do not have to meet the secondary containment requirements in § 267.195 if your tank systems do not contain free liquids and are situated inside a building with an impermeable floor. You must demonstrate the absence or presence of free liquids in the stored/treated waste, using Method 9095B (Paint Filter Liquids Test) as described in “Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,” EPA Publication SW-846, as incorporated by reference in 40 CFR 260.11.

(b) You do not have to meet the secondary containment requirements of § 267.195(a) if your tank system, including sumps, as defined in 40 CFR 260.10, is part of a secondary containment system to collect or contain releases of hazardous wastes.

#### **§ 267.191 What are the required design and construction standards for new tank systems or components?**

You must ensure that the foundation, structural support, seams, connections, and pressure controls (if applicable) are adequately designed and that the tank system has sufficient structural strength, compatibility with the waste(s) to be stored or treated, and corrosion protection to ensure that it will not collapse, rupture, or fail. You must obtain a written assessment, reviewed and certified by an independent, qualified Arkansas-registered professional engineer, following 40 CFR 270.11(d), attesting that the tank system has sufficient structural integrity and is acceptable for the storing and treating of hazardous waste. This assessment must include, at a minimum, the following information:

(a) Design standard(s) for the construction of tank(s) and/or the ancillary equipment.

(b) Hazardous characteristics of the waste(s) to be handled.

(c) For new tank systems or components in which the external shell of a metal tank or any external metal component of the tank system will be in contact with the soil or with water, a determination by a corrosion expert of:

(1) Factors affecting the potential for corrosion, such as:

- (i) Soil moisture content.
- (ii) Soil pH.
- (iii) Soil sulfides level.
- (iv) Soil resistivity.
- (v) Structure to soil potential.
- (vi) Existence of stray electric current.
- (vii) Existing corrosion-protection measures (for example, coating, cathodic protection).

(2) The type and degree of external corrosion protection needed to ensure the integrity of the tank system during the use of the tank system or component, consisting of one or more of the following:

- (i) Corrosion-resistant materials of construction such as special alloys, fiberglass reinforced plastic, etc.
- (ii) Corrosion-resistant coating (such as epoxy, fiberglass, etc.) with cathodic protection (for example, impressed current or sacrificial anodes) and
- (iii) Electrical isolation devices such as insulating joints, flanges, etc.

(d) Design considerations to ensure that:

- (1) Tank foundations will maintain the load of a full tank.
- (2) Tank systems will be anchored to prevent flotation or dislodgment where the tank system is placed in a saturated zone, or is located within a seismic fault zone subject to the standards of § 267.18(a).
- (3) Tank systems will withstand the effects of frost heave.

§ 267.192 What handling and inspection procedures must I follow during installation of new tank systems?

(a) You must ensure that you follow proper handling procedures to prevent damage to a new tank system during installation. Before placing a new tank system or component in use, an independent, qualified installation inspector or an independent, qualified, Arkansas-registered professional engineer, either of whom is trained and experienced in the proper installation of tank systems or components, must inspect the system for the presence of any of the following items:

- (1) Weld breaks.
- (2) Punctures.
- (3) Scrapes of protective coatings.

(4) Cracks.

(5) Corrosion.

(6) Other structural damage or inadequate construction/installation.

(b) You must remedy all discrepancies before the tank system is placed in use.

§ 267.193 What testing must I do?

You must test all new tanks and ancillary equipment for tightness before you place them in use. If you find a tank system that is not tight, you must perform all repairs necessary to remedy the leak(s) in the system before you cover, enclose, or place the tank system into use.

§ 267.194 What installation requirements must I follow?

(a) You must support and protect ancillary equipment against physical damage and excessive stress due to settlement, vibration, expansion, or contraction.

(b) You must provide the type and degree of corrosion protection recommended by an independent corrosion expert, based on the information provided under § 267.191(c), to ensure the integrity of the tank system during use of the tank system. An independent corrosion expert must supervise the installation of a corrosion protection system that is field fabricated to ensure proper installation.

(c) You must obtain, and keep at the facility, written statements by those persons required to certify the design of the tank system and to supervise the installation of the tank system as required in §§ 267.192, 267.193, and paragraphs (a) and (b) of this section. The written statement must attest that the tank system was properly designed and installed and that you made repairs under §§ 267.192 and 267.193. These written statements must also include the certification statement as required in 40 CFR 270.11(d).

§ 267.195 What are the secondary containment requirements?

To prevent the release of hazardous waste or hazardous constituents to the environment, you must provide secondary containment that meets the requirements of this section for all new and existing tank systems.

(a) Secondary containment systems must be:

(1) Designed, installed, and operated to prevent any migration of wastes or accumulated liquid out of the system to the soil, groundwater, or surface water at any time during the use of the tank system; and

(2) Capable of detecting and collecting re-

leases and accumulated liquids until the collected material is removed.

(b) To meet the requirements of paragraph (a) of this section, secondary containment systems must be, at a minimum:

(1) Constructed of or lined with materials that are compatible with the wastes(s) to be placed in the tank system and must have sufficient strength and thickness to prevent failure owing to pressure gradients (including static head and external hydrological forces), physical contact with the waste to which it is exposed, climatic conditions, and the stress of daily operation (including stresses from nearby vehicular traffic).

(2) Placed on a foundation or base capable of providing support to the secondary containment system, resistance to pressure gradients above and below the system, and capable of preventing failure due to settlement, compression, or uplift.

(3) Provided with a leak-detection system that is designed and operated so that it will detect the failure of either the primary or secondary containment structure or the presence of any release of hazardous waste or accumulated liquid in the secondary containment system within 24 hours.

(4) Sloped or otherwise designed or operated to drain and remove liquids resulting from leaks, spills, or precipitation. You must remove spilled or leaked waste and accumulated precipitation from the secondary containment system within 24 hours, or as promptly as possible, to prevent harm to human health and the environment.

**§ 267.196 What are the required devices for secondary containment and what are their design, operating and installation requirements?**

(a) Secondary containment for tanks must include one or more of the following:

- (1) A liner (external to the tank).
- (2) A double-walled tank.
- (3) An equivalent device; you must maintain documentation of equivalency at the facility.

(b) External liner systems must be:

(1) Designed or operated to contain 100 percent of the capacity of the largest tank within its boundary.

(2) Designed or operated to prevent run-on or infiltration of precipitation into the secondary containment system unless the collection system has sufficient excess capacity to contain run-on or infiltration. The additional capacity must be sufficient to contain precipitation from a 25-year, 24-hour rainfall event.

(3) Free of cracks or gaps.

(4) Designed and installed to surround the tank completely and to cover all surrounding earth likely to come into contact with the waste if the waste is released from the tank(s) (that is, capable of preventing lateral as well as vertical migration of the waste).

(c) Double-walled tanks must be:

(1) Designed as an integral structure (that is, an inner tank completely enveloped within an outer shell) so that any release from the inner tank is contained by the outer shell.

(2) Protected, if constructed of metal, from both corrosion of the primary tank interior and of the external surface of the outer shell.

(3) Provided with a built-in continuous leak detection system capable of detecting a release within 24 hours.

**§ 267.197 What are the requirements for ancillary equipment?**

You must provide ancillary equipment with secondary containment (for example, trench, jacketing, doublewalled piping) that meets the requirements of § 267.195 (a) and (b), except for:

(a) Above ground piping (exclusive of flanges, joints, valves, and other connections) that are visually inspected for leaks on a daily basis;

(b) Welded flanges, welded joints, and welded connections, that are visually inspected for leaks on a daily basis;

(c) Sealless or magnetic coupling pumps and sealless valves, that are visually inspected for leaks on a daily basis; and

(d) Pressurized above ground piping systems with automatic shut-off devices (for example, excess flow check valves, flow metering shutdown devices, loss of pressure actuated shut-off devices) that are visually inspected for leaks on a daily basis.

**§ 267.198 What are the general operating requirements for my tank systems?**

(a) You must not place hazardous wastes or treatment reagents in a tank system if they could cause the tank, its ancillary equipment, or the containment system to rupture, leak, corrode, or otherwise fail.

(b) You must use appropriate controls and practices to prevent spills and overflows from tank or containment systems. These include, at a minimum:

(1) Spill prevention controls (for example, check valves, dry disconnect couplings).

(2) Overfill prevention controls (for example, level sensing devices, high level alarms, automatic feed cutoff, or bypass to a standby tank).



(3) Sufficient freeboard in uncovered tanks to prevent overtopping by wave or wind action or by precipitation.

(c) You must comply with the requirements of § 267.200 if a leak or spill occurs in the tank system.

### § 267.199 What inspection requirements must I meet?

You must comply with the following requirements for scheduling, conducting, and documenting inspections.

(a) Develop and follow a schedule and procedure for inspecting overflow controls.

(b) Inspect at least once each operating day:

(1) Aboveground portions of the tank system to detect corrosion or releases of waste.

(2) Data gathered from monitoring and leak detection equipment (for example, pressure or temperature gauges, monitoring wells) to ensure that the tank system is being operated according to its design.

(3) The construction materials and the area immediately surrounding the externally accessible portion of the tank system, including the secondary containment system (for example, dikes) to detect erosion or signs of releases of hazardous waste (for example, wet spots, dead vegetation).

(c) Inspect cathodic protection systems, if present, according to, at a minimum, the following schedule to ensure that they are functioning properly:

(1) Confirm that the cathodic protection system is operating properly within six months after initial installation and annually thereafter.

(2) Inspect and/or test all sources of impressed current, as appropriate, at least every other month.

(d) Document, in the operating record of the facility, an inspection of those items in paragraphs (a) through (c) of this section.

### § 267.200 What must I do in case of a leak or a spill?

If there has been a leak or a spill from a tank system or secondary containment system, or if either system is unfit for use, you must remove the system from service immediately, and you must satisfy the following requirements:

(a) Immediately stop the flow of hazardous waste into the tank system or secondary containment system and inspect the system to determine the cause of the release.

(b) Remove the waste from the tank system or secondary containment system.

(1) If the release was from the tank system,

you must, within 24 hours after detecting the leak, remove as much of the waste as is necessary to prevent further release of hazardous waste to the environment and to allow inspection and repair of the tank system to be performed.

(2) If the material released was to a secondary containment system, you must remove all released materials within 24 hours or as quickly as possible to prevent harm to human health and the environment.

(c) Immediately conduct a visual inspection of the release and, based upon that inspection:

(1) Prevent further migration of the leak or spill to soils or surface water.

(2) Remove, and properly dispose of, any visible contamination of the soil or surface water.

(d) Report any release to the environment, except as provided in paragraph (d)(1) of this section, to the Director within 24 hours of its detection. If you have reported the release pursuant to 40 CFR part 302, that report will satisfy this requirement.

(1) You need not report on a leak or spill of hazardous waste if it is:

(i) Less than or equal to a quantity of one (1) pound; and

(ii) Immediately contained and cleaned up.

(2) Within 30 days of detection of a release to the environment, you must submit a report to the Director containing the following information:

(i) The likely route of migration of the release.

(ii) The characteristics of the surrounding soil (soil composition, geology, hydrogeology, climate).

(iii) The results of any monitoring or sampling conducted in connection with the release (if available). If sampling or monitoring data relating to the release are not available within 30 days, you must submit these data to the Director as soon as they become available.

(iv) The proximity to downgradient drinking water, surface water, and populated areas.

(v) A description of response actions taken or planned.

(e) Either close the system or make necessary repairs.

(1) Unless you satisfy the requirements of paragraphs (e)(2) and (3) of this section, you must close the tank system according to § 267.201.

(2) If the cause of the release was a spill that has not damaged the integrity of the system, you may return the system to service as soon as you

remove the released waste and make any necessary repairs.

(3) If the cause of the release was a leak from the primary tank system into the secondary containment system, you must repair the system before returning the tank system to service.

(f) If you have made extensive repairs to a tank system in accordance with paragraph (e) of this section (for example, installation of an internal liner; repair of a ruptured primary containment or secondary containment vessel), you may not return the tank system to service unless the repair is certified by an independent, qualified, Arkansas-registered, professional engineer in accordance with § 270.11(d).

(1) The engineer must certify that the repaired system is capable of handling hazardous wastes without release for the intended life of the system.

(2) You must submit this certification to the Director within seven days after returning the tank system to use.

#### § 267.201 What must I do when I stop operating the tank system?

When you close a tank system, you must remove or decontaminate all waste residues, contaminated containment system components (liners, etc.), contaminated soils, and structures and equipment contaminated with waste, and manage them as hazardous waste, unless 40 CFR 261.3(d) applies. The closure plan, closure activities, cost estimates for closure, and financial responsibility for tank systems must meet all of the requirements specified in subsections G and H of this section.

#### § 267.202 What special requirements must I meet for ignitable or reactive wastes?

(a) You may not place ignitable or reactive waste in tank systems, unless:

(1) You treat, render, or mix the waste before or immediately after placement in the tank system so that:

(i) You comply with § 267.17(b); and (ii) The resulting waste, mixture, or dissolved material no longer meets the definition of ignitable or reactive waste under § 261.21 or § 261.23 of this Regulation; or

(2) You store or treat the waste in such a way that it is protected from any material or conditions that may cause the waste to ignite or react; or

(3) You use the tank system solely for emergencies.

(b) If you store or treat ignitable or reactive waste in

a tank, you must comply with the requirements for the maintenance of protective distances between the waste management area and any public ways, streets, alleys, or an adjoining property line that can be built upon as required in Tables 2–1 through 2–6 of the National Fire Protection Association’s “Flammable and Combustible Liquids Code,” (1977 or 1981), (incorporated by reference, see § 260.11).

#### § 267.203 What special requirements must I meet for incompatible wastes?

(a) You may not place incompatible wastes, or incompatible wastes and materials, in the same tank system, unless you comply with § 267.17(b).

(b) You may not place hazardous waste in a tank system that has not been decontaminated and that previously held an incompatible waste or material, unless you comply with § 267.17(b).

#### § 267.204 What air emission standards apply?

You must manage all hazardous waste placed in a tank following the requirements of subsections AA, BB, and CC of Section 264 of this Regulation. Under a standardized permit, the following control devices are permissible: Thermal vapor incinerator, catalytic vapor incinerator, flame, boiler, process heater, condenser, and carbon absorption unit.

#### Subsections K through CC [Reserved]

#### Subsection DD—Containment buildings

#### § 267.1100 Does this subsection apply to me?

This subsection applies to you if you own or operate a facility that treats or stores hazardous waste in containment buildings under a 40 CFR section 270 subsection J standardized permit, except as provided in § 267.1(b). Storage and/or treatment in your containment building is not land disposal as defined in 40 CFR 268.2 if your unit meets the requirements of §§ 267.1101, 267.1102, and 267.1103.

#### § 267.1101 What design and operating standards must my containment building meet?

Your containment building must comply with the design and operating standards in this section. EPA will consider standards established by professional organizations generally recognized by the industry such as the American Concrete Institute (ACI) and the American Society



of Testing Materials (ASTM) in judging the structural integrity requirements of this section.

(a) The containment building must be completely enclosed with a floor, walls, and a roof to prevent exposure to the elements, (e.g., precipitation, wind, run-on), and to assure containment of managed wastes.

(b) The floor and containment walls of the unit, including the secondary containment system, if required under § 267.1103, must be designed and sufficient strength and thickness to:

(1) Support themselves, the waste contents, and any personnel and heavy equipment that operates within the unit.

(2) Prevent failure due to:

(i) Pressure gradients, settlement, compression, or uplift.

(ii) Physical contact with the hazardous wastes to which they are exposed.

(iii) Climatic conditions.

(iv) Stresses of daily operation, including the movement of heavy equipment within the unit and contact of such equipment with containment walls.

(v) Collapse or other failure.

(c) All surfaces to be in contact with hazardous wastes must be chemically compatible with those wastes.

(d) You must not place incompatible hazardous wastes or treatment reagents in the unit or its secondary containment system if they could cause the unit or secondary containment system to leak, corrode, or otherwise fail.

(e) A containment building must have a primary barrier designed to withstand the movement of personnel, waste, and handling equipment in the unit during the operating life of the unit and appropriate for the physical and chemical characteristics of the waste to be managed.

(f) If appropriate to the nature of the waste management operation to take place in the unit, an exception to the structural strength requirement may be made for light-weight doors and windows that meet these criteria:

(1) They provide an effective barrier against fugitive dust emissions under § 267.1102(d).

(2) The unit is designed and operated in a fashion that assures that wastes will not actually come in contact with these openings.

(g) You must inspect and record in the facility's operating record, at least once every seven days, data gathered from monitoring equipment and leak detection equipment, as well as the containment building and the area immediately surrounding the containment building to detect signs of releases of hazardous waste.

(h) You must obtain certification by a qualified registered professional engineer that the containment building design meets the requirements of §§ 267.1102, 267.1103, and paragraphs (a) through (f) of this section.

§ 267.1102 What other requirements must I meet to prevent releases?

You must use controls and practices to ensure containment of the hazardous waste within the unit, and must, at a minimum:

(a) Maintain the primary barrier to be free of significant cracks, gaps, corrosion, or other deterioration that could cause hazardous waste to be released from the primary barrier. (b) Maintain the level of the stored/ treated hazardous waste within the containment walls of the unit so that the height of any containment wall is not exceeded.

(c) Take measures to prevent personnel or by equipment used in handling the waste from tracking hazardous waste out of the unit. You must designate an area to decontaminate equipment, and you must collect and properly manage any rinsate.

(d) Take measures to control fugitive dust emissions such that any openings (doors, windows, vents, cracks, etc.) exhibit no visible emissions (see 40 CFR part 60, appendix A, Method 22—Visual Determination of Fugitive Emissions from Material Sources and Smoke Emissions from Flares). In addition, you must operate and maintain all associated particulate collection devices (for example, fabric filter, electrostatic precipitator) with sound air pollution control practices. You must effectively maintain this state of no visible emissions at all times during routine operating and maintenance conditions, including when vehicles and personnel are entering and exiting the unit.

§ 267.1103 What additional design and operating standards apply if liquids will be in my containment building?

If your containment building will be used to manage hazardous wastes containing free liquids or treated with free liquids, as determined by the paint filter test, by a visual examination, or by other appropriate means, you must include:

(a) A primary barrier designed and constructed of materials to prevent the migration of hazardous constituents into the barrier (for example, a geomembrane covered by a concrete wear surface).

(b) A liquid collection and removal system to minimize the accumulation of liquid on the primary barrier of the containment building.

(1) The primary barrier must be sloped to drain liquids to the associated collection system; and

(2) You must collect and remove liquids and waste to minimize hydraulic head on the containment system at the earliest practicable time.

(c) A secondary containment system, including a secondary barrier designed and constructed to prevent mi-

gration of hazardous constituents into the barrier, and a leak detection system capable of detecting failure of the primary barrier and collecting accumulated hazardous wastes and liquids at the earliest practical time.

(1) You may meet the requirements of the leak detection component of the secondary containment system by installing a system that is, at a minimum:

(i) Constructed with a bottom slope of 1 percent or more; and

(ii) Constructed of a granular drainage material with a hydraulic conductivity of  $1 \times 10^{-2}$  cm/sec or more and a thickness of 12 inches (30.5 cm) or more, or constructed of synthetic or geonet drainage materials with a transmissivity of  $3 \times 10^{-5}$  m<sup>2</sup>/sec or more.

(2) If you will be conducting treatment in the building, you must design the area in which the treatment will be conducted to prevent the release of liquids, wet materials, or liquid aerosols to other portions of the building.

(3) You must construct the secondary containment system using materials that are chemically resistant to the waste and liquids managed in the containment building and of sufficient strength and thickness to prevent collapse under the pressure exerted by overlaying materials and by any equipment used in the containment building.

#### § 267.1104 How may I obtain a waiver from secondary containment requirements?

Notwithstanding any other provision of this subsection, the Director may waive requirements for secondary containment for a permitted containment building where:

(a) You demonstrate that the only free liquids in the unit are limited amounts of dust suppression liquids required to meet occupational health and safety requirements, and

(b) Containment of managed wastes and dust suppression liquids can be assured without a secondary containment system.

#### § 267.1105 What do I do if my containment building contains areas both with and without secondary containment?

For these containment buildings, you must:

(a) Design and operate each area in accordance with the requirements enumerated in §§ 267.1101 through 267.1103.

(b) Take measures to prevent the release of liquids or wet materials into areas without secondary containment. (c) Maintain in the facility's operating log a written description of the operating procedures used to maintain the integrity of areas without secondary containment.

#### § 267.1106 What do I do if I detect a release?

Throughout the active life of the containment building, if you detect a condition that could lead to or has caused a release of hazardous waste, you must repair the condition promptly, in accordance with the following procedures.

(a) Upon detection of a condition that has led to a release of hazardous waste (for example, upon detection of leakage from the primary barrier), you must:

(1) Enter a record of the discovery in the facility operating record;

(2) Immediately remove the portion of the containment building affected by the condition from service;

(3) Determine what steps you must take to repair the containment building, to remove any leakage from the secondary collection system, and to establish a schedule for accomplishing the cleanup and repairs; and

(4) Within 7 days after the discovery of the condition, notify the Director of the condition, and within 14 working days, provide a written notice to the Director with a description of the steps taken to repair the containment building, and the schedule for accomplishing the work.

(b) The Director will review the information submitted, make a determination regarding whether the containment building must be removed from service completely or partially until repairs and cleanup are complete, and notify you of the determination and the underlying rationale in writing.

(c) Upon completing all repairs and cleanup, you must notify the Director in writing and provide a verification, signed by a qualified, registered professional engineer, that the repairs and cleanup have been completed according to the written plan submitted in accordance with paragraph (a)(4) of this section.

#### § 267.1107 Can a containment building itself be considered secondary containment?

Containment buildings can serve as secondary containment systems for tanks placed within the building under certain conditions.

(a) A containment building can serve as an external liner system for a tank, provided it meets the requirements of § 267.196(a).

(b) The containment building must also meet the requirements of § 267.195(a), (b)(1) and (2) to be considered an acceptable secondary containment system for a tank.

#### § 267.1108 What must I do when I stop operating the containment building?

When you close a containment building, you must remove or decontaminate all waste residues, contaminated containment system components (liners, etc.), contaminated subsoils, and structures and equipment contaminated with waste and leachate and manage them as hazardous waste unless 40 CFR 261.3(d) applies. The closure plan, closure activities, cost estimates for closure, and financial responsibility for containment buildings must meet all of the requirements specified in subsections G and H of this section.

## Section 268—LAND DISPOSAL RESTRICTIONS

### Subsection A—General

171. In Section 268.2, amend paragraph (g) by revising “A manufactured” to read “a manufactured”; “Any material” to read “any material”; “Process residuals” to read “process residuals”; and “and Intact” to read “and intact”.

#### § 268.2 Definitions applicable in this section.

\*\*\*\*\*

(g) “Debris” means solid material exceeding a 60 mm particle size that is intended for disposal and that is: ~~A manufactured a manufactured~~ object; or plant or animal matter; or natural geologic material. However, the following materials are not debris: ~~Any material any material~~ for which a specific treatment standard is provided in Subsection D, section 268, namely lead acid batteries, cadmium batteries, and radioactive lead solids; ~~Process residuals process residuals~~ such as smelter slag and residues from the treatment of waste, wastewater, sludges, or air emission residues; ~~and Intact and intact~~ containers of hazardous waste that are not ruptured and that retain at least 75% of their original volume. A mixture of debris that has not been treated to the standards provided by § 268.45 and other material is subject to regulation as debris if the mixture is comprised primarily of debris, by volume, based on visual inspection.

\*\*\*\*\*

172. In Section 268.4, amend paragraph (a)(3) introductory text by revising the citation “of section 264 or section 264” to read “of section 264 or section 265”.

#### § 268.4 Treatment surface impoundment exemption.

(a) \*\*\*

(3) The impoundment meets the design requirements of § 264.221(c) or § 265.221(a) of this regu-

lation, regardless that the unit may not be new, expanded, or a replacement, and be in compliance with applicable ground water monitoring requirements of Subsection F ~~of section 264 or section 264 of Section 264 or Section 265~~ of this regulation unless:

\*\*\*\*\*

173. In Section 268.6, amend paragraph (c)(5) introductory text by revising “section meet” to read “section meets”.

#### § 268.6 Petitions to allow land disposal of a waste prohibited under Subsection C of Section 268.

\*\*\*\*\*

(c) \*\*\*

(5) The monitoring program specified under paragraph (c)(1) of this ~~section meet~~ section meets the following criteria:

\*\*\*\*\*

174. Amend Section 268.7 as follows:

a. Amend by revising paragraphs (a)(1) and (a)(2), and (b)(6) to read as follows:

b. In paragraph (a)(3)(ii), second sentence, insert the word “column” after the phrase “information in”, and insert a closing quotation mark after the citation “268.7(a)(3)”;

c. In paragraph (b)(4)(ii), revise the citation “§ 261.3(e)” to read “§ 261.3(f)”;

d. Amend by revising paragraph (b)(6) to read as follows:  
e. In paragraph (c)(2), remove the closing parenthesis from “Leaching Procedure”;

f. In paragraph (d) introductory text, revise the citation “§ 261.3(e)” to read “§ 261.3(f)”;

g. Revise paragraph (d)(1) to read as set forth below;

h. In paragraph (d)(2), revise the citation “§ 261.2(e)(1)” to read “§ 261.3(f)(1)”;

i. In paragraph (d)(3), revise the citation “§ 261.3(e)(1)” to read “§ 261.3(f)(1)”.

#### § 268.7 Testing, tracking and recordkeeping requirements for generators, treaters, and disposal facilities.

(a) *Requirements for generators:*

(1) A generator of hazardous waste must determine if the waste has to be treated before it can be land disposed. This is done by determining if the hazardous waste meets the treatment standards in § 268.40, 268.45, or § 268.49. This determination can be made concurrently with the hazardous waste determination required in § 262.11 of this Regulation, in either of two ways: testing the waste or using knowledge of the waste. If the generator tests

the waste, testing would normally determine the total concentration of hazardous constituents, or the concentration of hazardous constituents in an extract of the waste obtained using test method 1311 in “Test Methods of Evaluating Solid Waste, Physical/Chemical Methods,” EPA Publication SW-846, ~~as referenced in §260.11 of this regulation~~ **(incorporated by reference, see § 260.11 of this Regulation),** depending on whether the treatment standard for the waste is expressed as a total concentration or concentration of hazardous constituent in the waste’s extract. **(Alternatively, the generator must send the waste to a RCRA-permitted hazardous waste treatment facility, where the waste treatment facility must comply with the requirements of § 264.13 of this Regulation and paragraph (b) of this section.)** In addition, some hazardous wastes must be treated by particular treatment methods before they can be land disposed and some soils are contaminated by such hazardous wastes. These treatment standards are also found in § 268.40, and are described in detail in § 268.42, Table 1. These wastes, and solids contaminated with such wastes, do not need to be tested (however, if they are in a waste mixture, other wastes with concentration level treatment standards would have to be tested). If a generator determines they are managing a waste or soil contaminated with a waste, that displays a hazardous characteristic of ignitability, corrosivity, reactivity, or toxicity, they must comply with the special requirements of § 268.9 of this section in addition to any applicable requirements in this section.

~~(2) If the waste or contaminated soil does not meet the treatment standards, or if the generator chooses not to make the determination of whether his waste must be treated, with the initial shipment of waste to each treatment or storage facility, the generator must send a one-time written notice to each treatment or storage facility receiving the waste, and place a copy in the file. The notice must include the information in column “268.7(a)(2)” of the Generator Paperwork Requirements Table in paragraph (a)(4) of this section. (Alternatively, if the generator chooses not to make the determination of whether the waste must be treated, the notification must include the EPA Hazardous Waste Numbers and Manifest Number of the first shipment and must state “This hazardous waste may or may not be subject to the LDR treatment standards. The treatment facility must make the determination.”) No further notification is necessary until such time that the waste or facility change, in which case a new notification must be sent and a copy placed in the generator’s file. **If the waste or contaminated soil does not meet the treatment standard: With the initial shipment of waste to each treat-**~~

**ment or storage facility, the generator must send a one-time written notice to each treatment or storage facility receiving the waste, and place a copy in the file. The notice must include the information in column “268.7(a)(2)” of the Generator Paperwork Requirements Table in § 268.7(a)(4). No further notification is necessary until such time that the waste or facility changes, in which case a new notification must be sent and a copy placed in the generator’s file.**

\* \* \* \* \*

(3) \* \* \*

(ii) For contaminated soil, with the initial shipment of wastes to each treatment, storage, or disposal facility, the generator must send a one-time written notice to each facility receiving the waste and place a copy in the file. The notice must include the information in column “268.7(a)(3)” of the Generator Paperwork Requirements Table in § 268.7(a)(4).

\* \* \* \* \*

(4) \* \* \*

(ii) Debris excluded from the definition of hazardous waste ~~under § 261.3(e)~~ **§ 261.3(f)** of this regulation (i.e., debris treated by an extraction or destruction technology provided by Table 1, § 268.45, and debris that the Director has determined does not contain hazardous waste), however, is subject to the notification and certification requirements of paragraph (d) of this section rather than the certification requirements of this paragraph.

\* \* \* \* \*

(b) \* \* \*

(6) Where the wastes are recyclable materials used in a manner constituting disposal subject to the provisions of § 266.20(b) of this Regulation regarding treatment standards and prohibition levels, the owner or operator of a treatment facility (i.e., the recycler) ~~is not required to notify the receiving facility, pursuant to paragraph (b)(3) of this section.~~ **must, for the initial shipment of waste, prepare a one-time certification described in paragraph (b)(4) of this section, and a one-time notice which includes the information in paragraph (b)(3) of this section (except the manifest number). The certification and notification must be placed in the facility’s on-site files. With each shipment of such wastes the owner or operator of the recycling facility must submit a certification described in paragraph (b)(4) of this section, and a notice which includes the information listed in paragraph (b)(3) of this section (except the manifest number) to the Director, or his delegated representative. **If the waste or the receiving facility changes, a new certification and notification must be prepared****



and placed in the on site files. In addition, the recycling facility ~~also must~~ **must also** keep records of the name and location of each entity receiving the hazardous waste-derived product.

\* \* \* \* \*

(c) \* \* \*

(2) Test the waste, or an extract of the waste or treatment residue developed using test method 1311 (the Toxicity Characteristic Leaching Procedure), described in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846 as incorporated by reference in § 260.11 of this chapter), to assure that the wastes or treatment residues are in compliance with the applicable treatment standards set forth in subsection D of this Section. Such testing must be performed according to the frequency specified in the facility's waste analysis plan as required by § 264.13 or § 265.13 of this regulation.

\* \* \* \* \*

(d) Generators or treaters who first claim that hazardous debris is excluded from the definition of hazardous waste under ~~§ 261.3(e)~~ **§ 261.3(f)** of this regulation (i.e., debris treated by an extraction or destruction technology provided by Table 1, § 268.45, and debris that the EPA Regional Administrator (or his designated representative) or State authorized to implement 40 CFR Part 268 requirements has determined does not contain hazardous waste) are subject to the following notification and certification requirements:

\* \* \* \* \*

(d) \* \* \*

(1) A one-time notification, including the following information, must be submitted to the ADEQ.

**(i) The name and address of the Subsection D facility receiving the treated debris;**

**(ii) A description of the hazardous debris as initially generated, including the applicable EPA Hazardous Waste Number(s); and**

**(iii) For debris excluded under § 261.3(f)(1) of this regulation, the technology from Table 1, § 268.45, used to treat the debris.**

(2) The notification must be updated if the debris is shipped to a different facility, and, for debris excluded under ~~§ 261.2(e)(1)~~ **§ 261.3(f)(1)** of this chapter, if a different type of debris is treated or if a different technology is used to treat the debris.

(3) For debris excluded under ~~§ 261.2(e)(1)~~ **§ 261.3(f)(1)** of this chapter, the owner or operator of the treatment facility must document and certify compliance with the treatment standards of Table 1, § 268.45, as follows:

\* \* \* \* \*

175. Section 268.9 is amended by revising paragraphs (a)

and (d) introductory text to read as follows:

**§ 268.9 Special rules regarding wastes that exhibit a characteristic.**

(a) The initial generator of a solid waste must determine each EPA Hazardous Waste Number (waste code) applicable to the waste in order to determine the applicable treatment standards under Subsection D of this section. **This determination may be made concurrently with the hazardous waste determination required in § 262.11 of this Regulation.** For purposes of section 268, the waste will carry the waste code for any applicable listed waste (Section 261, subsection D of this Regulation). In addition, where the waste exhibits a characteristic, the waste will carry one or more of the characteristic waste codes (Section 261, Subsection C of this Regulation), except when the treatment standard for the listed waste operates in lieu of the treatment standard for the characteristic waste, as specified in paragraph (b) of this section. If the generator determines that their waste displays a hazardous characteristic (and is not D001 nonwastewaters treated by CMBST, RORGS, OR POLYM of § 268.42, Table 1), the generator must determine the underlying hazardous constituents (as defined at § 268.2(i)) in the characteristic waste.

\* \* \* \* \*

(d) Wastes that exhibit a characteristic are also subject to § 268.7 requirements, except that once the waste is no longer hazardous, a one-time notification and certification must be placed in the generator's or treater's on-site files. The notification and certification **that is placed in the generators or treaters files** must be updated if the process or operation generating the waste changes and/or if the subtitle D facility receiving the waste changes. ~~and/or if the subtitle D facility receiving the waste changes. However, the generator or treater need only notify the EPA region or an authorized state on an annual basis if such changes occur. Such notification and certification should be sent to the EPA region or authorized state by the end of the calendar year, but no later than December 31.~~

\* \* \* \* \*

176. In § 268.14, amend paragraphs (b) and (c) by revising "not withstanding" to read "notwithstanding" in both instances.

**§ 268.14 Surface impoundment exemptions.**

\* \* \* \* \*

(b) Wastes which are newly identified or listed under section 3001 after November 8, 1984, and stored in a surface impoundment that is newly subject to subtitle C of RCRA as a result of the additional identification or listing, may continue to be stored in the surface impoundment for 48 months after the promulgation of the additional listing or characteristic, ~~not withstanding~~ **notwithstanding** that the

waste is otherwise prohibited from land disposal, provided that the surface impoundment is in compliance with the requirements of Subsection F of section 265 of this regulation within 12 months after promulgation of the new listing or characteristic.

(c) Wastes which are newly identified or listed under section 3001 after November 8, 1984, and treated in a surface impoundment that is newly subject to subtitle C of RCRA as a result of the additional identification or listing, may continue to be treated in that surface impoundment, ~~not withstanding~~ **notwithstanding** that the waste is otherwise prohibited from land disposal, provided that surface impoundment is in compliance with the requirements of Subsection F of section 265 of this regulation within 12 months after the promulgation of the new listing or characteristic. In addition, if the surface impoundment continues to treat hazardous waste after 48 months from promulgation of the additional listing or characteristic, it must then be in compliance with § 268.4.

\*\*\*\*\*

177. Amend **Section 268.40** as follows:

a. In paragraph (g), revise “as defined” to read “as defined”.

b. Amend the table TREATMENT STANDARDS FOR HAZARDOUS WASTES as follows:

1. At the column heading “Wastewaters”, revise “Concentration in mg/L3” to read “Concentration 3 in mg/L”;

2. At the column heading “Nonwastewaters”, revise “Concentration in mg/kg5” to read “Concentration5 in mg/kg”;

3. At the entry “K047”, in the waste description column, revise “water form TNT” to read “water from TNT”;

4. At the entries “K049” and “K051”, revise the CAS number for “Chrysene” from “2218-01-9” to read “218-01-9”;

5. At the entry “K088”, revise the common name “Benz(a)anthracene” to read “Benz(a)anthracene”; and revise the common name “Indeno(1,2,3,-c,d)pyrene” to read “Indeno(1,2,3-cd)pyrene”;

6. At the entry “K111”, revise the CAS number for “2,4-Dinitrotoluene” from “121-1-2” to read “121-14-2”;

7. At the entry “K114”, in the waste description column, revise the common name “dinitrotoluene” to read “dinitrotoluene”;

8. At the entry “K156”, revise the CAS number for “Acetophenone” from “96-86-2” to read “98-86-2”;

9. At the entry “U202” “Acetone” following “U001”, revise “U202” to read “U002”;

10. At the entry “U134”, revise the CAS number “16984-48-8” to read “7664-39-3”;

11. At the entry “U137”, revise in the waste description and in the common name columns “Indeno(1,2,3-c,d)pyrene” to read “Indeno(1,2,3-cd)pyrene” in both instances.

**§ 268.40 Applicability of Treatment Standards.**

\*\*\*\*\*

(g) Between August 26, 1996 and March 4, 1999 the treatment standards for the wastes specified in § 261.32 as EPA Hazardous Waste numbers K156-K161; and in § 261.33 as EPA Hazardous Waste numbers P127, P128, P185, P188-P192, P194, P196-P199, P201-P205, U271, U277-U280, U364-U367, U372, U373, U375-U379, U381-U387, U389-U396, U400-U404, U407, and U409-U411; and soil contaminated with these wastes; may be satisfied by either meeting the constituent concentrations presented in the table “Treatment Standards for Hazardous Wastes” in this section, or by treating the waste by the following technologies: combustion, as defined by the technology code CMBST at §268.42 Table 1, for nonwaste-waters; and, biodegradation ~~as defined~~ **as defined** by the technology code BIODG, carbon adsorption as defined by the technology code CARBN, chemical oxidation as defined by the technology code CHOXD, or combustion as defined as technology code CMBST at §268.42 Table 1, for wastewaters.

\*\*\*\*\*

**§268.40 TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable \* \* \***

Wastewaters \* \* \*

~~Concentration in mg/L3;~~ **Concentration 3 in mg/L**

\*\*\*\*\*

Nonwastewaters \* \* \*

~~Concentration in mg/kg5~~ **Concentration5 in mg/kg**

\*\*\*\*\*

K047

Pink/red water ~~form~~ **from** TNT operations

\*\*\*\*\*

K049 Chrysene ~~2218-01-9~~ **218-01-9**

\*\*\*\*\*

K051 Chrysene ~~2218-01-9~~ **218-01-9**

\*\*\*\*\*

K088

~~Indeno(1,2,3,-c,d)pyrene~~ **Indeno(1,2,3-cd)pyrene**

\*\*\*\*\*

K111

~~121-1-2~~ **121-14-2**

\*\*\*\*\*

K114

Vicinals from the purification of toluenediamine in the production of toluenediamine via hydrogenation of ~~dinitrotoluene~~ **dinitrotoluene**.

\*\*\*\*\*

K156

Acetophenone 96-86-2 ~~98-86-2~~

\*\*\*\*\*

~~U202~~ **U002**

\*\*\*\*\*

“U134

~~16984-48-8~~ **7664-39-3**

\*\*\*\*\*

U137

~~Indeno(1,2,3-c,d)pyrene~~ **Indeno(1,2,3-cd)pyrene**

\*\*\*\*\*



Indeno(1,2,3-c,d)pyrene Indeno(1,2,3-cd)pyrene  
 \* \* \* \* \*

178. In **Section 268.42, Table 1**, amend the entry for Technology code “SSTRP” in the second column as follows:

a. In the first sentence, revise “as well as, temperature and pressure ranges have” to read “as well as temperature and pressure ranges, have”;

b. In the second sentence, insert a comma after the phrase “parameters of the unit”; remove the comma in the phrase “such as, the number”; and replace the period at the end of “the internal column design.” with a comma;

c. In the third sentence, revise “Thus, resulting” to read “thus resulting”.

**§ 268.42 Treatment standards expressed as specified technologies**

\* \* \* \* \*  
**Table 1**  
 \* \* \* \* \*

**SSTRP:** Steam stripping of organics from liquid wastes utilizing direct application of steam to the wastes operated such that liquid and vapor flow rates, ~~as well as, temperature and pressure ranges have~~ as well as temperature and pressure ranges, have been optimized, monitored, and maintained. These operating parameters are dependent upon the design parameters of the unit, such as; the number of separation stages and the internal column design. ~~Thus, resulting thus resulting~~ in a condensed extract high in organics that must undergo either incineration, reuse as a fuel, or other recovery/reuse and an extracted wastewater that must undergo further treatment as specified in the standard  
 \* \* \* \* \*

179. In **Section 268.44**, amend paragraph (c), last sentence of the certification statement, by revising “I am aware that these are” to read “I am aware that there are”.

**§ 268.44 Variance from a treatment standard**

\* \* \* \* \*

(c) Each petition must include the following statement signed by the petitioner or an authorized representative: “I certify under penalty of law that I have personally examined and am familiar with the information submitted in this petition and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. ~~I am aware that these are~~ I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment”

\* \* \* \* \*

180. Amend **Section 268.45, Table 1**, as follows:

a. At item B.1., first column, revise “biodegradation” to read “biodegradation”;

b. At item B.2.a., first column, revise “electolytic” to read “electrolytic”; and under number (8), revise “permanganates” to read “permanganates”.

**§ 268.45 Treatment standards for hazardous debris**

\* \* \* \* \*

**Table 1.-Alternative Treatment Standards For Hazardous Debris**<sup>1</sup>

\* \* \* \* \*

B. Destruction Technologies: \* \* \*

1. Biological Destruction (Biodegradation):

and ~~biodegration~~ biodegradation of organic or nonmetallic inorganic  
 \* \* \* \* \*

2. \* \* \*

a. Chemical Oxidation: Chemical or ~~electolytic~~ electrolytic

\* \* \* \* \*

181. Amend **Section 268.48 Table, UNIVERSAL TREATMENT STANDARDS**, as follows:

a. In Table UTS, amend by adding in alphabetical sequence the following entries under organic constituents:

b. Amend the Footnote by changing “thisSection” to read “this Section:

**§ 268.48 Table UTS – Universal Treatment Standards**

(a) \* \* \*

**Universal Treatment Standards Table**

**TABLE UTS - UNIVERSAL TREATMENT STANDARDS**

NOTE: NA means not applicable

Chemical Name	CAS No1		Waste
Nonwaste			
waters2	waters3		
<b>Organic Constituents</b>			
Acenaphthylene	208-96-8	0.059	3.4
Acenaphthene	83-32-9	0.059	3.4
Acetone	67-64-1	0.28	160
Acetonitrile	75-05-8	5.6	38
Acetophenone	96-86-2	0.010	9.7
2-Acetylaminofluorene	53-96-3	0.059	140
Acrolein	107-02-8	0.29	NA
Acrylamide	79-06-1	19	23
Acrylonitrile	107-13-1	0.24	84
Aldicarb sulfone	1646-88-4	0.056	0.28

\6\			
Aldrin	309-00-2	0.021	0.066
4-Aminobiphenyl	92-67-1	0.13	NA
Aniline	62-53-3	0.81	14
o-Anisidine (2-methoxyaniline)	90-04-0	0.010	0.66
Anthracene	120-12-7	0.059	3.4
Aramite	140-57-8	0.36	NA
alpha-BHC	319-84-6	0.00014	0.066
beta-BHC	319-85-7	0.00014	0.066
delta-BHC	319-86-8	0.023	0.066
gamma-BHC	58-89-9	0.0017	0.066
Barban \6\	101-27-9	0.056	1.4
Bendiocarb \6\	22781-23-3	0.056	1.4
Benomyl \6\	17804-35-2	0.056	1.4
Benzene	71-43-2	0.14	10
Benz(a)anthracene	56-55-3	0.059	3.4
Benzal chloride	98-87-3	0.055	6.0
Benzo(b)fluoranthene (difficult to distinguish from benzo(k)fluoranthene)	205-99-2	0.11	6.8
Benzo(k)fluoranthene (difficult to distinguish from benzo(b)fluoranthene)	207-08-9	0.11	6.8
Benzo(g,h,i)perylene	191-24-2	0.0055	1.8
Benzo(a)pyrene	50-32-8	0.061	3.4
Bromodichloromethane	75-27-4	0.35	15
Bromomethane/Methyl bromide	74-83-9	0.11	15
4-Bromophenyl phenyl ether	101-55-3	0.055	15
n-Butyl alcohol	71-36-3	5.6	2.6
Butylate \6\	2008-41-5	0.042	1.4
Butyl benzyl phthalate	85-68-7	0.017	28
2-sec-Butyl-4,6-	88-85-7	0.066	2.5

dinitrophenol/Dinoseb			
Carbaryl \6\	63-25-2	0.006	0.14
Carbenzadim \6\	10605-21-7	0.056	1.4
Carbofuran \6\	1563-66-2	0.006	0.14
Carbofuran phenol \6\	1563-38-8	0.056	1.4
Carbon disulfide	75-15-0	3.8	4.8 mg/l TCLP
Carbon tetrachloride	56-23-5	0.057	6.0
Carbosulfan \6\	55285-14-8	0.028	1.4
Chlordane (alpha and gamma isomers)	57-74-9	0.0033	0.26
p-Chloroaniline	106-47-8	0.46	16
Chlorobenzene	108-90-7	0.057	6.0
Chlorobenzilate	510-15-6	0.10	NA
2-Chloro-1,3-butadiene	126-99-8	0.057	0.28
Chlorodibromomethane	124-48-1	0.057	15
Chloroethane	75-00-3	0.27	6.0
bis(2-Chloroethoxy)methane	111-91-1	0.036	7.2
bis(2-Chloroethyl)ether	111-44-4	0.033	6.0
Chloroform	67-66-3	0.046	6.0
bis(2-Chloroisopropyl) ether	39638-32-9	0.055	7.2
p-Chloro-m-cresol	59-50-7	0.018	14
2-Chloroethyl vinyl ether	110-75-8	0.062	NA
Chloromethane/Methyl chloride	74-87-3	0.19	30
2-Chloronaphthalene	91-58-7	0.055	5.6
2-Chlorophenol	95-57-8	0.044	5.7
3-Chloropropylene	107-05-1	0.036	30
Chrysene	218-01-9	0.059	3.4
p-Cresidine	120-71-8	0.010	0.66
o-Cresol	95-48-7	0.11	5.6

m-Cresol (difficult to distinguish from p-cresol)	108-39-4	0.77	5.6
p-Cresol (difficult to distinguish from m-cresol)	106-44-5	0.77	5.6
m-Cumenyl methylcarbamate (6)	64-00-6	0.056	1.4
Cyclohexanone	108-94-1	0.36	0.75 mg/l TCLP
o,p[prime]-DDD	53-19-0	0.023	0.087
p,p[prime]-DDD	72-54-8	0.023	0.087
o,p[prime]-DDE	3424-82-6	0.031	0.087
p,p[prime]-DDE	72-55-9	0.031	0.087
o,p[prime]-DDT	789-02-6	0.0039	0.087
p,p[prime]-DDT	50-29-3	0.0039	0.087
Dibenz(a,h)anthracene	53-70-3	0.055	8.2
Dibenz(a,e)pyrene	192-65-4	0.061	NA
1,2-Dibromo-3-chloropropane	96-12-8	0.11	15
1,2-Dibromoethane/ Ethylene dibromide	106-93-4	0.028	15
Dibromomethane	74-95-3	0.11	15
m-Dichlorobenzene	541-73-1	0.036	6.0
o-Dichlorobenzene	95-50-1	0.088	6.0
p-Dichlorobenzene	106-46-7	0.090	6.0
Dichlorodifluoromethane	75-71-8	0.23	7.2
1,1-Dichloroethane	75-34-3	0.059	6.0
1,2-Dichloroethane	107-06-2	0.21	6.0
1,1-Dichloroethylene	75-35-4	0.025	6.0
trans-1,2-Dichloroethylene	156-60-5	0.054	30
2,4-Dichlorophenol	120-83-2	0.044	14
2,6-Dichlorophenol	87-65-0	0.044	14
2,4-Dichlorophenoxyacetic acid/2,4-D			

1,2-Dichloropropane	78-87-5	0.85	18
cis-1,3-Dichloropropylene	10061-01-5	0.036	18
trans-1,3-Dichloropropylene	10061-02-6	0.036	18
Dieldrin	60-57-1	0.017	0.13
Diethyl phthalate	84-66-2	0.20	28
p-Dimethylaminoazobenzene	60-11-7	0.13	NA
2,4-Dimethylaniline (2,4-xylydine)	95-68-1	0.010	0.66
2,4-Dimethylphenol	105-67-9	0.036	14
Dimethyl phthalate	131-11-3	0.047	28
Di-n-butyl phthalate	84-74-2	0.057	28
1,4-Dinitrobenzene	100-25-4	0.32	2.3
4,6-Dinitro-o-cresol	534-52-1	0.28	160
2,4-Dinitrophenol	51-28-5	0.12	160
2,4-Dinitrotoluene	121-14-2	0.32	140
2,6-Dinitrotoluene	606-20-2	0.55	28
Di-n-octyl phthalate	117-84-0	0.017	28
Di-n-propylnitrosamine	621-64-7	0.40	14
1,4-Dioxane	123-91-1	12.0	170
Diphenylamine (difficult to distinguish from diphenylnitrosamine)	122-39-4	0.92	13
Diphenylnitrosamine (difficult to distinguish from diphenylamine)	86-30-6	0.92	13
1,2-Diphenylhydrazine	122-66-7	0.087	NA

Disulfoton	298-04-4	0.017	6.2
Dithiocarbamates (total) \6\	NA	0.028	28
Endosulfan I	959-98-8	0.023	0.066
Endosulfan II	33213-65-9	0.029	0.13
Endosulfan sulfate	1031-07-8	0.029	0.13
Endrin	72-20-8	0.0028	0.13
Endrin aldehyde	7421-93-4	0.025	0.13
EPTC \6\	759-94-4	0.042	1.4
Ethyl acetate	141-78-6	0.34	33
Ethyl benzene	100-41-4	0.057	10
Ethyl cyanide/ Propanenitrile	107-12-0	0.24	360
Ethyl ether	60-29-7	0.12	160
Ethyl methacrylate	97-63-2	0.14	160
Ethylene oxide	75-21-8	0.12	NA
Famphur	52-85-7	0.017	15
Fluoranthene	206-44-0	0.068	3.4
Fluorene	86-73-7	0.059	3.4
Formetanate hydrochloride \6\	23422-53-9	0.056	1.4
Heptachlor	76-44-8	0.0012	0.066
1,2,3,4,6,7,8-Heptachlorodibenzo-p-dioxin (1,2,3,4,6,7,8-HpCDD)	35822-46-9	0.000035	.0025
1,2,3,4,6,7,8-Heptachlorodibenzo-furan (1,2,3,4,6,7,8-HpCDF)	67562-39-4	0.000035	.0025
1,2,3,4,7,8,9-Heptachlorodibenzo-furan (1,2,3,4,7,8,9-HpCDF)	55673-89-7	0.000035	.0025
Heptachlor epoxide	1024-57-3	0.016	0.066
Hexachlorobenzene	118-74-1	0.055	10
Hexachlorobutadiene	87-68-3	0.055	5.6

Hexachlorocyclopentadiene	77-47-4	0.057	2.4
HxCDDs (All Hexachlorodibenzo-p-dioxins)	NA	0.000063	0.001
HxCDFs (All Hexachlorodibenzo-furans)	NA	0.000063	0.001
Hexachloroethane	67-72-1	0.055	30
Indeno(1,2,3-c,d)pyrene	193-39-5	0.0055	3.4
Iodomethane	74-88-4	0.19	65
Isobutyl alcohol	78-83-1	5.6	170
Isodrin	465-73-6	0.021	0.066
Isosafrole	120-58-1	0.081	2.6
Kepone	143-50-0	0.0011	0.13
Methacrylonitrile	126-98-7	0.24	84
Methanol	67-56-1	5.6	0.75 mg/l TCLP
Methapyrilene	91-80-5	0.081	1.5
Methiocarb \6\	2032-65-7	0.056	1.4
Methomyl \6\	16752-77-5	0.028	0.14
Methoxychlor	72-43-5	0.25	0.18
3-Methylcholanthrene	56-49-5	0.0055	15
4,4-Methylene bis(2-chloroaniline)	101-14-4	0.50	30
Methylene chloride	75-09-2	0.089	30
Methyl ethyl ketone	78-93-3	0.28	36
Methyl isobutyl ketone	108-10-1	0.14	33
Methyl methacrylate	80-62-6	0.14	160
Methyl methanesulfonate	66-27-3	0.018	NA
Methyl parathion	298-00-0	0.014	4.6
Metolcarb \6\	1129-41-5	0.056	1.4
Mexacarbate \6\	315-18-4	0.056	1.4
Molinate \6\	2212-67-1	0.042	1.4
Naphthalene	91-20-3	0.059	5.6

2-Naphthylamine	91-59-8	0.52	NA
o-Nitroaniline	88-74-4	0.27	14
p-Nitroaniline	100-01-6	0.028	28
Nitrobenzene	98-95-3	0.068	14
5-Nitro-o-toluidine	99-55-8	0.32	28
o-Nitrophenol	88-75-5	0.028	13
p-Nitrophenol	100-02-7	0.12	29
N-Nitrosodiethylamine	55-18-5	0.40	28
N-Nitrosodimethylamine	62-75-9	0.40	2.3
N-Nitroso-di-n-butylamine	924-16-3	0.40	17
N-Nitrosomethylethylamine	10595-95-6	0.40	2.3
N-Nitrosomorpholine	59-89-2	0.40	2.3
N-Nitrosopiperidine	100-75-4	0.013	35
N-Nitrosopyrrolidine	930-55-2	0.013	35
1,2,3,4,6,7,8,9-Octachlorodibenz o-p-dioxin (OCDD)	3268-87-9	0.000063	0.005
1,2,3,4,6,7,8,9-Octachlorodibenz ofluran (OCDF)	39001-02-0	0.000063	0.005
Oxamyl \6\	23135-22-0	0.056	0.28
Parathion	56-38-2	0.014	4.6
Total PCBs (sum of all PCB isomers, or all Aroclors)\8\	1336-36-3	0.10	10
Pebulate \6\	1114-71-2	0.042	1.4
Pentachlorobenzene	608-93-5	0.055	10
PeCDDs (All Pentachlorodibenzo-p-dioxins)	NA	0.000063	0.001
PeCDFs (All Pentachlorodibenzofurans)	NA	0.000035	0.001
Pentachloroethane	76-01-7	0.055	6.0
Pentachloronitrobenzene	82-68-8	0.055	4.8

enzene			
Pentachlorophenol	87-86-5	0.089	7.4
Phenacetin	62-44-2	0.081	16
Phenanthrene	85-01-8	0.059	5.6
Phenol	108-95-2	0.039	6.2
1,3-Phenylenediamine	108-45-2	0.010	0.66
Phorate	298-02-2	0.021	4.6
Phthalic acid	100-21-0	0.055	28
Phthalic anhydride	85-44-9	0.055	28
Physostigmine \6\	57-47-6	0.056	1.4
Physostigmine salicylate \6\	57-64-7	0.056	1.4
Promecarb \6\	2631-37-0	0.056	1.4
Pronamide	23950-58-5	0.093	1.5
Propham \6\	122-42-9	0.056	1.4
Propoxur \6\	114-26-1	0.056	1.4
Prosulfocarb \6\	52888-80-9	0.042	1.4
Pyrene	129-00-0	0.067	8.2
Pyridine	110-86-1	0.014	16
Safrole	94-59-7	0.081	22
Silvex/2,4,5-TP	93-72-1	0.72	7.9
1,2,4,5-Tetrachlorobenzene	95-94-3	0.055	14
TCDDs (All Tetrachlorodibenzo-p-dioxins)	NA	0.000063	0.001
TCDFs (All Tetrachlorodibenzofurans)	NA	0.000063	0.001
1,1,1,2-Tetrachloroethane	630-20-6	0.057	6.0
1,1,2,2-Tetrachloroethane	79-34-5	0.057	6.0
Tetrachloroethylene	127-18-4	0.056	6.0
2,3,4,6-Tetrachlorophenol	58-90-2	0.030	7.4
Thiodicarb \6\	59669-26-0	0.019	1.4
Thiophanate-methyl \6\	23564-05-8	0.056	1.4

Toluene	108-88-3	0.080	10
Toxaphene	8001-35-2	0.0095	2.6
Triallate \6\	2303-17-5	0.042	1.4
Tribromomethane/ Bromofom	75-25-2	0.63	15
1,2,4- Trichlorobenzene	120-82-1	0.055	19
1,1,1- Trichloroethane	71-55-6	0.054	6.0
1,1,2- Trichloroethane	79-00-5	0.054	6.0
Trichloroethylene	79-01-6	0.054	6.0
Trichlorofluorome thane	75-69-4	0.020	30
2,4,5- Trichlorophenol	95-95-4	0.18	7.4
2,4,6- Trichlorophenol	88-06-2	0.035	7.4
2,4,5- Trichlorophenoxy acetic acid/ 2,4,5-T	93-76-5	0.72	7.9
1,2,3- Trichloropropane	96-18-4	0.85	30
1,1,2-Trichloro- 1,2,2- trifluoroethane	76-13-1	0.057	30
Triethylamine \6\	121-44-8	0.081	1.5
tris-(2,3- Dibromopropyl) phosphate	126-72-7	0.11	0.10
Vernolate \6\	1929-77-7	0.042	1.4
Vinyl chloride	75-01-4	0.27	6.0
Xylenes-mixed isomers (sum of o-, m-, and p- xylene concentrations)	1330-20-7	0.32	30
Inorganic Constituents			
Antimony	7440-36-0	1.9	1.15 mg/l TCLP
Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
Barium	7440-39-3	1.2	21 mg/l TCLP
Beryllium	7440-41-7	0.82	1.22 mg/l TCLP
Cadmium	7440-43-9	0.69	0.11 mg/l TCLP
Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP
Cyanides (Total) \4\	57-12-5	1.2	590

Cyanides (Amenable) \4\	57-12-5	0.86	30
Fluoride \5\	16984-48-8	35	NA
Lead	7439-92-1	0.69	0.75 mg/l TCLP
Mercury_Nonwastew ater from Retort	7439-97-6	NA	0.20 mg/l TCLP
Mercury_All Others	7439-97-6	0.15	0.025 mg/l TCLP
Nickel	7440-02-0	3.98	11 mg/l TCLP
Selenium \7\	7782-49-2	0.82	5.7 mg/l TCLP
Silver	7440-22-4	0.43	0.14 mg/l TCLP
Sulfide \5\	18496-25-8	14	NA
Thallium	7440-28-0	1.4	0.20 mg/l TCLP
Vanadium \5\	7440-62-2	4.3	1.6 mg/l TCLP
Zinc \5\	7440-66-6	2.61	4.3 mg/l TCLP

\* \* \* \* \*

FOOTNOTES TO TABLE UTS

1 CAS means Chemical Abstract Services When the waste code and/or regulated constituents are described as a combination of a chemical with its salts and/or esters, the CAS number is given for the parent compound only .

2 Concentration standards for wastewaters are expressed in mg/l and are based on analysis of composite samples.

3 Except for Metals (EP or TCLP) and Cyanides (Total and Amenable) the nonwastewater treatment standards expressed as a concentration were established, in part, based upon incineration in units operated in accordance with the technical requirements of Section 264, subsection O or Section 265, subsection O, or based upon combustion in fuel substitution units operating in accordance with applicable technical requirements A facility may comply with these treatment standards according to provisions in § 26840(d) All concentration standards for nonwastewaters are based on analysis of grab samples.

4 Both Cyanides (Total) and Cyanides (Amenable) for nonwastewaters are to be analyzed

using Method 9010C or 9012B, found in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in § 26011, with a sample size of 10 grams and a distillation time of one hour and 15 minutes.

5 These constituents are not "underlying hazardous constituents" in characteristic wastes, according to the definition at §2682(i).

6 Between August 26, 1998 and March 4, 1999, these constituents are not "underlying hazardous constituents" as defined in § 2682(i) of this section)

7 This constituent is not an underlying hazardous constituent as defined at § 2682(i) of ~~this Section~~ this Section because its UTS level is greater than its TC level, thus a treated selenium waste would always be characteristically hazardous, unless it is treated to below its characteristic level 8 mg/L, TCLP

9 This standard is temporarily deferred for soil exhibiting a hazardous characteristic due to D004-D011 only.

\* \* \* \* \*

182. In **Section 268.49**, amend paragraph (d) by revising "fluoride" to read "fluoride".

**§ 268.49 Alternative LDR treatment standards for contaminated soil \* \* \***

\* \* \* \* \*

(d) Constituents subject to treatment. When applying



the soil treatment standards in paragraph (c) of this section, constituents subject to treatment are any constituents listed in §268.48 Table UTS-Universal Treatment Standards that are reasonably expected to be present in any given volume of contaminated soil, except ~~fluoride~~ fluoride, selenium, sulfides, vanadium, zinc, and that are present at concentrations greater than ten times the universal treatment standard. PCBs are not a constituent subject to treatment in any given volume of soil which exhibits the toxicity characteristic solely because of the presence of metals.

\*\*\*\*\*

183. Amend **Section 268.50** as follows:

a. In paragraph (c), revise “A owner/operator” to read “An owner/operator”;

b. In paragraph (g), revise “requirements in this do not” to read “requirements in this section do not”.

**§ 268.50 Prohibitions on storage of restricted wastes**

\*\*\*\*\*

(c) ~~A owner/operator~~ An owner/operator of a treatment, storage or disposal facility may store such wastes beyond one year; however, the owner/operator bears the burden of proving that such storage was solely for the purpose of accumulation of such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment, or disposal.

\*\*\*\*\*

(g) The prohibition and ~~requirements in this do not~~ requirements in this section do not apply to hazardous remediation wastes stored in a staging pile approved pursuant to § 264.554 of this regulation.

\*\*\*\*\*

184. Amend **Section 268, Appendix VIII**, by removing the second instances of the entries for “K011” “Nonwastewater” and for “K011” “Wastewater”.

**Appendix VIII to Section 268 — LDR Effective Dates of Injected Prohibited Hazardous Wastes**

\*\*\*\*\*

K011 Nonwastewater June 8, 1991

K011 Wastewater May 8, 1992

~~K011 Nonwastewater June 8, 1991~~

~~K011 Wastewater May 8, 1992~~

\*\*\*\*\*

**Section 270— ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM**

**Subsection A—General Information**

185. Amend **Section 270.1** as follows:

a. Amend by adding sentences after the second sentence of paragraph (b) introductory text, and by adding paragraphs (b)(1) and (2) to read as follows:

b. In paragraph (c)(1)(iii), revise “it they” to read “if they?”;

c. In paragraph (c)(3)(i) introductory text, revise “obtain an RCRA” to read “obtain a RCRA”.

**§ 270.1 Purpose and scope of these regulations. \***

\*\*\*\*\*

(b) Overview of the HWM Permit Program. Not later than 90 days after the promulgation or revision of regulations in Section 261 of this regulation (identifying and listing hazardous wastes) generators and transporters of hazardous waste, and owners or operators of hazardous waste treatment, storage, or disposal facilities may be required to file a notification of that activity under RCRA section 3010.

Treatment, storage, and disposal facilities (TSDs) that are otherwise subject to permitting under RCRA and that meet the criteria in paragraph (b)(1), or paragraph (b)(2) of this section, may be eligible for a standardized permit under subsection J of this section. Six months after the initial promulgation of the Section 261 regulations, treatment, storage, or disposal of hazardous waste by any person who has not applied for or received an HWM permit is prohibited. An HWM permit application consists of two parts, *Part A* (see § 270.13) and *Part B* (see § 270.14 and applicable sections in §§ 270.15 through 270.29). For “existing HWM facilities,” the requirement to submit an application is satisfied by submitting only Part A of the permit application until the date the Director sets for submitting Part B of the application. (Part A consists of Forms 1 and 3 of the Consolidated Permit Application Forms.) Timely submission of both notification under section 3010 and Part A qualifies owners and operators of existing HWM facilities (who are required to have a permit) for interim status under the Arkansas Hazardous Waste Management Act (A.C.A. §§ 8-7-201 *et seq.*) Facility owners and operators with interim status are treated as having been issued a permit until EPA or a State with either interim authorization for Phase II or final authorization under 40 CFR part 271 makes a final determination on the permit application. Facility owners and operators with interim status must comply with interim status standards set forth at 40 CFR part 265 and 266 or with the analogous provisions at Sections 265 and 266 of this Regulation. Facility owners and operators with interim status are not relieved from complying with other State requirements. For existing HWM facilities, the Director shall set a date, giving at least six months notice, for submission of Part B of the application. There is no form for Part B of the application; rather, Part B must be submitted in narrative form and contain the information set forth in the applicable sections of §§

270.14 through 270.29. Owners or operators of new HWM facilities must submit parts A and B of the permit application at least 180 days before physical construction is expected to commence.

(1) The facility generates hazardous waste and then non-thermally treats or stores hazardous waste on-site in tanks, containers, or containment buildings; or

(2) The facility receives hazardous waste generated off-site by a generator under the same ownership as the receiving facility, and then stores or non-thermally treats the hazardous waste in containers, tanks, or containment buildings.

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(iii) Barges or vessels that dispose of hazardous waste by ocean disposal and onshore hazardous waste treatment or storage facilities associated with an ocean disposal operation. However, the owner and operator will be deemed to have an HWM permit for ocean disposal from the barge or vessel itself ~~if they~~ if they comply with the requirements of § 270.60(a) (permit-by-rule for ocean disposal barges and vessels).

\* \* \* \* \*

(3) Further exclusions. (i) A person is not required to ~~obtain an HWM~~ obtain a HWM permit for treatment or containment activities taken during immediate response to any of the following situations:

\* \* \* \* \*

186. Section 270.2 is amended by adding definitions for “Permit” and “Standardized permit” in alphabetical order to read as follows:

**§ 270.2 Definitions.**

\* \* \* \* \*

“Permit” means an authorization, license, or equivalent control document issued by EPA or an approved State to implement the requirements of this Section and 40 CFR Parts 271 and 124. Permit includes permit by rule (§ 270.60), emergency permit (§ 270.61) and standardized permit (subsection J of this section). Permit does not include RCRA interim status (subsection G of this section), or any permit which has not been the subject of final agency action, such as a draft permit or a proposed permit.

\* \* \* \* \*

“Standardized permit” means a RCRA permit issued under 40 CFR Part 124, subsection G, Regulation No. 8, and Subsection J of this Section authorizing the facility owner or operator to manage hazardous waste. The stan-

ardized permit may have two parts: A uniform portion issued in all cases and a supplemental portion issued at the Director’s discretion.

\* \* \* \* \*

187. Section 270.6 is revised to read as follows:

**§ 270.6 References.**

(a) When used in Section 270 of this Regulation, the following publications are incorporated by reference. ~~(See 40 CFR 260.11 References) “Test Methods for Evaluating Solid Waste, Physical/Chemical Methods”, EPA Publication SW-846 [Second Edition, 1982 as amended by Update I (April, 1984), and Update II (April, 1985)]. The second edition of SW-846 and Updates I, II and III are available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, (703) 487-4600, as document no. PB 87-120-291. The cost is \$48.95 for paper and \$13.50 for microfiche. These incorporations by reference were approved by the Director of the Federal Register pursuant to 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of approval and a notice of any change in these materials will be published in the Federal Register. Copies may be inspected at the Library, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., (3403T), Washington, DC 20460, libraryhq@epa.gov; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal register/code of federal regulations/ibr locations.html.~~

~~(b) The references listed in paragraph (a) of this section are also available for inspection at the Office of the Federal Register, 26400 L Street, NW., Washington, DC 20408. These incorporations by reference were approved by the Director of the Federal Register. These materials are incorporated as they exist on the date of approval and a notice of any change in these materials will be published in the Federal Register. The following materials are available for purchase from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703) 605-6000 or (800) 553-6847; or for purchase from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512-1800:~~

~~(1) “APTI Course 415: Control of Gaseous Emissions,” EPA Publication EPA-450/2-81-005, December 1981, IBR approved for §§ 270.24 and 270.25.~~

~~(2) [Reserved].~~

**Subsection B—Permit Application**

188. Amend Section 270.10 as follows:

- a. Amend by revising paragraphs (a) and (h) and adding new paragraph (l) to read as follows:
- b. Amend paragraph (j) by revising “stores, treats, or dispose of” to read “stores, treats, or disposes”.
- c. Amend by revising paragraph (l) to read as follows:

**§ 270.10 General application requirements.**

~~(a) Permit application. Any person who is required to have a permit (including new applicants and permittees with expiring permits) shall complete, sign, and submit an application to the Director as described in this section and §§ 270.70 through 270.73. Persons currently authorized with interim status shall apply for permits when required by the Director. Persons covered by HWM permits by rule (§ 270.60), need not apply. Procedures for applications, issuance and administration of emergency permits are found exclusively in § 270.61. Procedures for application, issuance and administration of research, development, and demonstration permits are found exclusively in § 270.65. Applying for a permit. Below is information on how to obtain a permit and where to find requirements for specific permits:~~

(1) If you are covered by RCRA permits by rule (§ 270.60), you need not apply.

(2) If you currently have interim status, you must apply for permits when required by the Director.

(3) If you are required to have a permit (including new applicants and permittees with expiring permits), you must complete, sign, and submit an application to the Director, as described in this section and §§ 270.70 through 270.73.

(4) If you are seeking an emergency permit, the procedures for application, issuance, and administration are found exclusively in § 270.61.

(5) If you are seeking a research, development, and demonstration permit, the procedures for application, issuance, and administration are found exclusively in § 270.65.

(6) If you are seeking a standardized permit, the procedures for application and issuance are found in 40 CFR Part 124, subsection G, Regulation No. 8, and and Subsection J of this Section.

\*\*\*\*\*

~~(h) Reapplications. Any HWM facility with an effective permit shall submit a new application at least 180 days before the expiration date of the effective permit, unless permission for a later date has been granted by the Director. (The Director shall not grant permission for applications to be submitted later than the expiration date of the existing permit.) Reapplying for a permit. If you have an effective permit and you want to reapply for a new one, you have two options:~~

(1) You may submit a new application at least

180 days before the expiration date of the effective permit, unless the Director allows a later date; or

(2) If you intend to be covered by a standardized permit, you may submit a Notice of Intent as described in § 270.51(e)(1) at least 180 days before the expiration date of the effective permit, unless the Director allows a later date. The Director may not allow you to submit applications or Notices of Intent later than the expiration date of the existing permit, except as allowed by § 270.51(e)(2).

\*\*\*\*\*

(j) Exposure information. (1) After August 8, 1985, any Part B permit application submitted by an owner or operator of a facility that ~~stores, treats, or dispose of~~ stores, treats, or disposes hazardous waste in a surface impoundment or a landfill must be accompanied by information, reasonably ascertainable by the owner or operator, on the potential for the public to be exposed to hazardous wastes or hazardous constituents through releases related to the unit. At a minimum, such information must address:

\*\*\*\*\*

(1) If the Director concludes, based on one or more of the factors listed in paragraph (l)(1) of this section that compliance with the standards of 40 CFR part 63, subpart EEE alone may not be protective of human health or the environment, the Director shall require the additional information or assessment(s) necessary to determine whether additional controls are necessary to ensure protection of human health and the environment. This includes information necessary to evaluate the potential risk to human health and/or the environment resulting from both direct and indirect exposure pathways. The Director may also require a permittee or applicant to provide information necessary to determine whether such an assessment(s) should be required.

(1) The Director shall base the evaluation of whether compliance with the standards of 40 CFR part 63, subpart EEE alone is protective of human health or the environment on factors relevant to the potential risk from a hazardous waste combustion unit, including, as appropriate, any of the following factors:

(i) Particular site-specific considerations such as proximity to receptors (such as schools, hospitals, nursing homes, day care centers, parks, community activity centers, or other potentially sensitive receptors), unique dispersion patterns, etc.;

(ii) Identities and quantities of emissions of persistent, bioaccumulative or toxic pollutants considering enforceable controls in place to limit those pollutants;

(iii) Identities and quantities of nondioxin products of incomplete combustion most likely to be emitted and to pose significant

risk based on known toxicities (confirmation of which should be made through emissions testing);

(iv) Identities and quantities of other off-site sources of pollutants in proximity of the facility that significantly influence interpretation of a facility-specific risk assessment;

(v) Presence of significant ecological considerations, such as the proximity of a particularly sensitive ecological area;

(vi) Volume and types of wastes, for example wastes containing highly toxic constituents;

(vii) Other on-site sources of hazardous air pollutants that significantly influence interpretation of the risk posed by the operation of the source in question;

(viii) Adequacy of any previously conducted risk assessment, given any subsequent changes in conditions likely to affect risk; and

(ix) Such other factors as may be appropriate.

(2) [Reserved]

\*\*\*\*\*

189. Amend **Section 270.11** as follows:

a. In paragraph (d)(1), revise “paragraph (a) or (b) of this must” to read “paragraph (a) or (b) of this section must”;

b. In paragraph (d)(2), certification statement, revise “upon information and belief” to read “to the best of my knowledge and belief”.

**§ 270.11 Signatories to permit applications and reports.**

\*\*\*\*\*

(d)(1) Any person signing a document under ~~paragraph (a) or (b) of this must~~ paragraph (a) or (b) of this section must make the following certification:

\*\*\*\*\*

(d) \*\*\*

(2) For remedial action plans (RAPs) under subsection H of this section, if the operator certifies according to paragraph (d)(1) of this section, then the owner may choose to make the following certification instead of the certification in paragraph (d)(1) of this section:

Based on my knowledge of the conditions of the property described in the RAP and my inquiry of the person or persons who manage the system referenced in the operator’s certification, or those persons directly responsible for gathering the information, the information submitted is, ~~upon information and belief~~ to the best of my knowledge and

belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

\*\*\*\*\*

190. Amend **Section 270.14** as follows:

a. Paragraph (a) is amended to read as follows:

b. In paragraph (b)(11)(ii)(B), revise “with 200 feet” to read “within 200 feet”;

**§ 270.14 Contents of part B: General requirements.**

(a) Part B of the permit application consists of the general information requirements of this section, and the specific information requirements in §§ 270.14 through 270.29 applicable to the facility. The Part B information requirements presented in §§ 270.14 through 270.29 reflect the standards promulgated in Section 264 of this Regulation. These information requirements are necessary in order for ADEQ to determine compliance with the Section 264 standards. If owners and operators of HWM facilities can demonstrate that the information prescribed in part B can not be provided to the extent required, the Director may make allowance for submission of such information on a case-by-case basis. Information required in part B shall be submitted to the Director and signed in accordance with the requirements in § 270.11. Certain technical data, such as design drawings and specification, and engineering studies shall be certified by an independent qualified Arkansas-registered Professional Engineer. For post-closure permits, only the information specified in § 270.28 is required in part B of the permit application.

\*\*\*\*\*

(b) \*\*\*

(11) \*\*\*

(ii) \*\*\*

(B) If faults (to include lineations) which have had displacement in Holocene time are present within 3,000 feet of a facility, no faults pass ~~with 200 feet~~ within 200 feet of the portions of the facility where treatment, storage, or disposal of hazardous waste will be conducted, based on data from a comprehensive geologic analysis of the site. Unless a site analysis is otherwise conclusive concerning the absence of faults within 200 feet of such portions of the facility data shall be obtained from a subsurface exploration (trenching) of the area within a distance no less than 200 feet from portions of the facility where treatment, storage, or disposal of hazardous waste will be conducted. Such trenching shall be performed in a direction that is



perpendicular to known faults (which have had displacement in Holocene time) passing within 3,000 feet of the portions of the facility where treatment, storage, or disposal of hazardous waste will be conducted. Such investigation shall document with supporting maps and other analyses, the location of faults found.

\*\*\*\*\*

191. Section 270.16 is amended by revising paragraph (a) to read as follows:

**§ 270.16 Specific part B information requirements for tank systems.**

\*\*\*\*\*

(a) A written assessment that is reviewed and certified by an independent qualified Arkansas-registered Professional Engineer as to the structural integrity and suitability for handling hazardous waste of each tank system, as required under §§ 264.191 and 264.192 of this regulation;

\*\*\*\*\*

192. In Section 270.17, amend paragraph (f) by revising “detailed-plans” to read “detailed plans”.

**§ 270.17 Specific Part B information requirements for surface impoundments.** \*\*\*

\*\*\*\*\*

(f) A description of how hazardous waste residues and contaminated materials will be removed from the unit at closure, as required under § 264.228(a)(1). For any wastes not to be removed from the unit upon closure, the owner or operator must submit ~~detailed-plans~~ **detailed plans** and an engineering report describing how § 264.228(a)(2) and (b) will be complied with. This information should be included in the closure plan and, where applicable, the post-closure plan submitted under § 270.14(b)(13);

\*\*\*\*\*

193. In Section 270.18, amend paragraph (b) by revising the citation “§ 264.90(2)” to read “§ 264.90(b)(2)”; and amend paragraph (g) by revising “place” to read “placed”.

**§ 270.18 Specific Part B information requirements for waste piles**

\*\*\*\*\*

(b) If an exemption is sought to § 264.251 and Subsection F of Section 264 as provided by § 264.250(c) or ~~§ 264.90(2)~~ **§ 264.90(b)(2)**, an explanation of how the standards of § 264.250(c) will be complied with or detailed plans and an engineering report describing how the requirements

of § 264.90(b)(2) will be met.

\*\*\*\*\*

(g) If incompatible wastes, or incompatible wastes and materials will be ~~place~~ **placed** in a waste pile, an explanation of how § 264.257 will be complied with;

\*\*\*\*\*

194. Section 270.19 is amended by revising paragraph (e) to read as follows:

**§ 270.19 Specific part B information requirements for incinerators.**

\*\*\*\*\*

(e) When an owner or operator **of a hazardous waste incineration unit becomes subject to RCRA permit requirements after October 12, 2005, or when** an owner or operator **of an existing hazardous waste incineration unit** demonstrates compliance with the air emission standards and limitations in part 63, subpart EEE, (*i.e.*, by conducting a comprehensive performance test and submitting a Notification of Compliance **under 40 CFR 63.1207(j) and 63.1210(d)** documenting compliance with all applicable requirements of part 63, subpart EEE, ), the requirements of this section do not apply, except those provisions the Director determines are necessary to ensure compliance with §§ 264.345(a) and 264.345(c) of this Regulation if you elect to comply with § 270.235(a)(1)(i) to minimize emissions of toxic compounds from startup, shutdown, and malfunction events. Nevertheless, the Director may apply the provisions of this section, on a case-by-case basis, for purposes of information collection in accordance with §§ 270.10(k), **270.10(l)**, 270.32(b)(2), **and 270.32(b)(3)**.

195. In Section 270.20, amend paragraph (i)(2) by revising “attenuative” to read “attenuative”.

**§ 270.20 Specific Part B information requirements for land treatment facilities.**

\*\*\*\*\*

(i) \*\*\*

(2) The ~~attenuative~~ **attenuative** properties of underlying and surrounding soils or other materials;

196. Section 270.22 is amended by revising the introductory text to read as follows:

**§ 270.22 Specific part B information requirements for boilers and industrial furnaces burning hazardous waste.**

When an owner or operator of a cement **kiln**, or lightweight

aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace becomes subject to RCRA permit requirements after October 12, 2005, or when an owner or operator of an existing cement kiln, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace demonstrates compliance with the air emission standards and limitations in 40 CFR Part 63, subpart EEE, (i.e., by conducting a comprehensive performance test and submitting a Notification of Compliance under 40 CFR Part 63.1207(j) and 63.1210~~(b)~~(d) documenting compliance with all applicable requirements of part 63, subpart EEE, ), the requirements of this section do not apply ~~except those provisions the Director determines are necessary to ensure compliance with §§ 266.102(e)(1) and 266.102(e)(2)(iii) of this regulation if you elect to comply with § 270.235(a)(1)(i) to minimize emissions of toxic compounds from startup, shutdown, and malfunction events. Nevertheless, the Director may apply the provisions of this section, on a case-by-case basis, for purposes of information collection in accordance with §§ 270.10(k) and 270.32(b)(2): . The requirements of this section do apply, however, if the Director determines certain provisions are necessary to ensure compliance with §§ 266.102(e)(1) and 266.102(e)(2)(iii) of this Regulation if you elect to comply with § 270.235(a)(1)(i) to minimize emissions of toxic compounds from startup, shutdown, and malfunction events; or if you are an area source and elect to comply with the §§ 266.105, 266.106, and 266.107 standards and associated requirements for particulate matter, hydrogen chloride and chlorine gas, and non-mercury metals; or the Director determines certain provisions apply, on a case-by-case basis, for purposes of information collection in accordance with §§ 270.10(k), 270.10(l), 270.32(b)(2), and 270.32(b)(3).~~

\*\*\*\*\*

197. Section 270.24 is amended by revising paragraph (d)(3) to read as follows:

**§ 270.24 Specific part B information requirements for process vents.**

\*\*\*\*\*

(d) \*\*\*

(3) A design analysis, specifications, drawings, schematics, and piping and instrumentation diagrams based on the appropriate sections of “APTI Course 415: Control of Gaseous Emissions” (incorporated by reference as specified in ~~§ 260.11 § 270.6~~) or other engineering texts acceptable to the Director that present basic control device information. The design analysis shall address the vent stream characteristics and control device operation parameters as specified in § 264.1035(b)(4)(iii).

\*\*\*\*\*

198. Section 270.25 is amended by revising paragraph (e)(3) to read as follows:

**§ 270.25 Specific part B information requirements for equipment.**

\*\*\*\*\*

(e) \*\*\*

(3) A design analysis, specifications, drawings, schematics, and piping and instrumentation diagrams based on the appropriate sections of “APTI Course 415: Control of Gaseous Emissions” (incorporated by reference as specified in ~~§ 260.11 § 270.6~~) or other engineering texts acceptable to the Director that present basic control device information. The design analysis shall address the vent stream characteristics and control device operation parameters as specified in § 264.1035(b)(4)(iii).

\*\*\*\*\*

199. Section 270.26 is amended by revising paragraph (c)(15) to read as follows:

**§ 270.26 Special part B information requirements for drip pads.**

\*\*\*\*\*

(c) \*\* \*

(15) A certification signed by an independent qualified Arkansas-registered Professional Engineer, stating that the drip pad design meets the requirements of paragraphs (a) through(f) § 264.573 of this regulation.

\*\*\*\*\*

**Subsection C—PERMIT CONDITIONS**

200. Section 270.32 is amended by adding paragraph (b)(3) to read as follows:

**§ 270.32 Establishing permit conditions.**

\*\*\*\*\*

(b) \*\*\*

**(3) If, as the result of an assessment(s) or other information, the Director determines that conditions are necessary in addition to those required under 40 CFR Part 63, subsection EEE, and Sections 264 or 266 of this Regulation to ensure protection of human health and the environment, he shall include those terms and conditions in a RCRA permit for a hazardous waste combustion unit.**

\*\*\*\*\*



201. In **Section 270.33**, amend paragraph (b) introductory text by revising “An RCRA permit” to read “A RCRA permit”.

**§ 270.33 Schedules of compliance.**

\* \* \* \* \*

(b) Alternative schedules of compliance. ~~An HWM permit~~ A HWM permit applicant or permittee may cease conducting regulated activities (by receiving a terminal volume of hazardous waste and, for treatment and storage HWM facilities, closing pursuant to applicable requirements; and, for disposal HWM facilities, closing and conducting post-closure care pursuant to applicable requirements) rather than continue to operate and meet permit requirements as follows:

\* \* \* \* \*

**Subsection D—Changes to Permits**

202. **Section 270.40** is amended by revising the first sentence of paragraph (b) to read as follows:

**§ 270.40 Transfer of permits.**

\* \* \* \* \*

(b) Changes in the ownership or operational control of a facility may be made as a Class 1 modification with prior written approval of the Director in accordance with **§ 270.42 or as a routine change with prior approval under 40 CFR 124.213**. The new owner or operator must submit a revised permit application no later than 90 days prior to the scheduled change. A written agreement containing a specific date for transfer of permit responsibility between the current and new permittees must also be submitted to the Director. When a transfer of ownership or operational control occurs, the old owner or operator shall comply with the requirements of Section 264, Subsection H (Financial Requirements) until the new owner or operator has demonstrated that he or she is complying with the requirements of that Subsection. The new owner or operator must demonstrate compliance with Subsection H requirements *not later than* the date of the change of ownership or operational control of the facility. Upon demonstration to the Director by the new owner or operator of compliance with Subsection H, the Director shall notify the old owner or operator that he or she no longer needs to comply with Subsection H as of the date of demonstration.

203. Amend **Section 270.41** as follows:

a. Amend by revising the next to last sentence of the introductory paragraph and adding paragraph (b)(3) to read as follows:

b. Amend paragraph (c) by revising “environmental” to read “environment”.

**§ 270.41 Modification or revocation and reissuance of permits.**

When the Director receives any information (for example, inspects the facility, receives information submitted by the permittee as required in the permit (see § 270.30), receives a request for revocation and reissuance under 40 CFR 124.5 or conducts a review of the permit file), he or she may determine whether one or more of the causes listed in paragraphs (a) and (b) of this section for modification, or revocation and reissuance or both exist. If cause exists, the Director may modify or revoke and reissue the permit accordingly, subject to the limitations of paragraph (c) of this section, and may request an updated application if necessary. When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision and the permit is reissued for a new term. (See 40 CFR 124.5(c)(2).) If cause does not exist under this section, the Director shall not modify or revoke and reissue the permit, except on request of the permittee. If a permit modification is requested by the permittee, the Director shall approve or deny the request according to the procedures of Section 270.42. If a permit modification is requested by the permittee, the Director shall approve or deny the request according to the procedures of § 270.42, or § 270.320 and 40 CFR part 124, subpart G. Otherwise, a draft permit must be prepared and other procedures in 40 CFR 124 and APC&EC Regulation No. 8 followed.

\* \* \* \* \*

(b) \* \* \*

(3) The Director has received notification under 40 CFR Part 124.202(b) of a facility owner or operator’s intent to be covered by a standardized permit.

\* \* \* \* \*

(c) Facility siting. Suitability of the facility location will not be considered at the time of permit modification or revocation and reissuance unless new information or standards indicate that a threat to human health or the **environmental environment** exists which was unknown at the time of permit issuance.

\* \* \* \* \*

204. **Section 270.42** is amended by:

a. Amend paragraph (d)(2)(i) by revising “do no” to read “do not”.

a. Revising paragraph (j)(1).

b. Redesignating paragraph (j)(2) as (j)(3).

c. Adding new paragraph (j)(2).

d. Adding new paragraphs (k) and (l)

e. Adding a new entry 10 in numerical order and adding new entry O in the table under section L of Appendix I, to read as follows:

§ 270.42 Permit modification at the request of the Permittee. \* \* \*

\* \* \* \* \*

(d) \* \* \*

(2) \* \* \*

(i) Class 1 modifications apply to minor changes that keep the permit current with routine changes to the facility or its operation. These changes ~~do not~~ do not substantially alter the permit conditions or reduce the capacity of the facility to protect human health or the environment. In the case of Class 1 modifications, the Director may require prior approval.

\* \* \* \* \*

(j) Combustion facility changes to meet 40 CFR Part 63 MACT standards. The following procedures apply to hazardous waste combustion facility permit modifications requested under Appendix I of this section, section L(9).

(1) Facility owners or operators must have complied with the Notification of Intent to Comply (NIC) requirements of 40 CFR 63.1210 that were in effect prior to October 11, 2000 (See 40 CFR Part 63 §§ 63.1200–63.1499 Revised as of July 1, 2000) in order to request a permit modification under this section for the purpose of technology changes needed to meet the standards under 40 CFR Part 63.1203, 63.1204, and 63.1205.

~~(2) If the Director does not approve or deny the request within 90 days of receiving it, the request shall be deemed approved. The Director may, at his or her discretion, extend this 90 day deadline one time for up to 30 days by notifying the facility owner or operator.~~ Facility owners or operators must comply with the Notification of Intent to Comply (NIC) requirements of 40 CFR Part 63.1210(b) and 63.1212(a) before a permit modification can be requested under this section for the purpose of technology changes needed to meet the 40 CFR Part 63.1215, 63.1216, 63.1217, 63.1218, 63.1219, 63.1220, and 63.1221 standards promulgated on October 12, 2005.

(k) Waiver of RCRA permit conditions in support of transition to the part 63 MACT standards. (1) You may request to have specific RCRA operating and emissions limits waived by submitting a Class 1 permit modification request under Appendix I of this section, section L(10). You must:

(i) Identify the specific RCRA permit operating and emissions limits which you are requesting to waive;

(ii) Provide an explanation of why the changes are necessary in order to minimize or eliminate conflicts between the RCRA permit and MACT compliance; and

(iii) Discuss how the revised provisions will be sufficiently protective.

(iv) The Director shall approve or deny the request within 30 days of receipt of the request. The Director may, as his or her discretion, extend this 30 day deadline one time for up to 30 days by notifying the facility owner or operator.

(2) To request this modification in conjunction with MACT performance testing where permit limits may only be waived during actual test events and pretesting, as defined under 40 CFR Part 63.1207(h)(2)(i) and (ii), for an aggregate time not to exceed 720 hours of operation (renewable at the discretion of the Director) you must:

(i) Submit your modification request to the Director at the same time you submit your test plans to the EPA Regional Administrator; and

(ii) The Director may elect to approve or deny the request contingent upon approval of the test plans.

(1) Performance Track member facilities. The following procedures apply to Performance Track member facilities that request a permit modification under Appendix I of this section, section O(1).

(1) Performance Track member facilities must have complied with the requirements of § 264.15(b)(5) in order to request a permit modification under this section.

(2) The Performance Track member facility should consider the application approved if the Director does not: deny the application, in writing; or notify the Performance Track member facility, in writing, of an extension to the 60-day deadline within 60 days of receiving the request. In these situations, the Performance Track member facility must adhere to the revised inspection schedule outlined in its application and maintain a copy of the application in the facility's operating record.

\* \* \* \* \*

205. Amend § 270.42 Appendix I as follows:

- a. At item C.4, revise the modification class code (second column) “12” to read “2”;
- b. At item C.6, revise the citation “264.98(j)” to read “264.98(h)”;
- c. At item C.7.a, revise the citation “264.98(h)(4)” to read “264.98(g)(4)”;
- d. At item C.7.b, revise the citation “264.99(k)” to read “264.99(j)”;
- e. At item C.8.a, revise the citation “264.99(i)(2)” to read “264.99(h)(2)”;
- f. At item F.2, amend by replacing the colon after “2” with a period;
- g. At item G.1, amend by replacing the colon after “1”

with a period;

h. At item H.6, revise the modification class code ‘\*1’ to read ‘11’;

i. At item J.7, revise the modification class code ‘\*1’ to read ‘11’;

j. At item L.9, revise ‘Changes Needed to meet Standards’ to read ‘changes needed to meet standards’.

k. Add item L.10 to read as follows:

l. Add permit modification class O, as follows:

Appendix 1 To § 270.42—Classification of Permit Modification

Modifications Class

\*\*\*\*\*

C. Ground-Water Protection

\* \* \* \* \*

4. Changes in point of compliance. +22

\* \* \* \* \*

6. Changes to a detection monitoring program as required by § 264.98(j), unless otherwise specified in this appendix.

7. \* \* \*

a. Addition of compliance monitoring program as required by §§ 264.98(h)(+) 264.98(g)(4) and 264.99.

\* \* \* \* \*

b. Changes to a compliance monitoring program as required by § 264.99(k) 264.99(j), unless otherwise specified in this appendix.

\* \* \* \* \*

8. \* \* \*

a. Addition of a corrective action program as required by §§ 264.99(i)(2) 264.99(h)(2) and 264.100.

\* \* \* \* \*

F. Containers

\* \* \* \* \*

2. \*

\* \* \* \* \*

G. Tanks

1. \*

\* \* \* \* \*

H. Surface Impoundments

\* \* \* \* \*

6. \* \* \* +11

\* \* \* \* \*

J. Landfills and Unenclosed Waste Piles

\* \* \* \* \*

7. \* \* \* +11

\* \* \* \* \*

L. Incinerators, Boilers, and Industrial Furnaces:

\* \* \* \* \*

9. Technology Changes Needed to meet Standards changes needed to meet standards under 40 CFR part 63 (Subpart EEE— National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors), provided the procedures of § 270.42(j) are followed.

\* \* \* \* \*

L. \* \* \*

10. Changes to RCRA permit provisions needed to support transition to 40 CFR part 63 (Subsection EEE—National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors), provided the procedures of § 270.42(k) are followed..... 1<sup>1</sup>

\*\*\*\*\*

O. Burden Reduction

1. Approval of reduced inspection frequency for Performance Track member facilities for:

a. Tanks systems pursuant to § 264.195..... 1<sup>1</sup>

b. Containers pursuant to § 264.174 ..... 1<sup>1</sup>

c. Containment buildings pursuant to § 264.1101(c)(4) ..... 1<sup>1</sup>

d. Areas subject to spills pursuant to § 264.15(b)(4) ..... 1<sup>1</sup>

Development of one contingency plan based on Integrated Contingency Plan Guidance pursuant to § 264.52(b) ..... 1

Changes to recordkeeping and reporting requirements pursuant to: §§ 264.56(i), 264.343(a)(2), 264.1061(b)(1),(d), 264.1062(a)(2), 264.196(f), 264.100(g), and 264.113(e)(5) ..... 1

Changes to inspection frequency for tank systems pursuant to § 264.195(b) ..... 1

Changes to detection and compliance monitoring program pursuant to §§ 264.98(d), (g)(2), and (g)(3), 264.99(f), and (g) ..... 1

<sup>1</sup> Class 1 modifications requiring prior Agency approval.

Subsection E—Expiration and Continuation of Permits

206. Section 270.51 is amended by adding paragraph (e) to read as follows:

§ 270.51 Continuation of expiring permits.

\* \* \* \* \*

(e) Standardized permits.

(1) The conditions of your expired standardized permit continue until the effective date of your new permit (see 40 CFR 124.15) if all of the following are true:

(i) If EPA is the permit-issuing authority.

(ii) If you submit a timely and complete Notice of Intent under 40 CFR 124.202(b) requesting coverage under a RCRA standardized permit; and

(iii) If the Director, through no fault on your part, does not issue your permit before your previous permit expires (for example, where it is impractical to make the permit effective by that date because of time or resource constraints).

(2) In some cases, the Director may notify you that you are not eligible for a standardized permit (see 40 CFR 124.206). In those cases, the conditions of your expired permit will continue if you submit the information specified in paragraph (a)(1) of this section (that is, a complete application for a new permit) within 60 days after you receive our notification that you are not eligible for a standardized permit.

Subsection F—Special Forms of Permits

207. Section 270.62 is amended by revising the introductory text to read as follows:

**§ 270.62 Hazardous waste incinerator permits.**

When an owner or operator of a hazardous waste incineration unit becomes subject to RCRA permit requirements after October 12, 2005, or when an owner or operator of an existing hazardous waste incineration unit demonstrates compliance with the air emission standards and limitations in 40 CFR Part 63, subpart EEE, (*i.e.*, by conducting a comprehensive performance test and submitting a Notification of Compliance under 40 CFR Part 63.1207(j) and 63.1210~~(b)~~(d) documenting compliance with all applicable requirements of 40 CFR Part 63, subpart EEE, ), the requirements of this section do not apply, except those provisions the Director determines are necessary to ensure compliance with Sections 264.345(a) and 264.345(c) of this Regulation if you elect to comply with § 270.235(a)(1)(i) to minimize emissions of toxic compounds from startup, shutdown, and malfunction events. Nevertheless, the Director may apply the provisions of this section, on a case-by-case basis, for purposes of information collection in accordance with §§ 270.10(k), 270.10(l), 270.32(b)(2), and 270.32(b)(3) of this Regulation.

\* \* \* \* \*

208. Section 270.66 is amended by revising the introductory text to read as follows:

**§ 270.66 Permits for boilers and industrial furnaces burning hazardous waste.**

When an owner or operator of a cement ~~kiln, or~~ lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace becomes subject to RCRA permit requirements after October 12, 2005 or when an owner or operator of an existing cement kiln, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace demonstrates compliance with the air emission standards and limitations in 40 CFR Part 63, subpart EEE, (*i.e.*, by conducting a comprehensive performance test and submitting a Notification of Compliance under 40 CFR Part 63.1207(j) and 63.1210~~(b)~~(d) documenting compliance with all applicable requirements of 40 CFR Part 63, subpart EEE, ), the requirements of this section do not apply. ~~except those provisions the Director determines are necessary to ensure compliance with §§ 266.102(e)(1) and 266.102(e)(2)(iii) of this regulation if you elect to comply with § 270.235(a)(1)(i) to minimize emissions of toxic compounds from startup, shutdown, and malfunction events. Nevertheless, the Director may apply the provisions of this section, on a case-by-case basis, for purposes of information collection in accordance with §§ 270.10(k) and 270.32(b)(2). The requirements of this section do apply, however, if the Director determines certain provisions are necessary to ensure compliance with §§ 266.102(e)(1) and 266.102(e)(2)(iii) of this Regulation if you elect to comply with § 270.235(a)(1)(i) to~~

minimize emissions of toxic compounds from startup, shutdown, and malfunction events; or if you are an area source and elect to comply with the §§ 266.105, 266.106, and 266.107 standards and associated requirements for particulate matter, hydrogen chloride and chlorine gas, and non-mercury metals; or the Director determines certain provisions apply, on a case-by-case basis, for purposes of information collection in accordance with §§ 270.10(k), 270.10(l), 270.32(b)(2), and 270.32(b)(3) of this Regulation.

\* \* \* \* \*

209. Section 270.67 is added to subsection F to read as follows:

**§ 270.67 RCRA standardized permits for storage and treatment units.**

RCRA standardized permits are special forms of permits for TSD owners or operators that:

(a) Generate hazardous waste and then non-thermally treat or store the hazardous waste on-site in tanks, containers, or containment buildings; or

(b) Receive hazardous waste generated off-site by a generator under the same ownership as the receiving facility, and then store or non-thermally treat the hazardous waste in containers, tanks, or containment buildings. Standardized permit facility owners or operators are regulated under Subsection J of this Section, 40 CFR Part 124 Subsection G, Regulation No. 8, and Section 267 of this Regulation.

\* \* \* \* \*

210. Section 270.235 is amended by:

a. Revising the section heading and paragraphs (a)(1) introductory text and (a)(2) introductory text.

b. Revising paragraphs (b)(1) introductory text and (b)(2).

c. Adding new paragraph (c). The revisions read as follows:

**§ 270.235 Options for incinerators, cement kilns, lightweight aggregate kilns, solid fuel boilers, liquid fuel boilers and hydrochloric acid production furnaces to minimize emissions from startup, shutdown, and malfunction events.**

(a) \* \* \*

(1) *Revisions to permit conditions after documenting compliance with MACT.* The owner or operator of a RCRA-permitted incinerator, cement kiln, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace may request that the Director address permit conditions that minimize emissions from startup, shutdown, and malfunction events under



any of the following options when requesting removal of permit conditions that are no longer applicable according to §§ 264.340(b) and 266.100(b) of this Regulation:

\* \* \* \* \*

(2) *Addressing permit condition upon permit reissuance.* The owner or operator of an incinerator, cement kiln, lightweight aggregate kiln, **solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace** that has conducted a comprehensive performance test and submitted to the Director a Notification of Compliance documenting compliance with the standards of 40 CFR Part 63, subpart EEE, may request in the application to re-issue the permit for the combustion unit that the Director control emissions from startup, under any of the following options:

\* \* \* \* \*

(b) \* \* \*

(1) *Interim status operations.* In compliance with §§ 265.340 and 266.100(b) of this Regulation, the owner or operator of an incinerator, cement kiln, lightweight aggregate kiln, **solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace** that is operating under the interim status standards of Section 265 or 266 of this Regulation may control emissions of toxic compounds during startup, shutdown, and malfunction events under either of the following options after conducting a comprehensive performance test and submitting to the Director a Notification of Compliance documenting compliance with the standards of 40 CFR Part 63, subpart EEE, .

\* \* \* \* \*

(2) *Operations under a subsequent RCRA permit.* When an owner or operator of an incinerator, cement kiln, lightweight aggregate kiln, **solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace** that is operating under the interim status standards of Sections 265 or 266 of this Regulation submits a RCRA permit application, the owner or operator may request that the Director control emissions from startup, shutdown, and malfunction events under any of the options provided by paragraphs (a)(2)(i), (a)(2)(ii), or (a)(2)(iii) of this subsection.

**(c) New units. Hazardous waste incinerator, cement kiln, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace units that become subject to RCRA permit requirements after October 12, 2005 must control emissions of toxic compounds during startup, shutdown, and malfunction events under either of the following options:**

**(1) Comply with the requirements specified in 40 CFR Part 63.1206(c)(2) ; or**

**(2) Request to include in the RCRA permit, conditions that ensure emissions of toxic com-**

**pounds are minimized from startup, shutdown, and malfunction events, including releases from emergency safety vents, based on review of information including the source’s startup, shutdown, and malfunction plan and design. The director will specify that these permit conditions apply only when the facility is operating under its startup, shutdown, and malfunction plan.**

\* \* \* \* \*

211. **Subsection J** is added to **Section 270** to read as follows:

**Subsection J—RCRA Standardized Permits for Storage and Treatment Units**

**General Information About Standardized Permits**

- 270.250 What is a RCRA standardized permit?**
- 270.255 Who is eligible for a standardized permit?**
- 270.260 What requirements of Section 270 apply to a standardized permit?**

**Applying for a Standardized Permit**

- 270.270 How do I apply for a standardized permit?**
- 270.275 What information must I submit to the permitting agency to support my standardized permit application?**
- 270.280 What are the certification requirements?**

**Information That Must Be Kept at Your Facility**

- 270.290 What general types of information must I keep at my facility?**
- 270.300 What container information must I keep at my facility?**
- 270.305 What tank information must I keep at my facility?**
- 270.310 What equipment information must I keep at my facility?**
- 270.315 What air emissions control information must I keep at my facility?**

**Modifying a Standardized Permit**

- 270.320 How do I modify my RCRA standardized permit?**

**Subsection J—RCRA Standardized Permits for Storage and Treatment Units**

**General Information About Standardized Permits**

**§ 270.250 What is a RCRA standardized permit?**

**A RCRA standardized permit (RCRA) is a special type of permit that authorizes you to manage hazardous waste. It is issued under 40 CFR part 124, subsection G, Regulation No. 8, and Subsection J of this Section.**

**§ 270.255 Who is eligible for a standardized permit?**

- (a) You may be eligible for a standardized permit if:**
  - (1) You generate hazardous waste and then store or non-thermally treat the hazardous waste**

on-site in containers, tanks, or containment buildings; or

(2) You receive hazardous waste generated off-site by a generator under the same ownership as the receiving facility, and then store or non-thermally treat the hazardous waste in containers, tanks, or containment buildings.

(3) We will inform you of your eligibility when we make a decision on your permit application.

(b) [Reserved]

**§ 270.260 What requirements of Section 270 apply to a standardized permit?**

The following subsections of this Section 270 apply to a standardized permit:

(a) Subsection A—General Information: All sections.

(b) Subsection B—Permit Application: §§ 270.10, 270.11, 270.12, 270.13 and 270.29.

(c) Subsection C—Permit Conditions: All sections.

(d) Subsection D—Changes to Permit: §§ 270.40, 270.41, and 270.43.

(e) Subsection E—Expiration and Continuation of Permits: All sections.

(f) Subsection F—Special Forms of Permits: § 270.67.

(g) Subsection G—Interim Status: All sections.

(h) Subsection H—Remedial Action Plans: Does not apply.

(i) Subsection J—Standardized Permits: All sections.

**Applying for a Standardized Permit**

**§ 270.270 How do I apply for a standardized permit?**

You apply for a standardized permit by following the procedures in 40 CFR Part 124, subsection G, Regulation No. 8, and this Subsection.

**§ 270.275 What information must I submit to the permitting agency to support my standardized permit application?**

The information in paragraphs (a) through (j) of this section will be the basis of your standardized permit application. You must submit it to the Director when you submit your Notice of Intent under 40 CFR 124.202(b) requesting coverage under a RCRA standardized permit:

(a) The Part A information described in § 270.13.

(b) A meeting summary and other materials required by 40 CFR 124.31.

(c) Documentation of compliance with the location standards of Section 267.18 and § 270.14(b)(11) of this Regulation.

(d) Information that allows the Director to carry out our obligations under other Federal laws required in § 270.3.

(e) Solid waste management unit information required by § 270.14(d).

(f) A certification meeting the requirements of § 270.280, and an audit of the facility's compliance status with Section 267 as required by § 270.280.

(g) A closure plan prepared in accordance with Section 267, Subsection G.

(h) The most recent closure cost estimate for your facility prepared under § 267.142 and a copy of the documentation required to demonstrate financial assurance under § 267.143. For a new facility, you may gather the required documentation 60 days before the initial receipt of hazardous wastes.

(i) If you manage wastes generated offsite, the waste analysis plan.

(j) If you manage waste generated from off-site, documentation showing that the waste generator and the off-site facility are under the same ownership.

**§ 270.280 What are the certification requirements?**

You must submit a signed certification based on your audit of your facility's compliance with Section 267.

(a) Your certification must read: I certify under penalty of law that:

(1) I have personally examined and am familiar with the report containing the results of an audit conducted of my facility's compliance status with APC&EC Regulation No. 23, Section 267, which supports this certification. Based on my inquiry of those individuals immediately responsible for conducting the audit and preparing the report, I believe that my (include paragraph (a)(1)(i) and (ii) this section, whichever applies):

(i) My existing facility complies with all applicable requirements of APC&EC Regulation No. 23, Section 267 and will continue to comply until the expiration of the permit; or

(ii) My facility has been designed, and will be constructed and operated to comply with all applicable requirements of Regulation No. 23, Section 267, and will continue to comply until expiration of the permit.

(2) I will make all information that I am required to maintain at my facility by §§ 270.290 through 277.315 readily available for review by the permitting agency and the public; and,

(3) I will continue to make all information required by §§ 270.290 through 277.315 available until the permit expires. I am aware that there are significant penalties for submitting false in-



formation, including the possibility of fine and imprisonment for knowing violation.

(b) You must sign this certification following the requirements of § 270.11(a)(1) through (3).

(c) This certification must be based upon an audit that you conduct of your facility's compliance status with Section 267 of this Regulation. A written audit report, signed and certified as accurate by the auditor, must be submitted to the Director with the 40 CFR 124.202(b) Notice of Intent.

### Information That Must Be Kept at Your Facility

#### § 270.290 What general types of information must I keep at my facility?

You must keep the following information at your facility:

(a) A general description of the facility.

(b) Chemical and physical analyses of the hazardous waste and hazardous debris handled at the facility. At a minimum, these analyses must contain all the information you must know to treat or store the wastes properly under the requirements of Section 267 of this Regulation.

(c) A copy of the waste analysis plan required by § 267.13(b).

(d) A description of the security procedures and equipment required by § 267.14.

(e) A copy of the general inspection schedule required by § 267.15(b). You must include in the inspection schedule applicable requirements of §§ 267.174, 267.193, 267.195, 264.1033, 264.1052, 264.1053, 264.1058, and 264.1088.

(f) A justification of any modification of the preparedness and prevention requirements of Section 267, Subsection C (§§ 267.30 to 267.35).

(g) A copy of the contingency plan required by Section 267, subsection D.

(h) A description of procedures, structures, or equipment used at the facility to:

(1) Prevent hazards in unloading operations (for example, use ramps, special forklifts),

(2) Prevent runoff from hazardous waste handling areas to other areas of the facility or environment, or to prevent flooding (for example, with berms, dikes, trenches),

(3) Prevent contamination of water supplies,

(4) Mitigate effects of equipment failure and power outages,

(5) Prevent undue exposure of personnel to hazardous waste (for example, requiring protective clothing), and

(6) Prevent releases to atmosphere,

(i) A description of precautions to prevent accidental ignition or reaction of ignitable, reactive, or incom-

patible wastes as required by § 267.17.

(j) Traffic pattern, estimated volume (number, types of vehicles) and control (for example, show turns across traffic lanes, and stacking lanes; describe access road surfacing and load bearing capacity; show traffic control signals).

(k) [Reserved]

(l) An outline of both the introductory and continuing training programs you will use to prepare employees to operate or maintain your facility safely as required by § 267.16. A brief description of how training will be designed to meet actual job tasks under § 267.16(a)(3) requirements.

(m) A copy of the closure plan required by § 267.112. Include, where applicable, as part of the plans, specific requirements in §§ 267.176, 267.201, and 267.1108.

(n) [Reserved]

(o) The most recent closure cost estimate for your facility prepared under § 267.142 and a copy of the documentation required to demonstrate financial assurance under § 267.143. For a new facility, you may gather the required documentation 60 days before the initial receipt of hazardous wastes.

(p) [Reserved]

(q) Where applicable, a copy of the insurance policy or other documentation that complies with the liability requirements of § 267.147. For a new facility, documentation showing the amount of insurance meeting the specification of § 267.147(a) that you plan to have in effect before initial receipt of hazardous waste for treatment or storage.

(r) Where appropriate, proof of coverage by a State financial mechanism, as required by §§ 267.149 or 267.150.

(s) A topographic map showing a distance of 1,000 feet around your facility at a scale of 2.5 centimeters (1 inch) equal to not more than 61.0 meters (200 feet). The map must show elevation contours. The contour interval must show the pattern of surface water flow in the vicinity of and from each operational unit of the facility. For example, contours with an interval of 1.5 meters (5 feet), if relief is greater than 6.1 meters (20 feet), or an interval of 0.6 meters (2 feet), if relief is less than 6.1 meters (20 feet). If your facility is in a mountainous area, you should use large contour intervals to adequately show topographic profiles of facilities. The map must clearly show the following:

(1) Map scale and date.

(2) 100-year flood plain area.

(3) Surface waters including intermittent streams.

(4) Surrounding land uses (residential, commercial, agricultural, recreational).

(5) A wind rose (i.e., prevailing windspeed and direction).

- (6) Orientation of the map (north arrow).
- (7) Legal boundaries of your facility site.
- (8) Access control (fences, gates).
- (9) Injection and withdrawal wells both on-site and off-site.
- (10) Buildings; treatment, storage, or disposal operations; or other structure (recreation areas, runoff control systems, access and internal roads, storm, sanitary, and process sewerage systems, loading and unloading areas, fire control facilities, etc.)
- (11) Barriers for drainage or flood control.
- (12) Location of operational units within your facility, where hazardous waste is (or will be) treated or stored. (Include equipment cleanup areas.)

**§ 270.300 What container information must I keep at my facility?**

If you store or treat hazardous waste in containers, you must keep the following information at your facility:

(a) A description of the containment system to demonstrate compliance with the container storage area provisions of § 267.173. This description must show the following:

- (1) Basic design parameters, dimensions, and materials of construction.
- (2) How the design promotes drainage or how containers are kept from contact with standing liquids in the containment system.
- (3) Capacity of the containment system relative to the number and volume of containers to be stored.
- (4) Provisions for preventing or managing run-on.
- (5) How accumulated liquids can be analyzed and removed to prevent overflow.

(b) For storage areas that store containers holding wastes that do not contain free liquids, a demonstration of compliance with § 267.173(c), including:

- (1) Test procedures and results or other documentation or information to show that the wastes do not contain free liquids.
- (2) A description of how the storage area is designed or operated to drain and remove liquids or how containers are kept from contact with standing liquids.

(c) Sketches, drawings, or data demonstrating compliance with § 267.174 (location of buffer zone (15m or 50ft) and containers holding ignitable or reactive wastes) and § 267.175(c) (location of incompatible wastes in relation to each other), where applicable.

(d) Where incompatible wastes are stored or otherwise managed in containers, a description of the procedures used to ensure compliance with §§ 267.175(a) and

(b), and 267.17(b) and (c).

(e) Information on air emission control equipment as required by § 270.315.

**§ 270.305 What tank information must I keep at my facility?**

If you use tanks to store or treat hazardous waste, you must keep the following information at your facility:

(a) A written assessment that is reviewed and certified by an independent, qualified, Arkansas-registered professional engineer on the structural integrity and suitability for handling hazardous waste of each tank system, as required under §§ 267.191 and 267.192.

(b) Dimensions and capacity of each tank.

(c) Description of feed systems, safety cutoff, bypass systems, and pressure controls (e.g., vents).

(d) A diagram of piping, instrumentation, and process flow for each tank system.

(e) A description of materials and equipment used to provide external corrosion protection, as required under § 267.191.

(f) For new tank systems, a detailed description of how the tank system(s) will be installed in compliance with §§ 267.192 and 267.194.

(g) Detailed plans and description of how the secondary containment system for each tank system is or will be designed, constructed, and operated to meet the requirements of §§ 267.195 and 267.196.

(h) [Reserved].

(i) Description of controls and practices to prevent spills and overflows, as required under § 267.198.

(j) For tank systems in which ignitable, reactive, or incompatible wastes are to be stored or treated, a description of how operating procedures and tank system and facility design will achieve compliance with the requirements of §§ 267.202 and 267.203.

(k) Information on air emission control equipment as required by § 270.315.

**§ 270.310 What equipment information must I keep at my facility?**

If your facility has equipment to which Section 264, subsection BB of this Regulation applies, you must keep the following information at your facility:

(a) For each piece of equipment to which Section 264 subsection BB applies:

(1) Equipment identification number and hazardous waste management unit identification.

(2) Approximate locations within the facility (e.g., identify the hazardous waste management unit on a facility plot plan).

(3) Type of equipment (e.g., a pump or a pipeline valve).

(4) Percent by weight of total organics in the hazardous waste stream at the equipment.

(5) Hazardous waste state at the equipment (e.g., gas/vapor or liquid).

(6) Method of compliance with the standard (e.g., monthly leak detection and repair, or equipped with dual mechanical seals).

(b) For facilities that cannot install a closed-vent system and control device to comply with Section 264, subsection BB on the effective date that the facility becomes subject to the subsection BB provisions, an implementation schedule as specified in § 264.1033(a)(2) of this Regulation.

(c) Documentation that demonstrates compliance with the equipment standards in §§ 264.1052 and 264.1059. This documentation must contain the records required under § 264.1064.

(d) Documentation to demonstrate compliance with § 264.1060 must include the following information:

(1) A list of all information references and sources used in preparing the documentation.

(2) Records, including the dates, of each compliance test required by § 264.1033(j).

(3) A design analysis, specifications, drawings, schematics, and piping and instrumentation diagrams based on the appropriate sections of “Course 415: Control of Gaseous Emissions” (incorporated by reference as specified in § 260.11) or other engineering texts acceptable to the Director that present basic control device design information. The design analysis must address the vent stream characteristics and control device operation parameters as specified in § 264.1035(b)(4)(iii).

(4) A statement you signed and dated certifying that the operating parameters used in the design analysis reasonably represent the conditions that exist when the hazardous waste management unit is operating at the highest load or capacity level reasonable expected to occur.

(5) A statement you signed and dated certifying that the control device is designed to operate at an efficiency of 95 weight percent or greater.

**§ 270.315 What air emissions control information must I keep at my facility?**

**If you have air emission control equipment subject to Section 264, subsection CC of this Regulation, you must keep the following information at your facility:**

**(a) Documentation for each floating roof cover installed on a tank subject to §§ 264.1084(d)(1) or (d)(2) that includes information you prepared or the cover manufacturer/vendor provided describing the cover design, and your certification that the cover meets applicable design specifications listed in §§ 264.1084(e)(1) or**

**(f)(1).**

**(b) Identification of each container area subject to the requirements of Section 264, subsection CC of this Regulation, and your certification that the requirements of this subsection are met.**

**(c) Documentation for each enclosure used to control air pollutant emissions from tanks or containers under requirements of § 264.1084(d)(5) or 264.1086(e)(1)(ii). You must include records for the most recent set of calculations and measurements you performed to verify that the enclosure meets the criteria of a permanent total enclosure as specified in “Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure” under 40 CFR 52.741, appendix B.**

**(d) [Reserved]**

**(e) Documentation for each closed vent system and control device installed under requirements of § 264.1087 that includes design and performance information as specified in § 270.24 (c) and (d).**

**(f) An emission monitoring plan for both Method 21 in 40 CFR Part 60, appendix A and control device monitoring methods. This plan must include the following information: monitoring point(s), Monitoring methods for control devices, monitoring frequency, procedures for documenting exceedances, and procedures for mitigating noncompliances.**

**Modifying a Standardized Permit**

**§ 270.320 How do I modify my RCRA standardized permit?**

**You can modify your RCRA standardized permit by following the procedures found in 40 CFR 124.211 through 124.214.**

**Section 273—STANDARDS FOR UNIVERSAL WASTE MANAGEMENT**

212. Amend **Section 273.14**, in paragraph (a), by adding closing quotation marks after the phrase “Universal Waste—Battery(ies),”.

**§ 273.14 Labeling/markings. \* \* \***

(a) Universal waste batteries (i.e., each battery), or a container in which the batteries are contained, must be labeled or marked clearly with any one of the following phrases: ~~“Universal Waste—Battery(ies);~~ **“Universal Waste—Battery(ies).”** or “Waste Battery(ies),” or “Used Battery(ies);”

\* \* \* \* \*

213. In Section 273.34, amend paragraph (a) by revising “clearly with the any one” to read “clearly with any one”.

§ 273.34 Labeling/markings.

(a) Universal waste batteries (i.e., each battery), or a container or tank in which the batteries are contained, must be labeled or marked ~~clearly with the any one~~ clearly with any one of the following phrases: “Universal Waste - Battery(ies),” or “Waste Battery(ies),” or “Used Battery(ies);”  
\* \* \* \* \*

SECTION 279—STANDARDS FOR THE MANAGEMENT OF USED OIL

214. In Section 279.1, amend the definition of “Petroleum refining facility” by revising “kerosine” to read “kerosene”.

§ 279.1 Definitions.

\* \* \* \* \*

“Petroleum refining facility” means an establishment primarily engaged in producing gasoline, ~~kerosine~~ kerosene, distillate fuel oils, residual fuel oils, and lubricants, through fractionation, straight distillation of crude oil, redistillation of unfinished petroleum derivatives, cracking or other processes (i.e., facilities classified as SIC 2911).  
\* \* \* \* \*

215. In Section 279.10, amend paragraph (b)(2) introductory text by revising “solely exhibits” to read “solely exhibit”; and by revising “hazardous waste characteristic” to read “hazardous waste characteristics”.

§ 279.10 Applicability.

\* \* \* \* \*

(b) \* \* \*

\* \* \* \* \*

(2) Characteristic hazardous waste. Mixtures of used oil and hazardous waste that ~~solely exhibits~~ solely exhibit one or more of the hazardous waste characteristics identified in Subsection C of Section 261 of this regulation and mixtures of used oil and hazardous waste that is listed in Subsection D of Section 261 solely because it exhibits one or more of the characteristics of hazardous waste identified in Subsection C are subject to :

\* \* \* \* \*

216. Amend Section 279.11 as follows:

a. In the first sentence, delete “in the specification”; and in the second sentence, revise “not to exceed any specification” to read “not to exceed any allowable level”;

b. In Table 1, revise the title of the table to read “TABLE 1—USED OIL NOT EXCEEDING ANY ALLOWABLE LEVEL SHOWN BELOW IS NOT SUBJECT TO THIS PART WHEN BURNED FOR ENERGY RECOVERY<sup>1</sup>”, and in the first footnote, revise “The specification does not” to read “The allowable levels do not”.

§ 279.11 Used oil specifications.

Used oil burned for energy recovery, and any fuel produced from used oil by processing, blending, or other treatment is subject to regulation under this Section unless it is shown not to exceed any of the allowable levels of the constituents and properties ~~in the specification~~ shown in Table 1. Once used oil that is to be burned for energy recovery has been shown not to exhibit any specification and the person and the person making that showing complies with §§ 279.72, 279.73, and 279.74(b), the used oil is no longer subject to this Section.

\* \* \* \* \*

**TABLE 1:  
Used Oil Not Exceeding Any Specification Level is Not Subject to this Section When Burned for Energy Recovery. (1)**

**TABLE 1  
USED OIL NOT EXCEEDING ANY ALLOWABLE LEVEL SHOWN BELOW IS NOT SUBJECT TO THIS PART WHEN BURNED FOR ENERGY RECOVERY<sup>1</sup>**

(1) ~~The specification does not~~ The allowable levels do not apply to mixtures of used oil and hazardous waste that continue to be regulated as hazardous waste (See § 279.10(b)).

\* \* \* \* \*

217. Amend Section 279.52 paragraph (b)(6)(ii), revise “a real extent” to read “areal extent”; revise “facility records of manifests” to read “facility records or manifests”; and revise “analysts” to read “analyses”;

§ 279.52 General facility standards.

\* \* \* \* \*

(b) \* \* \*

(6) \* \* \*

(ii) Whenever there is a release, fire, or explosion, the emergency coordinator must immediately identify the character, exact source, amount, and areal extent of any released materials. He may do this by observation or review of facility records or manifests, and, if necessary, by chemical **analysis analyses**.

\* \* \* \* \*

218. Amend **Section 279.56** in paragraph (a)(2), by revising “processor/re-refining” to read “processor/re-refiner”.

**§ 279.56 Tracking.**

(a) \* \* \*

\* \* \* \* \*

(2) The name and address of the generator or processor/re-refiner from whom the used oil was shipped for ~~processing/re-refining~~ processor/re-refiner;

\* \* \* \* \*

**EXHIBIT B:**

**Questionnaire for Filing  
Proposed Rules and Regulations  
with the  
Arkansas Legislative Council  
and the  
Joint Interim Committee**





**QUESTIONNAIRE  
FOR FILING PROPOSED RULES & REGULATIONS  
WITH THE ARKANSAS LEGISLATIVE COUNCIL AND THE  
JOINT INTERIM COMMITTEE**

**FROM:**

**AGENCY:** Arkansas Department of Environmental Quality  
**DIVISION:** Hazardous Waste Division  
**CONTACT PERSON:** Karen Bassett  
**ADDRESS:** 8001 National Drive, Little Rock, AR 72219  
**PHONE NUMBER:** 682-0744 **FAX NUMBER:** 682-0880

**TO:**

Attention: Donna Davis  
Subcommittee on Administrative Rules and Regulations  
Arkansas Legislative Council  
Room 315, State Capitol  
Little Rock, Arkansas 72201

=====

**1. What is the short title of this rule?** APC&EC Regulation No. 23 (Hazardous Waste Management); 2007 Annual Update

**2. What is the subject of the proposed rule?** State adoption and implementation of regulations for the management of hazardous wastes

**3. Is this rule required to comply with federal statute or regulations?** Yes.  
**If Yes, please provide the federal statute and or regulation citation:** 40 CFR Part 271

**4. Was this rule filed under the emergency provisions of the Administrative Procedure Act?** No  
**If Yes, what is the date of the emergency rule?** N/A  
**When does the emergency rule expire?** N/A  
**Will this emergency rule be promulgated under the regular provisions of the Administrative Procedures Act?** N/A

**5. Is this a new rule?** No – update of existing regulations.  
**Does this repeal an existing rule?** No  
**If yes, please provide a copy of the repealed rule.**

**Is this an amendment to an existing rule?** Yes  
**If yes, please attach a markup showing the changes in the existing rule and a summary of the substantive changes.** Attached.

**6. What State or federal law or regulation grants the authority for this proposed rule?**

Arkansas Hazardous Waste Management Act, A.C.A. §§ 8-7-209(b)(1)  
Arkansas Remedial Action Trust Fund Act, A.C.A. §§ 8-7-506

**7. What is the purpose of this proposed rule? Why is it necessary?** Adopts newly-revised federal rules published between August 5, 2005, and December 31, 2007.

**8. Will a public hearing be held on this proposed rule?** Yes.

**(If yes, state the date, time, and location of the public hearing.** 2:00 p.m., February 27, 2008, in the Commission Room at the Department headquarters at 5301 Northshore Drive, North Little Rock.

**9. When does the public comment period expire?** 4:30 p.m., March 12, 2008

**10. What is the proposed effective date of this rule?** May, 2008 (10 days following filing, after April 25, 2008 APC&E Commission meeting)

**11. Do you expect this rule be controversial?** No.  
**If yes, please explain.**

**12. Please give the names, addresses, and phone numbers of all persons, groups, organizations, etc. interested in or affected by this proposed rule and the position taken by each.**

Categorize them according to the following:

(A) Those you contacted.

(B) Those who contacted you.

(C) Those whom you anticipate will participate in the public hearing.

<b>NAMES, ADDRESSES, &amp; PHONE NUMBERS</b>	<b>CATEGORY</b>	<b>FOR</b>	<b>AGAINST</b>
Arkansas Environmental Federation, 1400 W. Markham Street, Little Rock, AR 72201, (501) 374-0263	A,C	X	
Tokusen, USA, Conway, AR	B	X	

**EXHIBIT C:**

**Financial Impact Statement**







<b>Total:</b>	\$0.00		<b>Total:</b>	\$0.00
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*Regulation No. 23 affects all businesses and facilities which generate or manage hazardous wastes, used oil, and universal wastes. As of December 1, 2007, this addresses approximately 2,200 facilities and businesses in Arkansas. The regulatory changes in this proposal are equivalent or in some cases less stringent than the previous state and federal requirements, so regulated facilities are anticipated to incur no additional costs to doing business or maintaining compliance. Businesses which are able to take advantage of the lessened requirements such as the conditional exemption for cathode ray tubes may see some decrease in these costs. These costs will vary widely by the nature of each affected facility, and it would be speculative to estimate these costs over the wide range of businesses and operations subject to the hazardous waste management program.*

**5. What is the total estimated cost by fiscal year to the agency to implement this regulation?**

<u>Current Fiscal Year (2008)</u>		<u>Next Fiscal Year (2009)</u>	
Federal Funds:	\$0.00	Federal Funds:	\$0.00
Special Revenue:	\$0.00	Special Revenue:	\$0.00
<b>Total:</b>	<b>\$0.00</b>	<b>Total:</b>	<b>\$0.00</b>

*Implementing these proposed revisions will not discernibly increase nor decrease program operational or administrative costs.*

**EXHIBIT D:**

**Compliance with  
Act 143 of 2007**



## **Compliance with Act 143 of 2007 (formerly Executive Order 05-04)**

Act 143 of 2007 requires that “[b]efore submitting proposed rules for adoption, amendment, or repeal, the agency shall first determine whether the proposed rules affect small businesses.” The agency shall consider “whether a means exists to make the rules less costly for small businesses without compromising the objective of the rules.” If the agency determines that the proposed rule will affect small businesses, the agency must prepare an economic impact statement in accordance with Act 143 of 2007.

The Act is not applicable to rules that are federally mandated, or that substantially codify existing state or federal laws. ADEQ determines that Act 143 of 2007 is not applicable to this proposed rule because the amendments to Regulation No. 23 included in this proposed rulemaking substantially codify existing state and federal regulations. (Ark. Code of 1987, Ann., § 25-15-302(a)(1)(C)). This proposal incorporates a number of revisions to the federal hazardous waste regulations previously promulgated by the U.S. EPA to the corresponding sections of Regulation No. 23, and additionally makes a number of typographic corrections to existing state provisions in the Regulation.

Pursuant to the Federal Resource Conservation and Recovery Act (“RCRA”), 33 U.S.C. §1251 *et seq.*, Arkansas has been delegated the authority to establish and administer the federal hazardous waste management program within its borders. This program is administered through the Arkansas Hazardous Waste Management Act, and state and federal regulations codified in the Arkansas Pollution Control & Ecology Commission’s Regulation No. 23. RCRA requires that states authorized to carry out the hazardous waste management program in lieu of EPA must review their program regulations on an annual basis and adopt new federal revisions to ensure that the state program regulations remain consistent with and no less stringent than the corresponding federal regulations. As a result of this review process, ADEQ proposes to adopt specific federal regulations promulgated by EPA between August 2005 and December 2007, and incorporate these provisions into portions of Regulation No. 23, Hazardous Waste Management. The regulatory revisions that are subject of this rulemaking have been deemed necessary through this federally mandated review. In addition to these federal revisions, a number of typographic corrections are made to existing state provisions in the regulation. No additional requirements are being proposed that substantially affect small businesses beyond the current requirements.

In August through December of 2007, ADEQ initiated a series of meetings with affected stakeholders to evaluate the impact of adopting (or not adopting) the regulatory changes included in this proposal. These stakeholders included the Arkansas Department of Health, the Arkansas Highway and Transportation Department, Arkansas Department of Emergency Management, and the Arkansas Department of Economic Development, in addition to representatives from the Arkansas Environmental Federation, Audubon Society, and the Arkansas Municipal League. The revisions brought forward in this proposal represent the consensus of that stakeholder group.



**EXHIBIT E:**

**ENVIRONMENTAL IMPACT/ECONOMIC  
BENEFIT ANALYSIS**



# **ECONOMIC IMPACT/ENVIRONMENTAL BENEFIT ANALYSIS**

*Answer to best of the proponent's ability, as required by ADPCEC Regulation 8,  
Chapter 3.5*

## **APC&EC Regulation No. 23 (Hazardous Waste Management) 2007 Annual Update**

### **RULE SUMMARY:**

#### **I. Federal Revisions**

##### **I.1: Hazardous Waste Management System; Standardized Permit for RCRA Hazardous Waste Management Facilities; 70 FR 53420-53478, September 8, 2005.**

This federal revision allows for a “standardized permit,” which will be available to noncommercial RCRA treatment, storage, and disposal facilities (TSDFs) otherwise subject to RCRA permitting that generate and then store or non-thermally treat hazardous wastes on-site in tanks, containers, or containment buildings. Standardized permits may also be made available to facilities which receive hazardous wastes generated off-site by a generator belonging to the same parent company or under the same ownership as the receiving facility, and then store or non-thermally treat these wastes in tanks, containers, or containment buildings. Standardized permits would consist of two parts: a set of standard “one-size-fits-all” conditions which apply uniformly to all facilities using a particular treatment or storage process, and a second, facility-specific portion to address any additional, site-specific requirements applicable to the individual facility. The standardized permit is intended to streamline the permitting process by allowing facilities to obtain and modify permits more easily, while still achieving the same level of environmental protectiveness as individual facility permits. No change is made to the permit fee schedule at Section 6 of this regulation; standardized permits will be assessed the same application, maintenance, and renewal fees as normal RCRA permits.

##### **I.2: Revision of Wastewater Treatment Exemptions for Hazardous Waste Mixtures (“Headworks Exemptions”); 70 FR 57784-57785, October 4, 2005.**

In developing this rule, EPA developed an economic cost and environmental benefit analysis which was summarized in the Final Rule at 70 FR 57780-57782, as well as published as an “Economic Background Document” as a component of the administrative record for this rule. ADEQ staff have reviewed these documents and compared them to the universe of facilities potentially subject to these proposed requirements, and concurs with EPA that if implemented, these proposed rules would result in a lessened burden and cost savings for affected facilities which take advantage of this new rule.

**I.3: National Emission Standards for Hazardous Air Pollutants: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (Phase I Final Replacement Standards and Phase II); 70 FR 59539-59579, October 12, 2005.**

In developing this rule, EPA developed an economic cost and environmental benefit analysis which was summarized in the Final Rule at 70 FR 59529-59535, as well as published as an “Economic Background Document” as a component of the administrative record for this rule. ADEQ staff has reviewed these documents and compared them to the universe of facilities potentially subject to these proposed requirements, and concurs with EPA’s assessment.

**I.4: Resource Conservation and Recovery Act Burden Reduction Initiative; 71 FR 16902-16915, April 4, 2006.**

In developing this rule, EPA developed an economic cost and environmental benefit analysis which was summarized in the Final Rule at 71 FR 16899-16902, as well as published as an “Economic Background Document” as a component of the administrative record for this rule. ADEQ staff has reviewed these documents and compared them to the universe of facilities potentially subject to these proposed requirements, and concurs with EPA’s assessment of the costs and benefits of these measures.

**I.5: Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Removal of Final Rule; 71 FR 35395-35396 (June 20, 2006).**

This federal revision amended **Section 261, Appendix IX** to remove an earlier Federal delisting decision for wastewater treatment sludges generated by the Tokusen, USA facility in Conway, Faulkner County. Changes in the production operations at the facility invalidated the conditions of the delisting.

Economic and environmental impact of this revision affects only this single facility.

**I.6. Hazardous Waste and Used Oil; Corrections to Errors in the Code of Federal Regulations; 71 FR 40258-40280, July 14, 2006.**

This federal revision corrected a variety of errors in the federal hazardous waste and used oil regulations, as a result of printing omissions, typographical errors, misspellings, citations to paragraphs and other references that have been deleted or moved to new locations without correcting the citations, and similar mistakes appearing in numerous final rules published in the *Federal Register*. Corresponding text in Regulation No. 23

has been edited so as to remain consistent with these Federal provisions. This revision does not create any new regulatory requirements.

## **I. 7. Hazardous Waste Management System; Modification of the Hazardous Waste Program; Cathode Ray Tubes; 71 FR 42947-42949, July 28, 2006.**

This federal revision provides a conditional exemption from the RCRA definition of solid waste for cathode ray tubes (CRTs) and processed glass from CRTs if these items are recycled under the provisions of this rule. This rule is intended to encourage recycling and reuse of used CRTs and CRT glass, and provides clarification of the regulatory status of CRT and electronic waste processing operations such as that performed by Unicor in Texarkana. Adoption and implementation of this rule does not affect the Commission's provisions for managing these items as well as other consumer electronic items as universal wastes (APC&EC Regulation No. 23 § 273.6); the universal waste management standards continue to be an alternative for managing and disposing of these wastes.

## **II. State Revisions**

**II. 1. Section 264.18(d)** is amended to reflect the recent name change of the Arkansas Natural Resources Conservation Commission. This State-only revision edits language in the state-specific standards for locating hazardous waste management facilities to be consistent with the recent name change of the Arkansas Soil and Water Conservation Commission to the Natural Resources Conservation Commission. No other provisions are affected by this revision.

**II. 2. Section 264.151** is amended to correct typographic errors and clarify specific terms in the various model instruments for financial assurance. These revisions do not otherwise modify the requirements of these documents or create any new or additional requirements.

<p style="text-align: center;"><b>STEP 1: DETERMINATION OF ANALYSIS REQUIREMENT (to be included in petition to initiate rulemaking)</b></p>
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**1A.** Is the proposal expressly addressed by a Federal requirement?

**Yes. See 1B.**

No. Economic Impact/Environmental Benefit Analysis is not required.

**Yes.**

**1B.** If 1A is YES, is proposed regulation equivalent, or more stringent, or less stringent than federal requirement?

State provisions implementing this rule are equivalent to and no more stringent than the corresponding Federal regulations.

- **If equivalent – Economic Impact/Environmental Benefit Analysis is not required**
- If more stringent - Economic Impact/Environmental Benefit Analysis is required
- If less stringent - Economic Impact/Environmental Benefit Analysis is not required, but does require federal agency approval prior to adoption if the proposal is part of an authorized state program.

<p style="text-align: center;"><b>STEP 2: THE ANALYSIS</b> <b>(to be included in petition to initiate rulemaking, if required)</b></p>
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**2A. ECONOMIC IMPACT**

Not Required.  
(Equivalent to corresponding Federal Rule.)

**2B. ENVIRONMENTAL BENEFIT**

Not Required.  
(Equivalent to corresponding Federal Rule.)



# **EXHIBIT F:**

## **STATEMENT OF BASIS AND PURPOSE**





## Statement of Basis and Purpose

The Arkansas Department of Environmental Quality maintains and administers a hazardous waste management program to implement the provisions of the Arkansas Hazardous Waste Management Act (Arkansas Code, Annotated, §§ 8-7-201 *et seq.*) and to provide a program which is, at a minimum, equivalent in force and effect to the Federal program as established by the Resource Conservation and Recovery Act, as amended, including but not limited to the Hazardous and Solid Waste Amendments. To this end, the Department, through the procedures of the Arkansas Pollution Control and Ecology Commission, conducts rulemaking at least annually in order to adopt the additions and revisions to the federal hazardous waste regulations promulgated by EPA during the preceding year and update the State hazardous waste program in order to maintain its equivalency to federal requirements.

The background, purpose, and specific need for each revision is discussed separately below.

### **I. Federally-initiated changes to Regulation No. 23 fall under five measures as follows:**

#### **1. Hazardous Waste Management System; Standardized Permit for RCRA Hazardous Waste Management Facilities; 70 FR 53420-53478, September 8, 2005.**

This federal revision allows for a “standardized permit,” which will be available to noncommercial RCRA treatment, storage, and disposal facilities (TSDFs) otherwise subject to RCRA permitting that generate and then store or non-thermally treat hazardous wastes on-site in tanks, containers, or containment buildings. Standardized permits may also be made available to facilities which receive hazardous wastes generated off-site by a generator belonging to the same parent company or under the same ownership as the receiving facility, and then store or non-thermally treat these wastes in tanks, containers, or containment buildings. Standardized permits would consist of two parts: a set of standard “one-size-fits-all” conditions which apply uniformly to all facilities using a particular treatment or storage process, and a second, facility-specific portion to address any additional, site-specific requirements applicable to the individual facility. The standardized permit is intended to streamline the permitting process by allowing facilities to obtain and modify permits more easily, while still achieving the same level of environmental protectiveness as individual facility permits. No change is made to the permit fee schedule at Section 6 of this regulation; standardized permits will be assessed the same application, maintenance, and renewal fees as normal RCRA permits.

## **2. Revision of Wastewater Treatment Exemptions for Hazardous Waste Mixtures (“Headworks Exemptions”); 70 FR 57784-57785, October 4, 2005.**

Facilities which treat and subsequently discharge their hazardous wastes through a wastewater treatment facility or publicly-owned treatment works which is subject to a permit under the federal Clean Water Act generally do not require an additional RCRA permit for such treatment since protection of human health and the environment must be addressed by the standards of the wastewater discharge permit. Hazardous wastes which are treated in this manner are considered to be conditionally-exempt under the provisions of Regulation No. 23 § 261.5(c)(2).

This federal revision adds benzene and 2-ethoxyethanol to the list of solvents whose mixtures with wastewaters are so exempted from the definition of hazardous waste. The scrubber waters derived from the combustion of any of the exempted solvents also are included in this exemption. This revision also adds an option to allow generators to directly measure solvent chemical levels at the headworks of their wastewater treatment system to determine whether the wastewater mixture is exempt from the definition of hazardous waste. Finally, this revision extends the eligibility for the *de minimis* exemption to other listed hazardous wastes (beyond discarded commercial chemical products) and to non-manufacturing facilities.

## **3. National Emission Standards for Hazardous Air Pollutants: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (Phase I Final Replacement Standards and Phase II); 70 FR 59539-59579, October 12, 2005.**

This federal revision finalized the national emission standards for hazardous air pollutants (NESHAP) which apply to hazardous waste combustion facilities (HWCs), i.e., hazardous waste-burning incinerators, cement kilns, lightweight aggregate kilns, industrial, commercial, and institutional boilers and process heaters, and hydrochloric acid production furnaces. This is a multimedia rule which affects both air regulations addressed by 40 CFR 63 and hazardous waste requirements in 40 CFR Parts 264, 265, 266, and 270. This proposal incorporates the RCRA hazardous waste components of this rule into Sections 264, 265, 266, and 270 of Regulation No. 23.

## **4. Resource Conservation and Recovery Act Burden Reduction Initiative; 71 FR 16902-16915, April 4, 2006.**

In developing this rule, EPA developed an economic cost and environmental benefit analysis which was summarized in the Final Rule at 71 FR 16899-16902, as well as published as an “Economic Background Document” as a component of the administrative record for this rule. ADEQ staff has reviewed these documents and compared them to the universe of facilities potentially subject to these proposed requirements, and concurs with EPA’s assessment of the costs and benefits of these measures.

This proposal retains existing state-specific requirements for the qualifications of professionals who prepare and certify specific construction and inspection documents, to include the requirement that professional engineers who prepare and certify these documents must be registered by the Arkansas Board of Professional Engineers and Land Surveyors, as well as the requirement that they be independent of the regulated facility owner or operator. These requirements have been previously determined by the Department and the U.S. EPA to be more stringent than the corresponding federal requirements, and as such are not superseded by the revisions to the corresponding federal rules.

**5. Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Removal of Final Rule; 71 FR 35395-35396 (June 20, 2006).**

This federal revision amended **Section 261, Appendix IX** to remove an earlier Federal delisting decision for wastewater treatment sludges generated by the Tokusen, USA facility in Conway, Faulkner County. Changes in the production operations at the facility invalidated the conditions of the delisting.

**6. Hazardous Waste and Used Oil; Corrections to Errors in the Code of Federal Regulations; 71 FR 40258-40280, July 14, 2006.**

This federal revision corrected a variety of errors in the federal hazardous waste and used oil regulations, as a result of printing omissions, typographical errors, misspellings, citations to paragraphs and other references that have been deleted or moved to new locations without correcting the citations, and similar mistakes appearing in numerous final rules published in the *Federal Register* over the past several years. This revision does not create any new regulatory requirements.

**7. Hazardous Waste Management System; Modification of the Hazardous Waste Program; Cathode Ray Tubes; 71 FR 42947-42949, July 28, 2006.**

This federal revision provides a conditional exemption from the RCRA definition of solid waste for cathode ray tubes (CRTs) and processed glass from CRTs if these items are recycled under the provisions of this rule. This rule is intended to encourage recycling and reuse of used CRTs and CRT glass, and provides clarification of the regulatory status of CRT and electronic waste processing operations such as that performed by Unicor in Texarkana. Adoption and implementation of this rule does not affect the Commission's provisions for managing these items as well as other consumer electronic items as universal wastes (APC&EC Regulation No. 23 § 273.6); the universal waste management standards continue to be an alternative for managing and disposing of these wastes.

***Compliance with Act 143 of 2007 (formerly Executive Order 05-04):*** This proposed rulemaking would substantially codify existing, revised Federal regulations into the corresponding State regulation (See A.C.A. § 25-15-302(a)(1)(C)). As such, they are not subject to the provisions of A.C.A. § 25-15-302. As this proposal seeks to adopt and incorporate federal regulations into corresponding state rules in order to implement a federally authorized program, market-based or other alternatives were not considered.

The delegation and program cooperative agreements between ADEQ and U.S. EPA require that the Department make an earnest effort to maintain consistency between State and Federal regulations. While all components proposed in this revision are optional for the state to adopt them or not, the current State requirements corresponding to these proposed revisions are in the main more stringent, and Arkansas businesses would face a greater burden in maintaining compliance than those in neighboring and other states.

Actions & activities required pursuant to these revisions will be carried out with existing Departmental staff and resources. No additional costs are anticipated other than the current costs of implementing the program.

Small businesses which generate and/or manage hazardous wastes, used oils, and universal wastes are required to comply with the provisions of Regulation No. 23 in managing, shipping, treating, and disposing of these wastes. As of December 1, 2007, approximately 2200 businesses fall within the regulated universe of the RCRA waste management program. ADEQ does not track whether regulated businesses fall within the definition of a “small business,” but the RCRA regulations provide for varying degrees of regulatory requirements and compliance oversight based upon the amount of waste that a business generates at any time. Small businesses in Arkansas typically fall within those categories regulated as small quantity generators (SQGs) and conditionally-exempt small quantity generators (CESQGs). As of December 1, 2007, 279 SQGs and 1,504 CESQGs were known to be active in Arkansas. However, only a small number of these facilities fall within the economic definition of “small business” as defined by the Act.

Regulation No. 23 does not create any barrier to entry for small businesses, and the proposed revisions will not affect this. Businesses subject to this regulation are obligated to comply pursuant to federal and state law.

These amendments create no additional requirements or costs for small business. The Federal revisions proposed to be adopted pursuant to this rulemaking are actually less stringent than the pre-existing Federal regulations they are replacing and the state adoption of these provisions will maintain equivalence and equity with the corresponding federal rules. Affected small businesses should recognize reduced compliance costs once these new rules are in effect within the State.

Requirements under Regulation No. 23 are not based upon the size of a particular business, but upon the amount of wastes which a particular business generates from month to month, regardless of the business’ size or number of employees. This is consistent with the corresponding federal regulations for managing hazardous wastes.

ADEQ does not anticipate any difficulty for small businesses implementing these revised rules. In most cases since many of the proposed revisions will reduce the reporting and administrative burden of compliance in comparison to than the existing regulations, small businesses should realize reduced burden and costs in carrying out these provisions within their operations.

The revisions proposed here are equivalent to the corresponding federal rules in 40 CFR. Surrounding states are also required as a condition of their program delegation to consider adoption of these revisions and update their regulations appropriately, so there is and will be no significant differences in the compliance requirements from those is adjacent states. Note that for easy reference, ADEQ identifies specific provisions in the body of Regulation No. 23 which are more stringent than or in addition to the corresponding federal regulations by printing them in italic text.

## **II. State-initiated changes in the provisions of Regulation No. 23.**

ADEQ is not proposing substantive changes in the State provisions of Regulation No. 32 with the exception of the following:

1. **Section 264.18(d)** is amended to reflect the recent name change of the Arkansas Natural Resources Conservation Commission.
2. **Section 264.151** is amended to correct typographic errors and clarify specific terms in the various model instruments for financial assurance. These revisions do not otherwise modify the requirements of these documents or create any new or additional requirements.

***Compliance with Act 143 of 2007 (formerly Executive Order 05-04):*** These revisions make typographic corrections to existing state provisions in the Regulation. As such, they substantially codify existing State regulations and are not subject to the provisions of A.C.A. § 25-15-302.

**EXHIBIT G:**

**Economic Impact Statement:  
Regulatory Flexibility**





**ECONOMIC IMPACT STATEMENT  
OF PROPOSED RULES OR REGULATIONS**

EO 05-04: Regulatory Flexibility

**Department:** Dept. of Environmental Quality

**Division:** Hazardous Waste

**Contact Person:** Tom Ezell

**Date:** December 13, 2007

**Contact Phone:** (501) 682-0854

**Contact E-Mail:** ezell@adeq.state.ar.us

**Title or Subject:** APC&EC Regulation No. 23 (Hazardous Waste Management) 2007 Update

**Benefits of the Proposed Rule or Regulation**

1. Explain the need for the proposed change(s). Did any complaints motivate you to pursue regulatory action? If so, please explain the nature of such complaints.

ADEQ has been delegated responsibility for implement both federal and state provisions for the RCRA hazardous waste management program in Arkansas. This delegation is contingent upon the State maintaining a regulatory program that is consistent with and no less stringent than the corresponding federal requirements. Annually, ADEQ initiates rulemaking procedures via the Arkansas Pollution Control and Ecology Commission to incorporate and adopt recent changes to the federal regulations in order to maintain equivalence and consistency between the state and federal hazardous waste management regulations. This proposal seeks to incorporate relevant changes to federal regulations published since August 2005. Complaints played no role in the development of these draft revisions.

2. What are the top three benefits of the proposed rule or regulation?

- Maintains equivalence between State and new Federal hazardous waste management regulations;
- Provides a lower-cost alternative means for the reclamation and recycling of cathode-ray tubes; and
- Clarifies outdated languages and corrects errors found in the current text of Regulation No. 23.

3. What, in your estimation, would be the consequence of taking no action, thereby maintaining the status quo?

The delegation and program cooperative agreements between ADEQ and U.S. EPA require that the Department make an earnest effort to maintain consistency between State and Federal regulations. While all components proposed in this revision are optional for the state to adopt them or not, the current State requirements corresponding to these proposed revisions are in the main more stringent, and Arkansas businesses would face a greater burden in maintaining compliance than those in neighboring and other states.

4. Describe market-based alternatives or voluntary standards that were considered in place of the proposed regulation and state the reason(s) for not selecting these alternatives.

This rulemaking substantially codifies existing, revised Federal regulations into the corresponding State regulation. As such, they are not subject to the provisions of Sections 3-5 of Executive Order 05-04. As this proposal seeks to adopt and incorporate federal regulations into corresponding state rules in order to implement a federally authorized program, market-based or other alternatives were not considered.

### **Impact of Proposed Rule or Regulation**

5. Estimate the cost to state government of collecting information, completing paperwork, filing, recordkeeping, auditing and inspecting associated with this new rule or regulation.

Actions & activities required pursuant to these revisions will be carried out with existing Departmental staff and resources. No additional costs are anticipated other than the current costs of implementing the program.

6. What types of small businesses will be required to comply with the new rule or regulation? Please estimate the number of small businesses affected.

Small businesses which generate and/or manage hazardous wastes, used oils, and universal wastes are required to comply with the provisions of Regulation No. 23 in managing, shipping, treating, and disposing of these wastes. As of December 1, 2007, approximately 2200 businesses fall within the regulated universe of the RCRA waste management program. ADEQ does not track whether regulated businesses fall within the definition of a "small business," but the RCRA regulations provide for varying degrees of regulatory requirements and compliance oversight based upon the amount of waste that a business generates at any time. Small businesses in Arkansas typically fall within those categories regulated as small quantity generators (SQGs) and conditionally-exempt small quantity generators (CESQGs). As of December 1, 2007, 279 SQGs and 1,504 CESQGs were known to be active in Arkansas. However, only a small number of these facilities fall within the economic definition of "small business."

7. Does the proposed regulation create barriers to entry? If so, please describe those barriers and why those barriers are necessary.

Regulation No. 23 does not create any barrier to entry for small businesses, and the proposed revisions will not affect this. Businesses subject to this regulation are obligated to comply pursuant to federal and state law.

8. Explain the additional requirements with which small business owners will have to comply and estimate the costs associated with compliance.

These amendments create no additional requirements or costs for small business. The Federal revisions proposed to be adopted pursuant to this rulemaking are actually less stringent than the pre-existing Federal regulations they are replacing and the state adoption of these provisions will maintain equivalence and equity with the corresponding federal rules. Affected small businesses should recognize reduced compliance costs once these new rules are in effect within the State.

9. State whether the regulation contains different requirements for different-sized entities, and explain why this is, or is not, necessary.

As noted above, requirements under Regulation No. 23 are not based upon the size of a particular business, but upon the amount of wastes which a particular business generates from month to month, regardless of the business' size or number of employees. This is consistent with the corresponding federal regulations for managing hazardous wastes.

10. Describe your understanding of the ability of small business owners to implement changes required by the proposed regulation.

ADEQ does not anticipate any difficulty for small businesses implementing these revised rules. In most cases since many of the proposed revisions will reduce the reporting and administrative burden of compliance in comparison to than the existing regulations, small businesses should realize reduced burden and costs in carrying out these provisions within their operations.

11. How does this rule or regulation compare to similar rules or regulations in other states or the federal government?

The revisions proposed here are equivalent to the corresponding federal rules in 40 CFR. Surrounding states are also required as a condition of their program delegation to consider adoption of these revisions and update their regulations appropriately, so there is and will be no significant differences in the compliance requirements from those in adjacent states. Note that for easy reference, ADEQ identifies specific provisions in the body of Regulation No. 23 which are more stringent than or in addition to the corresponding federal regulations by printing them in italic text.

12. Provide a summary of the input your agency has received from small business or small business advocates about the proposed rule or regulation.

In August through December of 2007 ADEQ initiated a series of meetings with stakeholders to evaluate the impact of adopting (or not adopting) the regulatory changes included in this proposal. These stakeholders included the Arkansas Department of Health, the Arkansas Highway and Transportation Department, Arkansas Department of Emergency Management, and the Arkansas Department of Economic Development, in addition to representatives from the Arkansas Environmental Federation, Arkansas Audubon Society, and the Arkansas Municipal League. The revisions brought forward in this proposal represent the consensus of that stakeholder group.



# **EXHIBIT H:**

## **Scheduling Minute Order**





**ARKANSAS POLLUTION CONTROL  
AND ECOLOGY COMMISSION**

**LOCATION - SUBJECT**

**Regulation No. 23  
Docket No. 08- -R**

**MINUTE ORDER NO. 08 -**

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On January 11, 2008, The Arkansas Department of Environmental Quality ("Department") filed a Petition to Amend Regulation No. 23 (Hazardous Waste Management) (hereafter "Petition"). The Petition has been designated as Docket No. 08-00\_-R.

The Commission's Regulations Committee met on January 25, 2008 to review the Petition. Having considered the Petition, the Regulations Committee recommends the Commission institute a rulemaking proceeding to consider amending Regulation No. 23.

1. The Arkansas Department of Environmental Quality ("Department") shall file an original and two (2) copies and a computer disk in Microsoft Word of all materials required under this Minute Order.

2. Persons submitting written public comments shall submit their written comments to the Department. Within ten (10) business days following the adoption or denial of the proposed rule, the Department shall deliver the originals of all comments to the Commission Secretary.

3. A public hearing shall be conducted on February 27, 2008, at 2:00 p.m. in the Commission Room at the Department's offices at 5301 Northshore Drive North Little Rock.

4. The period for receiving all written comments shall conclude ten (10) business days after the date of the public hearing pursuant to Regulation No. 8, Part 3, Section 3.2.3, unless an extension of time is granted.

5. The Department has filed a Statement of Basis and Purpose as required by Regulation No. 8, Part 3, Section 3.6.2(1), (2) and (3) as a component of this proposed rulemaking.

**ARKANSAS POLLUTION CONTROL  
AND ECOLOGY COMMISSION**

**LOCATION - SUBJECT**

**Regulation No. 23  
Docket No. 08-00\_-R**

**MINUTE ORDER NO. 08 -**

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6. The Department shall file, not later than April 11, 2008, a proposed Minute Order deciding this matter.

7. The Department shall seek review of the proposed rule from the Joint Interim Committee on Public Health and Welfare and/or from the Joint Interim Committee on Administrative Rules and Regulations.

8. The Regulations Committee will consider this matter at its April 2008 meeting. Members of the Regulations Committee may ask questions of the Department and any person that made oral or written comments. The Regulations Committee will make a recommendation to the Commission.

9. At its regularly scheduled April 2008 meeting, the presentation of oral statements and legal arguments shall be regulated as follows:

a. The Chair of the Commission will permit members of the public to make a statement to the Commission. No more than three (3) minutes will be allowed for each statement. The period for statements will close at the end of one (1) hour, or sooner if all interested persons have completed their statements. The Chair in his discretion, may extend the one (1) hour public comment period.

ARKANSAS POLLUTION CONTROL  
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MINUTE ORDER NO. 08 -

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b. At the discretion of the Chair, an attorney representing one or more individuals, a corporation or other legal entity may be permitted five (5) minutes in which to address the Commission.

c. Department legal counsel or other designated Department employee will be permitted ten (10) minutes in which to address the Commission.

d. At the conclusion of all comments, the Chairman will call on each Commissioner for the purpose of asking the attorneys or persons sponsoring comments who are present, any questions they may have. Attorneys will not be permitted to respond or ask follow-up questions of any person questioned by a Commissioner.

After each Commissioner has had an opportunity to ask questions, the Chair will entertain a motion on the matter, allow discussion, and call for a vote of the Commission members.

10. The Commission finds the proposed regulation is exempt from Act 143 of 2007 (formerly Executive Order 05-04) because the proposed rule is federally mandated or it codifies existing state or federal law.

ARKANSAS POLLUTION CONTROL  
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LOCATION - SUBJECT

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The Commission accepts the recommendation of the Regulations Committee and initiates the rulemaking proceeding in Docket No. 07-007-R effective January 25, 2008. The Commission adopts, without modification, the procedural schedule set forth above.

**COMMISSIONERS:**

_____ L. Bengal	_____ J. Shannon
_____ S. Henderson	_____ L. Sickel
_____ D. Hendrix	_____ J. Simpson
_____ C. McGrew	_____ W. Thompson
_____ D. Samples	_____ E. Valdez
_____ T. Schueck	_____ B. White
	_____ R. Young

\_\_\_\_\_ **SUBMITTED BY:** J.R. Benefield **DATE PASSED:** 1/25/2008  
T. Schueck,  
Chairman



Date:  
Comments/Approval:

By:

12. Present proposed final regulation and minute order to the **Commission** for adoption.

Date:  
Comments/Approval:

By:

13. Send two (2) copies of adopted regulation to **Secretary of State** (regulation goes into effect twenty calendar days after filing).

Date mailed:

15. Provide fifteen (15) copies to the **Arkansas State Library**.

16. Formally submit adopted regulation to **EPA** (if necessary) with Governor's submittal letter.  
Date mailed:

17. Provide (1) record and electronic copies to **ADEQ Legal Division** for Department repository.

**EXHIBIT A:**  
**PROPOSED RULE CHANGES**



**DRAFT**

# **ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION**



## **REGULATION No. 23 HAZARDOUS WASTE MANAGEMENT**

Presented to the  
Pollution Control and Ecology Commission  
on  
January 25, 2008

**DRAFT**

**DRAFT**



**DRAFT**

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COMMISSION**

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*Updated as of December 9, 2005*

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Provisions of APC&EC Regulation No. 23 (Hazardous Waste Management), dated December 9, 2005, are amended as itemized below:

**Section 3. AMENDMENT AND UPDATE OF REGULATION No. 23 (HAZARDOUS WASTE MANAGEMENT)**

1. **Section 3(b)** is amended to read as follows:

(b) **Incorporations by Reference.** The regulations listed immediately below, 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 Environmental Quality”; and all references to the “U.S. Environmental Protection Agency” or “EPA” shall be considered references to the “Arkansas Department of Environmental Quality”. 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 Regulation 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 Regulation.

**Title 40 Code of Federal Regulations:**

(1) Appendix IX of Part 261 (with the exception of delisting decisions for Arkansas companies; for analogous provisions, see Reg. 23 § 261 Appendix IX);

(2) Appendix IX of Part 266; and

(3) Subpart 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 also APC&EC Regulation No. 8 (Administrative Procedures) for analogous provisions as referenced in § 270 of this Regulation.)

(4) All as adopted as final rules (including “interim final rules” and “technical amendments”) published in the *Federal Register* by the U.S. Environmental Protection Agency on or before ~~July 1, 2005~~ January 1, 2008.

**Section 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL**

2. **Section 260.10** is amended as follows:

a. In the first sentence of paragraph (2) of the definition of “facility” is revised, and the definitions of “Cathode ray tube,” “CRT collector,” “CRT glass manufacturer,” “CRT processing,” and “Performance Track member facility” is added in alphabetical order to read as follows:

b. In the definition of “*Incompatible waste*,” revise the parenthetical phrase “(See Section 265, appendix V, of this chapter for examples.)” to read “(See appendix V of parts 264 and 265 of this chapter for examples.)”;

**§ 260.10 Definitions.**

\*\*\*\*\*

*Facility* \*\*\*

\*\*\*\*\*

(2) For the purpose of implementing corrective action under § 264.101 or 267.101 of this regulation, all contiguous property under the control of the owner or operator seeking a permit under Subtitle C of RCRA *and/or the Arkansas Hazardous Waste Management Act*. This definition also applies to facilities implementing corrective action under RCRA § 3008(h) *or the Arkansas Remedial Action Trust Fund Act*.

\*\*\*\*\*

**Cathode ray tube or CRT means a vacuum tube, composed primarily of glass, which is the visual or video display component of an electronic device. A used, intact CRT means a CRT whose vacuum has not been released. A used, broken CRT means glass removed from its housing or casing whose vacuum has been released.**

\*\*\*\*\*

**CRT collector means a person who receives used, intact CRTs for recycling, repair, resale, or donation.**

**CRT glass manufacturer means an operation or part of an operation that uses a furnace to manufacture CRT glass.**

**CRT processing means conducting all of the following activities:**

- (1) Receiving broken or intact CRTs; and**
- (2) Intentionally breaking intact CRTs or further breaking or separating broken CRTs; and**
- (3) Sorting or otherwise managing glass removed from CRT monitors.**

\*\*\*\*\*

**Performance Track member facility means a facility that has been accepted by EPA for membership in the National Environmental Performance Track Program**

and is still a member of the Program. The National Environmental Performance Track Program is a voluntary, facility based, program for top environmental performers. Facility members must demonstrate a good record of compliance, past success in achieving environmental goals, and commit to future specific quantified environmental goals, environmental management systems, local community outreach, and annual reporting of measurable results.

\*\*\*\*\*

“Incompatible waste” means a hazardous waste which is unsuitable for:

- (1) Placement in a particular device or facility because it may cause corrosion or decay of containment materials (e.g., container inner liners or tank walls); or
- (2) Commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, mists, fumes, or gases, or flammable fumes or gases.

~~(See Section 265, Appendix V, of this regulation for examples.)~~

(See appendix V of parts 264 and 265 of this chapter for examples.)

\*\*\*\*\*

3. Section 260.11 is amended by

- a. Revising the first sentence in paragraph (a), and
- b. Revising paragraph (c)(1), (c)(3)(xxvii), and (d)(1)

to read as follows:

**§ 260.11 References.**

(a) When used in sections 260 through ~~279~~ 268 of this regulation, the following publications are incorporated by reference. These incorporations by reference were approved by the Director of the *Federal Register* pursuant to 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of approval and a notice of any change in these materials will be published in the Federal Register. Copies may be inspected at the Library, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW. (3403T), Washington, DC 20460, libraryhq@epa.gov; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federalregulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federalregulations/ibr_locations.html).

\*\*\*\*\*

(c) \*\*\*

- (1) “APTI Course 415: Control of Gaseous Emissions,” EPA Publication EPA-450/2-81-005, December 1981, IBR approved for §§ 264.1035, 265.1035, 270.24, 270.25, 270.310(d)(3).

\*\*\*\*\*

(3) \*\*\*

(xxvii) Method 9095B, dated November 2004 and in Update IIIB, IBR approved, section 261, appendix IX, and §§ 264.190, 264.314, 265.190, 265.314, 265.1081, 267.190(a), 268.32.

\*\*\*\*\*

(d) \*\*\*

- (1) “Flammable and Combustible Liquids Code” (1977 or 1981), IBR approved for §§ 264.198, 265.198, 267.202(b).

\*\*\*\*\*

4. Section 260.31 is amended by removing paragraph (b)(2) and redesignating paragraphs (b)(3) through (b)(8) as (b)(2) through (b)(7).

**§ 260.31 Standards and criteria for variances from classification as a solid waste.**

\*\*\*\*\*

(b) The Director may grant requests for a variance from classifying as a solid waste those materials that are reclaimed and then reused as feedstock within the original production process in which the materials were generated if the reclamation operation is an essential part of the production process. This determination will be based on the following criteria:

(1) How economically viable the production process would be if it were to use virgin materials, rather than reclaimed materials;

~~(2) The prevalence of the practice on an industry-wide basis;~~

~~(3)~~(2) The extent to which the material is handled before reclamation to minimize loss;

~~(4)~~(3) The time periods between generating the material and its reclamation, and between reclamation and return to the original primary production process;

~~(5)~~(4) The location of the reclamation operation in relation to the production process;

~~(6)~~(5) Whether the reclaimed material is used for the purpose for which it was originally produced when it is returned to the original process, and whether it is returned to the process in substantially its original form;

~~(7)~~(6) Whether the person who generates the material also reclaims it;

~~(8)~~(7) Other relevant factors.

5. In Section 260.40, amend paragraph (a) by revising the citation “§ 261.6(a)(2)(iv)” to read “§ 261.6(a)(2)(iii)”.

**§ 260.40 Additional regulation of certain hazardous waste recycling activities on a case-by-case basis.**

(a) The Director may decide on a case-by-case basis

that persons accumulating or storing the recyclable materials described in ~~§ 261.6(a)(2)(xi)~~ § 261.6(a)(2) (iii) of this regulation should be regulated under § 261.6 (b) and (c) of this regulation. The basis for this decision is that the materials are being accumulated or stored in a manner that does not protect human health and the environment because the materials or their toxic constituents have not been adequately contained, or because the materials being accumulated or stored together are incompatible. In making this decision, the Director will consider the following factors:

\* \* \* \* \*

6. **Section 260.41** introductory text is amended by revising the citation “§ 261.6(a)(2)(iv)” to read “§ 261.6(a)(2)(iii)”.

**§ 260.41 Procedures for case-by-case regulation of hazardous waste recycling activities.**

The Director will use the following procedures when determining whether to regulate hazardous waste recycling activities described in ~~§ 261.6(a)(2)(xi)~~ § 261.6(a)(2)(iii) under the provisions of § 261.6 (b) and (c), rather than under the provisions of subsection F of section 266 of this regulation.

\* \* \* \* \*

**Section 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE**

7. **Section 261.2 (c)(1)(i)** is amended by revising the reference to “Table I” to read “Table 1” (i.e., revise the letter “I” to be the number “1”).

**§ 261.2 Definition of Solid Waste.**

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(i) Materials noted with an “X” in Column 1 of ~~Table I~~ Table 1 are solid wastes when they are:

\* \* \* \* \*

8. **Section 261.3** is amended by revising paragraphs (a)(2)(iv)(A), (a)(2)(iv)(B), (a)(2)(iv)(D), (a)(2)(iv)(F) and (a)(2)(iv)(G) to read as follows:

**261.3 Definition of hazardous waste.**

(a) \* \* \*

(2) \* \* \*

(iv) \* \* \*

(A) One or more of the following spent solvents listed in § 261.31—benzene, carbon tetrachloride, tetrachloroethylene, trichloroethylene or the scrubber waters derived from the combustion of these spent solvents—Provided, That the maximum total weekly usage of these solvents (other than the amounts that can be demonstrated not to be discharged to wastewater) divided by the average weekly flow of wastewater into the headworks of the facility’s wastewater treatment or pretreatment system does not exceed 1 part per million, OR the total measured concentration of these solvents entering the headworks of the facility’s wastewater treatment system (at facilities subject to regulation under the Clean Air Act, as amended, at 40 CFR Parts 60, 61, or 63, or at facilities subject to an enforceable limit in a federal operating permit that minimizes fugitive emissions), does not exceed 1 part per million on an average weekly basis. Any facility that uses benzene as a solvent and claims this exemption must use an aerated biological wastewater treatment system and must use only lined surface impoundments or tanks prior to secondary clarification in the wastewater treatment system. Facilities that choose to measure concentration levels must file a copy of their sampling and analysis plan with the Director, as the context requires, or an authorized representative (“Director” as defined in § 270.2 of this regulation). A facility must file a copy of a revised sampling and analysis plan only if the initial plan is rendered inaccurate by changes in the facility’s operations. The sampling and analysis plan must include the monitoring point location (headworks), the sampling frequency and methodology, and a list of constituents to be monitored. A facility is eligible for the direct monitoring option once they receive confirmation that the sampling and analysis plan has been received by the Director. The Director may reject the sampling and analysis plan if he/she finds that, the sampling and analysis plan fails to include the above information; or the plan parameters would not enable the facility to calculate the weekly average concentration of these chemicals accurately. If the Director rejects the sampling and analy-

sis plan or if the Director finds that the facility is not following the sampling and analysis plan, the Director shall notify the facility to cease the use of the direct monitoring option until such time as the bases for rejection are corrected; or

(B) One or more of the following spent solvents listed in § 261.31 – methylene chloride, 1,1,1-trichloroethane, chlorobenzene, o- dichlorobenzene, cresols, cresylic acid, nitrobenzene, toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, spent chlorofluorocarbon solvents, 2-ethoxyethanol, or the scrubber waters derived-from the combustion of these spent solvents—Provided that the maximum total weekly usage of these solvents (other than the amounts that can be demonstrated not to be discharged to wastewater) divided by the average weekly flow of wastewater into the headworks of the facility’s wastewater treatment or pretreatment system does not exceed 25 parts per million, OR the total measured concentration of these solvents entering the headworks of the facility’s wastewater treatment system (at facilities subject to regulation under the Clean Air Act as amended, at 40 CFR parts 60, 61, or 63, or at facilities subject to an enforceable limit in a federal operating permit that minimizes fugitive emissions), does not exceed 25 parts per million on an average weekly basis. Facilities that choose to measure concentration levels must file a copy of their sampling and analysis plan with the Director, or an authorized representative (“Director” as defined in § 270.2). A facility must file a copy of a revised sampling and analysis plan only if the initial plan is rendered inaccurate by changes in the facility’s operations. The sampling and analysis plan must include the monitoring point location (headworks), the sampling frequency and methodology, and a list of constituents to be monitored. A facility is eligible for the direct monitoring option once they receive confirmation that the sampling and analysis plan has been received by the Director. The Director may reject the sampling and analysis plan if he/she finds that, the sampling and analysis plan fails to include the above information; or the plan parameters would not enable the facility to cal-

culate the weekly average concentration of these chemicals accurately. If the Director rejects the sampling and analysis plan or if the Director finds that the facility is not following the sampling and analysis plan, the Director shall notify the facility to cease the use of the direct monitoring option until such time as the bases for rejection are corrected; or

\* \* \* \* \*

(D) A discarded hazardous waste, commercial chemical product, or chemical intermediate listed in § 261.31 through 261.33, arising from de minimis losses of these materials ~~from manufacturing operations in which these materials are used as raw materials or are produced in the manufacturing process.~~ For purposes of this paragraph (a)(2)(iv)(D), de minimis losses ~~include those from~~ are inadvertent releases to a wastewater treatment system, including those from normal material handling operations (e.g., spills from the unloading or transfer of materials from bins or other containers, leaks from pipes, valves or other devices used to transfer materials); minor leaks of process equipment, storage tanks or containers; leaks from well maintained pump packings and seals; sample purgings; relief device discharges; discharges from safety showers and rinsing and cleaning of personal safety equipment; and rinsate from empty containers or from containers that are rendered empty by that rinsing. Any manufacturing facility that claims an exemption for de minimis quantities of wastes listed in §§ 261.31 through 261.32, or any nonmanufacturing facility that claims an exemption for de minimis quantities of wastes listed in subsection D of this section must either have eliminated the discharge of wastewaters or have included in its Clean Water Act permit application or submission to its pretreatment control authority the constituents for which each waste was listed (in Section 261, Appendix VII) of this Regulation; and the constituents in the table “Treatment Standards for Hazardous Wastes” in § 268.40 of this Regulation for which each waste has a treatment standard (i.e., Land Disposal Restriction constituents). A facility is eligible to claim the exemption once the permit writer or control authority has been notified of possible de minimis re-



leases via the Clean Water Act permit application or the pretreatment control authority submission. A copy of the Clean Water permit application or the submission to the pretreatment control authority must be placed in the facility's on-site files; or

\* \* \* \* \*

(F) One or more of the following wastes listed in § 261.32 of this Regulation — wastewaters from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K157)—Provided that the maximum weekly usage of formaldehyde, methyl chloride, methylene chloride, and triethylamine (including all amounts that cannot be demonstrated to be reacted in the process, destroyed through treatment, or is recovered, i.e., what is discharged or volatilized) divided by the average weekly flow of process wastewater prior to any dilution into the headworks of the facility's wastewater treatment system does not exceed a total of 5 parts per million by weight OR the total measured concentration of these chemicals entering the headworks of the facility's wastewater treatment system (at facilities subject to regulation under the Clean Air Act as amended, at 40 CFR Parts 60, 61, or 63, or at facilities subject to an enforceable limit in a federal operating permit that minimizes fugitive emissions), does not exceed 5 parts per million on an average weekly basis. Facilities that choose to measure concentration levels must file copy of their sampling and analysis plan with the Director, as the context requires, or an authorized representative ("Director" as defined in § 270.2). A facility must file a copy of a revised sampling and analysis plan only if the initial plan is rendered inaccurate by changes in the facility's operations. The sampling and analysis plan must include the monitoring point location (headworks), the sampling frequency and methodology, and a list of constituents to be monitored. A facility is eligible for the direct monitoring option once they receive confirmation that the sampling and analysis plan has been received by the Director. The Director may reject the sampling and analysis plan if he/she finds that, the sampling and analysis plan fails to include the above information; or the plan param-

eters would not enable the facility to calculate the weekly average concentration of these chemicals accurately. If the Director rejects the sampling and analysis plan or if the Director finds that the facility is not following the sampling and analysis plan, the Director shall notify the facility to cease the use of the direct monitoring option until such time as the bases for rejection are corrected; or

G) Wastewaters derived from the treatment of one or more of the following wastes listed in § 261.32 of this Regulation – organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K156).—Provided, that the maximum concentration of formaldehyde, methyl chloride, methylene chloride, and triethylamine prior to any dilutions into the headworks of the facility's wastewater treatment system does not exceed a total of 5 milligrams per liter OR the total measured concentration of these chemicals entering the headworks of the facility's wastewater treatment system (at facilities subject to regulation under the Clean Air Act as amended, at 40 CFR Parts 60, 61, or 63, or at facilities subject to an enforceable limit in a federal operating permit that minimizes fugitive emissions), does not exceed 5 milligrams per liter on an average weekly basis. Facilities that choose to measure concentration levels must file copy of their sampling and analysis plan with the Director, as the context requires, or an authorized representative ("Director" as defined in § 270.2). A facility must file a copy of a revised sampling and analysis plan only if the initial plan is rendered inaccurate by changes in the facility's operations. The sampling and analysis plan must include the monitoring point location (headworks), the sampling frequency and methodology, and a list of constituents to be monitored. A facility is eligible for the direct monitoring option once they receive confirmation that the sampling and analysis plan has been received by the Director. The Director may reject the sampling and analysis plan if he/she finds that, the sampling and analysis plan fails to include the

above information; or the plan parameters would not enable the facility to calculate the weekly average concentration of these chemicals accurately. If the Director rejects the sampling and analysis plan or if the Director finds that the facility is not following the sampling and analysis plan, the Director shall notify the facility to cease the use of the direct monitoring option until such time as the bases for rejection are corrected.

\* \* \* \* \*

9. Section 261.4 is revised as follows:

- a. In paragraph (a)(9)(iii)(E) to read as follows:
- b. Adding a new paragraph (a)(22), to read as follows:
- c. In paragraph (b)(6)(ii) introductory text, revise “Specific waste” to read “Specific wastes”;
- d. In paragraph (b)(6)(ii)(D), revise “crome” to read “chrome”;
- e. In paragraph (b)(6)(ii)(F), revise “sludes” to read “sludges”, and revise the word “chrometan” to read “chrome tan”;
- f. In paragraph (b)(9), revise “and wood product” to read “and wood products”;
- g. Amend paragraph (b)(15)(v) by changing “As of” to read “After”.
- h. In paragraph (e)(2)(vi), revise the citation “(e)(v)(C)” to read “(e)(2)(v)(C)”;
- i. In paragraph (f)(9) introductory text to read as follows:

**§ 261.4 Exclusions.**

(a) \* \* \*

(9) \* \* \*

(iii) \* \* \*

(E) Prior to operating pursuant to this exclusion, the plant owner or operator prepares a one-time notification stating that the plant intends to claim the exclusion, giving the date on which the plant intends to begin operating under the exclusion, and containing the following language: “I have read the applicable regulation establishing an exclusion for wood preserving wastewaters and spent wood preserving solutions and understand it requires me to comply at all times with the conditions set out in the regulation.” The plant must maintain a copy of that document in its on-site records in its on-site records ~~for a period of no less than 3 years from the date specified in the notice~~ until closure of the facility. The exclusion applies so long as the plant meets all of the conditions. If the plant goes out of compliance with any con-

dition, it may apply to the Director for reinstatement. The Director may reinstate the exclusion upon finding that the plant has returned to compliance with all conditions and that the violations are not likely to recur.

\* \* \* \* \*

(a) \* \* \*

(22) Used cathode ray tubes (CRTs)

(i) Used, intact CRTs as defined in § 260.10 of this regulation are not solid wastes within the United States unless they are disposed, or unless they are speculatively accumulated as defined in § 261.1(c)(8) by CRT collectors or glass processors.

(ii) Used, intact CRTs as defined in § 260.10 of this regulation are not solid wastes when exported for recycling provided that they meet the requirements of Sec. 261.40.

(iii) Used, broken CRTs as defined in § 260.10 of this regulation are not solid wastes provided that they meet the requirements of § 261.39.

(iv) Glass removed from CRTs is not a solid waste provided that it meets the requirements of § 261.39(c).

\* \* \* \* \*

(b) \* \* \*

(6) \* \* \*

\* \* \* \* \*

(ii) ~~Specific waste~~ Specific wastes which meet the standard in paragraphs (b)(6)(i) (A), (B), and (C) (so long as they do not fail the test for the toxicity characteristic for any other constituent, and do not exhibit any other characteristic) are:

\* \* \* \* \*

(D) Sewer screenings generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/~~erome~~ chrome tan/retan/wet finish; hair save/ chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

\* \* \* \* \*

(F) Wastewater treatment ~~sludes~~ sludges generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/~~chrometan~~ chrome tan /retan/wet finish; and through-the-blue.

\* \* \* \* \*

(9) Solid waste which consists of discarded arsenical-treated wood or wood products which fails the test for the Toxicity Characteristic for Hazard-

ous Waste Codes D004 through D017 and which is not a hazardous waste for any other reason if the waste is generated by persons who utilize the arsenical-treated wood ~~and wood product~~ and wood products for these materials' intended end use.

\*\*\*\*\*

(v) ~~As of~~ After November 21, 2003, leachate or gas condensate from K176, K177, and K178 is no longer exempt if managed in surface impoundment prior to discharge. After February 26, 2007, leachate or gas

\*\*\*\*\*

(e) \*\*\*

(2) \*\*\*

(vi) The generator reports the information required under paragraph ~~(e)(v)(C)~~ (e)(2)(v)(C) of this section in its annual report.

\*\*\*\*\*

(f) \*\*\*

(9) The facility prepares and submits a report to the Director by March 15 of each year, that ~~estimates the number of studies and the amount of waste expected to be used in treatability studies during the current year, and~~ includes the following information for the previous calendar year:

\*\*\*\*\*

10. **Section 261.6** is amended as follows:

a. In paragraph (a)(2)(i), remove the parenthetical phrase "(subsection C)" and add "(Section 266, subsection C)" in its place;

b. In paragraph (a)(2)(ii), remove the parenthetical phrase "(subsection H)" and add "(Section 266, subsection H)" in its place;

c. In paragraph (a)(2)(iii), remove the parenthetical phrase "(subsection F)" and add "(Section 266, subsection F)" in its place;

d. In paragraph (a)(2)(iv), remove the parenthetical phrase "(subsection G)" and add "(Section 266, Subsection G)" in its place;

e. In paragraph (c)(2), revise the word "rcycled" to read "recycled".

**§ 261.6 Requirements for recyclable materials.**

(a) \*\*\*

(2) \*\*\*

(i) Recyclable materials used in a manner constituting disposal ~~(subsection C)~~ (§ 266, subsection C);

\*\*\*\*\*

(ii) Hazardous wastes burned for energy recovery in boilers and industrial furnaces that are not regulated under subsection O of section 264 or 265 of this regulation ~~(subsection~~

H) **(§ 266, subsection H)**;

\*\*\*\*\*

(iii) Recyclable materials from which precious metals are reclaimed ~~(subsection F)~~ (§ 266, subsection F);

\*\*\*\*\*

(iv) Spent lead-acid batteries that are being reclaimed ~~(subsection G)~~ (§ 266, subsection G).

\*\*\*\*\*

(c) \*\*\*

(2) Owners or operators of facilities that recycle recyclable materials without storing them before they are ~~reycled~~ recycled are subject to the following requirements, except as provided in paragraph (a) of this section:

\*\*\*\*\*

11. **Section 261.7(a)(1)** is revised to read as follows:

**§ 261.7 Residues of hazardous waste in empty containers.**

(a)(1) Any hazardous waste remaining in either:

- (i) an empty container; or
- (ii) an inner liner removed from an empty container, as defined in paragraph (b) of this section, is not subject to regulation under sections 261 through 265, ~~or Section 267~~, 268, 270 of this Regulation or 40 CFR 124, or to the notification requirements of section 3010 of RCRA.

\*\*\*\*\*

12. **Section 261.21** is amended by revising paragraphs (a)(3) and (a)(4) and adding notes 1 through 4 to the end of the section to read as follows:

**§ 261.21 Characteristic of ignitability.**

(a) \*\*\*

~~(3) It is a flammable compressed gas as defined in 49 CFR 173.115 and as determined by the test methods described in that regulation or equivalent test methods approved by the Director under §§ 260.20 and 260.21.~~

~~(4) It is an oxidizer as defined in 49 CFR 173.127.~~

(3) It is an ignitable compressed gas.

(i) The term "compressed gas" shall designate any material or mixture having in the container an absolute pressure exceeding 40 p.s.i. at 70 °F or, regardless of the pressure at 70 degrees F, having an absolute pressure exceeding 104 p.s.i. at 130 °F; or any liquid flammable material having a



vapor pressure exceeding 40 p.s.i. absolute at 100 °F as determined by ASTM Test D-323.

(ii) A compressed gas shall be characterized as ignitable if any one of the following occurs:

(A) Either a mixture of 13 percent or less (by volume) with air forms a flammable mixture or the flammable range with air is wider than 12 percent regardless of the lower limit. These limits shall be determined at atmospheric temperature and pressure.

The method of sampling and test procedure shall be acceptable to the Bureau of Explosives and approved by the director, Pipeline and Hazardous Materials Technology, U.S. Department of Transportation (see Note 2).

(B) Using the Bureau of Explosives' Flame Projection Apparatus (see Note 1), the flame projects more than 18 inches beyond the ignition source with valve opened fully, or, the flame flashes back and burns at the valve with any degree of valve opening.

(C) Using the Bureau of Explosives' Open Drum Apparatus (see Note 1), there is any significant propagation of flame away from the ignition source.

(D) Using the Bureau of Explosives' Closed Drum Apparatus (see Note 1), there is any explosion of the vapor-air mixture in the drum.

~~(4) It is an oxidizer as defined in 49 CFR 173.127.~~

(4) It is an oxidizer. An oxidizer for the purpose of this subchapter is a substance such as a chlorate, permanganate, inorganic peroxide, or a nitrate, that yields oxygen readily to stimulate the combustion of organic matter (see Note 4).

(i) An organic compound containing the bivalent -O-O- structure and which may be considered a derivative of hydrogen peroxide where one or more of the hydrogen atoms have been replaced by organic radicals must be classed as an organic peroxide unless:

(A) The material meets the definition of a Class A explosive or a Class B explosive, as defined in § 261.23(a)(8), in which case it must be classed as an explosive, (B) The material is forbidden to be offered for transportation according to 49 CFR 172.101 and 49 CFR 173.21, (C) It is determined that the predominant hazard of the material containing an organic peroxide is other

than that of an organic peroxide, or (D) According to data on file with the Pipeline and Hazardous Materials Safety Administration in the U.S. Department of Transportation (see Note 3), it has been determined that the material does not present a hazard in transportation.

\* \* \* \* \*

Note 1: A description of the Bureau of Explosives' Flame Projection Apparatus, Open Drum Apparatus, Closed Drum Apparatus, and method of tests may be procured from the Bureau of Explosives.

Note 2: As part of a U.S. Department of Transportation (DOT) reorganization, the Office of Hazardous Materials Technology (OHMT), which was the office listed in the 1980 publication of 49 CFR 173.300 for the purposes of approving sampling and test procedures for a flammable gas, ceased operations on February 20, 2005. OHMT programs have moved to the Pipeline and Hazardous Materials Safety Administration (PHMSA) in the DOT.

Note 3: As part of a U.S. Department of Transportation (DOT) reorganization, the Research and Special Programs Administration (RSPA), which was the office listed in the 1980 publication of 49 CFR 173.151a for the purposes of determining that a material does not present a hazard in transport, ceased operations on February 20, 2005. RSPA programs have moved to the Pipeline and Hazardous Materials Safety Administration (PHMSA) in the DOT.

Note 4: The DOT regulatory definition of an oxidizer was contained in § 173.151 of 49 CFR, and the definition of an organic peroxide was contained in paragraph 173.151a. An organic peroxide is a type of oxidizer.

\* \* \* \* \*

13. In Section 261.24, amend paragraph (b) by revising the reference to "Table I" to read "Table 1" (i.e., replace the letter "I" with the number "1").

**§ 261.24 Toxicity characteristic.**

\* \* \* \* \*

(b) A solid waste that exhibits the characteristic of toxicity has the EPA Hazardous Waste Number specified in ~~Table I~~ **Table 1** which corresponds to the toxic contaminant causing it to be hazardous.

\* \* \* \* \*

14. In Section 261.31(a), amend the Table by adding a footnote at the bottom to read as follows: "\* (I,T) should be used to specify mixtures that are ignitable and contain toxic constituents.".

**§ 261.31 Hazardous wastes from non-specific sources.**

(a) \* \* \*

FOOTNOTE: \*(I,T) should be used to specify mixtures containing ignitable and toxic constituents.

\* \* \* \* \*

15. In Section 261.32, amend the Table entries for “K107”, “1,1-dimethyl-hydrazine” by deleting the hyphen to read “1,1-dimethylhydrazine”;

**§ 261.32 Hazardous wastes from specific sources.**

\* \* \* \* \*

K107 Column bottoms from product separation from the production of ~~1,1-dimethyl-hydrazine~~ 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazines.(C,T)

\* \* \* \* \*

16. Section 261.33 is amended as follows:

a. In paragraph (e), revise the phrase “are subject to be the” to read “are subject to the”;

b. In paragraph (e), amend the bracketed Comment by adding a sentence at the end, within the brackets, to read as set forth below;

c. Amend paragraph (f) by revising “manufacturing” to read “manufacturing”.

d. In paragraph (f), amend the bracketed Comment by adding a sentence to the end, within the brackets, to read as set forth below.

e. In the table of paragraph (f), add an entry just above the entry for “U227” (in column 1), “79-00-5” (in column 2), and “1,1,2-Trichloroethane” (in column 3) to read as set forth below.

**§ 261.33 Discarded commercial chemical products, off-specification species, container residues, and spill residues thereof.**

\* \* \* \* \*

(e) The commercial chemical products, manufacturing chemical intermediates or off-specification commercial chemical products or manufacturing chemical intermediates referred to in paragraphs (a) through (d) of this section, are identified as acute hazardous wastes (H) and ~~are subject to be the~~ are subject to the small quantity exclusion defined in § 261.5(e).

\* \* \* \* \*

Comment: For the convenience of the regulated community the primary hazardous properties of these materials have been indicated by the letters T (Toxicity), and R (Reactivity). Absence of a letter indicates that the compound only is listed for acute toxicity. Wastes are first listed in alphabetical order by substance and then listed again in numerical order by Hazardous Waste Number.

\* \* \* \* \*

Hazardous waste No.	Chemical Abstracts No	Substance
---------------------	-----------------------	-----------

\* \* \* \* \*

<u>P001</u> .....	<u>1 81-81-2</u>	<u>2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenylbutyl)-, &amp; salts, when present at concentrations greater than 0.3%</u>
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P001 .....

P002 .....

P002 .....

P003 .....

P003 .....

P004 .....

P004 .....

P005 .....

P005 .....

P006 .....

(R,T)

P007 .....

P007 .....

P008 .....

P008 .....

P009 .....

P009 .....

P010 .....

P011 .....

P011 .....

P012 .....

P012 .....

P013 .....

P014 .....

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P015 .....

P016 .....

P016 .....

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P018 .....

P018 .....

P020 .....

P020 .....

P021 .....

P021 .....

P022 .....

P023 .....

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P024 .....

P024 .....

P026 .....

P026 .....

P027 .....

P027 .....

P028 .....

P028 .....

P029 .....

P029 .....

P030 .....

P031 .....

P031 .....

P033 .....

P033 .....

Warfarin, & salts, when present at concentrations greater than 0.3%

Acetamide, -

(aminothioxomethyl)-

1-Acetyl-2-thiourea

Acrolein

2-Propenal

Aldrin

1,4,5,8-

Dimethanonaphthalene,

1,2,3,4,10,10-hexa-chloro-

1,4,4a,5,8,8a,-hexahydro-,

(1-alpha,4alpha,4abeta-

5alpha,8alpha,8abeta)-

Allyl alcohol

2-Propen-1-ol

Aluminum phosphide

5-(Aminomethyl)-3-

isoxazolol

3(2H)-Isoxazolone, 5-

(aminomethyl)-

4-Aminopyridine

4-Pyridinamine

Ammonium picrate (R)

Phenol, 2,4,6-trinitro-,

ammonium salt (R)

Arsenic acid H3 AsO4

Arsenic oxide As2 O3

Arsenic pentoxide

Arsenic oxide As2 O3

Arsenic trioxide

Barium cyanide

Benzenethiol

Thiophenol

Beryllium powder

Dichloromethyl ether

Methane, oxybis(chloro-

Bromoacetone

2-Propanone, 1-bromo-

Brucine

Strychnidin-10-one, 2,3-

dimethoxy-

Dinoseb

Phenol, 2-(1-methyl

propyl)-4,6-dinitro-

Calcium cyanide

Calcium cyanide Ca(CN)2

Carbon disulfide

Acetaldehyde, chloro-

Chloroacetaldehyde

Benzenamine, 4-chloro-

p-Chloroaniline

1-(o-Chlorophenyl)

thiourea

Thiourea, (2-chloro-

phenyl)-

3-Chloropropionitrile

Propanenitrile, 3-chloro-

Benzene, (chloromethyl)-

Benzyl chloride

Copper cyanide

Copper cyanide Cu(CN)

Cyanides (soluble cyanide

salts), not otherwise

specified

Cyanogen

Ethanedinitrile

Cyanogen chloride

Cyanogen chloride (CN)Cl



<a href="#">P081</a> ..... 55-63-0	<a href="#">1,2,3-Propanetriol, trinitrate (R)</a>	<a href="#">P113</a> ..... 1314-32-5	<a href="#">Thallium oxide Tl<sub>2</sub>O<sub>3</sub></a>
<a href="#">P082</a> ..... 62-75-9	<a href="#">Methanamine, -methyl-N-nitroso-</a>	<a href="#">P114</a> ..... 12039-52-0	<a href="#">Selenious acid, dithallium(1+) salt</a>
<a href="#">P082</a> ..... 62-75-9	<a href="#">N-Nitrosodimethylamine</a>	<a href="#">P114</a> ..... 12039-52-0	<a href="#">Tetraethyldithio pyrophosphate</a>
<a href="#">P084</a> ..... 4549-40-0	<a href="#">N-Nitrosomethyl vinyl amine</a>	<a href="#">P115</a> ..... 7446-18-6	<a href="#">Thiodiphosphoric acid, tetraethyl ester</a>
<a href="#">P084</a> ..... 4549-40-0	<a href="#">Vinylamine, -methyl-N-nitroso-</a>	<a href="#">P115</a> ..... 7446-18-6	<a href="#">Plumbane, tetraethyl-</a>
<a href="#">P085</a> ..... 152-16-9	<a href="#">Diphosphoramidate, octamethyl-</a>	<a href="#">P116</a> ..... 79-19-6	<a href="#">Tetraethyl lead</a>
<a href="#">P085</a> ..... 152-16-9	<a href="#">Octamethylpyrophosphoramide</a>	<a href="#">P116</a> ..... 79-19-6	<a href="#">Thiosemicarbazide</a>
<a href="#">P087</a> ..... 20816-12-0	<a href="#">Osmium oxide OsO<sub>4</sub>, (T-4)-</a>	<a href="#">P118</a> ..... 75-70-7	<a href="#">Methanethiol, trichloro-</a>
<a href="#">P087</a> ..... 20816-12-0	<a href="#">Osmium tetroxide</a>	<a href="#">P118</a> ..... 75-70-7	<a href="#">Trichloromethanethiol</a>
<a href="#">P088</a> ..... 145-73-3	<a href="#">Endothall</a>	<a href="#">P119</a> ..... 7803-55-6	<a href="#">Ammonium vanadate</a>
<a href="#">P088</a> ..... 145-73-3	<a href="#">7-Oxabicyclo[2.2.1]heptane-2,3-dicarboxylic acid</a>	<a href="#">P119</a> ..... 7803-55-6	<a href="#">Vanadic acid, ammonium salt</a>
<a href="#">P089</a> ..... 56-38-2	<a href="#">Parathion</a>	<a href="#">P120</a> ..... 1314-62-1	<a href="#">Vanadium oxide V<sub>2</sub>O<sub>5</sub></a>
<a href="#">P089</a> ..... 56-38-2	<a href="#">Phosphorothioic acid, O,O-diethyl O-(4-nitrophenyl) ester</a>	<a href="#">P120</a> ..... 1314-62-1	<a href="#">Vanadium pentoxide</a>
<a href="#">P092</a> ..... 62-38-4	<a href="#">Mercury, (acetato-O)phenyl-</a>	<a href="#">P121</a> ..... 557-21-1	<a href="#">Zinc cyanide</a>
<a href="#">P092</a> ..... 62-38-4	<a href="#">Phenylmercury acetate</a>	<a href="#">P121</a> ..... 557-21-1	<a href="#">Zinc cyanide Zn(CN)<sub>2</sub></a>
<a href="#">P093</a> ..... 103-85-5	<a href="#">Phenylthiourea</a>	<a href="#">P122</a> ..... 1314-84-7	<a href="#">Zinc phosphide Zn<sub>3</sub>P<sub>2</sub>, when present at concentrations greater than 10% (R,T)</a>
<a href="#">P093</a> ..... 103-85-5	<a href="#">Thiourea, phenyl-</a>	<a href="#">P123</a> ..... 8001-35-2	<a href="#">Toxaphene</a>
<a href="#">P094</a> ..... 298-02-2	<a href="#">Phorate</a>	<a href="#">P127</a> ..... 1563-66-2	<a href="#">7-Benzofuranol, 2,3-dihydro-2,2-dimethyl-, methylcarbamate,</a>
<a href="#">P094</a> ..... 298-02-2	<a href="#">Phosphorodithioic acid, O,O-diethyl S-[(ethylthio)methyl] ester</a>	<a href="#">P127</a> ..... 1563-66-2	<a href="#">Carbofuran</a>
<a href="#">P095</a> ..... 75-44-5	<a href="#">Carbonic dichloride</a>	<a href="#">P128</a> ..... 315-8-4	<a href="#">Mexacarbonate</a>
<a href="#">P095</a> ..... 75-44-5	<a href="#">Phosgene</a>	<a href="#">P128</a> ..... 315-18-4	<a href="#">Phenol, 4-(dimethylamino)-3,5-dimethyl-, methylcarbamate (ester)</a>
<a href="#">P096</a> ..... 7803-51-2	<a href="#">Hydrogen phosphide</a>	<a href="#">P185</a> ..... 26419-73-8	<a href="#">1,3-Dithiolane-2-carboxaldehyde, 2,4-dimethyl-, O-[(methylamino)-carbonyl] oxime,</a>
<a href="#">P096</a> ..... 7803-51-2	<a href="#">Phosphine</a>	<a href="#">P185</a> ..... 26419-73-8	<a href="#">Tirpate</a>
<a href="#">P097</a> ..... 52-85-7	<a href="#">Famphur</a>	<a href="#">P188</a> ..... 57-64-7	<a href="#">Benzoic acid, 2-hydroxy-, compd. with (3aS-cis)-1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethylpyrrolo[2,3-b]indol-5-yl methylcarbamate ester (1:1)</a>
<a href="#">P097</a> ..... 52-85-7	<a href="#">Phosphorothioic acid, O-[4-[(dimethylamino)sulfonyl]phenyl] O,O-dimethyl ester</a>	<a href="#">P188</a> ..... 57-64-7	<a href="#">Physostigmine salicylate</a>
<a href="#">P098</a> ..... 151-50-8	<a href="#">Potassium cyanide</a>	<a href="#">P189</a> ..... 55285-14-8	<a href="#">Carbamic acid, [(dibutylamino)-thio]methyl-, 2,3-dihydro-2,2-dimethyl-7-benzofuranyl ester</a>
<a href="#">P098</a> ..... 151-50-8	<a href="#">Potassium cyanide K(CN)</a>	<a href="#">P189</a> ..... 55285-14-8	<a href="#">Carbosulfan</a>
<a href="#">P099</a> ..... 506-61-6	<a href="#">Argentate(1-), bis(cyano-C)-, potassium</a>	<a href="#">P190</a> ..... 1129-41-5	<a href="#">Carbamic acid, methyl-, 3-methylphenyl ester</a>
<a href="#">P099</a> ..... 506-61-6	<a href="#">Potassium silver cyanide</a>	<a href="#">P190</a> ..... 1129-41-5	<a href="#">Metolcarb</a>
<a href="#">P101</a> ..... 107-12-0	<a href="#">Ethyl cyanide</a>	<a href="#">P191</a> ..... 644-64-4	<a href="#">Carbamic acid, dimethyl-, 1-[(dimethylamino)carbonyl]-5-methyl-1H-pyrazol-3-yl ester</a>
<a href="#">P101</a> ..... 107-12-0	<a href="#">Propanenitrile</a>	<a href="#">P191</a> ..... 644-64-4	<a href="#">Dimetilan</a>
<a href="#">P102</a> ..... 107-19-7	<a href="#">Propargyl alcohol</a>	<a href="#">P192</a> ..... 119-38-0	<a href="#">Carbamic acid, dimethyl-, 3-methyl-1-(1-methylethyl)-pyrazol-5-yl ester</a>
<a href="#">P102</a> ..... 107-19-7	<a href="#">2-Propyn-1-ol</a>	<a href="#">P192</a> ..... 119-38-0	<a href="#">Isolan</a>
<a href="#">P103</a> ..... 630-10-4	<a href="#">Selenourea</a>	<a href="#">P194</a> ..... 23135-22-0	<a href="#">Ethanimidthioic acid, 2-(dimethylamino)-N-[(methylamino)carbonyl]oxy]-2-oxo-, methyl ester</a>
<a href="#">P104</a> ..... 506-64-9	<a href="#">Silver cyanide</a>		
<a href="#">P104</a> ..... 506-64-9	<a href="#">Silver cyanide Ag(CN)</a>		
<a href="#">P105</a> ..... 26628-22-8	<a href="#">Sodium azide</a>		
<a href="#">P106</a> ..... 143-33-9	<a href="#">Sodium cyanide</a>		
<a href="#">P106</a> ..... 143-33-9	<a href="#">Sodium cyanide Na(CN)</a>		
<a href="#">P108</a> ..... 1 157-24-9	<a href="#">Strychnidin-10-one, &amp; salts</a>		
<a href="#">P108</a> ..... 1 157-24-9	<a href="#">Strychnine, &amp; salts</a>		
<a href="#">P109</a> ..... 3689-24-5	<a href="#">Tetraethyldithiopyro phosphate</a>		
<a href="#">P109</a> ..... 3689-24-5	<a href="#">Thiodiphosphoric acid, tetraethyl ester</a>		
<a href="#">P110</a> ..... 78-00-2	<a href="#">Plumbane, tetraethyl-</a>		
<a href="#">P110</a> ..... 78-00-2	<a href="#">Tetraethyl lead</a>		
<a href="#">P111</a> ..... 107-49-3	<a href="#">Diphosphoric acid, tetraethyl ester</a>		
<a href="#">P111</a> ..... 107-49-3	<a href="#">Tetraethyl pyrophosphate</a>		
<a href="#">P112</a> ..... 509-14-8	<a href="#">Methane, tetranitro-(R)</a>		
<a href="#">P112</a> ..... 509-14-8	<a href="#">Tetranitromethane (R)</a>		
<a href="#">P113</a> ..... 1314-32-5	<a href="#">Thallic oxide</a>		





U031 ..... 71-36-3	1-Butanol (I)	U060 ..... 72-54-8	Benzene, 1,1'-(2,2-dichloroethylidene)bis[4-chloro-
U031 ..... 71-36-3	n-Butyl alcohol (I)	U060 ..... 72-54-8	DDD
U032 ..... 13765-19-0	Calcium chromate	U061 ..... 50-29-3	Benzene, 1,1'-(2,2,2-trichloroethylidene)bis[4-chloro-
U032 ..... 13765-19-0	Chromic acid H <sub>2</sub> CrO <sub>4</sub> , calcium salt	U061 ..... 50-29-3	DDT
U033 ..... 353-50-4	Carbonic difluoride	U062 ..... 2303-16-4	Carbamothioic acid, bis(1-methylethyl)-, S-(2,3-dichloro-2-propenyl) ester
U033 ..... 353-50-4	Carbon oxyfluoride (R.T)	U062 ..... 2303-16-4	Diallate
U034 ..... 75-87-6	Acetaldehyde, trichloro-	U063 ..... 53-70-3	Dibenz[a,h]anthracene
U034 ..... 75-87-6	Chloral	U064 ..... 189-55-9	Benzo[rs]t]pentaphene
U035 ..... 305-03-3	Benzenebutanoic acid, 4-[bis(2-chloroethyl)amino]-	U064 ..... 189-55-9	Dibenzo[a,i]pyrene
U035 ..... 305-03-3	Chlorambucil	U066 ..... 96-12-8	1,2-Dibromo-3-chloropropane
U036 ..... 57-74-9	Chlordane, alpha & gamma isomers	U066 ..... 96-12-8	Propane, 1,2-dibromo-3-chloro-
U036 ..... 57-74-9	4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a-hexahydro-	U067 ..... 106-93-4	Ethane, 1,2-dibromo-
U037 ..... 108-90-7	Benzene, chloro-	U067 ..... 106-93-4	Ethylene dibromide
U037 ..... 108-90-7	Chlorobenzene	U068 ..... 74-95-3	Methane, dibromo-
U038 ..... 510-15-6	Benzeneacetic acid, 4-chloro-alpha-(4-chlorophenyl)-alpha-hydroxy-, ethyl ester	U068 ..... 74-95-3	Methylene bromide
U038 ..... 510-15-6	Chlorobenzilate	U069 ..... 84-74-2	1,2-Benzenedicarboxylic acid, dibutyl ester
U039 ..... 59-50-7	p-Chloro-m-cresol	U069 ..... 84-74-2	Dibutyl phthalate
U039 ..... 59-50-7	Phenol, 4-chloro-3-methyl-	U070 ..... 95-50-1	Benzene, 1,2-dichloro-
U041 ..... 106-89-8	Epichlorohydrin	U070 ..... 95-50-1	o-Dichlorobenzene
U041 ..... 106-89-8	Oxirane, (chloromethyl)-	U071 ..... 541-73-1	Benzene, 1,3-dichloro-
U042 ..... 110-75-8	2-Chloroethyl vinyl ether	U071 ..... 541-73-1	m-Dichlorobenzene
U042 ..... 110-75-8	Ethene, (2-chloroethoxy)-	U072 ..... 106-46-7	Benzene, 1,4-dichloro-
U043 ..... 75-01-4	Ethene, chloro-	U072 ..... 106-46-7	p-Dichlorobenzene
U043 ..... 75-01-4	Vinyl chloride	U072 ..... 106-46-7	[1,1'-Biphenyl]-4,4'-diamine, 3,3'-dichloro-
U044 ..... 67-66-3	Chloroform	U073 ..... 91-94-1	3,3'-Dichlorobenzidine
U044 ..... 67-66-3	Methane, trichloro-	U073 ..... 91-94-1	2-Butene, 1,4-dichloro-(I,T)
U045 ..... 74-87-3	Methane, chloro- (I,T)	U074 ..... 764-41-0	1,4-Dichloro-2-butene (I,T)
U045 ..... 74-87-3	Methyl chloride (I,T)	U074 ..... 764-41-0	Dichlorodifluoromethane
U046 ..... 107-30-2	Chloromethyl methyl ether	U075 ..... 75-71-8	Methane, dichlorodifluoro-
U046 ..... 107-30-2	Methane, chloromethoxy-	U075 ..... 75-71-8	Ethane, 1,1-dichloro-
U047 ..... 91-58-7	beta-Chloronaphthalene	U076 ..... 75-34-3	Ethylidene dichloride
U047 ..... 91-58-7	Naphthalene, 2-chloro-	U076 ..... 75-34-3	Ethane, 1,2-dichloro-
U048 ..... 95-57-8	o-Chlorophenol	U077 ..... 107-06-2	Ethylene dichloride
U048 ..... 95-57-8	Phenol, 2-chloro-	U077 ..... 107-06-2	1, 1-Dichloroethylene
U049 ..... 3165-93-3	Benzenamine, 4-chloro-2-methyl-, hydrochloride	U078 ..... 75-35-4	Ethane, 1,1-dichloro-
U049 ..... 3165-93-3	4-Chloro-o-toluidine, hydrochloride	U078 ..... 75-35-4	1,2-Dichloroethylene
U050 ..... 218-01-9	Chrysene	U079 ..... 156-60-5	Ethane, 1,2-dichloro-, (E)-
U051 ..... 1319-77-3	Creosote	U079 ..... 156-60-5	Methane, dichloro-
U052 ..... 1319-77-3	Cresol (Cresylic acid)	U080 ..... 75-09-2	Methylene chloride
U052 ..... 1319-77-3	Phenol, methyl-	U080 ..... 75-09-2	2,4-Dichlorophenol
U053 ..... 4170-30-3	2-Butenal	U081 ..... 120-83-2	Phenol, 2,4-dichloro-
U053 ..... 4170-30-3	Crotonaldehyde	U081 ..... 120-83-2	2,6-Dichlorophenol
U055 ..... 98-82-8	Benzene, (1-methylethyl)-(I)	U082 ..... 87-65-0	Phenol, 2,6-dichloro-
U055 ..... 98-82-8	Cumene (I)	U082 ..... 87-65-0	Propane, 1,2-dichloro-
U056 ..... 110-82-7	Benzene, hexahydro-(I)	U083 ..... 78-87-5	Propylene dichloride
U056 ..... 110-82-7	Cyclohexane (I)	U083 ..... 78-87-5	1,3-Dichloropropene
U057 ..... 108-94-1	Cyclohexanone (I)	U084 ..... 542-75-6	1-Propene, 1,3-dichloro-
U058 ..... 50-18-0	Cyclophosphamide	U084 ..... 542-75-6	2,2'-Bioxirane
U058 ..... 50-18-0	2H-1,3,2-Oxazaphosphorin-2-amine, N,N-bis(2-chloroethyl)tetrahydro-, 2-oxide	U085 ..... 1464-53-5	1,2:3,4-Diepoxybutane (I,T)
U059 ..... 20830-81-3	Daunomycin	U085 ..... 1464-53-5	N,N'-Diethylhydrazine
U059 ..... 20830-81-3	5,12-Naphthacenedione, 8-acetyl-10-[(3-amino-2,3,6-trideoxy)-alpha-L-lyxo-hexopyranosyl]oxy]-7,8,9,10-tetrahydro-6,8,11-trihydroxy-1-methoxy-, (8S-cis)-	U086 ..... 1615-80-1	Hydrazine, 1,2-diethyl-
		U086 ..... 1615-80-1	O,O-Diethyl S-methyl dithiophosphate
		U087 ..... 3288-58-2	Phosphorodithioic acid, O,O-diethyl S-methyl ester
		U087 ..... 3288-58-2	1,2-Benzenedicarboxylic acid, diethyl ester
		U088 ..... 84-66-2	Diethyl phthalate
		U088 ..... 84-66-2	Diethylstilbestrol
		U089 ..... 56-53-1	Phenol, 4,4'-(1,2-diethyl-
		U089 ..... 56-53-1	

U090 ..... 94-58-6	1,2-ethenediyl)bis-, (E)-	U118 ..... 97-63-2	2-Propenoic acid, 2-methyl-, ethyl ester
U090 ..... 94-58-6	1,3-Benzodioxole, 5-propyl-	U119 ..... 62-50-0	Ethyl methanesulfonate
U091 ..... 119-90-4	Dihydrosafrole	U119 ..... 62-50-0	Methanesulfonic acid, ethyl ester
U091 ..... 119-90-4	[1,1'-Biphenyl]-4,4'-diamine, 3,3'-dimethoxy-	U120 ..... 206-44-0	Fluoranthene
U092 ..... 124-40-3	3,3'-Dimethoxybenzidine	U121 ..... 75-69-4	Methane, trichlorofluoro-
U092 ..... 124-40-3	Dimethylamine (I)	U121 ..... 75-69-4	Trichloromonofluoro-methane
U093 ..... 60-11-7	Methanamine, -methyl-(I)	U122 ..... 50-00-0	Formaldehyde
U093 ..... 60-11-7	Benzenamine, N,N-dimethyl-4-(phenylazo)-	U123 ..... 64-18-6	Formic acid (C,T)
U094 ..... 57-97-6	p-Dimethylamino	U124 ..... 110-00-9	Furan (I)
U094 ..... 57-97-6	azobenzene	U124 ..... 110-00-9	Furfuran (I)
U094 ..... 57-97-6	Benz[a]anthracene, 7,12-dimethyl-	U125 ..... 98-01-1	2-Furancarboxaldehyde (I)
U095 ..... 119-93-7	7,12-Dimethylbenz[a]anthracene	U125 ..... 98-01-1	Furfural (I)
U095 ..... 119-93-7	[1,1'-Biphenyl]-4,4'-diamine, 3,3'-dimethyl-	U126 ..... 765-34-4	Glycidylaldehyde
U096 ..... 80-15-9	3,3'-Dimethylbenzidine	U126 ..... 765-34-4	Oxirane-carboxaldehyde
U096 ..... 80-15-9	alpha, alpha-Dimethylbenzylhydroperoxide (R)	U127 ..... 118-74-1	Benzene, hexachloro-
U096 ..... 80-15-9	Hydroperoxide, 1-methyl-1-phenylethyl-(R)	U127 ..... 118-74-1	Hexachlorobenzene
U097 ..... 79-44-7	Carbamic chloride, dimethyl-	U128 ..... 87-68-3	1,3-Butadiene, 1,1,2,3,4,4-hexachloro-
U097 ..... 79-44-7	Dimethylcarbonyl chloride	U128 ..... 87-68-3	Hexachlorobutadiene
U098 ..... 57-14-7	1,1-Dimethylhydrazine	U129 ..... 58-89-9	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1alpha,2alpha,3beta,4alpha,5alpha,6beta)-Lindane
U098 ..... 57-14-7	Hydrazine, 1,1-dimethyl-	U129 ..... 58-89-9	1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-
U099 ..... 540-73-8	1,2-Dimethylhydrazine	U130 ..... 77-47-4	Hexachlorocyclopentadiene
U099 ..... 540-73-8	Hydrazine, 1,2-dimethyl-	U130 ..... 77-47-4	Ethane, hexachloro-
U101 ..... 105-67-9	2,4-Dimethylphenol	U131 ..... 67-72-1	Hexachloroethane
U101 ..... 105-67-9	Phenol, 2,4-dimethyl-	U131 ..... 67-72-1	Hexachlorophene
U102 ..... 131-11-3	1,2-Benzenedicarboxylic acid, dimethyl ester	U132 ..... 70-30-4	Phenol, 2,2'-methylene bis[3,4,6-trichloro-
U102 ..... 131-11-3	Dimethyl phthalate	U132 ..... 70-30-4	Hydrazine (R,T)
U103 ..... 77-78-1	Dimethyl sulfate	U133 ..... 302-01-2	Hydrofluoric acid (C,T)
U103 ..... 77-78-1	Sulfuric acid, dimethyl ester	U134 ..... 7664-39-3	Hydrogen fluoride (C,T)
U105 ..... 121-14-2	Benzene, 1-methyl-2,4-dinitro-	U134 ..... 7664-39-3	Hydrogen sulfide
U105 ..... 121-14-2	2,4-Dinitrotoluene	U135 ..... 7783-06-4	Hydrogen sulfide H <sub>2</sub> S
U106 ..... 606-20-2	Benzene, 2-methyl-1,3-dinitro-	U135 ..... 7783-06-4	Arsinic acid, dimethyl-
U106 ..... 606-20-2	2,6-Dinitrotoluene	U136 ..... 75-60-5	Cacodylic acid
U107 ..... 117-84-0	1,2-Benzenedicarboxylic acid, dioctyl ester	U136 ..... 75-60-5	Indeno[1,2,3-cd]pyrene
U107 ..... 117-84-0	Di-n-octyl phthalate	U137 ..... 193-39-5	Methane, iodo-
U108 ..... 123-91-1	1,4-Diethyleneoxide	U137 ..... 193-39-5	Methyl iodide
U108 ..... 123-91-1	1,4-Dioxane	U138 ..... 74-88-4	Isobutyl alcohol (I,T)
U109 ..... 122-66-7	1,2-Diphenylhydrazine	U138 ..... 74-88-4	1-Propanol, 2-methyl- (I,T)
U109 ..... 122-66-7	Hydrazine, 1,2-diphenyl-	U140 ..... 78-83-1	1,3-Benzodioxole, 5-(1-propenyl)-
U110 ..... 142-84-7	Dipropylamine (I)	U140 ..... 78-83-1	Isosafrole
U110 ..... 142-84-7	1-Propanamine, N-propyl-(I)	U141 ..... 120-58-1	Kepone
U111 ..... 621-64-7	Di-n-propylnitrosamine	U141 ..... 120-58-1	1,3,4-Metheno-2H-cyclobuta[cd]pentalen-2-one, 1,1a,3,3a,4,5,5,5a,5b,6-decachlorooctahydro-
U111 ..... 621-64-7	1-Propanamine, N-nitroso-N-propyl-	U142 ..... 143-50-0	2-Butenoic acid, 2-methyl-, 7-[[2,3-dihydroxy-2-(1-methoxyethyl)-3-methyl-1-oxobutoxy]methyl]-2,3,5,7a-tetrahydro-1H-pyrrolizin-1-yl ester, [1S-[1alpha(Z),7(2S*,3R*),7alpha]]-
U112 ..... 141-78-6	Acetic acid ethyl ester (I)	U142 ..... 143-50-0	Lasiocarpine
U112 ..... 141-78-6	Ethyl acetate (I)	U143 ..... 303-34-4	Acetic acid, lead(2+) salt
U113 ..... 140-88-5	Ethyl acrylate (I)	U143 ..... 303-34-4	Lead acetate
U113 ..... 140-88-5	2-Propenoic acid, ethyl ester (I)	U144 ..... 301-04-2	Lead phosphate
U114 ..... 111-54-6	Carbamodithioic acid, 1,2-ethanediybis-, salts & esters	U144 ..... 301-04-2	Phosphoric acid, lead(2+) salt (2:3)
U114 ..... 111-54-6	Ethylenebisdithiocarbamic acid, salts & esters	U145 ..... 7446-27-7	Lead, bis(acetato-O)tetrahydroxytri-
U115 ..... 75-21-8	Ethylene oxide (I,T)	U145 ..... 7446-27-7	Lead subacetate
U115 ..... 75-21-8	Oxirane (I,T)	U146 ..... 1335-32-6	2,5-Furandione
U116 ..... 96-45-7	Ethylenethiourea	U146 ..... 1335-32-6	
U116 ..... 96-45-7	2-Imidazolidinethione	U147 ..... 108-31-6	
U117 ..... 60-29-7	Ethane, 1,1'-oxybis-(I)		
U117 ..... 60-29-7	Ethyl ether (I)		
U118 ..... 97-63-2	Ethyl methacrylate		



U147	108-31-6	Maleic anhydride	U174	55-18-5	N-Nitrosodiethylamine
U148	123-33-1	Maleic hydrazide	U176	759-73-9	N-Nitroso-N-ethylurea
U148	123-33-1	3,6-Pyridazinedione, 1,2-dihydro-	U176	759-73-9	Urea, N-ethyl-N-nitroso-
U149	109-77-3	Malononitrile	U177	684-93-5	N-Nitroso-N-methylurea
U149	109-77-3	Propanedinitrile	U177	684-93-5	Urea, N-methyl-N-nitroso-
U150	148-82-3	Melphalan	U178	615-53-2	Carbamic acid, methyl nitroso-, ethyl ester
U150	148-82-3	L-Phenylalanine, 4-[bis(2-chloroethyl)amino]-	U178	615-53-2	N-Nitroso-N-methylurethane
U151	7439-97-6	Mercury	U179	100-75-4	N-Nitrosopiperidine
U152	126-98-7	Methacrylonitrile (I,T)	U179	100-75-4	Piperidine, 1-nitroso-
U152	126-98-7	2-Propenenitrile, 2-methyl- (I,T)	U180	930-55-2	N-Nitrosopyrrolidine
U153	74-93-1	Methanethiol (I,T)	U180	930-55-2	Pyrrolidine, 1-nitroso-
U153	74-93-1	Thiomethanol (I,T)	U181	99-55-8	Benzenamine, 2-methyl-5-nitro-
U154	67-56-1	Methanol (I)	U181	99-55-8 5-	Nitro-o-toluidine
U154	67-56-1	Methyl alcohol (I)	U182	123-63-7	1,3,5-Trioxane, 2,4,6-trimethyl-
U155	91-80-5	1,2-Ethanediamine, N,N-dimethyl-N'-2-pyridinyl-N'-(2-thienylmethyl)-	U182	123-63-7	Paraldehyde
U155	91-80-5	Methapyrilene	U183	608-93-5	Benzene, pentachloro-
U156	79-22-1	Carbonochloridic acid, methyl ester (I,T)	U183	608-93-5	Pentachlorobenzene
U156	79-22-1	Methyl chlorocarbonate (I,T)	U184	76-01-7	Ethane, pentachloro-
U157	56-49-5	Benz[j]aceanthrylene, 1,2-dihydro-3-methyl-	U184	76-01-7	Pentachloroethane
U157	56-49-5	3-Methylcholanthrene	U185	82-68-8	Benzene, pentachloronitro-
U158	101-14-4	Benzenamine, 4,4'-methylenebis[2-chloro-4,4'-Methylenebis(2-chloroaniline)]	U185	82-68-8	Pentachloronitrobenzene (PCNB)
U159	78-93-3	2-Butanone (I,T)	U186	504-60-9	1-Methylbutadiene (I)
U159	78-93-3	Methyl ethyl ketone (MEK) (I,T)	U186	504-60-9	1,3-Pentadiene (I)
U160	1338-23-4	2-Butanone, peroxide (R,T)	U187	62-44-2	Acetamide, -(4-ethoxyphenyl)-
U160	1338-23-4	Methyl ethyl ketone peroxide (R,T)	U187	62-44-2	Phenacetin
U161	108-10-1	Methyl isobutyl ketone (I)	U188	108-95-2	Phenol
U161	108-10-1	4-Methyl-2-pentanone (I)	U189	1314-80-3	Phosphorus sulfide (R)
U161	108-10-1	Pentanol, 4-methyl-	U189	1314-80-3	Sulfur phosphide (R)
U162	80-62-6	Methyl methacrylate (I,T)	U190	85-44-9	1,3-Isobenzofurandione
U162	80-62-6	2-Propenoic acid, 2-methyl-, methyl ester (I,T)	U190	85-44-9	Phthalic anhydride
U163	70-25-7	Guanidine, -methyl-N'-nitro-N-nitroso-MNNG	U191	109-06-8	2-Picoline
U163	70-25-7	Methylthiouracil	U191	109-06-8	Pyridine, 2-methyl-
U164	56-04-2	4(1H)-Pyrimidinone, 2,3-dihydro-6-methyl-2-thioxo-	U192	23950-58-5	Benzamide, 3,5-dichloro-N-(1,1-dimethyl-2-propynyl)-
U164	56-04-2	Naphthalene	U192	23950-58-5	Pronamide
U165	91-20-3	1,4-Naphthalenedione	U193	1120-71-4	1,2-Oxathiolane, 2,2-dioxide
U166	130-15-4	1,4-Naphthoquinone	U193	1120-71-4	1,3-Propane sultone
U166	130-15-4	1-Naphthalenamine	U194	107-10-8	1-Propanamine (I,T)
U167	134-32-7	alpha-Naphthylamine	U194	107-10-8	n-Propylamine (I,T)
U167	134-32-7	2-Naphthalenamine	U196	110-86-1	Pyridine
U168	91-59-8	beta-Naphthylamine	U197	106-51-4	p-Benzoquinone
U168	91-59-8	Benzene, nitro-	U197	106-51-4	2,5-Cyclohexadiene-1,4-dione
U169	98-95-3	Nitrobenzene (I,T)	U200	50-55-5	Reserpine
U169	98-95-3	p-Nitrophenol	U200	50-55-5	Yohimban-16-carboxylic acid, 11,17-dimethoxy-18-[(3,4,5-trimethoxybenzoyl)oxy]-, methyl ester, (3beta,16beta,17alpha,18beta,20alpha)-
U170	100-02-7	Phenol, 4-nitro-	U201	108-46-3	1,3-Benzenediol
U170	100-02-7	2-Nitropropane (I,T)	U201	108-46-3	Resorcinol
U171	79-46-9	Propane, 2-nitro- (I,T)	U202	181-07-2	1,2-Benzisothiazol-3(2H)-one, 1,1-dioxide, & salts
U171	79-46-9	1-Butanamine, N-butyl-N-nitroso-	U202	181-07-2	Saccharin, & salts
U172	924-16-3	N-Nitrosodi-n-butylamine	U203	94-59-7	1,3-Benzodioxole, 5-(2-propenyl)-
U172	924-16-3	Ethanol, 2,2'-(nitrosoimino)bis-	U203	94-59-7	Safrole
U173	1116-54-7	N-Nitrosodiethanolamine	U204	7783-00-8	Selenious acid
U173	1116-54-7	Ethanamine, -ethyl-N-nitroso-	U204	7783-00-8	Selenium dioxide
U174	55-18-5		U205	7488-56-4	Selenium sulfide
			U205	7488-56-4	Selenium sulfide SeS <sub>2</sub> (R,T)
			U206	18883-66-4	Glucopyranose, 2-deoxy-2-(3-methyl-3-nitrosoureido)-, D-
			U206	18883-66-4	D-Glucose, 2-deoxy-2-

U206 ..... 18883-66-4	[[methylnitroso amino)- carbonyl]amino]- Streptozotocin	U243 ..... 1888-71-7	Hexachloropropene
U207 ..... 95-94-3	Benzene, 1,2,4,5-tetra chloro-	U243 ..... 1888-71-7	1-Propene, 1,1,2,3,3,3- hexachloro-
U207 ..... 95-94-3	1,2,4,5-Tetrachlorobenzene	U244 ..... 137-26-8	Thioperoxydicarbonic diamide [(H <sub>2</sub> N)C(S)] <sub>2</sub> S <sub>2</sub> , tetramethyl-
U208 ..... 630-20-6	Ethane, 1,1,1,2-tetrachloro-	U244 ..... 137-26-8	Thiram
U208 ..... 630-20-6	1,1,1,2-Tetrachloroethane	U246 ..... 506-68-3	Cyanogen bromide (CN)Br
U209 ..... 79-34-5	Ethane, 1,1,2-tetrachloro-	U247 ..... 72-43-5	Benzene, 1,1'-(2,2,2- trichloroethylidene)bis[4- methoxy-
U209 ..... 79-34-5	1,1,2,2-Tetrachloroethane	U247 ..... 72-43-5	Methoxychlor
U210 ..... 127-18-4	Ethene, tetrachloro-	U248 ..... 81-81-2	2H-1-Benzopyran-2-one, 4- hydroxy-3-(3-oxo-1-phenyl- butyl)-, & salts, when present at concentrations of 0.3% or less
U210 ..... 127-18-4	Tetrachloroethylene	U248 ..... 81-81-2	Warfarin, & salts, when present at concentrations of 0.3% or less
U211 ..... 56-23-5	Carbon tetrachloride	U249 ..... 1314-84-7	Zinc phosphide Zn <sub>3</sub> P <sub>2</sub> , when present at concentra- tions of 10% or less
U211 ..... 56-23-5	Methane, tetrachloro-	U271 ..... 17804-35-2	Benomyl
U213 ..... 109-99-9	Furan, tetrahydro-(I)	U271 ..... 17804-35-2	Carbamic acid, [1- (butylamino)carbonyl]-1H- benzimidazol-2-yl]-, methyl ester
U213 ..... 109-99-9	Tetrahydrofuran (I)	U278 ..... 22781-23-3	Bendiocarb
U214 ..... 563-68-8	Acetic acid, thallium(I+) salt	U278 ..... 22781-23-3	1,3-Benzodioxol-4-ol, 2,2- dimethyl-, methyl carbamate
U214 ..... 563-68-8	Thallium(I) acetate	U279 ..... 63-25-2	Carbaryl
U215 ..... 6533-73-9	Carbonic acid, dithallium(I+) salt	U279 ..... 63-25-2	1-Naphthalenol, methyl carbamate
U215 ..... 6533-73-9	Thallium(I) carbonate	U280 ..... 101-27-9	Barban
U216 ..... 7791-12-0	Thallium(I) chloride	U280 ..... 101-27-9	Carbamic acid, (3-chloro phenyl)-, 4-chloro-2-butynyl ester
U216 ..... 7791-12-0	Thallium chloride TICl	U328 ..... 95-53-4	Benzenamine, 2-methyl- o-Toluidine
U217 ..... 10102-45-1	Nitric acid, thallium(I+) salt	U328 ..... 95-53-4	Benzenamine, 4-methyl- p-Toluidine
U217 ..... 10102-45-1	Thallium(I) nitrate	U353 ..... 106-49-0	Ethanol, 2-ethoxy-
U218 ..... 62-55-5	Ethanethioamide	U353 ..... 106-49-0	Ethylene glycol monoethyl ether
U218 ..... 62-55-5	Thioacetamide	U359 ..... 110-80-5	Bendiocarb phenol
U219 ..... 62-56-6	Thiourea	U359 ..... 110-80-5	1,3-Benzodioxol-4-ol, 2,2- dimethyl-, 7-Benzofuranol, 2,3- dihydro-2,2-dimethyl- Carbofuran phenol
U220 ..... 108-88-3	Benzene, methyl-	U364 ..... 22961-82-6	Carbamic acid, 1H- benzimidazol-2-yl, methyl ester
U220 ..... 108-88-3	Toluene	U364 ..... 22961-82-6	Carbendazim
U221 ..... 25376-45-8	Benzenediamine, ar-methyl-	U367 ..... 1563-38-8	Carbamic acid, phenyl-, 1- methylethyl ester
U221 ..... 25376-45-8	Toluenediamine	U367 ..... 1563-38-8	Propham
U222 ..... 636-21-5	Benzenamine, 2-methyl-, hydrochloride	U372 ..... 10605-21-7	Carbamothioic acid, dipropyl-, S-(phenylmethyl) ester
U222 ..... 636-21-5	o-Toluidine hydrochloride	U372 ..... 10605-21-7	Prosulfocarb
U223 ..... 26471-62-5	Benzene, 1,3- diisocyanatomethyl- (R,T)	U373 ..... 122-42-9	Carbamothioic acid, bis(1- methylethyl)-, S-(2,3,3- trichloro-2-propenyl) ester
U223 ..... 26471-62-5	Toluene diisocyanate (R,T)	U373 ..... 122-42-9	Triallate
U225 ..... 75-25-2	Bromoform	U387 ..... 52888-80-9	A2213
U225 ..... 75-25-2	Methane, tribromo-	U387 ..... 52888-80-9	Ethanimidothioic acid, 2- (dimethylamino)-N- hydroxy-2-oxo-, methyl ester
U226 ..... 71-55-6	Ethane, 1,1,1-trichloro-	U389 ..... 2303-17-5	Diethylene glycol,
U226 ..... 71-55-6	Methyl chloroform	U389 ..... 2303-17-5	
U226 ..... 71-55-6	1,1,1-Trichloroethane	U394 ..... 30558-43-1	
U227 ..... 79-00-5	Ethane, 1,1,2-trichloro-	U394 ..... 30558-43-1	
U227 ..... 79-00-5	1,1,2-Trichloroethane	U395 ..... 5952-26-1	
U228 ..... 79-01-6	Ethene, trichloro-		
U228 ..... 79-01-6	Trichloroethylene		
U234 ..... 99-35-4	Benzene, 1,3,5-trinitro-		
U234 ..... 99-35-4	1,3,5-Trinitrobenzene (R,T)		
U235 ..... 126-72-7	1-Propanol, 2,3-dibromo-, phosphate (3:1)		
U235 ..... 126-72-7	Tris(2,3-dibromopropyl) phosphate		
U236 ..... 72-57-1	2,7-Naphthalenedisulfonic acid, 3,3'-[(3,3'-dim- ethyl[1,1'-biphenyl]-4,4'- diyl)bis(azo)bis[5-amino-4- hydroxy]-, tetrasodium salt		
U236 ..... 72-57-1	Trypan blue		
U237 ..... 66-75-1	2,4-(1H,3H)- Pyrimidinedione, 5-[bis(2- chloroethyl)amino]-		
U237 ..... 66-75-1	Uracil mustard		
U238 ..... 51-79-6	Carbamic acid, ethyl ester		
U238 ..... 51-79-6	Ethyl carbamate (urethane)		
U239 ..... 1330-20-7	Benzene, dimethyl- (I,T)		
U239 ..... 1330-20-7	Xylene (I)		
U240 ..... 94-75-7	Acetic acid, (2,4-dichloro phenoxy)-, salts & esters		
U240 ..... 94-75-7	2,4-D, salts & esters		

U395 ..... 5952-26-1

U404 ..... 121-44-8

U404 ..... 121-44-8

U409 ..... 23564-05-8

U409 ..... 23564-05-8

U410 ..... 59669-26-0

U410 ..... 59669-26-0

U411 ..... 114-26-1

U411 ..... 114-26-1

See F027 ..... 93-76-5

See F027 ..... 87-86-5

See F027 ..... 87-86-5

See F027 ..... 58-90-2

See F027 ..... 95-95-4

See F027 ..... 88-06-2

See F027 ..... 93-72-1

See F027 ..... 93-72-1

See F027 ..... 93-76-5

See F027 ..... 58-90-2

See F027 ..... 95-95-4

See F027 ..... 88-06-2

dicarbamate

Ethanol, 2,2'-oxybis-, dicarbamate

Ethanamine, N,N-diethyl-Triethylamine

Carbamic acid, [1,2-phenylenebis(iminocarbonothioyl)]bis-, dimethyl ester

Thiophanate-methyl

Ethanimidothioic acid, N,N'-[thiobis(methylimino)carbonyloxy]]bis-, dimethyl ester

Thiodicarb

Phenol, 2-(1-methylethoxy)-, methylcarbamate

Propoxur

Acetic acid, (2,4,5-trichlorophenoxy)-

Pentachlorophenol

Phenol, pentachloro-

Phenol, 2,3,4,6-tetrachloro-

Phenol, 2,4,5-trichloro-

Phenol, 2,4,6-trichloro-

Propanoic acid, 2-(2,4,5-trichlorophenoxy)-

Silvex (2,4,5-TP)

2,4,5-T

2,3,4,6-Tetrachlorophenol

2,4,5-Trichlorophenol

2,4,6-Trichlorophenol

17. **Section 261.38** is revised as follows:

a. Amend the certification statement in paragraph (c)(1)(i)(C)(4) by revising the citation “261.28(c)(10)” to read “Section 261.38(c)(10)”.

b. **Section 261.38** of subsection D is moved to subsection E.

**§ 261.38 Comparable/Syngas Fuel Exclusion.**

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(i) \* \* \*

(C) \* \* \*

(4) The following statement is signed and submitted by the person claiming the exclusion or his authorized representative: Under penalty of criminal and civil prosecution for making or submitting false statements, representations, or omissions, I certify that the requirements of 40 CFR 261.38 have been met for all waste identified in this notification. Copies of the records and information required at ~~40 CFR 261.28(c)(10)~~ 40 CFR 261.38(c)(10) are available at the comparable/syngas fuel generator’s facility. Based on my inquiry of the indi-

viduals immediately responsible for obtaining the information, the information is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

\* \* \* \* \*

18. **Section 261** is amended by adding Subsection E to read as follows:

**Subsection E— Exclusions/Exemptions**

§ 261.38 Comparable/Syngas Fuel Exclusion.

**§ 261.39 Conditional Exclusion for Used, Broken Cathode Ray Tubes (CRTs) and Processed CRT Glass Undergoing Recycling.**

**§ 261.40 Conditional Exclusion for Used, Intact Cathode Ray Tubes (CRTs) Exported for Recycling.**

**§ 261.41 Notification and Recordkeeping for Used, Intact Cathode Ray Tubes (CRTs) Exported for Reuse.**

**Subsection E—Exclusions/Exemptions**

\* \* \* \* \*

**§ 261.39 Conditional Exclusion for Used, Broken Cathode Ray Tubes (CRTs) and Processed CRT Glass Undergoing Recycling.**

**Used, broken CRTs are not solid wastes if they meet the following conditions:**

**(a) Prior to processing: These materials are not solid wastes if they are destined for recycling and if they meet the following requirements:**

**(1) Storage. The broken CRTs must be either:**

**(i) Stored in a building with a roof, floor, and walls, or**

**(ii) Placed in a container (i.e., a package or a vehicle) that is constructed, filled, and closed to minimize releases to the environment of CRT glass (including fine solid materials).**

**(2) Labeling. Each container in which the used, broken CRT is contained must be labeled or marked clearly with one of the following phrases: “Used cathode ray tube(s)-contains leaded glass ” or “Leaded glass from televisions or computers.” It must also be labeled: “Do not mix with other glass materials.”**

**(3) Transportation. The used, broken CRTs must be transported in a container meeting the requirements of paragraphs (a)(1)(ii) and (2) of this section.**

**(4) Speculative accumulation and use constituting disposal. The used, broken CRTs are sub-**

ject to the limitations on speculative accumulation as defined in paragraph (c)(8) of this section. If they are used in a manner constituting disposal, they must comply with the applicable requirements of Section 266, Subsection C of this regulation instead of the requirements of this section.

(5) Exports. In addition to the applicable conditions specified in paragraphs (a)(1)-(4) of this section, exporters of used, broken CRTs must comply with the following requirements:

(i) Notify EPA of an intended export before the CRTs are scheduled to leave the United States. A complete notification should be submitted sixty (60) days before the initial shipment is intended to be shipped off-site. This notification may cover export activities extending over a twelve (12) month or lesser period. The notification must be in writing, signed by the exporter, and include the following information:

(A) Name, mailing address, telephone number and EPA ID number (if applicable) of the exporter of the CRTs.

(B) The estimated frequency or rate at which the CRTs are to be exported and the period of time over which they are to be exported.

(C) The estimated total quantity of CRTs specified in kilograms.

(D) All points of entry to and departure from each foreign country through which the CRTs will pass.

(E) A description of the means by which each shipment of the CRTs will be transported (e.g., mode of transportation vehicle (air, highway, rail, water, etc.), type(s) of container (drums, boxes, tanks, etc.)).

(F) The name and address of the recycler and any alternate recycler.

(G) A description of the manner in which the CRTs will be recycled in the foreign country that will be receiving the CRTs.

(H) The name of any transit country through which the CRTs will be sent and a description of the approximate length of time the CRTs will remain in such country and the nature of their handling while there.

(ii) Notifications submitted by mail should be sent to the following mailing address: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division,

(Mail Code 2254A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Hand-delivered notifications should be sent to: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, (Mail Code 2254A), Environmental Protection Agency, Ariel Rios Bldg., Room 6144, 1200 Pennsylvania Ave., NW., Washington, DC. In both cases, the following shall be prominently displayed on the front of the envelope: "Attention: Notification of Intent to Export CRTs."

(iii) Upon request by EPA, the exporter shall furnish to EPA any additional information which a receiving country requests in order to respond to a notification.

(iv) EPA will provide a complete notification to the receiving country and any transit countries. A notification is complete when EPA receives a notification which EPA determines satisfies the requirements of paragraph (a)(5)(i) of this section. Where a claim of confidentiality is asserted with respect to any notification information required by paragraph (a)(5)(i) of this section, EPA may find the notification not complete until any such claim is resolved in accordance with 40 CFR 260.2.

(v) The export of CRTs is prohibited unless the receiving country consents to the intended export. When the receiving country consents in writing to the receipt of the CRTs, EPA will forward an Acknowledgment of Consent to Export CRTs to the exporter. Where the receiving country objects to receipt of the CRTs or withdraws a prior consent, EPA will notify the exporter in writing. EPA will also notify the exporter of any responses from transit countries.

(vi) When the conditions specified on the original notification change, the exporter must provide EPA with a written renotification of the change, except for changes to the telephone number in paragraph (a)(5)(i)(A) of this section and decreases in the quantity indicated pursuant to paragraph (a)(5)(i)(C) of this section. The shipment cannot take place until consent of the receiving country to the changes has been obtained (except for changes to information about points of entry and departure and transit countries pursuant to paragraphs (a)(5)(i)(D) and (a)(5)(i)(H) of this section) and the exporter of CRTs receives from EPA a copy of the Acknowledgment of Consent to Export CRTs.



edgment of Consent to Export CRTs reflecting the receiving country's consent to the changes.

(vii) A copy of the Acknowledgment of Consent to Export CRTs must accompany the shipment of CRTs. The shipment must conform to the terms of the Acknowledgment.

(viii) If a shipment of CRTs cannot be delivered for any reason to the recycler or the alternate recycler, the exporter of CRTs must renotify EPA of a change in the conditions of the original notification to allow shipment to a new recycler in accordance with paragraph (a)(5)(vi) of this section and obtain another Acknowledgment of Consent to Export CRTs.

(ix) Exporters must keep copies of notifications and Acknowledgments of Consent to Export CRTs for a period of three years following receipt of the Acknowledgment.

(b) Requirements for used CRT processing: Used, broken CRTs undergoing CRT processing as defined in § 260.10 of this regulation are not solid wastes if they meet the following requirements:

(1) Storage. Used, broken CRTs undergoing processing are subject to the requirement of paragraph (a)(4) of this section.

(2) Processing.

(i) All activities specified in paragraphs (2) and (3) of the definition of "CRT processing" in § 260.10 of this regulation must be performed within a building with a roof, floor, and walls; and

(ii) No activities may be performed that use temperatures high enough to volatilize lead from CRTs.

(c) Processed CRT glass sent to CRT glass making or lead smelting: Glass from used CRTs that is destined for recycling at a CRT glass manufacturer or a lead smelter after processing is not a solid waste unless it is speculatively accumulated as defined in § 261.1(c)(8).

(d) Use constituting disposal: Glass from used CRTs that is used in a manner constituting disposal must comply with the requirements of Section 266, subsection C of this regulation instead of the requirements of this section.

**§ 261.40 Conditional Exclusion for Used, Intact Cathode Ray Tubes (CRTs) Exported for Recycling.**

Used, intact CRTs exported for recycling are not solid wastes if they meet the notice and consent conditions of § 261.39(a)(5), and if they are not speculatively accumulated as defined in § 261.1(c)(8).

**§ 261.41 Notification and Recordkeeping for Used, Intact Cathode Ray Tubes (CRTs) Exported for Reuse.**

(a) Persons who export used, intact CRTs for reuse must send a one-time notification to the Regional Administrator. The notification must include a statement that the notifier plans to export used, intact CRTs for reuse, the notifier's name, address, and EPA ID number (if applicable) and the name and phone number of a contact person.

(b) Persons who export used, intact CRTs for reuse must keep copies of normal business records, such as contracts, demonstrating that each shipment of exported CRTs will be reused. This documentation must be retained for a period of at least three years from the date the CRTs were exported.

**Appendix VII to Section 261—[Amended]**

19. In Section 261 Appendix VII, amend the entries for "F002", "F038", "F039", "K001", and "K073" as follows:

a. In the second column of the "F002" row, revise "trichloroethane" to read "trifluoroethane";

b. In the second column of the "F038" row, add a comma between "benzo(a)pyrene" and "chrysene" to read "benzo(a)pyrene, chrysene";

c. In the second column of the "F039" row, revise the citation "40 CFR 268.43(a)" to read "40 CFR 268.43";

d. In the second column of the "K001" row, revise "creosote" to read "creosote";

e. In the second column of the "K073" row, revise "hexachloroethane" to read "hexachloroethane".

**Appendix VII to Section 261 — Basis for Listing Hazardous Waste**

\* \* \* \* \*

F002 Tetrachloroethylene, methylene chloride, trichloroethylene, 1,1,1-trichloroethane, 1,1,2-trichloroethane, chlorobenzene, 1,1,2-trichloro-1,2,2-trichloroethane ~~trifluoroethane~~ *trifluoroethane*, orthodichlorobenzene, trichlorofluoromethane.

\* \* \* \* \*

F038 Benzene, ~~benzo(a)pyrene-chrysene~~ *benzo(a)pyrene, chrysene*, lead, chromium.

\* \* \* \* \*

F039 All constituents for which treatment standards are specified for multi-source leachate (wastewaters and nonwastewaters) under ~~40 CFR 268.43(a)~~ *40 CFR 268.43*. Table CCW.

\* \* \* \* \*

K001 Pentachlorophenol, phenol, 2-chlorophenol, p-chloro-m-cresol, 2,4-dimethylphenyl, 2,4-dinitrophenol, trichlorophenols, tetrachlorophenols, 2,4-dinitrophenol, ~~creosote~~ *creosote*, chrysene, naphthalene, fluoranthene, benzo(b)fluoranthene, benzo(a)pyrene, indeno(1,2,3-cd)pyrene, benz(a)anthracene, dibenz(a)anthracene, acenaphthalene.

\* \* \* \* \*

K073 Chloroform, carbon tetrachloride, ~~hexachloroethane~~ *hexachloroethane*, trichloroethane, tetrachloroethylene, dichloroethylene, 1,1,2,2-

tetrachloroethane.

\*\*\*\*\*

20. Amend **Section 261 Appendix VIII** by amending the entries for “Allyl chloride”, “Benzidine”, § 1,2-Dichloroethylene”, “Lasiocarpine”, and “Nitrosamines, N.O.S.” to read as follows:

a. In the third column of the “Allyl chloride” row, revise “107-18-6” to read “107-05-1”;

b. In the second column of the “Benzidine” row, amend “-4,41-” by changing the superscript “1” to the symbol “’” to read, “-4,4’-”;

c. In the second column of the “1,2-Dichloroethylene” row, revise “-dichlrol-” to read “-dichloro-”;

d. In the third and fourth columns of the “Lasiocarpine” row, revise “303-34-1” to read “303-34-4”;

e. In the third column of the “Nitrosamines, N.O.S.” row, revise “35576-91-1D” to read “35576-91-1”.

**Appendix VIII — Hazardous Constituents**

\*\*\*\*\*

Allyl chloride	1-Propane, 3-chloro
	<del>107-18-6</del> <u>107-05-1</u>
*****	
Benzidine	[1,1'-Biphenyl]- <del>4,4-</del> <u>4,4'</u> -diamine
92-87-5	U021
*****	
1,2-Dichloroethylene	Ethene, 1,2- <del>dichlrol-</del> <u>dichloro-</u> , (E)-
156-60-5	U079
*****	
Lasiocarpine	2-Butenoic acid, 2-methyl-,
<del>303-34-1</del> <u>303-34-4</u>	U143
	7-[[2,3-dihydroxy-2-(1-methoxyethyl)-3-methyl-1-oxobutoxy]methyl]-
	2,3,5,7atetrahydro-
	1H-pyrrolizin-1-yl ester,
	[1S-[1alpha(Z),7(2S*,3R*),7aalpha]]-

\*\*\*\*\*

Nitrosamines, N.O.S.1

~~35576-91-1D~~35576-91-1

\*\*\*\*\*

21. The entry in **Section 261, Appendix IX** for Tokusen USA, Inc. is removed and revoked as follows:

**Tokusen USA, Inc. Conway, AR**

Dewatered wastewater treatment plant (WWTP) sludge (EPA Hazardous Waste Nos. F006) generated at a maximum annual rate of 670 cubic yards per calendar year after December 31, 2002 and disposed of in a Subtitle D landfill. For the exclusion to be valid, Tokusen must implement a testing program that meets the following Paragraphs:

(1) Delisting Levels: All leachable concentrations for those constituents listed below in (i) and (ii) must not exceed the following levels (mg/l): Tokusen must use an acceptable leaching method, for example SW-846, Method 1311 to measure constituents in the waste leachate, dewatered WWTP sludge

- (i) Inorganic Constituents Antimony-0.360 mg/l; Arsenic-0.0654 mg/l; Barium-51.1 mg/l; Chromium-5.0 mg/l; Cobalt-15.7 mg/l; Copper-7,350 mg/l; Lead-5.0 mg/l; Nickel-19.7 mg/l; Selenium-1.0 mg/l; Silver-2.68 mg/l; Vanadium-14.8

mg/l; Zinc-196 mg/l;

(ii) Organic Constituents 1,4-Dichlorobenzene-3.03 mg/l; Hexachlorobutadiene-0.21 mg/l;

(2) Waste Holding and Handling: Tokusen must store the dewatered WWTP sludge as described in its RCRA permit, or continue to dispose of as hazardous all dewatered WWTP sludge generated, until they have completed verification testing described in Paragraph (3)(A) and (B), as appropriate, and valid analyses show that paragraph (1) is satisfied:

(A) Not used.

(B) Levels of constituents measured in the samples of the dewatered WWTP sludge that do not exceed the levels set forth in Paragraph (1) are non-hazardous. Tokusen can manage and dispose the non-hazardous dewatered WWTP sludge according to all applicable solid waste regulations.

(C) If constituent levels in a sample exceed any of the delisting levels set in Paragraph (1), Tokusen must re-treat the batches of waste used to generate the representative sample until it meets the levels. Tokusen must repeat the analyses of the treated waste.

(D) If the facility has not treated the waste, Tokusen must manage and dispose the waste generated under Subtitle C of RCRA.

(3) Verification Testing Requirements: Tokusen must perform sample collection and analyses, including quality control procedures, using appropriate methods. As applicable to the method-defined parameters concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev.A), 9071B, and 9095B. If the Department and EPA judge the process to be effective under the operating conditions used during the initial verification testing, Tokusen may replace the testing required in Paragraph (3)(A) with the testing required in Paragraph (3)(B). Tokusen must continue to test as specified in Paragraph (3)(A) until and unless notified by EPA and the Department in writing that testing in Paragraph (3)(A) may be replaced by Paragraph (3)(B):

(A) Initial Verification Testing: After EPA and ADEQ grant this final exclusion, Tokusen must do the following:

- (i) Collect and analyze composites of the dewatered WWTP sludge.
- (ii) Make two composites of representative grab samples collected.
- (iii) Analyze the waste, before disposal, for all of the constituents listed in Paragraph 1.
- (iv) Sixty (60) days after this exclusion becomes final, report to EPA and ADEQ the operational and analytical test data, including quality control information.

(B) Subsequent Verification Testing: Following written notification by EPA and the Department, Tokusen may substitute the testing conditions in (3)(B) for (3)(A). Tokusen must continue to monitor operating conditions, and analyze representative samples each quarter of operation during the first year of waste generation using appropriate methods. As applicable to method-defined parameters of concern, analyses requiring the use SW-846 methods incorporated by reference in § 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. The samples must represent the waste generated during the quarter.

(C) Termination of Organic Testing:

- (i) Tokusen must continue testing as required under Paragraph (3)(B) for organic constituents in Paragraph (1)(A)(ii), until the analytical results submitted under Paragraph (3)(B) show a minimum of two consecutive samples below the delisting levels in Paragraph (1)(A)(i), Tokusen may then request that EPA and the Department stop quarterly organic testing. After EPA and ADEQ notify Tokusen in writing, the company may end quar-

terly organic testing:

(ii) Following cancellation of the quarterly testing, Tokusen must continue to test a representative composite sample for all constituents listed in Paragraph (1) annually (by twelve months after final exclusion) using appropriate methods. As applicable to method-defined parameters of concern, analyses requiring the use SW=846 methods incorporated by reference in § 260.11 must be used without substitution. As applicable, the SW=846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B.

(4) Changes in Operating Conditions: If Tokusen significantly changes the process described in its petition or starts any processes that generate(s) the waste that may or could affect the composition or type of waste generated as established under Paragraph (1) (by illustration, but not limitation; changes in equipment or operating conditions of the treatment process); they must notify EPA and the Department in writing; they may no longer handle the waste generated from the new process as nonhazardous until the waste meets the delisting levels set in Paragraph (1) and they have received written approval to do so from EPA and the Department.

(5) Data Submittals: Tokusen must submit the information described below. If Tokusen fails to submit the required data within the specified time or maintain the required records on-site for the specified time, EPA and ADEQ, at their discretion, will consider this sufficient basis to reopen the exclusion as described in Paragraph 6. Tokusen must:

(A) Submit the data obtained through Paragraph 3 to the Region 6 Delisting Program, EPA, 1445 Ross Avenue, Dallas, Texas 75202-2733, Mail Code, (6PD-O) and to the Active Sites Branch, Hazardous Waste Division, ADEQ, 8001 National Drive, Little Rock, AR 72219 within the time specified.

(B) Compile records of operating conditions and analytical data from Paragraph (3), summarized, and maintained on-site for a minimum of five years.

(C) Furnish these records and data when EPA or the State of Arkansas request them for inspection.

(D) A company official having supervisory responsibility should send along with all data a signed copy of the following certification statement, to attest to the truth and accuracy of the data submitted: "Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. If any of this information is determined by EPA or ADEQ in their sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA or ADEQ and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion.

(6) Reopener:

(A) If, anytime after disposal of the delisted waste, Tokusen possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at a level higher than the delisting level allowed by the Director and the Regional Administrator or his delegate in granting the petition, then the facility must report the data, in writing, to the Director and the Regional Administrator or his delegate within 10 days of first possessing or being made aware

of that data:

(B) If the annual testing of the waste does not meet the delisting requirements in Paragraph (1), Tokusen must report the data, in writing, to the Director and the Regional Administrator or his delegate within 10 days of first possessing or being made aware of that data:

(C) If Tokusen fails to submit the information described in paragraphs (5), (6)(A) or (6)(B) or if any other information is received from any source, the Director and/or Regional Administrator or his delegate will make a preliminary determination as to whether the reported information requires Department or Agency action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment.

(D) If the Director, or Regional Administrator or his delegate determines that the reported information does require Department or Agency action, the Director or Regional Administrator or his delegate will notify the facility in writing of the actions the Director, the Regional Administrator or his delegate believe are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed Department or Agency action is not necessary. The facility shall have 10 days from the date of the Director's and/or the Regional Administrator or his delegate's notice to present such information:

(E) Following the receipt of information from the facility described in paragraph (6)(D) or (if no information is presented under paragraph (6)(D)) the initial receipt of information described in paragraphs (5), (6)(A) or (6)(B), the Director or the Regional Administrator or his delegate will issue a final written determination describing the Department and/or Agency actions that are necessary to protect human health or the environment. Any required action described in the Director's or the Regional Administrator or his delegate's determination shall become effective immediately, unless the Director or the Regional Administrator or his delegate provides otherwise.

(7) Notification Requirements: Tokusen must do the following before transporting the delisted waste. Failure to provide this notification will result in a violation of the delisting petition and a possible revocation of the decision:

(A) Provide a one-time written notification to any State Regulatory Agency to which or through which they will transport the delisted waste described above for disposal, 60 days before beginning such activities:

(B) Update the one-time written notification if they ship the delisted waste into a different disposal facility:

## Section 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

22. Section 262.12 is amended by revising paragraph (b) to read as follows:

### § 262.12 EPA identification numbers.

\* \* \* \* \*

(b) A generator who has not received an EPA identification number may obtain one by applying to the Director using the current version of EPA Form 8700-12 (RCRA Subtitle C Site Identification Form) (AR-09-



99R). Upon receiving the request the Director will assign an EPA identification number to the generator.

\*\*\*\*\*

23. Section 262.13 is amended by revising paragraph (f) to read as follows:

§ 262.13 State Requirements for Transportation of Waste from Generators of over 100 kgs per Month.

\*\*\*\*\*

(f). Generators of hazardous wastes newly characterized as TC Toxic using the Toxicity Characteristic Leaching Procedure (TCLP) (40 CFR 261.24) must notify this Department using the current version of EPA Form 8700-12 (RCRA Subtitle C Site Identification Form) (AR-11-91R) and obtain an EPA identification number. Generators who have previously notified the Department of hazardous waste activity and currently have an EPA identification number, but now determine that they produce a TC toxic waste must submit an amended EPA Form 8700-12(AR-09-99R) to the Department notifying that they generate TC toxic wastes in addition to other hazardous wastes previously reported.

\*\*\*\*\*

24. Amend § 262.32(b) after "HAZARDOUS WASTE" paragraph to add Generator's EPA Identification Number \_\_\_\_\_ ." after Generator's Name and Address \_\_\_\_\_ — to read:

§ 262.32 Marking

HAZARDOUS WASTE \* \* \* \* \*
Generator's Name and Address \_\_\_\_\_ .

Generator's EPA Identification Number \_\_\_\_\_ .

Manifest Tracking Number \_\_\_\_\_ .

\*\*\*\*\*

25. Section 262.34 is amended as follows:

a. Amend paragraph (a)(1)(iv) by removing the beginning phrase "The waste is placed in containment buildings" and adding in its place the phrase "In containment buildings".

b. Amend paragraph (j) by adding add "( before or one kg.

§ 262.34 Accumulation time.

\*\*\*\*\*

(a) \* \* \*

(1) \* \* \*

(iv) The waste is placed in containment buildings In containment buildings and the generator complies with subsection DD of § 265, has placed its professional engineer certification that the building complies with the design standards specified in § 265.1101 in the facility's operating record no later than 60 days after the date of initial operation of the unit. After February 18, 1993, certification by an Arkansas-registered professional engineer will be required prior to operation of the unit. The owner or operator shall maintain the following records at the facility:

\*\*\*\*\*

(j) A member of the Performance Track Program who generates 1000 kg or greater of hazardous waste per month (or one kg or more of acute hazardous waste)

\*\*\*\*\*

26. Section 262.53 is amended by revising paragraph (b) to read as follows:

§ 262.53 Notification of intent to export.

\*\*\*\*\*

(b) Notifications submitted by mail should be sent to the following mailing address: Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting, and Data Division (2222A), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Hand-delivered notifications should be sent to: Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting, and Data Division (2222A), Environmental Protection Agency, Ariel Rios Bldg., 12th St. and Pennsylvania Ave., NW., Washington, DC. In both cases, the following shall be prominently displayed on the front of the envelope: "Attention: Notification of Intent to Export."

(b) Notifications submitted by mail should be sent to the following mailing address: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Hand-delivered notifications should be sent to: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, Environmental Protection Agency, Ariel Rios Bldg., Room 6144, 12th St. and Pennsylvania Ave., NW., Washington, DC 20004. In both cases, the following shall be prominently displayed on the front of the envelope: "Attention: Notification of Intent to Export."

\*\*\*\*\*

27. Section 262.54 is amended at paragraph (c) by revising "Special Handling Instructions and Additional Informa-

tion” to read “International Shipments block”.

§ 262.54 Special manifest requirements.

\* \* \* \* \*

(c) In ~~Special Handling Instructions and Additional Information~~ International Shipments block, the primary exporter must check the export box and enter the point of exit (city and State) from the United States;

\* \* \* \* \*

28. Section 262.56 is amended by revising paragraph (b) to read as follows:

§ 262.56 Annual reports.

\* \* \* \* \*

~~(b) Annual reports submitted by mail should be sent to the following mailing address: Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting, and Data Division (2222A), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Hand-delivered reports should be sent to: Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting, and Data Division (2222A), Environmental Protection Agency, Ariel Rios Bldg., 12th St. and Pennsylvania Ave., NW., Washington, DC.~~

(b) Annual reports submitted by mail should be sent to the following mailing address: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Hand-delivered reports should be sent to: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, Environmental Protection Agency, Ariel Rios Bldg., Room 6144, 12th St. and Pennsylvania Ave., NW., Washington, DC 20004.

\* \* \* \* \*

29. Section 262.58 is amended by revising paragraph (a)(1) to read as follows:

§ 262.58 International Agreements.

(a) \* \* \*

~~(1) For the purposes of this Subsection, the designated OECD countries consist of Australia, Austria, Belgium, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, United Kingdom, and the United States:~~

(1) For the purposes of Subsection H, the designated OECD Member countries consist of Australia, Austria, Belgium, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hun-

gary, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Poland, Portugal, the Slovak Republic, South Korea, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States.

\* \* \* \* \*

30. Section 262.81 is amended at paragraph (k) by revising “RCRA Information Center (RIC), 1235 Jefferson-Davis Highway, first floor, Arlington, VA 22203” to read “RCRA Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC 20460”.

§ 262.81 Definitions.

\* \* \* \* \*

(k) “Recovery operations” means activities leading to resource recovery, recycling, reclamation, direct re-use or alternative uses as listed in Table 2.B of the Annex of OECD Council Decision C(88)90(Final) of 27 May 1988, (available from the Environmental Protection Agency, RCRA Information Center (RIC), 1235 ~~Jefferson-Davis Highway, first floor, Arlington, VA 22203~~ RCRA Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC 20460 (Docket # F-94-IEHF-FFFFF) and the Organisation for Economic Co-operation and Development, Environment Directorate, 2 rue Andre Pascal, 75775 Paris Cedex 16, France) which include:

\* \* \* \* \*

31. In Section 262.82, amend paragraph (a)(1)(ii) by revising the phrase “Green-list waste” to read “Green-list wastes”.

§ 262.82 General conditions.

(a) \* \* \*

(1) \* \* \*

(ii) ~~Green-list waste~~ Green-list wastes that are sufficiently contaminated or mixed with amber-list wastes, such that the waste or waste mixture is considered hazardous under U.S. national procedures, are subject to amber-list controls.

\* \* \* \* \*

32. Section 262.83 is amended as follows:

a. Amend paragraph (b)(1)(i) by revising “Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A)” to read “Office of Federal Activities, International Compliance Assurance Division (2254A)”.

b. Revise paragraph (b)(2)(i) to read as follows:

§ 262.83 Notification and consent.

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(i) Notification. At least 45 days prior to commencement of the transfrontier movement, the notifier must provide written notification in English of the proposed transfrontier movement to the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A) Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, with the words "Attention: OECD Export Notification" prominently displayed on the envelope. This notification must include all of the information identified in paragraph (e) of this section. In cases where wastes having similar physical and chemical characteristics, the same United Nations classification, and the same RCRA waste codes are to be sent periodically to the same recovery facility by the same notifier, the notifier may submit one notification of intent to export these wastes in multiple shipments during a period of up to one year.

\* \* \* \* \*

(2) \* \* \*

~~(i) The notifier must provide EPA the information identified in paragraph (e) of this section in English, at least 10 days in advance of commencing shipment to a pre-approved facility. The notification should indicate that the recovery facility is pre-approved, and may apply to a single specific shipment or to multiple shipments as described in paragraph (b)(1)(i) of this section. This information must be sent to the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, with the words "OECD Export Notification—Pre-approved Facility" prominently displayed on the envelope.~~

(i) The notifier must provide EPA the information identified in paragraph (e) of this section in English, at least 10 days in advance of commencing shipment to a pre-approved facility. The notification should indicate that the recovery facility is pre-approved, and may apply to a single specific shipment or to multiple shipments as described in paragraph (b)(1)(i) of this section.

This information must be sent to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, with the words "Attention: OECD Export Notification—Pre-approved Facility" prominently displayed on the envelope.

\* \* \* \* \*

33. Section 262.84 is amended by revising paragraph (e) to read as follows:

§ 262.84 Tracking document.

\* \* \* \* \*

~~(e) Within 3 working days of the receipt of imports subject to this Subsection, the owner or operator of the U.S. recovery facility must send signed copies of the tracking document to the notifier, to the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, and to the competent authorities of the exporting and transit countries:~~

(e) Within three working days of the receipt of imports subject to this Subsection, the owner or operator of the U.S. recovery facility must send signed copies of the tracking document to the notifier, to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and to the competent authorities of the exporting and transit countries.

\* \* \* \* \*

34. Section 262.87 is amended as follows:

a. In paragraph (a) revise "Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A)", to read, "Office of Federal Activities, International Compliance Assurance Division (2254A)";

b. Amend paragraph (a)(5) introductory text by inserting a space in "100kg" and "1000kg" to read "100 kg" and "1000 kg".

§ 262.87 Reporting and recordkeeping.

(a) Annual reports. For all waste movements subject to this Subsection, persons (e.g., notifiers, recognized traders) who meet the definition of primary exporter in § 262.51 shall file an annual report with the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A) Office of Federal Activities, International Compliance Assurance

Division (2254A), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, no later than March 1 of each year summarizing the types, quantities, frequency, and ultimate destination of all such hazardous waste exported during the previous calendar year. (If the primary exporter is required to file an annual report for waste exports that are not covered under this Subsection, he may include all export information in one report provided the following information on exports of waste destined for recovery within the designated OECD member countries is contained in a separate section). Such reports shall include the following:

\* \* \* \* \*

(5) In even numbered years, for each hazardous waste exported, except for hazardous waste produced by exporters of greater than ~~100kg~~100 kg but less than ~~1000kg~~1000 kg in a calendar month, and except for hazardous waste for which information was already provided pursuant to § 262.41:

\* \* \* \* \*

35. Section 262 Appendix 1 8700-22 is amended by changing the second “III” Instructions for Owners to “IV” as shown below.

**APPENDIX I TO SECTION 262 — UNIFORM HAZARDOUS WASTE MANIFEST AND INSTRUCTIONS (EPA FORMS 8700-22 AND 8700-22A AND THEIR INSTRUCTIONS) U.S. EPA FORM 8700-22**

**~~III.~~IV. INSTRUCTIONS FOR OWNERS AND OPERATORS OF TREATMENT, STORAGE, AND DISPOSAL FACILITIES**

\* \* \* \* \*

**Section 263 — STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE**

36. Section 263.11 is amended by revising paragraph (b) to read as follows:

**§ 263.11 EPA identification number.**

\* \* \* \* \*

(b) A transporter who has not received an EPA identification number may obtain one by applying to the Director (for Arkansas companies) using the current version of EPA Form 8700-12 (RCRA Subtitle C Site Identification Form) (AR-11-91R)(Notification of Regulated Waste Activity). Upon receiving the request, the Director will assign an EPA identification number to the transporter.

\* \* \* \* \*

**Section 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES**

37. In § 264.1, amend paragraph (g)(2) by revising “Subsections C, D, F, or G” to read “Subsections C, F, G, or H”; and revise paragraph (j)(1) to read as follows:

**§ 264.1 Purpose, scope, and applicability.**

\* \* \* \* \*

(g) \* \* \*

(2) The owner or operator of a facility managing recyclable materials described in § 261.6(a) (2), (3) and (4) of this regulation (except to the extent that requirements of this Section are referred to in Section 279 or ~~Subsections C, F, or G~~ Subsections C, F, G, or H of Section 266 of this regulation).

\* \* \* \* \*

(j) The requirements of subsections B, C, and D of this Section and § 264.101 do not apply to remediation waste management sites. (However, some remediation waste management sites may be a part of a facility that is subject to a traditional RCRA permit because the facility is also treating, storing or disposing of hazardous wastes that are not remediation wastes. In these cases, Subsections B, C, and D of this Section, and § 264.101 do apply to the facility subject to the traditional RCRA permit.) Instead of the requirements of subsections B, C, and D of this Section, owners or operators of remediation waste management sites must:

(1) Obtain an EPA identification number by applying to the Director using the current version of Arkansas/EPA Form 8700-12 (RCRA Subtitle C Site Identification Form);

\* \* \* \* \*

**Subsection B—General Facility Standards**

38. Section 264.13, is amended at paragraph (b)(7)(iii)(B) by revising the semicolon at the end of the subsection into a colon.

**§ 264.13 General waste analysis.**

\* \* \* \* \*

(b) \* \* \*

(7) \* \* \*

(iii) \* \* \*

~~(B) Where no treatment standards have been established;~~

(B) Where no treatment standards



have been established:

\* \* \* \* \*

39. Section 264.15 is amended by revising paragraph (b)(4) (the comment to paragraph (b)(4) is unchanged), and adding paragraph (b)(5) to read as follows:

**§ 264.15 General inspection requirements.**

\* \* \* \* \*

(b) \* \* \*

(4) The frequency of inspection may vary for the items on the schedule. However, the frequency should be based on the rate of deterioration of the equipment and the probability of an environmental or human health incident if the deterioration, malfunction, or operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, must be inspected daily when in use, except for Performance Track member facilities, that must inspect at least once each month, upon approval by the Director, as described in paragraph (b)(5) of this section. At a minimum, the inspection schedule must include the items and frequencies called for in §§ 264.174, 264.193, 264.195, 264.226, 264.254, 264.278, 264.303, 264.347, 264.602, 264.1033, 264.1052, 264.1053, 264.1058, and 264.1083 through 264.1089 of this Section, where applicable.

\* \* \* \* \*

(5) Performance Track member facilities that choose to reduce their inspection frequency must:

(i) Submit a request for a Class I permit modification with prior approval to the Director. The modification request must identify the facility as a member of the National Environmental Performance Track Program and identify the management units for reduced inspections and the proposed frequency of inspections. The modification request must also specify, in writing, that the reduced inspection frequency will apply for as long as the facility is a Performance Track member facility, and that within seven calendar days of ceasing to be a Performance Track member, the facility will revert to the non-Performance Track inspection frequency. Inspections must be conducted at least once each month.

(ii) Within 60 days, the Director will notify the Performance Track member facility, in writing, if the request is approved, denied, or if an extension to the 60-day deadline is needed. This notice must be placed in the facility's operating record.

The Performance Track member facility should consider the application approved if the Director does not: deny the application; or notify the Performance Track member facility of an extension to the 60-day deadline. In these situations, the Performance Track member facility must adhere to the revised inspection schedule outlined in its request for a Class 1 permit modification and keep a copy of the application in the facility's operating record.

(iii) Any Performance Track member facility that discontinues their membership or is terminated from the program must immediately notify the Director of their change in status. The facility must place in its operating record a dated copy of this notification and revert back to the non-Performance Track inspection frequencies within seven calendar days.

\* \* \* \* \*

40. Section 264.16 is amended by adding new paragraph (a)(4) to read as follows:

**§ 264.16 Personnel training.**

(a) \* \* \*

(4) For facility employees that receive emergency response training pursuant to Occupational Safety and Health Administration (OSHA) regulations 29 CFR 1910.120(p)(8) and 1910.120(q), the facility is not required to provide separate emergency response training pursuant to this section, provided that the overall facility training meets all the requirements of this section.

\* \* \* \* \*

**Subsection D—Contingency Plan and Emergency Procedures**

41. Section 264.52 is amended by revising paragraph (b) to read as follows:

**§ 264.52 Content of contingency plan.**

\* \* \* \* \*

(b) If the owner or operator has already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan in accordance with 40 CFR Part 112, or 40 CFR Part 1510, or some other emergency or contingency plan, he need only amend that plan to incorporate hazardous waste management provisions that are sufficient to comply with the requirements of this section. The owner or operator may develop one contingency plan which meets all regulatory require-

ments. EPA and the Department recommend that the plan be based on the National Response Team’s Integrated Contingency Plan Guidance (“One Plan”). When modifications are made to non-RCRA provisions in an integrated contingency plan, the changes do not trigger the need for a RCRA permit modification.

\*\*\*\*\*

42. Section 264.56 is amended by removing paragraph (i) and redesignating paragraph (j) as paragraph (i).

**§ 264.56 Emergency procedures.**

\*\*\*\*\*

~~(i) The owner or operator must notify the Director, and appropriate State and local authorities, that the facility is in compliance with paragraph (h) of this section before operations are resumed in the affected area(s) of the facility.~~

~~(j)~~(i) The owner or operator must note in the operating record the time, date, and details of any incident that requires implementing the contingency plan. Within 15 days after the incident, he must submit a written report on the incident to the Director. The report must include:

\*\*\*\*\*

**Subsection E—Manifest System, Recordkeeping, and Reporting**

43. Section 264.73 is amended by revising paragraphs (b) introductory text, (b)(1), (b)(2) (the comment to (b)(2) remains unchanged), (b)(6), (b)(8), and (b)(10), and by adding paragraphs (b)(18) and (b)(19) to read as follows:

**§ 264.73 Operating record.**

\*\*\*\*\*

(b) The following information must be recorded, as it becomes available, and maintained in the operating record until closure of the facility:

(1) A description and the quantity of each hazardous waste received, and the method(s) and date(s) of its treatment, storage, or disposal at the facility as required by Appendix I of this section. This information must be maintained in the operating record until closure of the facility;

(2) The location of each hazardous waste within the facility and the quantity at each location. For disposal facilities, the location and quantity of each hazardous waste must be recorded on a map or diagram of each cell or disposal area. For all facilities, this information must include cross-references to specific manifest document numbers, if the waste was accompanied by a manifest. This information must be maintained in the operating record until closure of the facility.

\*\*\*\*\*

(6) Monitoring, testing or analytical data, and

corrective action where required by Subsection F of this Section and §§ 264.19, 264.191, 264.193, 264.195, 264.222, 264.223, 264.226, 264.252-264.254, 264.276, 264.278, 264.280, 264.302-264.304, 264.309, 264.347, 264.602, 264.1034(c)-264.1034(f), 264.1035, 264.1063(d)-264.1063(i), 264.1064, and 264.1082 through 264.1090 of this Section. Maintain in the operating record for three years, except for records and results pertaining to ground-water monitoring and cleanup which must be maintained in the operating record until closure of the facility.

\*\*\*\*\*

(8) All closure cost estimates under § 264.142, and for disposal facilities, all post-closure cost estimates under § 264.144 of this section. This information must be maintained in the operating record until closure of the facility.

\*\*\*\*\*

(10) Records of the quantities and date of placement for each shipment of hazardous waste placed in land disposal units under an extension to the effective date of any land disposal restriction granted pursuant to § 268.5 of this Regulation, a petition pursuant to § 268.6 of this Regulation, or a certification under § 268.8 of this Regulation, and the applicable notice required by a generator under § 268.7(a) of this Regulation. This information must be maintained in the operating record until closure of the facility.

\*\*\*\*\*

(18) Monitoring, testing or analytical data where required by § 264.347 must be maintained in the operating record for five years.

(19) Certifications as required by § 264.196(f) must be maintained in the operating record until closure of the facility.

\*\*\*\*\*

**Subsection F—Releases From Solid Waste Management Units**

44. Amend Section 264.97 as follows:

a. In paragraph (a)(1) introductory text, revise “background water” to read “background ground water”;

b. In paragraph (a)(1)(i), revise “background quality” to read “background ground-water quality”;

**§ 264.97 General groundwater monitoring requirements.**

\*\*\*\*\*

(a) \*\*\*

(1) Represent the quality of ~~background water~~ background ground water that has not been affected by leakage from a regulated unit;

\*\*\*\*\*

(i) A determination of ~~background quality~~

background ground-water quality may include sampling of wells that are not hydraulically upgradient of the waste management area where:

\*\*\*\*\*

45. Amend **Section 264.98** as follows:

a. Amend by revising paragraphs (d), (g)(2), and (g)(3) to read as follows:

b. In paragraph (g)(4)(i), revise “concentration or any” to read “concentration of any”.

**§ 264.98 Detection monitoring program.**

\*\*\*\*\*

(d) The Director will specify the frequencies for collecting samples and conducting statistical tests to determine whether there is statistically significant evidence of contamination for any parameter or hazardous constituent specified in the permit under paragraph (a) of this section in accordance with § 264.97(g). A sequence of at least four samples from each well (background and compliance wells) must be collected at least semi-annually during detection monitoring.

\*\*\*\*\*

(g)\*\*\*

(2) Immediately sample the ground water in all monitoring wells and determine whether constituents in the list of Appendix IX of Section 264 are present, and if so, in what concentration. However, the Director, on a discretionary basis, may allow sampling for a site-specific subset of constituents from the Appendix IX list of this section and other representative/related waste constituents.

(3) For any Appendix IX compounds found in the analysis pursuant to paragraph (g)(2) of this section, the owner or operator may resample within one month or at an alternative site-specific schedule approved by the Director and repeat the analysis for those compounds detected. If the results of the second analysis confirm the initial results, then these constituents will form the basis for compliance monitoring. If the owner or operator does not resample for the compounds in paragraph (g)(2) of this section, the hazardous constituents found during this initial Appendix IX analysis will form the basis for compliance monitoring.

\*\*\*\*\*

(g)

(4)

(i) An identification of the ~~concentration or any~~ concentration of any Appendix IX constituent detected in the ground water at each monitoring well at the compliance point;

\*\*\*\*\*

46. Amend **Section 264.99** as follows:

a. Amended by revising paragraphs (f) and (g) to read as follows:

b. Amended by paragraph (h)(2) introductory text, by revising the citation “§ 264.98(h)(5)” to read “§ 264.98(g)(5)”.

**§ 264.99 Compliance monitoring program.**

\*\*\*\*\*

(f) The Director will specify the frequencies for collecting samples and conducting statistical tests to determine statistically significant evidence of increased contamination in accordance with § 264.97(g). ~~A sequence of at least four samples from each well (background and compliance wells) must be collected at least semi-annually during the compliance period of the facility.~~

(g) ~~The owner or operator must analyze samples from all monitoring wells at the compliance point for all constituents contained in Appendix IX of Section 264 at least annually to determine whether additional hazardous constituents are present in the uppermost aquifer and, if so, at what concentration, pursuant to procedures in § 264.98(f). If the owner or operator finds Appendix IX constituents in the ground water that are not already identified in the permit as monitoring constituents, the owner or operator may resample within one month and repeat the Appendix IX analysis. If the second analysis confirms the presence of new constituents, the owner or operator must report the concentration of these additional constituents to the Director within seven days after the completion of the second analysis and add them to the monitoring list. If the owner or operator chooses not to resample, then he or she must report the concentrations of these additional constituents to the Director within seven days after completion of the initial analysis and add them to the monitoring list. Annually, the owner or operator must determine whether additional hazardous constituents from Appendix IX of this section, which could possibly be present but are not on the detection monitoring list in the permit, are actually present in the uppermost aquifer and, if so, at what concentration, pursuant to procedures in § 264.98(f). To accomplish this, the owner or operator must consult with the Director to determine on a case-by-case basis: which sample collection event during the year will involve enhanced sampling; the number of monitoring wells at the compliance point to undergo enhanced sampling; the number of samples to be collected from each of these monitoring wells; and, the specific constituents from Appendix IX of this section for which these samples must be analyzed. If the enhanced sampling event indicates that Appendix IX constituents are present in the ground water that are not already identified in the permit as monitoring constituents, the owner or operator may resample within one month or at an alternative site-specific schedule approved by the Director, and repeat the analysis. If the second analysis confirms the presence of new constituents, the owner or operator must report the concentration of these additional~~



constituents to the Director within seven days after the completion of the second analysis and add them to the monitoring list. If the owner or operator chooses not to resample, then he or she must report the concentrations of these additional constituents to the Director within seven days after completion of the initial analysis, and add them to the monitoring list.

(h) \* \* \* \*

(2) Submit to the Director an application for a permit modification to establish a corrective action program meeting the requirements of § 264.100 within 180 days, or within 90 days if an engineering feasibility study has been previously submitted to the Director under ~~§ 264.98(h)(5)~~ 264.98(g)(5). The application must at a minimum include the following information:

\* \* \* \* \*

47. Section 264.100 is amended by revising paragraph (g) to read as follows:

**§ 264.100 Corrective action program.**

\* \* \* \* \*

(g) The owner or operator must report in writing to the Director on the effectiveness of the corrective action program. The owner or operator must submit these reports ~~semi-annually~~ annually.

\* \* \* \* \*

48. In § 264.101, amend paragraph (d) by revising the phrase “This does not apply” to read “This section does not apply”.

**§ 264.101 Corrective action for solid waste management units.**

\* \* \* \* \*

(d) ~~This does not apply~~ This section does not apply to remediation waste management sites unless they are part of a facility subject to a permit for treating, storing or disposing of hazardous wastes that are not remediation wastes.

\* \* \* \* \*

**Subsection G—Closure and Post-Closure**

49. In § 264.112, amend paragraph (b)(8) by revising the citation “264.110(d)” to read “264.110(c)”.

**§ 264.112 Closure plan; amendment of plan.**

\* \* \* \* \*

(b) \* \* \* \*

(8) For facilities where the Director has applied alternative requirements at a regulated unit under §§ 264.90(f), ~~264.110(d)~~ 264.110(c), and/or § 264.140(d), either the alternative requirements applying to the regulated unit, or a reference to the enforceable document containing those alternative requirements.

\* \* \* \* \*

50. Section 264.113 is amended by revising paragraph (e)(5) to read as follows:

**§ 264.113 Closure; time allowed for closure.**

\* \* \* \* \*

(e) \* \* \* \*

(5) During the period of corrective action, the owner or operator shall provide ~~semi-annual~~ annual reports to the Director that describe the progress of the corrective action program, compile all ground-water monitoring data, and evaluate the effect of the continued receipt of non-hazardous wastes on the effectiveness of the corrective action.

\* \* \* \* \*

51. Section 264.115 is revised to read as follows:

**§ 264.115 Certification of closure.**

Within 60 days of completion of closure of each hazardous waste surface impoundment, waste pile, land treatment, and landfill unit, and within 60 days of the completion of final closure, the owner or operator must submit to the Director, by registered mail, a certification that the hazardous waste management unit or facility, as applicable, has been closed in accordance with the specifications in the approved closure plan.. The certification must be signed by the owner or operator and by an independent qualified Arkansas-registered Professional Engineer. Documentation supporting the Professional Engineer’s certification must be furnished to the Director upon request until he releases the owner or operator from the financial assurance requirements for closure under § 264.143(i).

52. Amend Section 264.116 by revising “landfills cells” to read “landfill cells”.

**§ 264.116 Survey plat.**

No later than the submission of the certification of closure of each hazardous waste disposal unit, the owner or operator must submit to the local zoning authority, or the

authority with jurisdiction over local land use, and to the Director, a survey plat indicating the location and dimensions of ~~landfills-cells~~ landfill cells or other hazardous waste disposal units with respect to permanently surveyed benchmarks. This plat must be prepared and certified by a professional land surveyor. The plat filed with the local zoning authority, or the authority with jurisdiction over local land use, must contain a note, prominently displayed, which states the owner's or operator's obligation to restrict disturbance of the hazardous waste disposal unit in accordance with the applicable Subsection G regulations.  
\* \* \* \* \*

53. In Section 264.118, amend paragraph (c) by revising the citation “§ 264.188(b)(3)” to read “§ 264.118(b)(3)”.

**§ 264.118 Post-closure plan; amendment of plan.**  
\* \* \* \* \*

(c) Until final closure of the facility, a copy of the approved post-closure plan must be furnished to the Director upon request, including request by mail. After final closure has been certified, the person or office specified in ~~§ 264.188(b)(3)~~ § 264.118(b)(3) must keep the approved post-closure plan during the remainder of the post-closure period.  
\* \* \* \* \*

54. Section 264.120 is revised to read as follows:

**§ 264.120 Certification of completion of post-closure care.**

No later than 60 days after completion of the established post-closure care period for each hazardous waste disposal unit, the owner or operator must submit to the Director, by registered mail, a certification that the post-closure care period for the hazardous waste disposal unit was performed in accordance with the specifications in the approved post-closure plan. The certification must be signed by the owner or operator and an independent qualified Arkansas-registered Professional Engineer. Documentation supporting the Professional Engineer's certification must be furnished to the Director upon request until he releases the owner or operator from the financial assurance requirements for post-closure care under § 264.145(i).  
\* \* \* \* \*

**Subsection H—Financial Requirements**

55. In § 264.140, amend paragraph (d)(1) by revising the citation “§ 264.110(d)” to read “§ 264.110(c)”.

**§ 264.140 Applicability.**  
\* \* \* \* \*

(d) \* \* \*

(1) Prescribes alternative requirements for the regulated unit under § 264.90(f) and/or ~~§ 264.110(d)~~ § 264.110(c); and  
\* \* \* \* \*

56. In § 264.142, amend paragraph (b)(2) by revising “2)” to read “(2)”.

**§ 264.142 Cost estimate for closure.**  
\* \* \* \* \*

(b) \* \* \*

~~2)~~ (2) Subsequent adjustments are made by multiplying the latest adjusted closure cost estimate by the latest inflation factor.  
\* \* \* \* \*

57. Amend § 264.143 as follows:

- a. In paragraph (b)(7), revise “then the penal sum” to read “than the penal sum”;
- b. In paragraph (b)(8), revise “as evidence by” to read “as evidenced by”;
- c. Amended by revising paragraph (i) to read as follows:

**§ 264.143 Financial assurance for closure.**  
\* \* \* \* \*

(b) \* \* \*

(7) Whenever the current closure cost estimate increases to an amount greater ~~then the penal sum~~ than the penal sum, the owner or operator, within 60 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current closure cost estimate and submit evidence of such increase to the Director, or obtain other financial assurance as specified in this section to cover the increase. Whenever the current closure cost estimate decreases, the penal sum may be reduced to the amount of the current closure cost estimate following written approval by the Director.

(8) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Director. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Director, ~~as evidence by~~ as evidenced by the return receipts.  
\* \* \* \* \*

(i) *Release of the owner or operator from the requirements of this section.* Within 60 days after receiving certifications from the owner or operator and an independent qualified Arkansas-registered Professional Engineer that final clo-

sure has been completed in accordance with the approved closure plan, the Director will notify the owner or operator in writing that he is no longer required by this section to maintain financial assurance for final closure of the facility, unless the Director has reason to believe that final closure has not been in accordance with the approved closure plan. The Director shall provide the owner or operator a detailed written statement of any such reason to believe that closure has not been in accordance with the approved closure plan.  
\*\*\*\*\*

58. Section 264.145 is amended as follows:

- a. In paragraph (d)(6), revise “issued in a amount” to read “issued in an amount”;
- b. In paragraph (f)(11) introductory text, revise “for this section” to read “of this section”; and revise “the direct of higher-tier” to read “the direct or higher-tier”.
- c. Amend by revising paragraph (i) to read as follows:

**§ 264.145 Financial assurance for post-closure care.**

\*\*\*\*\*

(d) \*\*\*

\*\*\*\*\*

(6) The letter of credit must be ~~issued in a amount~~ issued in an amount at least equal to the current post-closure cost estimate, except as provided in § 264.145(g).

\*\*\*\*\*

(f) \*\*\*

\*\*\*\*\*

(11) An owner or operator may meet the requirements ~~for this section of this section~~ by obtaining a written guarantee. The guarantor must be ~~the direct of higher-tier~~ the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a “substantial business relationship” with the owner or operator. The guarantor must meet the requirements for owners or operators in paragraphs (f)(1) through (9) of this section and must comply with the terms of the guarantee. The wording of the guarantee must be identical to the wording specified in § 264.151(h). A certified copy of the guarantee must accompany the items sent to the Director as specified in paragraph (f)(3) of this section. One of these items must be the letter from the guarantor’s chief financial officer. If the guarantor’s parent corporation is also the parent corporation of the owner or operator, the letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a “substantial business relationship” with the owner or operator, this letter must describe this “substantial business relationship” and the value received

in consideration of the guarantee. The terms of the guarantee must provide that:

\*\*\*\*\*

(i) *Release of the owner or operator from the requirements of this section.* Within 60 days after receiving certifications from the owner or operator and an independent qualified Arkansas-registered Professional Engineer that the post-closure care period has been completed for a hazardous waste disposal unit in accordance with the approved plan, the Director will notify the owner or operator that he is no longer required to maintain financial assurance for post-closure of that unit, unless the Director has reason to believe that post-closure care has not been in accordance with the approved post-closure plan. The Director shall provide the owner or operator a detailed written statement of any such reason to believe that post-closure care has not been in accordance with the approved post-closure plan.

\*\*\*\*\*

59. Section 264.147 is amended as follows:

- a. Amended by revising paragraph (e) to read as follows:
- b. Amend paragraph (h)(1) by revising “letter or credit” to read “letter of credit”.

**§ 264.147 Liability requirements.**

\*\*\*\*\*

(e) *Period of coverage.* Within 60 days after receiving certifications from the owner or operator and an independent qualified Arkansas-registered Professional Engineer that final closure has been completed in accordance with the approved closure plan, the Director will notify the owner or operator in writing that he is no longer required by this section to maintain liability coverage for that facility, unless the Director has reason to believe that closure has not been in accordance with the approved closure plan.

\*\*\*\*\*

60. Section 264.151 is amended as follows:

- a. In paragraph (a), replace all references of “ADEQ Director” with “Director”.
- b. Delete the word “appropriate” in both instances in Section 16.;
- c. In paragraph (b), in the section “Corporate Surety(ies),” remove the bracket (J) after “State of incorporation”;
- d. In paragraph (g), in the fifth paragraph of the LETTER FROM CHIEF FINANCIAL OFFICER, revise ““nonsudden” of” to read ““nonsudden” or”;
- e. In paragraph (g), in Part B, ALTERNATIVE I item 15., remove the comma after the word “If”;
- f. In paragraph (g), in Part B, ALTERNATIVE II item \*7., remove the underline before the “\$”;
- g-h. In paragraph (h)(2), under the section GUARAN-

TEE FOR LIABILITY COVERAGE, in the

second sentence, revise “or which guarantor” to read “of which guarantor”; and revise the phrase “[either 264.141(h)]” to read “[either 264.141(h) or 265.141(h)]”;

i. In paragraph (h)(2), under the section RECITALS, item 13.(a), under the subsection CERTIFICATION OF VALID CLAIM, insert a closing bracket (]) after “[Principal’s”;

j. Add a “space” between Paragraph (c) and paragraph (d);

k. In paragraph (k), in the section IRREVOCABLE STANDBY LETTER OF CREDIT, insert a closing bracket (]) at the end of the phrase after (2) to read “Grantor’s facility or group of facilities.]”;

l. In paragraph (l), revise the citations “§ 264.147(h) or § 265.147(h)” to read “§ 264.147(i) or § 265.147(i)”;

m. In paragraph (m)(1), change the wording of the second paragraph as follows:

n. In paragraph (m)(1), in the CERTIFICATION OF VALID CLAIM Section 8.(c), revise both instances of “depository” to read “depository”;

o. In paragraph (m)(1), Section 10., replace “EPA Regional Administrator” with “Director”;

p. In paragraph (m)(1), Section 14., replace “EPA” with “the Director”;

q. In paragraph (n)(1), change the wording of the second paragraph as follows:

r.–s. In paragraph (n)(1), under STANDBY TRUST AGREEMENT, in Section 3.(c)(1), revise “employee or” to read “employee of”;

t. In paragraph (n)(1), Section 12., third sentence, replace the semicolon after “the appointment” with a comma and replace “EPA Regional Administrator” with “Director”;

u. In paragraph (n)(1), add a “space” before Section 16;

v. In paragraph (n)(1), Section 16., second sentence, revise “reasonable” to read “reasonably”.

§ 264.151 Wording of the instruments.

(a) \* \* \*

Section 4. Payment for Closure and Post-Closure Care. The Trustee shall make payments from the Fund as the ADEQ Director shall direct, in writing, to provide for the payment of the costs of closure and/or post-closure care of the facilities covered by this Agreement. The Trustee shall reimburse the Grantor or other persons as specified by the ADEQ Director from the Fund for closure and post-closure expenditures in such amounts as the ADEQ Director shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the ADEQ Director specifies in writing.

Section 10. Annual Valuation. The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the ADEQ Director a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the ADEQ Director shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

\* \* \* \* \*

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee’s acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions.

The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the ADEQ Director, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor’s orders, requests, and instructions. All orders, requests, and instructions by the ADEQ Director to the Trustee shall be in writing, signed by the ADEQ Director or his designee, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or ADEQ hereunder has occurred.

\* \* \* \* \*

Section 16. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the appropriate Director, or by the Trustee and the appropriate ADEQ Director if the Grantor ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the ADEQ Director, or by the Trustee and the ADEQ Director, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 18. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the ADEQ Director issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

\* \* \* \* \*

(b) \* \* \*

\* \* \* \* \*

Corporate Surety(ies)  
[Name and address]  
State of incorporation:}

\* \* \* \* \*

(g) \* \* \*

LETTER FROM CHIEF FINANCIAL OFFICER

\* \* \* \* \*

The firm identified above guarantees, through the guarantee specified in subsection H of Regulation No. 23 Sections 264 and 265, liability coverage for [insert “sudden” or “nonsudden” of “nonsudden” or “both sudden and nonsudden”] accidental occurrences at the following facilities



owned or operated by the following: . The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee ; or (3) engaged in the following substantial business relationship with the owner or operator , and receiving the following value in consideration of this guarantee ]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter.]

LETTER FROM CHIEF FINANCIAL OFFICER

Part B, ALTERNATIVE I

\*15. Are at least 90% of assets located in the U.S.? (Yes/No) If; not, complete line 16.

Part B, ALTERNATIVE II

\*7. Tangible net worth (if any portion of the closure or post-closure cost estimates is included in "total liabilities" on your financial statements you may add that portion to this line) = \$\_\_\_\_\_

(h) \* \* \* (2) \* \* \*

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of [if incorporated within the United States insert "the State of " and insert name of State; if incorporated outside the United States insert the name of the country in which incorporated, the principal place of business within the United States, and the name and address of the registered agent in the State of the principal place of business], herein referred to as guarantor. This guarantee is made on behalf of [owner or operator] of [business address], which is one of the following: "our subsidiary;" "a subsidiary of [name and address of common parent corporation], or which guarantor of which guarantor is a subsidiary;" or "an entity with which guarantor has a substantial business relationship, as defined in APC&EC Regulation No. 23 § 264.141(h)" "[either No. 23 § 264.141(h) or No. 23 § 265.141(h)]", to any and all third parties who have sustained or may sustain bodily injury or property damage caused by [sudden and/or nonsudden] accidental occurrences arising from operation of the facility(ies) covered by this guarantee.

Recitals

13. \* \* \*

CERTIFICATION OF VALID CLAIM

[Principal]

14. \* \* \*

Signature of witness of notary Signature of witness or notary:

(j) \* \* \* 2 \* \* \*

(c) Whenever requested by the Director of the Arkansas Department of Environmental Quality (ADEQ), the Insurer agrees to furnish to the Director a signed duplicate original of the policy and all endorsements. "SPACE"

(d) Cancellation of the insurance, whether by the insurer, the insured, a parent corporation providing insurance coverage for its subsidiary, or by a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of the hazardous waste management facility, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the Director.

(k) \* \* \*

IRREVOCABLE STANDBY LETTER OF CREDIT

or (2) a valid final court order establishing a judgment against the

principal for bodily injury or property damage caused by a sudden or nonsudden accidental occurrence arising from operation of the principal's facility or group of facilities.]

(l) A surety bond, as specified in § 264.147(h) or § 265.147(h) § 264.147(i) or § 265.147(i) of this regulation, must be worded as follows: except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

(m)(1) \* \* \*

Whereas, the United States Environmental Protection Agency, "EPA," an agency of the United States Government, has established certain regulations applicable to the Grantor Grantor Whereas, the Arkansas Department of Environmental Quality, "ADEQ", an agency of the State of Arkansas, has established certain regulations applicable to the Grantor requiring, requiring that an owner or operator of a hazardous waste management facility or group of facilities must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental and/or nonsudden accidental occurrences arising from operations of the facility or group of facilities.

Section 8. \* \* \*

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

Section 10. Annual Valuations. The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the Director, ADEQ a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the EPA Regional Administrator Director shall constitute a conclusively binding assent by the Grantor barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendments to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the Director to the Trustee shall be in writing, signed by the Director, or his designee, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or ADEQ hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or EPA the Director, except as provided for herein.

(n)(1) . \* \* \*

Whereas the United States Environmental Protection Agency, "EPA," an agency of the United States Government, and the Arkansas Department of Environmental Quality, an agency of the State of Arkansas, have established certain regulations applicable to the Grantor Whereas, the Arkansas Department of Environmental Quality, "ADEQ", an agency

of the State of Arkansas, has established certain regulations applicable to the Grantor requiring, that an owner or operator of a hazardous waste management facility or group of facilities must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental and/or nonsudden accidental occurrences arising from operations of the facility or group of facilities.

\*\*\*\*\*

Section 3. . \* \* \*

(c) \* \* \*

(1) An ~~employee or~~ employee of [insert Grantor] arising from, and in the course of, employment by [insert Grantor]; or

\*\*\*\*\*

(e) \* \* \*

\*\*\*\*\*

(3) Property loaned by [insert Grantor];

\*\*\*\*\*

Section 12. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the ~~EPA Regional Administrator~~ Director and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

\*\*\*\*\*

Section 15. \* \* \*

The Director will agree to termination of the Trust when the owner or operator substitutes alternative financial assurance as specified in this section.

"SPACE"

Section 16. Immunity and indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor and the Director issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses ~~reasonable~~ reasonably incurred in its defense in the event the Grantor fails to provide such defense.

\*\*\*\*\*

**Subsection I—Use and Management of Containers**

61. **Section 264.174** is revised to read as follows:

**§ 264.174 Inspections.**

At least weekly, the owner or operator must inspect areas where containers are stored, ~~looking for leaking containers and for deterioration of containers and the containment system caused by corrosion or other factors. except for Performance Track member facilities, that may conduct inspections at least once each month, upon approval by the Director. To apply for reduced inspection frequencies, the Performance Track member facility must follow the procedures identified in § 264.15(b)(5) of this sec-~~

**tion. The owner or operator must look for leaking containers and for deterioration of containers and the containment system caused by corrosion or other factors.**

[Comment: See §§ 264.15(c) and 264.171 for remedial action required if deterioration or leaks are detected.]

\*\*\*\*\*

**Subsection J—Tank Systems**

62. **Section 264.191** is amended by revising paragraphs (a) and (b)(5)(ii) (the note to paragraph (b)(5)(ii) is unchanged) to read as follows:

**§ 264.191 Assessment of existing tank system's integrity.**

(a) For each existing tank system that does not have secondary containment meeting the requirements of § 264.193, the owner or operator must determine that the tank system is not leaking or is unfit for use. Except as provided in paragraph (c) of this section, the owner or operator must obtain and keep on file at the facility a written assessment reviewed and certified by an independent qualified Arkansas-registered Professional Engineer, in accordance with § 270.11(d) of this Regulation, that attests to the tank system's integrity by January 12, 1988.

(b) \* \* \*

(5) \* \* \*

(ii) For other than non-enterable underground tanks and for ancillary equipment, this assessment must include either a leak test, as described above, or other integrity examination that is certified by an independent qualified Arkansas-registered Professional Engineer in accordance with § 270.11(d) of this Regulation, that addresses cracks, leaks, corrosion, and erosion.

\*\*\*\*\*

63. **Section 264.192** is amended by revising paragraph (a) introductory text and paragraph (b) introductory text to read as follows:

**§ 264.192 Design and installation of new tank systems or components.**

(a) Owners or operators of new tank systems or components must obtain and submit to the Director, at time of submittal of part B information, a written assessment, reviewed and certified by an independent qualified Arkansas-registered Professional Engineer, in accordance with § 270.11(d) of this Regulation, attesting that the tank system has sufficient structural integrity and is acceptable for the storing and treating of hazardous waste. The assessment must show that the foundation, structural support, seams, connections, and



pressure controls (if applicable) are adequately designed and that the tank system has sufficient structural strength, compatibility with the waste(s) to be stored or treated, and corrosion protection to ensure that it will not collapse, rupture, or fail. This assessment, which will be used by the Director to review and approve or disapprove the acceptability of the tank system design, must include, at a minimum, the following information:

\*\*\*\*\*

(b) The owner or operator of a new tank system must ensure that proper handling procedures are adhered to in order to prevent damage to the system during installation. Prior to covering, enclosing, or placing a new tank system or component in use, an independent qualified installation inspector or an independent qualified Arkansas-registered Professional Engineer, either of whom is trained and experienced in the proper installation of tanks systems or components, must inspect the system for the presence of any of the following items:

\*\*\*\*\*

64. Section 264.193 is amended by:

- a. Removing paragraphs (a)(2) through (a)(4);
- b. Redesignating (a)(5) as (a)(2);
- c. Revising paragraphs (a)(1), newly designated (a)(2) to read as follows:
  - d. In paragraph (d)(4), insert a period at the end of the sentence;
  - e. In paragraph (e)(2)(ii), replace the colon with a semi-colon;
  - f. In paragraph (e)(2)(iii), replace the colon with a semi-colon;
  - g. In paragraph (e)(2)(v)(B), revise the citation “§ 262.21” to read “§ 261.23”, and replace the period after the word “vapor” with a semicolon and add the word “and”;
  - h. In paragraph (e)(3)(i), replace the period at the end with a semicolon;
  - i. In paragraph (e)(3)(ii), replace the colon with a semi-colon;
  - j. In paragraph (g)(1)(iii), replace the comma after the word “water” with a semi-colon;
  - k. In paragraph (g)(1)(iv), insert a period at the end of the paragraph;
  - l. In paragraph (g)(2)(i)(A), replace the period with a comma.
  - m. Revising paragraph (i)(2) to read as follows:

**§ 264.193 Containment and detection of releases.**

- (a) \*\*\*
  - (1) For all new and existing tank systems or components, prior to their being put into service.
  - ~~(2) For all existing tank systems used to store or treat EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027, within two years after January 12, 1987;~~

~~(3) For those existing tank systems of known and documented age, within two years after January 12, 1987 or when the tank system has reached 15 years of age, whichever comes later;~~

~~(4) For those existing tank systems for which the age cannot be documented, within eight years of January 12, 1987; but if the age of the facility is greater than seven years, secondary containment must be provided by the time the facility reaches 15 years of age, or within two years of January 12, 1987, whichever comes later; and~~

~~(5)(2) For tank systems that store or treat materials that become hazardous wastes, within two years of the hazardous waste listing, or when the tank system has reached 15 years of age, whichever comes later.~~

\*\*\*\*\*

(d) \*\*\*

\*\*\*\*\*

(4) An equivalent device as approved by the Director.

\*\*\*\*\*

(e) \*\*\*

(2) \*\*\*

\*\*\*\*\*

(ii) Designed or operated to prevent run-on or infiltration of precipitation into the secondary containment system unless the collection system has sufficient excess capacity to contain run-on or infiltration. Such additional capacity must be sufficient to contain precipitation from a 25-year, 24-hour rainfall event.;

(iii) Constructed with chemical-resistant water stops in place at all joints (if any).;

\*\*\*\*\*

(v) \*\*\*

\*\*\*\*\*

(B) Meets the definition of reactive waste under ~~§ 261.21~~ § 261.23 of this regulation, and may form an ignitable or explosive vapor.

\*\*\*\*\*

(3) \*\*\*

(i) Designed as an integral structure (i.e., an inner tank completely enveloped within an outer shell) so that any release from the inner tank is contained by the outer shell.;

\*\*\*\*\*

(ii) Protected, if constructed of metal, from both corrosion of the primary tank interior and of the external surface of the outer shell.;

\*\*\*\*\*

(g) \*\*\*

(1) \*\*\*

\*\*\*\*\*

(iii) The hydrogeologic setting of the facility, including the thickness of soils present

between the tank system and ground water;

\*\*\*\*\*

(iv) All other factors that would influence the quality and mobility of the hazardous constituents and the potential for them to migrate to ground water or surface water.

\*\*\*\*\*

(2) \*\*\*

(i) \*\*\*

(A) The physical and chemical characteristics of the waste in the tank system, including its potential for migration.

\*\*\*\*\*

(i) \*\*\*

(2) For other than non-enterable underground tanks, the owner or operator must either conduct a leak test as in paragraph (i)(1) of this section or develop a schedule and procedure for an assessment of the overall condition of the tank system by an independent qualified Arkansas-registered Professional Engineer. The schedule and procedure must be adequate to detect obvious cracks, leaks, and corrosion or erosion that may lead to cracks and leaks. The owner or operator must remove the stored waste from the tank, if necessary, to allow the condition of all internal tank surfaces to be assessed. The frequency of these assessments must be based on the material of construction of the tank and its ancillary equipment, the age of the system, the type of corrosion or erosion protection used, the rate of corrosion or erosion observed during the previous inspection, and the characteristics of the waste being stored or treated.

\*\*\*\*\*

65. Section 264.195 is amended by:

a. Revising paragraph (b) (the note to paragraph (b) is unchanged);

b. Redesignating existing paragraphs (c) and (d), as paragraphs (g) and (h), respectively;

c. Adding new paragraphs (c) through (f), to read as follows:

§ 264.195 Inspections.

\*\*\*\*\*

(b) The owner or operator must inspect at least once each operating day data gathered from monitoring and leak detection equipment (e.g., pressure or temperature gauges, monitoring wells) to ensure that the tank system is being operated according to its design.

(1) Aboveground portions of the tank system, if any, to detect corrosion or releases of waste;

(2) Data gathered from monitoring and leak detection equipment (e.g., pressure or temperature gauges, monitoring wells) to ensure that the tank system is being operated according to its design;

and

(3) The construction materials and the area immediately surrounding the externally accessible portion of the tank system, including the secondary containment system (e.g., dikes) to detect erosion or signs of releases of hazardous waste (e.g., wet spots, dead vegetation).

[Note: Section 264.15(c) requires the owner or operator to remedy any deterioration or malfunction he finds. Section 264.196 requires the owner or operator to notify the Director within 24 hours of confirming a leak. Also, 40 CFR part 302 may require the owner or operator to notify the National Response Center of a release.]

(c) In addition, except as noted under paragraph (d) of this section, the owner or operator must inspect at least once each operating day:

(1) Above ground portions of the tank system, if any, to detect corrosion or releases of waste.

(2) The construction materials and the area immediately surrounding the externally accessible portion of the tank system, including the secondary containment system (e.g., dikes) to detect erosion or signs of releases of hazardous waste (e.g., wet spots, dead vegetation).

(d) Owners or operators of tank systems that either use leak detection systems to alert facility personnel to leaks, or implement established workplace practices to ensure leaks are promptly identified, must inspect at least weekly those areas described in paragraphs (c)(1) and (c)(2) of this section. Use of the alternate inspection schedule must be documented in the facility's operating record. This documentation must include a description of the established workplace practices at the facility.

(e) Performance Track member facilities may inspect on a less frequent basis, upon approval by the Director, but must inspect at least once each month. To apply for a less than weekly inspection frequency, the Performance Track member facility must follow the procedures described in § 264.15(b)(5).

(f) Ancillary equipment that is not provided with secondary containment, as described in § 264.193(f)(1) through (4), must be inspected at least once each operating day.

~~(e)~~(g) The owner or operator must inspect cathodic protection systems, if present, according to, at a minimum, the following schedule to ensure that they are functioning properly:

(1) The proper operation of the cathodic protection system must be confirmed within six months after initial installation and annually thereafter; and

(2) All sources of impressed current must be inspected and/or tested, as appropriate, at least bi-monthly (i.e., every other month).

[Note: The practices described in the National Association of Corrosion Engineers (NACE) standard, "Recommended Practice (RP-02-85) — Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems," and the American Petroleum Institute (API) Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems," may be used, where applicable, as guidelines in maintaining and inspecting cathodic protection systems.]

(h) The owner or operator must document in the operating record of the facility an inspection of those items in paragraphs (a) through (c) of this section.

66. Section 264.196 is amended by revising paragraph (f) (the notes to paragraph (f) are unchanged) to read as follows:

§ 264.196 Response to leaks or spills and disposition of leaking or unfit-for-use tank systems.

\*\*\*\*\*

(f) Certification of major repairs. If the owner/operator has repaired a tank system in accordance with paragraph (e) of this section, and the repair has been extensive (e.g., installation of an internal liner; repair of a ruptured primary containment or secondary containment vessel), the tank system must not be returned to service unless the owner/operator has obtained a certification by an independent qualified Arkansas-registered Professional Engineer in accordance with § 270.11(d) of this Regulation that the repaired system is capable of handling hazardous wastes without release for the intended life of the system. This certification must be placed in the operating record and maintained until closure of the facility.

\*\*\*\*\*

Subsection K—Surface Impoundments

67. Section 264.221 is amended as follows:
a. In paragraph (c)(1)(i)(B), revise “1x10<sup>-7</sup> cm/sec” to read “1x10<sup>-7</sup> cm/sec”;
b. In paragraph (e)(1), revise “EP toxicity characteristics in” to read “toxicity characteristic in”;
c. In paragraph (e)(2)(i)(B), revise the citation “§ 144.3 of this chapter” to read “Section 270.2”; and add quotation marks around “underground source of drinking water”.

§ 264.221 Design and operating requirements.

\*\*\*\*\*

(c) \*\*\*

(1)(i) \*\*\*

(B) A composite bottom liner, consisting of at least two components. The upper component must be designed and constructed of materials (e.g., a geomembrane) to prevent the migration of hazardous constituents into this component during the active life and post-closure care period. The lower component must be designed and constructed of materials to minimize the migration of hazardous constituents if a breach in the up-

per component were to occur. The lower component must be constructed of at least 3 feet (91 cm) of compacted soil material with a hydraulic conductivity of no more than 1x10<sup>-7</sup> cm/sec.

\*\*\*\*\*

(e) \*\*\*

(1) The monofill contains only hazardous wastes from foundry furnace emission controls or metal casting molding sand, and such wastes do not contain constituents which would render the wastes hazardous for reasons other than the EP toxicity characteristics in toxicity characteristic in § 261.24 of this regulation; and

\*\*\*\*\*

(2)(i) \*\*\*

(B) The monofill is located more than one-quarter mile from an “underground source of drinking water” (as that term is defined in 40 CFR 144.3); and

\*\*\*\*\*

68. Section 264.223 is amended at paragraph (b)(1) by revising “exceedence” to read “exceedance”.

§ 264.223 Response actions.

\*\*\*\*\*

(b) \*\*\*

(1) Notify the Director in writing of the exceedence exceedance within 7 days of the determination;

\*\*\*\*\*

Subsection L—Waste Piles

69. Section 264.251 is amended by revising the introductory text to paragraph (c) to read as follows:

§ 264.251 Design and operating requirements.

\*\*\*\*\*

(c) The owner or operator of each new waste pile unit on which construction commences after January 29, 1992, each lateral expansion of a waste pile unit on which construction commences after July 29, 1992, and each replacement of an existing waste pile unit that is to commence re-use after July 29, 1992 must install two or more liners and a leachate collection and removal system above and between such liners. “Construction commences” is as defined in § 260.10 under “existing facility”.

\*\*\*\*\*

70. At Section 264.251 paragraph (a) revise, “surface impoundment units” to read “waste pile units”;

§ 264.252 Action leakage rate.

(a) The Director shall approve an action leakage rate for ~~surface impoundment units~~ waste pile units subject to § 264.251(c) or (d). The action leakage rate is the maximum design flow rate that the leak detection system (LDS) can remove without the fluid head on the bottom liner exceeding 1 foot. The action leakage rate must include an adequate safety margin to allow for uncertainties in the design (e.g., slope, hydraulic conductivity, thickness of drainage material), construction, operation, and location of the LDS, waste and leachate characteristics, likelihood and amounts of other sources of liquids in the LDS, and proposed response actions (e.g., the action leakage rate must consider decreases in the flow capacity of the system over time resulting from siltation and clogging, rib layover and creep of synthetic components of the system, overburden pressures, etc.).

\*\*\*\*\*

71. In Section 264.259, amend paragraph (b) by removing the comma between the word “and” and “F027”.

§ 264.259 Special requirements for hazardous wastes F020, F021, F022, F023, F026, and F027.

\*\*\*\*\*

(b) The Director may determine that additional design, operating, and monitoring requirements are necessary for piles managing hazardous wastes F020, F021, F022, F023, F026, and; F027 in order to reduce the possibility of migration of these wastes to ground water, surface water, or air so as to protect human health and the environment.

Subsection M—Land Treatment

72. Section 264.280 is amended by revising paragraph (b) to read as follows:

a. Amend by revising paragraph (b) to read as follows:

b. In paragraph (c)(7), revise “expect that” to read “except that”;

c. In paragraph (d), introductory text, revise “closure of post-closure” to read “closure or post-closure”.

§ 264.280 Closure and post-closure care.

\*\*\*\*\*

(b) For the purpose of complying with § 264.115 of this Regulation, when closure is completed the owner or operator may submit to the Director certification by an independent qualified soil scientist, in lieu of an independent qualified Arkansas-registered Professional Engineer, that the facility has been closed in accordance with the specifications in the approved closure plan.

(c) \*\*\*

(7) Continue unsaturated zone monitoring in compliance with § 264.278, ~~expect that~~ except that soil-pore liquid monitoring may be terminated 90 days after the last application of waste to the treatment zone.

\*\*\*\*\*

(d) The owner or operator is not subject to regulation under paragraphs (a)(8) and (c) of this section if the Director finds that the level of hazardous constituents in the treatment zone soil does not exceed the background value of those constituents by an amount that is statistically significant when using the test specified in paragraph (d)(3) of this section. The owner or operator may submit such a demonstration to the Director at any time during the ~~closure of post-closure~~ closure or post-closure care periods. For the purposes of this paragraph:

\*\*\*\*\*

73. In Section 264.283, amend paragraph (a) by removing the comma between the word “and” and “F027”.

§ 264.283 Special requirements for hazardous wastes F020, F021, F022, F023, F026, and F027.

(a) Hazardous Wastes F020, F021, F022, F023, F026 and; F027 must not be placed in a land treatment unit unless the owner or operator operates the facility in accordance with a management plan for these wastes that is approved by the Director pursuant to the standards set out in this paragraph, and in accord with all other applicable requirements of this Section. The factors to be considered are:

\*\*\*\*\*

Subsection N—Landfills

74. In Section 264.301 paragraph (e)(2)(i)(B), revise the citation “§ 144.3 of this chapter” to read “40 CFR 270.2”; and add quotation marks around “underground source of drinking water”.

§ 264.301 Design and operating requirements.

\*\*\*\*\*

(e) \*\*\*

(2)(i) \*\*\*

(B) The monofill is located more than one-quarter mile from an underground source of drinking water (as that term is defined in ~~40 CFR 144.3~~ 40 CFR 270.2); and

\*\*\*\*\*

75. Amend Section 264.302 as follows:

a. In paragraph (a), revise “surface impoundment units” to read “landfill units”;

b. In paragraph (b), remove the comma after the citation “§ 264.303(c)”.

§ 264.302 Action leakage rate.

(a) The Director shall approve an action leakage rate for ~~surface impoundment units~~ landfill units subject to § 264.301(c) or (d). The action leakage rate is the maximum design flow rate that the leak detection system (LDS) can remove without the fluid head on the bottom liner exceeding 1 foot. The action leakage rate must include an adequate safety margin to allow for uncertainties in the design (e.g., slope, hydraulic conductivity, thickness of drainage material), construction, operation, and location of the LDS, waste and leachate characteristics, likelihood and amounts of other sources of liquids in the LDS, and proposed response actions (e.g., the action leakage rate must consider decreases in the flow capacity of the system over time resulting from siltation and clogging, rib layover and creep of synthetic components of the system, overburden pressures, etc.).

\*\*\*\*\*

(b) To determine if the action leakage rate has been exceeded, the owner or operator must convert the weekly or monthly flow rate from the monitoring data obtained under § 264.303(c); to an average daily flow rate (gallons per acre per day) for each sump. Unless the Director approves a different calculation, the average daily flow rate for each sump must be calculated weekly during the active life and closure period, and monthly during the post-closure care period when monthly monitoring is required under § 264.303(c).

\*\*\*\*\*

76. In Section 264.304, amend paragraph (b)(1) by revising “exceedence” to read “exceedance”.

§ 264.304 Response actions.

(b) \*\*\*

(1) Notify the Director in writing of the ~~exceedence~~ exceedance within 7 days of the determination;

\*\*\*\*\*

77. Section 264.314 is amended by:

- a. Removing paragraph (a);
- b. Redesignating paragraphs (b) through (f) as paragraphs (a) through (e); and,
- c. Revising newly designated paragraphs (a) and newly designated paragraph (e) introductory text to read as follows:
- d. amend paragraph (e)(2) by revising the citation “§ 144.3 of this chapter” to read “40 CFR 270.2”; and by adding quotation marks around “underground source of drinking water”.

§ 264.314 Special requirements for bulk and containerized liquids.

~~(a) The following materials shall not be disposed of in landfills permitted under this Regulation and Regulation:~~

~~(1) Bulk liquids, semisolids and sludges unless, before disposal, such waste is treated or stabilized into cement-like material;~~

~~(2) Containers holding free liquids unless all freestanding liquid has been removed or treated or stabilized into cement-like material; or the container is very small, such as an ampule, or is a lab pack as defined in 264.316 or 265.316, as applicable and is disposed of in accordance with 264.316 or 265.316 as applicable;~~

~~(3) Municipal refuse which is not hazardous waste;~~

~~(4) Ignitable wastes in containers, unless all free liquids therein have been removed or treated and stabilized into cement-like material;~~

~~(b)~~ (a) The placement of bulk or non-containerized liquid hazardous waste or hazardous waste containing free liquids (whether or not sorbents have been added) in any landfill is prohibited. Effective May 8, 1985, the placement of bulk or non-containerized liquid hazardous waste or hazardous waste containing free liquids (whether or not sorbents have been added) in any landfill is prohibited. Before disposal, liquid waste or waste containing free liquids must be treated or stabilized, (e.g. by mixing with a sorbent solid so that free liquids are no longer present and the waste meets the requirements of (a)(1) or (2) above).

~~(e)~~ (b) To demonstrate the absence or presence of free liquids in either a containerized or a bulk waste, the following test must be used: Method 9095B (Paint Filter Liquids Test) as described in “Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,” EPA Publication SW-846, as incorporated by reference in § 260.11 of this regulation.

~~(c)~~ (c) Containers holding free liquids must not be placed in a landfill unless:

- (1) All free-standing liquid:
  - (i) has been removed by decanting, or other methods;
  - (ii) has been mixed with sorbent or solidified so that free-standing liquid is no longer observed; or
  - (iii) has been otherwise eliminated; or

(2) The container is very small, such as an ampule; or

(3) The container is designed to hold free liquids for use other than storage, such as a battery or capacitor; or

(4) The container is a lab pack as defined in § 264.316 and is disposed of in accordance with § 264.316.

~~(e)~~ (d) Sorbents used to treat liquids to be disposed of in landfills must be nonbiodegradable. Nonbiodegradable sor-



bents are materials listed or described in paragraph (e)(1) of this Subsection; or materials that are determined by the Department to be nonbiodegradable through the Section 260 petition process.

(1) Nonbiodegradable sorbents (i) Inorganic minerals, other inorganic materials, and elemental carbon (e.g., aluminosilicates, clays, smectites, Fuller’s earth, bentonite, calcium bentonite, montmorillonite, calcined montmorillonite, kaolinite, micas (illite), vermiculites, zeolites, calcium carbonate (organic-free limestone), oxides/hydroxides, alumina, lime, silica (sand), diatomaceous earth, perlite (volcanic glass), expanded volcanic rock, volcanic ash, cement kiln dust, fly ash, rice hull ash, activated charcoal/activated carbon), or

(ii) High molecular weight synthetic polymers (e.g., polyethylene, high density polyethylene (HDPE), polypropylene, polystyrene, polyurethane, polyacrylate, polynorborene, polyisobutylene, ground synthetic rubber, cross-linked allylstyrene and tertiary butyl copolymers). This does not include polymers derived from biological materials or polymers specifically designed to be degradable; or

(iii) Mixtures of these nonbiodegradable materials.

(2) Tests for nonbiodegradable sorbents. (i) The sorbent material is determined to be nonbiodegradable under ASTM Method G21-70(1984a) - Standard Practice for Determining Resistance of Synthetic Polymer Material to Fungi; or

(ii) The sorbent material is determined to be nonbiodegradable under ASTM Method G22-76 (1984b)-Standard Practice for Determining Resistance of Plastics to Bacteria; or

(iii) The sorbent material is determined to be non-biodegradable under OECD test 301B: [CO<sub>2</sub> Evolution (Modified Sturm Test)].

\*\*\*\*\*

~~(f)(e) Effective November 8, 1985, the placement of any liquid which is not a hazardous waste in a landfill is prohibited unless the owner or operator of such landfill demonstrates to the Director, or the Director determines, that:~~  
The placement of any liquid which is not a hazardous waste in a landfill is prohibited unless the owner or operator of such landfill demonstrates to the Director, or the Director determines that:

(1) The only reasonably available alternative to the placement in such landfill is placement in a landfill or unlined surface impoundment, whether or not permitted or operating under interim status, which contains, or may reasonably be anticipated to contain, hazardous waste; and

(2) Placement in such owner or operator’s landfill will not present a risk of contamination of any underground source of drinking water (as that term

is defined in ~~40 CFR 144.3~~ § 270.2 of this regulation.)

\*\*\*\*\*

78. In **Section 264.317**, amend paragraph (a) introductory text by revising “in a landfills” to read “in a landfill”.

**§ 264.317 Special requirements for hazardous wastes F020, F021, F022, F023, F026, and F027.**

(a) Hazardous Wastes F020, F021, F022, F023, F026, and F027 must not be ~~placed in a landfills~~ in a landfill unless the owner or operator operates the landfill in accord with a management plan for these wastes that is approved by the Director pursuant to the standards set out in this paragraph, and in accord with all other applicable requirements of this Section. The factors to be considered are:

\*\*\*\*\*

79. **Section 264.340** is amended by revising the first sentence of paragraph (b)(1) and adding paragraph (b)(5) to read as follows:

**§ 264.340 Applicability.**

\*\*\*\*\*

(b) \*\*\*

(1) Except as provided by paragraphs (b)(2) ~~(b)(3), and (b)(4)~~ through (b)(5) of this section, the standards of this section do not apply to a new hazardous waste incineration unit that becomes subject to RCRA permit requirements after October 12, 2005; or no longer apply when an owner or operator of an existing hazardous waste incineration unit demonstrates compliance with the maximum achievable control technology (MACT) requirements of 40 CFR part 63, subsection EEE by conducting a comprehensive performance test and submitting to the Director a Notification of Compliance under 40 CFR §§ 63.1207(j) and 63.1210(d) documenting compliance with the requirements of 40 CFR part 63, subpart EEE. Nevertheless, even after this demonstration of compliance with the MACT standards, RCRA permit conditions that were based on the standards of this regulation will continue to be in effect until they are removed from the permit or the permit is terminated or revoked, unless the permit expressly provides otherwise.

\*\*\*\*\*

(5) The particulate matter standard of § 264.343(c) remains in effect for incinerators that elect to comply with the alternative to the particulate matter standard of 40 CFR §§ 63.1206(b)(14) and 63.1219(e).

\*\*\*\*\*



80. Section 264.340 is amended by revising paragraph (b)(1) to read as follows:

§ 264.340 Applicability.

\*\*\*\*\*

(b) Integration of the MACT standards:

(1) Except as provided by paragraphs (b)(2) and (b)(3) of this section, the standards of this section no longer apply when an owner or operator demonstrates compliance with the maximum achievable control technology (MACT) requirements of 40 CFR part 63, subpart EEE by conducting a comprehensive performance test and submitting to the Director a Notification of Compliance under 40 CFR §§ 63.1207(j) and 63.1210(b)(d), documenting compliance with the requirements of 40 CFR part 63, subpart EEE.

\*\*\*\*\*

81. Section 264.343 is amended by revising paragraph (a)(2) to read as follows:

§ 264.343 Performance standards.

(a) \*\*\*

(1) \*\*\*

(2) An incinerator burning hazardous wastes F020, F021, F022, F023, F026, or F027 must achieve a destruction and removal efficiency (DRE) of 99.9999% for each principal organic hazardous constituent (POHC) designated (under § 264.342) in its permit. This performance must be demonstrated on POHCs that are more difficult to incinerate than tetra-, penta-, and hexachlorodibenzo-p-dioxins and dibenzofurans. DRE is determined for each POHC from the equation in § 264.343(a)(1). ~~In addition, the owner or operator of the incinerator must notify the Director of his intent to incinerate hazardous wastes FO20, FO21, FO22, FO23, FO26, or FO27.~~

\*\*\*\*\*

82. Section 264.347 is amended by revising paragraph (d) to read as follows:

§ 264.347 Monitoring and inspections.

\*\*\*\*\*

(d) This monitoring and inspection data must be recorded and the records must be placed in the operating ~~log~~ **record** required by § 264.73 **of this section and maintained in the operating record for five years.**

Subsection S—Special Provisions for Cleanup

83. Amend Section 264.552 as follows:

a. In paragraph (e)(4)(iii), replace the colon at the end of the paragraph with a period;

b. In paragraph (e)(4)(iv)(F), revise the citation “40 CFR 260.11(11)” to read “40 CFR 260.11(a)(11)”;

c. In paragraph (e)(6)(iii)(E), revise “Hydrological” to read “Hydrogeological”.

§ 264.552 Corrective Action Management Units (CAMU).

\*\*\*\*\*

(e) \*\*\*

(4) \*\*\*

(iii) Waste that the Director determines contains principal hazardous constituents must meet treatment standards determined in accordance with paragraph (e)(4)(iv) or (e)(4)(v) of this section.

\*\*\*\*\*

(iv) \*\*\*

(F) Alternatives to TCLP. For metal bearing wastes for which metals removal treatment is not used, the Director may specify a leaching test other than the TCLP (SW-846 Method 1311, ~~40 CFR 260.11(H)~~ **40 CFR 260.11(a)(11)**) to measure treatment effectiveness, provided the Director determines that an alternative leach testing protocol is appropriate for use, and that the alternative more accurately reflects conditions at the site that affect leaching.

\*\*\*\*\*

(6) \*\*\*

(iii) \*\*\*

(E) ~~Hydrological~~ **Hydrogeological** and other relevant environmental conditions at the facility which may influence the migration of any potential or actual releases; and

\*\*\*\*\*

84. Amend Section 264.554 as follows:

a. Amend paragraph (a) introductory text by revising “Director in according” to read “Director according”.

b. Amend by revising paragraph (c)(2) to read as follows:

§ 264.554 Staging piles.

(a) What is a staging pile? A staging pile is an accumulation of solid, non-flowing remediation waste (as defined in § 260.10 of this regulation) that is not a containment building and is used only during remedial operations for temporary storage at a facility. A staging pile must be located within

the contiguous property under the control of the owner/operator where the wastes to be managed in the staging pile originated. Staging piles must be designated by the **Director in-according Director according** to the requirements in this section.

\* \* \* \* \*

(c) \* \* \*

(2) Certification by an independent qualified Arkansas-registered Professional Engineer for technical data, such as design drawings and specifications, and engineering studies, unless the Director determines, based on information that you provide, that this certification is not necessary to ensure that a staging pile will protect human health and the environment; and

\* \* \* \* \*

**Subsection W—Drip Pads**

85. **Section 264.571** is amended by revising paragraphs (a), (b), and (c) to read as follows:

**§ 264.571 Assessment of existing drip pad integrity.**

(a) For each existing drip pad as defined in § 264.570 of this Subsection, the owner or operator must evaluate the drip pad and determine whether it meets all of the requirements of this Subsection, except the requirements for liners and leak detection systems of § 264.573(b). No later than the effective date of this rule, the owner or operator must obtain and keep on file at the facility a written assessment of the drip pad, reviewed and certified by an independent qualified Arkansas-registered Professional Engineer that attests to the results of the evaluation. The assessment must be reviewed, updated and re-certified annually until all upgrades, repairs, or modifications necessary to achieve compliance with all the standards of § 264.573 are complete. The evaluation must document the extent to which the drip pad meets each of the design and operating standards of § 264.573, except the standards for liners and leak detection systems, specified in § 264.573(b).

(b) *For immediate protection of the environment, all existing drip pads, regardless of age, must have an impermeable (as specified at § 264.573(a)(4)(i)) coating or cover in place not later than September 30, 1995.* In addition, the owner or operator must develop a written plan for upgrading, repairing, and modifying the drip pad to meet the requirements of § 264.573(b) and submit the plan to the Director no later than 2 years before the date that all repairs, upgrades, and modifications are complete. This written plan must describe all changes to be made to the drip pad in sufficient detail to document compliance with all the requirements of § 264.573. The plan must be reviewed and certified by an independent qualified Arkansas-registered Professional Engineer.

*Note: A properly installed and maintained drip pad coating which is installed to meet the September 30, 1995 deadline should satisfy the eventual coating option of § 264.573(a)(4).*

(c) Upon completion of all upgrades, repairs, and modifications, the owner or operator must submit to the Director or state Director, the as-built drawings for the drip pad together with a certification by an independent qualified Arkansas-registered Professional Engineer attesting that the drip pad conforms to the drawings.

\* \* \* \* \*

86. Amend **Section 264.573** as follows:

a. In paragraph (a)(1), revise “non-earthern” to read “non-earthen”; and replace the colon at the end of the paragraph with a semicolon;

b. Amend by revising paragraph (a)(4)(ii) and (g) to read as follows:

c. In paragraph (a)(5), revise “perations” to read “operations”;

d. Amend by revising paragraph (g) to read as follows:

e. In paragraph (m)(2) and in paragraph (m)(3) twice, revise “clean up” to read “cleanup”.

**§ 264.573 Design and operating requirements.**

(a) \* \* \*

(1) Be constructed ~~of non-earthern~~ non-earthen materials, excluding wood and non-structurally supported asphalt:

\* \* \* \* \*

(4) \* \* \*

(ii) The owner or operator must obtain and keep on file at the facility a written assessment of the drip pad, reviewed and certified by an independent qualified Arkansas-registered Professional Engineer that attests to the results of the evaluation. The assessment must be reviewed, updated and recertified annually. The evaluation must document the extent to which the drip pad meets the design and operating standards of this section, except for paragraph (b) of this section.

\* \* \* \* \*

(5) Be of sufficient structural strength and thickness to prevent failure due to physical contact, climatic conditions, the stress of daily ~~perations~~ operations, e.g., variable and moving loads such as vehicle traffic, movement of wood, etc.

\* \* \* \* \*

(m) \* \* \*

(2) The Director will review the information submitted, make a determination regarding whether the pad must be removed from service completely or partially until repairs and ~~clean up~~ cleanup are complete and notify the owner or operator of the determination and the underlying rationale in writing.

(3) Upon completing all repairs and ~~clean-up~~ cleanup, the owner or operator must notify the Director in writing and provide a certification signed by an independent, qualified Arkansas-registered professional engineer, that the repairs and ~~clean-up~~ cleanup have been completed according to the written plan submitted in accordance with paragraph (m)(1)(iv) of this section.

\*\*\*\*\*

(g) The drip pad must be evaluated to determine that it meets the requirements of paragraphs (a) through (f) of this section and the owner or operator must obtain a statement from an independent qualified Arkansas-registered Professional Engineer certifying that the drip pad design meets the requirements of this section.

\*\*\*\*\*

87. Section 264.574 is amended by revising paragraph (a) to read as follows:

**§ 264.574 Inspections.**

(a) During construction or installation, liners and cover systems (e.g., membranes, sheets, or coatings) must be inspected for uniformity, damage and imperfections (e.g., holes, cracks, thin spots, or foreign materials). Immediately after construction or installation, liners must be inspected and certified as meeting the requirements in § 264.573 of this Subsection by an independent qualified Arkansas-registered Professional Engineer. This certification must be maintained at the facility as part of the facility operating record. After installation, liners and covers must be inspected to ensure tight seams and joints and the absence of tears, punctures, or blisters.

\*\*\*\*\*

**Subsection AA—Air Emission Standards for Process Vents**

88. Amend § 264.1030(c) by revising “owner and operator receives” to read “owner and operator receive”; and revise “owner and operator is subject” to read “owner and operator are subject”.

**§ 264.1030 Applicability.**

\*\*\*\*\*

(d). Until such date when the ~~owner and operator receives~~ owner and operator receive a final permit incorporating the requirements of this subsection, the ~~owner and operator is subject~~ owner and operator are subject to the requirements of § 265, subsection AA.

\*\*\*\*\*

89. In Section 264.1033, amend paragraph (f)(2)(vii)(B) by replacing the period after the word “regular” with a comma.

**§ 264.1033 Standards: Closed-vent systems and control devices.**

\*\*\*\*\*

(f) \*\*\*

(2) \*\*\*

(vii) \*\*\*

(B) A monitoring device equipped with a continuous recorder to measure a parameter that indicates the carbon bed is regenerated on a regular, , predetermined time cycle.

\*\*\*\*\*

90. Amend Section 264.1035 as follows:

a. In paragraph (c)(4)(i), replace the period after the first instance of “760 °C” with a comma;

b. In paragraph (c)(4)(ii), insert a comma after the word “greater”.

**§ 264.1035 Recordkeeping requirements.**

\*\*\*\*\*

(c) \*\*\*

(4)

(i) For a thermal vapor incinerator designed to operate with a minimum residence time of 0.50 second at a minimum temperature of 760°C, , period when the combustion temperature is below 760°C.

(ii) For a thermal vapor incinerator designed to operate with an organic emission reduction efficiency of 95 weight percent or greater, , period when the combustion zone temperature is more than 28°C below the design average combustion zone temperature established as a requirement of paragraph (b)(4)(iii)(A) of this section.

\*\*\*\*\*

**Subsection BB—Air Emission Standards for Equipment Leaks**

91. In Section 264.1050, amend paragraph (f) by revising the citation “§ 264,1064(g)(6)” to read “§ 264.1064(g)(6)”.

**§ 264.1050 Applicability.**

\*\*\*\*\*

(f) Equipment that contains or contacts hazardous waste with an organic concentration of at least 10 percent by weight

for less than 300 hours per calendar year is excluded from the requirements of §§ 264.1052 through 264.1060 of this subsection if it is identified as required in ~~§ 264.1064(g)(6)~~ § 264.1064(g)(6) of this subsection.

\* \* \* \* \*

92. In **Section 264.1058**, amend paragraph (c)(1) by replacing the period after the second occurrence of the word “detected” with a comma.

**§ 264.1058 Standards: Pumps and valves in heavy liquid service, pressure relief devices in light liquid or heavy liquid service, and flanges and other connectors.**

\* \* \* \* \*

(c) \* \* \*

(1) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected: except as provided in § 264.1059.

\* \* \* \* \*

93. **Section 264.1061** is amended by:

- a. Removing paragraphs (b)(1) and (d); and,
- b. Redesignating paragraphs (b)(2) and (b)(3) as paragraphs (b)(1) and (b)(2).

**§ 264.1061 Alternative standards for valves in gas/vapor service or in light liquid service: percentage of valves allowed to leak.**

\* \* \*

(b) The following requirements shall be met if an owner or operator decides to comply with the alternative standard of allowing 2 percent of valves to leak:

~~(1) An owner or operator must notify the Director that the owner or operator has elected to comply with the requirements of this section.~~

~~(2)~~(1) A performance test as specified in paragraph (c) of this section shall be conducted initially upon designation, annually, and at other times requested by the Director.

~~(3)~~(2) If a valve leak is detected, it shall be repaired in accordance with § 264.1057(d) and (e).

\* \* \*

~~(d) If an owner or operator decides to comply with this section no longer, the owner or operator must notify the Director in writing that the work practice standard described in § 264.1057(a) through (e) will be followed.~~

94. **Section 264.1062** is amended by removing paragraph (a)(2) and redesignating paragraph (a)(1) as paragraph (a).

**§ 264.1062 Alternative standards for valves in**

**gas/vapor service or in light liquid service; skip period leak detection and repair.**

(a)~~(1)~~ An owner or operator subject to the requirements of § 264.1057 may elect for all valves within a hazardous waste management unit to comply with one of the alternative work practices specified in paragraphs (b) (2) and (3) of this section.

~~(2) An owner or operator must notify the Director before implementing one of the alternative work practices:~~

\* \* \* \* \*

**Subsection CC—Air Emission Standards for Tanks, Surface Impoundments, and Containers**

95. Amend **Section 264.1080** as follows:

a. In paragraph (a), revise “Subsections I, J, or K” to read “Subsection “I, J, or K””;

b. In paragraph (c), last sentence, revise “owner and operator is subject” to read “owner and operator are subject”.

**§ 264.1080 Applicability.**

(a) The requirements of this subsection apply to owners and operators of all facilities that treat, store, or dispose of hazardous waste in tanks, surface impoundments, or containers subject to either subsections I, J, or K of this Section except as § 264.1 and paragraph (b) of this section provide otherwise.

\* \* \* \* \*

(c) For the owner and operator of a facility subject to this subsection who received a final permit under RCRA section 3005 prior to December 6, 1996, the requirements of this subsection shall be incorporated into the permit when the permit is reissued in accordance with the requirements of 40 CFR 124.15 or is reviewed in accordance with the requirements of § 270.50(d) of this regulation. Until such date when the permit is reissued in accordance with the requirements of 40 CFR 124.15 or is reviewed in accordance with the requirements of § 270.50(d), the ~~owner and operator is subject~~ owner and operator are subject to the requirements of Section 265, subsection CC.

\* \* \* \* \*

**Subsection DD—Containment Buildings**

96. **Section 264.1100** is amended by revising the introductory text to read as follows:

**§ 264.1100 Applicability.**

The requirements of this Subsection apply to owners or operators who store or treat hazardous waste in units de-

signed and operated under § 264.1101 of this Subsection. ~~These provisions will become effective on February 18, 1993, although owner or operator may notify the Director of his intent to be bound by this Subsection at an earlier time.~~ The owner or operator is not subject to the definition of land disposal in RCRA section 3004(k) provided that the unit:

\*\*\*\*\*

97. Amend **Section 264.1101** as follows:

a. In paragraph (b)(3)(iii), revise the citation “§ 264.193(d)(1)” to read “§ 264.193(e)(1)”;

b. Amend by revising paragraph (c)(2) to read as follows:

c. In paragraph (c)(3) introductory text, revise “hazardous waste, must repair” to read “hazardous waste, the owner or operator must repair”;

d. In paragraph (c)(3)(i), revise “lead” to read “led”;

e. Amend by revising paragraph (c)(4) to read as follows:

f. In paragraph (d) introductory text, revise “For containment buildings that contain areas both” to read “For a containment building that contains both areas”.

**§ 264.1101 Design and operating standards.**

\*\*\*\*\*

(b) \*\*\*

(3) \*\*\*

(iii) The secondary containment system must be constructed of materials that are chemically resistant to the waste and liquids managed in the containment building and of sufficient strength and thickness to prevent collapse under the pressure exerted by overlaying materials and by any equipment used in the containment building. (Containment buildings can serve as secondary containment systems for tanks placed within the building under certain conditions. A containment building can serve as an external liner system for a tank, provided it meets the requirements of ~~§ 264.193(d)(1)~~ § 264.193(e)(1). In addition, the containment building must meet the requirements of § 264.193(b) and §§ 264.193(c) (1) and (2) to be considered an acceptable secondary containment system for a tank.)

\*\*\*\*\*

(c) \*\*\*

(2) Obtain and keep on-site a certification by an independent qualified Arkansas-registered Professional Engineer that the containment building design meets the requirements of paragraphs (a), (b), and (c) of this section. ~~For units placed into operation prior to February 18, 1993, this certification must be placed in the facility’s operating record (on-site files for generators who are not formally re-~~

~~quired to have operating records) no later than 60 days after the date of initial operation of the unit. After February 18, 1993, PE certification will be required prior to operation of the unit.~~

(3) Throughout the active life of the containment building, if the owner or operator detects a condition that could lead to or has caused a release of ~~hazardous waste, must repair~~ hazardous waste, the owner or operator must repair the condition promptly, in accordance with the following procedures.

(i) Upon detection of a condition that has ~~lead~~ led to a release of hazardous waste (e.g., upon detection of leakage from the primary barrier) the owner or operator must:

\*\*\*\*\*

(4) Inspect and record in the facility’s operating record, at least once every seven days, except for Performance Track member facilities that must inspect at least once each month, upon approval by the Director, data gathered from monitoring and leak detection equipment as well as the containment building and the area immediately surrounding the containment building to detect signs of releases of hazardous waste. To apply for reduced inspection frequency, the Performance Track member facility must follow the procedures described in § 264.15(b)(5).

\*\*\*\*\*

(d) ~~For containment buildings that contain areas both For a containment building that contains both areas~~ with and without secondary containment, the owner or operator must:

\*\*\*\*\*

98. Amend **Appendix I to Section 264** as follows:

a. In Table 1, add unit of measure codes for “Pounds”, “Pounds”, “Kilograms”, and “Tons” at the end of the table to read as set forth below; and

b. In Table 2 at Section 2.(d), revise the line “T75 Tricking filter” to read “T75 Tricking filter”.

**Appendix I to Section 264—Recordkeeping Instructions.**

TABLE 1

\*\*\*\*\*

<u>Pounds</u> .....	<u>P</u>
<u>Short tons</u> .....	<u>T</u>
<u>Kilograms</u> .....	<u>K</u>
<u>Tons</u> .....	<u>M</u>

<sup>1</sup> Single digit symbols are used here for data processing purposes.

\*\*\*\*\*

Table 2.

<del>T75 Tricking filter</del>
<u>T75 Tricking filter</u>

\*\*\*\*\*



# Section 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

99. Section 265.1 paragraph (c)(6), revise “Subsections C, D, F, or G” to read “Subsections C, F, G, or H”.

## § 265.1 Purpose, scope, and applicability.

\*\*\*\*\*

(c) \*\*\*

(6) The owner and operator of a facility managing recyclable materials described in § 261.6 (a) (2), (3) and (4) of this regulation (except to the extent that requirements of this Section are referred to in Section 279 or Subsections ~~C, F, or G~~ C, F, G, or H of Section 266 of this regulation).

\*\*\*\*\*

## Subsection B—General Facility Standards

100. In Section 265.12, amend paragraph (a)(1) by revising “of the date of the waste” to read “of the date the waste”.

## § 265.12 Required notices.

(a)(1) The owner or operator of a facility that has arranged to receive hazardous waste from a foreign source must notify the EPA Regional Administrator in writing at least four weeks in advance ~~of the date of the waste~~ of the date the waste is expected to arrive at the facility. Notice of subsequent shipments of the same waste from the same foreign source is not required.

\*\*\*\*\*

101. In Section 265.14, amend paragraph (b)(1) by revising “guards of facility personnel” to read “guards or facility personnel”.

## § 265.14 Security.

\*\*\*\*\*

(b) \*\*\*

(1) A 24-hour surveillance system (e.g., television monitoring or surveillance by ~~guards of facility personnel~~ guards or facility personnel) which continuously monitors and controls entry onto the active portion of the facility; or

\*\*\*\*\*

102. Section 265.15 is amended by revising paragraph (b)(4) and adding paragraph (b)(5) to read as follows:

## § 265.15 General inspection requirements.

\*\*\*\*\*

(b) \*\*\*

(4) The frequency of inspection may vary for the items on the schedule. However, the frequency should be based on the rate of deterioration of the equipment and the probability of an environmental or human health incident if the deterioration, malfunction, or operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, must be inspected daily when in use, except for Performance Track member facilities, that must inspect at least once each month, upon approval by the Director, as described in paragraph (b)(5) of this section. At a minimum, the inspection schedule must include the items and frequencies called for in §§ 265.174, 265.193, 265.195, 265.226, 265.260, 265.278, 265.304, 265.347, 265.377, 265.403, 265.1033, 265.1052, 265.1053, 265.1058, and 265.1084 through 265.1090, where applicable.

(5) Performance Track member facilities that choose to reduce inspection frequencies must:

(i) Submit an application to the Director. The application must identify the facility as a member of the National Environmental Performance Track Program and identify the management units for reduced inspections and the proposed frequency of inspections. Inspections must be conducted at least once each month.

(ii) Within 60 days, the Director will notify the Performance Track member facility, in writing, if the application is approved, denied, or if an extension to the 60-day deadline is needed. This notice must be placed in the facility’s operating record. The Performance Track member facility should consider the application approved if the Director does not: (1) Deny the application; or (2) notify the Performance Track member facility of an extension to the 60-day deadline. In these situations, the Performance Track member facility must adhere to the revised inspection schedule outlined in its application and maintain a copy of the application in the facility’s operating record.

(iii) Any Performance Track member facility that discontinues its membership or is terminated from the program must immediately notify the Director of its change in status. The facility must place in its operating record a dated copy of this notification.



cation and revert back to the non-Performance Track inspection frequencies within seven calendar days.

\* \* \* \* \*

103. Section 265.16 is amended by adding new paragraph (a)(4) to read as follows:

§ 265.16 Personnel training.

(a) \* \* \*

(4) For facility employees that receive emergency response training pursuant to Occupational Safety and Health Administration (OSHA) regulations 29 CFR 1910.120(p)(8) and 1910.120(q), the facility is not required to provide separate emergency response training pursuant to this section, provided that the overall facility training meets all the requirements of this section.

\* \* \* \* \*

104. In Section 265.19, amend paragraph (c)(2) last sentence, by revising “264.254(c)(1)” to read “264.251(c)(1)”.

§ 265.19 Construction quality assurance program.

\* \* \* \* \*

(c) \* \* \*

(2) The CQA program shall include test fills for compacted soil liners, using the same compaction methods as in the full-scale unit, to ensure that the liners are constructed to meet the hydraulic conductivity requirements of §§ 264.221(c)(1), 264.251(c)(1), and 264.301(c)(1) of this regulation in the field. Compliance with the hydraulic conductivity requirements must be verified by using in-situ testing on the constructed test fill. The test fill requirement is waived where data are sufficient to show that a constructed soil liner meets the hydraulic conductivity requirements of §§ 264.221(c)(1), ~~264.254(e)(1)~~ 264.251(c)(1), and 264.301(c)(1) of this regulation in the field.

\* \* \* \* \*

Subsection D—Contingency Plans and Emergency Procedures

105. Section 265.52 is amended by revising paragraph (b) to read as follows:

§ 265.52 Content of contingency plan.

\* \* \* \* \*

(b) If the owner or operator has already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan in accordance with 40 CFR Part 112, or 40 CFR Part 1510 ~~of Chapter V~~, or some other emergency or contingency plan, he need only amend that plan to incorporate hazardous waste management provisions that are sufficient to comply with the requirements of this Section. The owner or operator may develop one contingency plan which meets all regulatory requirements. EPA and the Department recommend that the plan be based on the National Response Team’s Integrated Contingency Plan Guidance (“One Plan”). When modifications are made to non-RCRA provisions in an integrated contingency plan, the changes do not trigger the need for a RCRA permit modification.

\* \* \* \* \*

106. Section 265.56 is revised to read as follows:

§ 265.56 Emergency procedures.

\* \* \* \* \*

(b) Whenever there is a release, fire, or explosion, the emergency coordinator must immediately identify the character, exact source, amount, and ~~a real~~ areal extent of any released materials. He may do this by observation or review of facility records or manifests and, if necessary, by chemical analysis.

\* \* \* \* \*

~~(i) The owner or operator must notify the Director, and appropriate local authorities, that the facility is in compliance with paragraph (h) of this section before operations are resumed in the affected area(s) of the facility.~~

~~(j)~~ (i) The owner or operator must note in the operating record the time, date, and details of any incident that requires implementing the contingency plan. Within 15 days after the incident, he must submit a written report on the incident to the Director. The report must include:

\* \* \* \* \*

Subsection E—Manifest System, Recordkeeping, and Reporting

107. Section 265.73 is amended by revising the introductory text to paragraph (b), (b)(1), (b)(2) (the comment to paragraph (b)(2) is unchanged), (b)(6) (the comment to paragraph (b)(6) is unchanged), (b)(7), and (b)(8) and adding a new (b)(15) to read as follows:

§ 265.73 Operating record.

\* \* \* \* \*

(b) The following information must be recorded, as it becomes available, and maintained in the operating record ~~until closure of the facility~~ for three years unless noted

below:

(1) A description and the quantity of each hazardous waste received, and the method(s) and date(s) of its treatment, storage, or disposal at the facility as required by Appendix I to this Section. This information must be maintained in the operating record until closure of the facility;

(2) The location of each hazardous waste within the facility and the quantity at each location. For disposal facilities, the location and quantity of each hazardous waste must be recorded on a map or diagram of each cell or disposal area. For all facilities, this information must include cross-references to manifest document numbers if the waste was accompanied by a manifest. This information must be maintained in the operating record until closure of the facility;

\* \* \* \* \*

(6) Monitoring, testing or analytical data, and corrective action where required by Subsection F of this section and by §§ 265.19, 265.94, 265.191, 265.193, 265.195, 265.224, 265.226, 265.255, 265.260, 265.276, 265.278, 265.280(d)(1), 265.302, 265.304, 265.347, 265.377, 265.1034(c) through 265.1034(f), 265.1035, 265.1063(d) through 265.1063(i), 265.1064, and 265.1083 through 265.1090 of this regulation. Maintain in the operating record for three years, except for records and results pertaining to ground-water monitoring and cleanup, and response action plans for surface impoundments, waste piles, and landfills, which must be maintained in the operating record until closure of the facility.

\* \* \* \* \*

(7) All closure cost estimates under § 265.142 and, for disposal facilities, all post-closure cost estimates under § 265.144 must be maintained in the operating record until closure of the facility.

(8) Records of the quantities (and date of placement) for each shipment of hazardous waste placed in land disposal units under an extension to the effective date of any land disposal restriction granted pursuant to ~~40-CFR~~ § 268.5 of this Regulation, monitoring data required pursuant to a petition under ~~40-CFR~~ § 268.6 of this Regulation, or a certification under ~~40-CFR~~ § 268.8 of this Regulation, and the applicable notice required by a generator under § 268.7(a) of this Regulation. All of this information must be maintained in the operating record until closure of the facility.

\* \* \* \* \*

(15) Monitoring, testing or analytical data, and corrective action where required by §§ 265.90, 265.93(d)(2), and 265.93(d)(5), and the certification as required by § 265.196(f) must be maintained in the operating record until closure of the facility.

\* \* \* \* \*

- 108. Section **265.76** is revised as follows:  
a. In paragraphs (a) through (g) to read as shown:  
b. Add paragraph (b) to read:

**§ 265.76 Unmanifested waste report.**

(a) If a facility accepts for treatment, storage, or disposal any hazardous waste from an off-site source without an accompanying manifest, or without an accompanying shipping paper as described in § 263.20(e)(2) of this regulation, and if the waste is not excluded from the manifest requirement by § 261.5 of this regulation, then the owner or operator must prepare and submit a single copy of a report to the Director within fifteen (15) days after receiving the waste. The unmanifested waste report must contain the following information:

- ~~(a)~~(1) The EPA identification number, name, and address of the facility;
- ~~(b)~~(2) The date the facility received the waste;
- ~~(c)~~(3) The EPA identification number, name, and address of the generator and the transporter, if available;
- ~~(d)~~(4) A description and the quantity of each unmanifested hazardous waste the facility received;
- ~~(e)~~(5) The method of treatment, storage, or disposal for each hazardous waste;
- ~~(f)~~(6) The certification signed by the owner or operator of the facility or his authorized representative; and
- ~~(g)~~(7) A brief explanation of why the waste was unmanifested, if known.

\* \* \* \* \*

(b) [Reserved]

\* \* \* \* \*

**Subsection F—Ground-Water Monitoring**

- 109. Section **265.90** is amended as follows:  
a. Amend paragraph (d) introductory text by removing the comma after the phrase “he may”.
- b. Amend by revising paragraphs (d)(1) and (d)(3) to read as follows

**§ 265.90 Applicability.**

\* \* \* \* \*

(d) If an owner or operator assumes (or knows) that ground-water monitoring of indicator parameters in accordance with §§ 265.91 and 265.92 would show statistically significant increases (or decreases in the case of pH) when evaluated under § 265.93(b), he may; install, operate, and maintain an alternate ground-water monitoring system (other than the one described in §§ 265.91 and 265.92). If the owner

or operator decides to use an alternate ground-water monitoring system he must:

(1) Within one year after the effective date of these regulations, develop a specific plan, certified by a qualified geologist or geotechnical engineer, which satisfies the requirements of § 265.93(d)(3), for an alternate ground-water monitoring system.

This plan is to be placed in the facility's operating record and maintained until closure of the facility.

\*\*\*\*\*

(3) Prepare a report in accordance with § 265.93(d)(5) and place it in the facility's operating record and maintain until closure of the facility.

\*\*\*\*\*

110. Section 265.93 is amended by revising paragraphs (d)(2) and (d)(5) to read as follows:

**§ 265.93 Preparation, evaluation, and response.**

\*\*\*\*\*

(d)(1) \*\*\*

(2) Within 15 days after the notification under paragraph (d)(1) of this section, the owner or operator must develop a specific plan, based on the outline required under paragraph (a) of this section and certified by a qualified geologist or geotechnical engineer, for a ground-water quality assessment at the facility. This plan must be placed in the facility operating record and be maintained until closure of the facility.

\*\*\*\*\*

(5) The owner or operator must make his first determination under paragraph (d)(4) of this section, as soon as technically feasible, and prepare a report containing an assessment of ground-water quality. This report must be placed in the facility operating record and be maintained until closure of the facility.

\*\*\*\*\*

**Subsection G—Closure and Post-Closure**

111. Amend Section 265.112 paragraph (b)(5), revise “partial and final closure period” to read “partial and final closure periods”;

**§ 265.112 Closure plan; amendment of plan.**

\*\*\*\*\*

(b) \*\*\*

(5) A detailed description of other activities necessary during the ~~partial and final closure period~~

partial and final closure periods to ensure that all partial closures and final closure satisfy the closure performance standards, including, but not limited to, ground-water monitoring, leachate collection, and run-on and run-off control; and

\*\*\*\*\*

112. Section 265.113 is amended by revising paragraph (e)(5) to read as follows:

**§ 265.113 Closure; time allowed for closure.**

\*\*\*\*\*

(e) \*\*\*

\*\*\*\*\*

(5) During the period of corrective action, the owner or operator shall provide ~~semi-annual~~ annual reports to the Director describing the progress of the corrective action program, compile all ground-water monitoring data, and evaluate the effect of the continued receipt of non-hazardous wastes on the effectiveness of the corrective action.

\*\*\*\*\*

113. Section 265.115 is revised to read as follows:

**§ 265.115 Certification of closure.**

Within 60 days of completion of closure of each hazardous waste surface impoundment, waste pile, land treatment, and landfill unit, and within 60 days of completion of final closure, the owner or operator must submit to the Director, by registered mail, a certification that the hazardous waste management unit or facility, as applicable, has been closed in accordance with the specifications in the approved closure plan. The certification must be signed by the owner or operator and by an independent qualified Arkansas-registered Professional Engineer. Documentation supporting the Professional Engineer's certification must be furnished to the Director upon request until he releases the owner or operator from the financial assurance requirements for closure under § 265.143(h).

114. In Section 265.119, amend paragraph (b)(1)(ii) by revising the citation “Subsection G” to read “§ 265, Subsection G”.

**§ 265.119 Post-closure notices.**

\*\*\*\*\*

(b) \*\*\*

(1) \*\*\*

(ii) Its use is restricted under § 265 Subsection G regulations; and

\* \* \* \* \*

115. **Section 265.120** is revised to read as follows:

**§ 265.120 Certification of completion of post-closure care.**

No later than 60 days after the completion of the established post-closure care period for each hazardous waste disposal unit, the owner or operator must submit to the Director, by registered mail, a certification that the post-closure care period for the hazardous waste disposal unit was performed in accordance with the specifications in the approved post-closure plan. The certification must be signed by the owner or operator and an independent qualified Arkansas-registered Professional Engineer. Documentation supporting the Professional Engineer’s certification must be furnished to the Director upon request until he releases the owner or operator from the financial assurance requirements for post-closure care under § 265.145(h).

**Subsection H—Financial Requirements**

116. Amend **Section 265.140** paragraph (b) introductory text, revise the citation “265.146” to read “265.145”;

**§ 265.140 Applicability.**

\* \* \* \* \*

(b) The requirements of §§ 265.144 and ~~265.146~~265.145 apply only to owners and operators of

\* \* \* \* \*

117. In **Section 265.142**, amend paragraph (a) by removing “265.178” from the list of sections.

**§ 265.142 Cost estimate for closure.**

(a) The owner or operator must have a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in §§ 265.111 through 265.115 and applicable closure requirements of §§ ~~265.178~~, 265.197, 265.228, 265.258, 265.280, 265.310, 265.351, 265.381 and 265.404.

\* \* \* \* \*

118. **Section 265.143** is amended by revising paragraph (h) to read as follows:

**§ 265.143 Financial assurance for closure.**

\* \* \* \* \*

(h) Release of the owner or operator from the require-

ments of this section. Within 60 days after receiving certifications from the owner or operator and an independent qualified Arkansas-registered Professional Engineer that final closure has been completed in accordance with the approved closure plan, the Director will notify the owner or operator in writing that he is no longer required by this section to maintain financial assurance for final closure of the facility, unless the Director has reason to believe that final closure has not been in accordance with the approved closure plan. The Director shall provide the owner or operator a detailed written statement of any such reason to believe that closure has not been in accordance with the approved closure plan.

119. **Section 265.145** is amended by revising paragraph (h) to read as follows:

**§ 265.145 Financial assurance for post-closure care.**

\* \* \* \* \*

(h) Release of the owner or operator from the requirements of this section. Within 60 days after receiving certifications from the owner or operator and an independent qualified Arkansas-registered Professional Engineer that the post-closure care period has been completed for a hazardous waste disposal unit in accordance with the approved plan, the Director will notify the owner or operator in writing that he is no longer required to maintain financial assurance for post-closure care of that unit, unless the Director has reason to believe that post-closure care has not been in accordance with the approved post-closure plan. The Director shall provide the owner or operator a detailed written statement of any such reason to believe that post-closure care has not been in accordance with the approved post-closure plan.

120. Amend **Section 265.147** as follows:

- a. Amend paragraph (b)(1) by adding paragraphs (i) and (ii) to read as follows:
- b. Amend by revising paragraph (e) to read as follows:

**§ 265.147 Liability requirements.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(i) Each insurance policy must be amended by attachment of the Hazardous Waste Facility Liability Endorsement or evidenced by a Certificate of Liability Insurance. The wording of the endorsement must be identical to the wording specified in § 264.151(i). The wording of the certificate of insurance must be identical to the wording specified in § 264.151(j). The owner or operator must submit a signed

duplicate original of the endorsement or the certificate of insurance to the Director, or Regional Administrators if the facilities are located in more than one Region. If requested by the Director or a Regional Administrator, the owner or operator must provide a signed duplicate original of the insurance policy.

(ii) Each insurance policy must be issued by an insurer which, at a minimum, is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

\*\*\*\*\*

(e) *Period of coverage.* Within 60 days after receiving certifications from the owner or operator and an independent qualified Arkansas-registered Professional Engineer that final closure has been completed in accordance with the approved closure plan, the Director will notify the owner or operator in writing that he is no longer required by this section to maintain liability coverage for that facility, unless the Director has reason to believe that closure has not been in accordance with the approved closure plan.

\*\*\*\*\*

**Subsection I—Use and Management of Containers**

121. Section 265.174 is revised to read as follows:

**§ 265.174 Inspections.**

~~The owner or operator must inspect areas where containers are stored, at least weekly, looking for leaks and for deterioration caused by corrosion or other factors. At least weekly, the owner or operator must inspect areas where containers are stored, except for Performance Track member facilities, that must conduct inspections at least once each month, upon approval by the Director. To apply for reduced inspection frequency, the Performance Track member facility must follow the procedures described in § 265.15(b)(5) of this section. The owner or operator must look for leaking containers and for deterioration of containers and the containment system caused by corrosion or other factors.~~

**Subsection J—Tank Systems**

122. Section 265.191 is amended by revising paragraphs (a) and (b)(5)(ii) (the note to paragraph (b)(5)(ii) is unchanged) to read as follows:

**§ 265.191 Assessment of existing tank system’s integrity.**

(a) For each existing tank system that does not have secondary containment meeting the requirements of § 265.193, the owner or operator must determine that the tank system is not leaking or is unfit for use. Except as provided in paragraph (c) of this section, the owner or operator must obtain and keep on file at the facility a written assessment reviewed and certified by an independent qualified Arkansas-registered Professional Engineer in accordance with § 270.11(d) of this Regulation, that attests to the tank system’s integrity by January 12, 1988.

(b) \*\*\*

(5) \*\*\*

(ii) For other than non-enterable underground tanks and for ancillary equipment, this assessment must be either a leak test, as described above, or an internal inspection and/or other tank integrity examination certified by an independent qualified Arkansas-registered Professional Engineer in accordance with § 270.11(d) of this Regulation that addresses cracks, leaks, corrosion, and erosion.

\*\*\*\*\*

123. Section 265.192 is amended by revising paragraphs (a) introductory text and (b) introductory text to read as follows:

**§ 265.192 Design and installation of new tank systems or components.**

(a) Owners or operators of new tank systems or components must ensure that the foundation, structural support, seams, connections, and pressure controls (if applicable) are adequately designed and that the tank system has sufficient structural strength, compatibility with the waste(s) to be stored or treated, and corrosion protection so that it will not collapse, rupture, or fail. The owner or operator must obtain a written assessment reviewed and certified by an independent qualified Arkansas-registered Professional Engineer in accordance with § 270.11(d) of this Regulation attesting that the system has sufficient structural integrity and is acceptable for the storing and treating of hazardous waste. This assessment must include the following information:

\*\*\*\*\*

(b) The owner or operator of a new tank system must ensure that proper handling procedures are adhered to in order to prevent damage to the system during installation. Prior to covering, enclosing, or placing a new tank system or component in use, an independent, qualified installation inspector or an independent qualified Arkansas-registered Professional Engineer, either of whom is trained and experienced in the proper installation of tank systems, must inspect the system or component for the presence of any of the following items:

\*\*\*\*\*



124. Section 265.193 is amended by:

- a. Removing paragraphs (a)(2) through (a)(4);
- b. Redesignating (a)(5) as (a)(2);
- c. Revising paragraphs (a)(1), newly designated (a)(2) and (i)(2) (the note to (i)(2) is unchanged) to read as follows.
- d. In paragraph (e)(2)(v)(B), revise the citation “§ 262.21” to read “§ 261.23”;

**265.193 Containment and detection of releases.**

(a) \* \* \*

(1) For all new and existing tank systems or components, prior to their being put into service.

~~(2) For all existing tanks used to store or treat EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027, within two years after January 12, 1987;~~

~~(3) For those existing tank systems of known and documentable age, within two years after January 12, 1987, or when the tank systems have reached 15 years of age, whichever comes later;~~

~~(4) For those existing tank system for which the age cannot be documented, within eight years of January 12, 1987; but if the age of the facility is greater than seven years, secondary containment must be provided by the time the facility reaches 15 years of age, or within two years of January 12, 1987, whichever comes later; and~~

~~(5) (2) For tank systems that store or treat materials that become hazardous wastes, subsequent to January 12, 1987, within the time intervals required in paragraphs (a)(1) through (a)(4) of this section, except that the date that a material becomes a hazardous waste must be used in place of January 12, 1987—within 2 years of the hazardous waste listing, or when the tank system has reached 15 years of age, whichever comes later.~~

\* \* \* \* \*

(i) \* \* \*

(2) For other than non-enterable underground tanks, and for all ancillary equipment, the owner or operator must either conduct a leak test as in paragraph (i)(1) of this section or an internal inspection or other tank integrity examination by an independent qualified Arkansas-registered Professional Engineer that addresses cracks, leaks, and corrosion or erosion at least annually. The owner or operator must remove the stored waste from the tank, if necessary, to allow the condition of all internal tanks surfaces to be assessed.

\* \* \* \* \*

(e) \* \* \*

(2) \* \* \*

(v) \* \* \*

(B) Meets the definition of reactive waste under ~~§ 261.21~~§ 261.23 of this regulation and may form an ignitable or explosive vapor; and

\* \* \* \* \*

125. In Section 265.194, amend paragraphs (b)(1) and (b)(2) by inserting a period after “e.g” in both paragraphs, and in paragraph (b)(1), by revising “discount” to read “disconnect”.

**§ 265.194 General operating requirements.**

\* \* \* \* \*

(b) \* \* \*

(1) Spill prevention controls (e.g., check valves, dry ~~discount~~ disconnect couplings);

(2) Overfill prevention controls (e.g., level sensing devices, high level alarms, automatic feed cut-off, or bypass to a standby tank); and

\* \* \* \* \*

126. Section 265.195 is amended by:

- a. Revising paragraph (a) (the note to paragraph (a) is unchanged);
- b. Redesignating existing paragraphs (b) and (c), as paragraphs (f) and (g), respectively; and,
- c. Adding new paragraphs (b) through (e).

**§ 265.195 Inspections.**

(a) The owner or operator must inspect, where present, at least once each operating day, data gathered from monitoring and leak detection equipment (e.g., pressure or temperature gauges, monitoring wells) to ensure that the tank system is being operated according to its design.

~~(1) Overfill/spill control equipment (e.g., waste-feed cutoff systems, bypass systems, and drainage systems) to ensure that it is in good working order;~~

~~(2) The aboveground portions of the tank system, if any, to detect corrosion or releases of waste;~~

~~(3) Data gathered from monitoring equipment and leak-detection equipment, (e.g., pressure and temperature gauges, monitoring wells) to ensure that the tank system is being operated according to its design; and~~

~~(4) The construction materials and the area immediately surrounding the externally accessible portion of the tank system including secondary containment structures (e.g., dikes) to detect erosion or signs of releases of hazardous waste (e.g., wet spots, dead vegetation);~~

Note: Section 265.15(c) requires the owner or operator to remedy any deterioration or malfunction he finds. Section 265.196 requires the owner or operator to notify the Director



within 24 hours of confirming a release. Also, 40 CFR part 302 may require the owner or operator to notify the National Response Center of a release.

**(b) Except as noted under the paragraph (c) of this section, the owner or operator must inspect at least once each operating day:**

**(1) Overfill/spill control equipment (e.g., waste-feed cutoff systems, bypass systems, and drainage systems) to ensure that it is in good working order;**

**(2) Above ground portions of the tank system, if any, to detect corrosion or releases of waste; and**

**(3) The construction materials and the area immediately surrounding the externally accessible portion of the tank system, including the secondary containment system (e.g., dikes) to detect erosion or signs of releases of hazardous waste (e.g., wet spots, dead vegetation).**

**(c) Owners or operators of tank systems that either use leak detection equipment to alert facility personnel to leaks, or implement established workplace practices to ensure leaks are promptly identified, must inspect at least weekly those areas described in paragraphs (b)(1) through (3) of this section. Use of the alternate inspection schedule must be documented in the facility’s operating record. This documentation must include a description of the established workplace practices at the facility.**

**(d) Performance Track member facilities may inspect on a less frequent basis, upon approval by the Director, but must inspect at least once each month. To apply for a less than weekly inspection frequency, the Performance Track member facility must follow the procedures described in § 265.15(b)(5).**

**(e) Ancillary equipment that is not provided with secondary containment, as described in § 265.193(f)(1) through (4), must be inspected at least once each operating day.**

**(f)** The owner or operator must inspect cathodic protection systems, if present, according to, at a minimum, the following schedule to ensure that they are functioning properly:

(1) The proper operation of the cathodic protection system must be confirmed within six months after initial installation, and annually thereafter; and

(2) All sources of impressed current must be inspected and/or tested, as appropriate, at least bi-monthly (i.e., every other month).

Note: The practices described in the National Association of Corrosion Engineers (NACE) standard, “Recommended Practice (RP-02-85) — Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems,” and the American Petroleum Institute (API) Publication 1632, “Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems,” may be used, where applicable, as guidelines in maintaining and inspecting cathodic protection systems.

**(g)** The owner or operator must document in the operating record of the facility an inspection of those items in

paragraphs (a) and (b) of this section.

127. **Section 265.196** is amended by revising paragraph (f) (the notes to paragraph (f) are unchanged) to read as follows:

**§ 265.196 Response to leaks or spills and disposition of leaking or unfit-for-use tank systems.**

\* \* \* \* \*

(f) *Certification of major repairs.* If the owner/operator has repaired a tank system in accordance with paragraph (e) of this section, and the repair has been extensive (e.g., installation of an internal liner; repair of a ruptured primary containment or secondary containment vessel), the tank system must not be returned to service unless the owner/operator has obtained a certification by an independent qualified Arkansas-registered Professional Engineer in accordance with § 270.11(d) that the repaired system is capable of handling hazardous wastes without release for the intended life of the system. This certification is to be placed in the operating record and maintained until closure of the facility.

\* \* \* \* \*

128. In **Section 265.197**, amend paragraph (b) by inserting a period after the closing parenthesis of the citation “(265.310)”.

**§ 265.197 Closure and post-closure care.**

\* \* \* \* \*

(b) If the owner or operator demonstrates that not all contaminated soils can be practicably removed or decontaminated as required in paragraph (a) of this section, then the owner or operator must close the tank system and perform post-closure care in accordance with the closure and post-closure care requirements that apply to landfills (§ 265.310). In addition, for the purposes of closure, postclosure, and financial responsibility, such a tank system is then considered to be a landfill, and the owner or operator must meet all of the requirements for landfills specified in Subsections G and H of this Section.

\* \* \* \* \*

129. **Section 265.201** is amended by:

- a. Revising the paragraph (c) introductory text;
- b. Redesignating paragraph (d) through (f), as paragraphs (f) through (h), respectively; and,
- c. Adding new paragraphs (d) and (e).

**§ 265.201 Special requirements for generators of between 100 and 1,000 kg/mo. that accumulate hazardous waste in tanks.**

\* \* \* \* \*

(c) **Except as noted in paragraph (d) of this section, generators of who accumulate** between 100 and 1,000 kg/mo of hazardous waste in tanks must inspect, where present:

(1) Discharge control equipment (e.g., waste feed cutoff systems, by-pass systems, and drainage systems) at least once each operating day, to ensure that it is in good working order;

(2) Data gathered from monitoring equipment (e.g., pressure and temperature gauges) at least once each operating day to ensure that the tank is being operated according to its design;

(3) The level of waste in the tank at least once each operating day to ensure compliance with § 265.201(b)(3);

(4) The construction materials of the tank at least weekly to detect corrosion or leaking of fixtures or seams; and

(5) The construction materials of, and the area immediately surrounding, discharge confinement structures (e.g., dikes) at least weekly to detect erosion or obvious signs of leakage (e.g., wet spots or dead vegetation).

Note: As required by § 265.15(c), the owner or operator must remedy any deterioration or malfunction he finds.

**(d) Generators who accumulate between 100 and 1,000 kg/mo of hazardous waste in tanks or tank systems that have full secondary containment and that either use leak detection equipment to alert facility personnel to leaks, or implement established workplace practices to ensure leaks are promptly identified, must inspect at least weekly, where applicable, the areas identified in paragraphs (c)(1) through (5) of this section. Use of the alternate inspection schedule must be documented in the facility's operating record. This documentation must include a description of the established workplace practices at the facility.**

**(e) Performance Track member facilities may inspect on a less frequent basis, upon approval by the Director, but must inspect at least once each month. To apply for a less than weekly inspection frequency, the Performance Track member facility must follow the procedures described in § 265.15(b)(5).**

**(f)** Generators of between 100 and 1,000 kg/mo accumulating hazardous waste in tanks must, upon closure of the facility, remove all hazardous waste from tanks, discharge control equipment, and discharge confinement structures.

Note: At closure, as throughout the operating period, unless the owner or operator can demonstrate, in accordance with § 261.3(c) or (d) of this regulation, that any solid waste removed from his tank is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and must manage it in accordance with all applicable requirements of Sections 262, 263, and 265 of this regulation.

**(g)** Generators of between 100 and 1,000 kg/mo must comply with the following special requirements for ignitable or reactive waste:

(1) Ignitable or reactive waste must not be placed in a tank, unless:

(i) The waste is treated, rendered, or mixed before or immediately after placement in a tank so that (A) the resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under § 261.21 or § 261.23 of this regulation, and (B) § 265.17(b) is complied with; or

(ii) The waste is stored or treated in such a way that it is protected from any material or conditions that may cause the waste to ignite or react; or

(iii) The tank is used solely for emergencies.

(2) The owner or operator of a facility which treats or stores ignitable or reactive waste in covered tanks must comply with the buffer zone requirements for tanks contained in Tables 2-1 through 2-6 of the National Fire Protection Association's "Flammable and Combustible Liquids Code," (1977 or 1981) (incorporated by reference, see § 260.11).

**(h)** Generators of between 100 and 1,000 kg/mo must comply with the following special requirements for incompatible wastes:

(1) Incompatible wastes, or incompatible wastes and materials, (see Appendix V for examples) must not be placed in the same tank, unless § 265.17(b) is complied with.

(2) Hazardous waste must not be placed in an unwashed tank which previously held an incompatible waste or material, unless § 265.17(b) is complied with.

## Subsection K—Surface Impoundments

127. Amend § 265.221 as follows:

a. Amend by revising paragraph (a) to read as follows:

b. In paragraph (d)(2)(i)(A), revise "in leaking?" to read "is leaking"; revise "soil it is not" to read "soil is not"; and revise "the owner of operator" to read "the owner or operator";

c. In paragraph (d)(2)(i)(B), revise the citation "§ 144.3 of this chapter" to read "40 CFR 270.2"; and add quotation marks around "underground source of drinking water".

### § 265.221 Design and operating requirements.

(a) The owner or operator of each new surface impoundment unit ~~on which construction commences after January 29, 1992~~, each lateral expansion of a surface impoundment unit ~~on which construction commences after July 29, 1992~~, and each replacement of an existing surface impoundment unit ~~that is to commence reuse after July 29, 1992~~ must install two or more liners and a leachate collection and removal system **above and** between ~~such the~~ liners, and operate the leachate collection and removal system, in accordance with § 264.221(c), unless exempted under §

264.221(d), (e), or (f), of this Regulation. ~~“Construction commences” is as defined in § 260.10 of this regulation under “existing facility.”~~

\* \* \* \* \*

(d) \* \* \*

(2)(i)(A) The monofill has at least one liner for which there is no evidence that such liner ~~in-leak-  
ing is leaking~~. For the purposes of this paragraph the term “liner” means a liner designed, constructed, installed, and operated to prevent hazardous waste from passing into the liner at any time during the active life of the facility, or a liner designed, constructed, installed, and operated to prevent hazardous waste from migrating beyond the liner to adjacent subsurface soil, ground water, or surface water at any time during the active life of the facility. In the case of any surface impoundment which has been exempted from the requirements of paragraph (a) of this section on the basis of a liner designed, constructed, installed, and operated to prevent hazardous waste from passing beyond the liner, at the closure of such impoundment the owner or operator must remove or decontaminate all waste residues, all contaminated liner material, and contaminated soil to the extent practicable. If all contaminated ~~soil it is not~~ soil is not removed or decontaminated, the ~~owner of operator~~ the owner or operator of such impoundment must comply with appropriate postclosure requirements, including but not limited to ground-water monitoring and corrective action;

(B) The monofill is located more than one-quarter mile from an underground source of drinking water (as that term is defined in ~~40 CFR 144.3~~ 40 CFR 270.2); and

\* \* \* \* \*

128. **Section 265.223** titled “Response actions” is redesignated as § 265.224, and § 265.224 titled “Containment system” is redesignated as § 265.223. and the newly designated § 265.224 is amended by revising paragraph (a) to read as follows:

- a. **Section 265.223** is moved to **265.224**.
- b. **Section 265.224** is moved to **Section 265.223**.

129. Amend **Section 265.224** as follows:

- a. Amend by revising paragraph (a) to read as follows:
- b. Amend paragraph (b)(1) by revising “exceedence” to read “exceedance”.

**§ 265.224 Containment system.**

(a) The owner or operator of surface impoundment units

subject to § 265.221(a) ~~must submit a response action plan to the Director when submitting the proposed action leakage rate under § 265.222~~ must develop and keep on site until closure of the facility a response action plan. The response action plan must set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan must describe the actions specified in paragraph (b) of this section.

(b) \* \* \*

(1) Notify the Director in writing of the ~~exceedence~~ exceedance within 7 days of the determination;

\* \* \* \* \*

**Subsection L—Waste Piles**

130. Amend § 265.255 in paragraph (b) by revising “surface impoundment units” to read “waste pile units”.

**§ 265.255 Action leakage rates.**

\* \* \* \* \*

(b) The Director shall approve an action leakage rate for ~~surface impoundment units~~ waste pile units subject to § 265.254. The action leakage rate is the maximum design flow rate that the leak detection system (LDS) can remove without the fluid head on the bottom liner exceeding 1 foot. The action leakage rate must include an adequate safety margin to allow for uncertainties in the design (e.g., slope, hydraulic conductivity, thickness of drainage material), construction, operation, and location of the LDS, waste and leachate characteristics, likelihood and amounts of other sources of liquids in the LDS, and proposed response actions (e.g., the action leakage rate must consider decreases in the flow capacity of the system over time resulting from siltation and clogging, rib layover and creep of synthetic components of the system, overburden pressures, etc.).

\* \* \* \* \*

131. Amend **Section 265.259** as follows:

- a. Amend by revising the first sentence of paragraph (a) to read as follows:
- b. amend paragraph (b)(1) by revising “exceedence” to read “exceedance”.

**§ 265.259 Response actions.**

(a) The owner or operator of waste pile units subject to § 265.254 must ~~submit a response action plan to the Director when submitting the proposed action leakage rate under § 265.255~~ develop and keep on-site until closure of the facility a response action plan. The response action plan must set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan must describe the actions specified in paragraph (b) of

this section.

(b) \* \* \*

(1) Notify the Director in writing of the ~~exceedence~~ exceedance within 7 days of the determination;

\* \* \* \* \*

**Subsection M—Land Treatment**

132. **Section 265.280** is amended by revising paragraph (e) to read as follows:

**§ 265.280 Closure and post-closure.**

\* \* \* \* \*

(e) For the purpose of complying with § 265.115, when closure is completed the owner or operator may submit to the Director certification both by the owner or operator and by an independent, qualified soil scientist, in lieu of an independent qualified Arkansas-registered Professional Engineer, that the facility has been closed in accordance with the specifications in the approved closure plan.

\* \* \* \* \*

133. In **Section 265.281**, amend paragraph (a)(1) by revising the citation “§ 265.21” to read “§ 261.21”.

**§ 265.281 Special requirements for ignitable or reactive waste.**

(a) \* \* \*

(1) The resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under ~~§ 265.21~~ § 261.21 or § 261.23 of this regulation; and

\* \* \* \* \*

**Subsection N—Landfills**

134. Amend **Section 265.301** as follows:

a. Amended by revising paragraph (a) to read as follows:

b. In paragraph (d)(1), revise “such waste does not” to read “such wastes do not”; revise the citation “§ 261.4” to read “§ 261.24”; and revise “Hazardous Waste Number” to read “Hazardous Waste Numbers”;

c. In paragraph (d)(2)(i)(B), revise the citation “§ 144.3 of this chapter” to read “§ 270.2”; and add quotation marks around “underground source of drinking water”.

**§ 265.301 Design and operating requirements.**

(a) The owner or operator of each new landfill unit ~~on which construction commences after January 29, 1992~~, each

lateral expansion of a landfill unit ~~on which construction commences after July 29, 1992~~, and each replacement of an existing landfill unit ~~that is to commence reuse after July 29, 1992~~ must install two or more liners and a leachate collection and removal system above and between such liners, and operate the leachate collection and removal systems, ~~in accordance with § 264.301(d), (e), or (f), of this regulation in accordance with § 264.301(c), unless exempted under § 264.301(d), (e), or (f) of this regulation.~~ “Construction commences” is as defined in § 260.10 of this regulation under “existing facility”.

\* \* \* \* \*

(d) \* \* \*

(1) The monofill contains only hazardous wastes from foundry furnace emission controls or metal casting molding sand, and such wastes do not contain constituents which would render the wastes hazardous for reasons other than the toxicity characteristic in § 261.24 of this regulation, with EPA ~~Hazardous Waste Number~~ Hazardous Waste Numbers D004 through D017; and

\* \* \* \* \*

(B) The monofill is located more than one-quarter mile from an underground source of drinking water (as that term is defined in ~~40 CFR 144.3~~ § 270.2 of this regulation); and

\* \* \* \* \*

135. In **Section 265.302**, amend paragraph (b) by revising “surface impoundment units” to read “landfill units”.

**§ 265.302 Action Leakage rate.**

\* \* \* \* \*

(b) The Director shall approve an action leakage rate for ~~surface impoundment units~~ landfill units subject to § 265.301(a). The action leakage rate is the maximum design flow rate that the leak detection system (LDS) can remove without the fluid head on the bottom liner exceeding 1 foot. The action leakage rate must include an adequate safety margin to allow for uncertainties in the design (e.g., slope, hydraulic conductivity, thickness of drainage material), construction, operation, and location of the LDS, waste and leachate characteristics, likelihood and amounts of other sources of liquids in the LDS, and proposed response actions (e.g., the action leakage rate must consider decreases in the flow capacity of the system over time resulting from siltation and clogging, rib layover and creep of synthetic components of the system, overburden pressures, etc.).

\* \* \* \* \*

136. Amend **Section 265.303** as follows:

- a. Amend by revising paragraph (a) to read as follows
- b. Amend paragraph (b)(1) by revising “exceedence”



to read “exceedance”.

§ 265.303 Response actions.

(a) The owner or operator of landfill units subject to § 265.301(a) must ~~submit a response action plan to the Director when submitting the proposed action leakage rate under § 265.302~~ develop and keep on site until closure of the facility a response action plan. The response action plan must set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan must describe the actions specified in paragraph (b) of this section.

(b) \* \* \*

(1) Notify the Director in writing of the ~~exceedence~~ exceedance within 7 days of the determination;  
\* \* \* \* \*

137. In Section 265.312, amend paragraph (a)(1) by revising “dissolution or material” to read “dissolution of material”.

§ 265.312 Special requirements for ignitable or reactive waste.

(a) \* \* \*

(1) The resulting waste, mixture, or ~~dissolution or material~~ dissolution of material no longer meets the definition of ignitable or reactive waste under § 261.21 or § 261.23 of this regulation; and  
\* \* \* \* \*

138. Section 265.314 is amended by:

- a. Removing paragraph (a);
- b. Redesignating paragraphs (b) through (g) as paragraphs (a) through (f); and,
- c. Revising newly designated paragraph (a), and the introductory text of newly designated paragraph (f) to read as follows:
- d. In paragraph (e)(1)(ii), revise “polysobutylene” to read “polyisobutylene”;
- e. In paragraph (f)(2), revise the citation “§ 144.3 of this chapter” to read “40 CFR 270.2”; and add quotation marks around “underground source of drinking water”.

§ 265.314 Special requirements for bulk and containerized liquids.

~~(a) The following materials shall not be disposed of in landfills permitted under this Regulation and Regulation:~~

- ~~(1) Bulk liquids, semisolids and sludges unless, before disposal, such waste is treated or stabilized into cement-like material.~~
- ~~(2) Containers holding free liquids unless all~~

~~freestanding liquid has been removed or treated or stabilized into cement-like material; or the container is very small, such as an ampule, or is a lab pack as defined in 264.316 or 265.316, as applicable and is disposed of in accordance with 264.316 or 265.316 as applicable.~~

~~(3) Municipal refuse which is not hazardous waste:~~

~~(4) Ignitable wastes in containers, unless all free liquids therein have been removed or treated and stabilized into cement-like material.~~

~~(b) (a)~~ Effective May 8, 1985, The placement of bulk or non-containerized liquid hazardous waste or hazardous waste containing free liquids (whether or not sorbents have been added) in any landfill is prohibited. Before disposal, liquid waste or waste containing free liquids must be treated or stabilized, (e.g. by mixing with a sorbent solid so that free liquids are no longer present and the waste meets the requirements of (a)(1) or (2) above).

~~(e) (b)~~ Containers holding free liquids must not be placed in a landfill unless:

- (1) All free-standing liquid,
  - (i) has been removed by decanting, or other methods,
  - (ii) has been mixed with sorbent or solidified so that free-standing liquid is no longer observed; or
  - (iii) had been otherwise eliminated; or
- (2) The container is very small, such as an ampule; or
- (3) The container is designed to hold free liquids for use other than storage, such as a battery or capacitor; or
- (4) The container is a lab pack as defined in § 265.316 and is disposed of in accordance with § 265.316.

~~(d) (c)~~ To demonstrate the absence or presence of free liquids in either a containerized or a bulk waste, the following test must be used: Method 9095B (Paint Filter Liquids Test) as described in “Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,” EPA Publication SW-846, as incorporated by reference in § 260.11 of this regulation.

~~(e) (d)~~ The date for compliance with paragraph (a) of this section is November 19, 1981. The date for compliance with paragraph (c) of this section is March 22, 1982.

~~(f) (e)~~ Sorbents used to treat liquids to be disposed of in landfills must be nonbiodegradable. Nonbiodegradable sorbents are materials listed or described in paragraph (e)(1) of this Subsection; or materials that are determined by the Commission to be nonbiodegradable through the Section 260 petition process.

- (1) Nonbiodegradable sorbents (i) Inorganic minerals, other inorganic materials, and elemental carbon (e.g., aluminosilicates, clays, smectites, Fuller’s earth, bentonite, calcium bentonite, montmorillonite, calcined montmorillonite, kaolinite, mi-

cas (illite), vermiculites, zeolites, calcium carbonate (organic-free limestone), oxides/hydroxides, alumina, lime, silica (sand), diatomaceous earth, perlite (volcanic glass), expanded volcanic rock, volcanic ash, cement kiln dust, fly ash, rice hull ash, activated charcoal/activated carbon), or

(ii) High molecular weight synthetic polymers (e.g., polyethylene, high density polyethylene (HDPE), polypropylene, polystyrene, polyurethane, polyacrylate, polynorborene, ~~polyisobutylene~~, polyisobutylene, ground synthetic rubber, cross-linked allylstyrene and tertiary butyl copolymers). This does not include polymers derived from biological materials or polymers specifically designed to be degradable; or

(iii) Mixtures of these nonbiodegradable materials.

(2) Tests for nonbiodegradable sorbents. (i) The sorbent material is determined to be nonbiodegradable under ASTM Method G21-70(1984a) - Standard Practice for Determining Resistance of Synthetic Polymer Material to Fungi; or

(ii) The sorbent material is determined to be nonbiodegradable under ASTM Method G22-76 (1984b)-Standard Practice for Determining Resistance of Plastics to Bacteria; or

(iii) The sorbent material is determined to be non-biodegradable under OECD test 301B: [CO<sub>2</sub> Evolution (Modified Sturm Test)].

~~(g) (f) Effective November 8, 1985;~~ The placement of any liquid which is not a hazardous waste in a landfill is prohibited unless the owner or operator of such landfill demonstrates to the Director, or the Director determines, that:

(1) The only reasonably available alternative to the placement in such landfill is placement in a landfill or unlined surface impoundment, whether or not permitted or operating under interim status, which contains, or may reasonably be anticipated to contain, hazardous waste; and

(2) Placement in such owner or operator’s landfill will not present a risk of contamination of any underground source of drinking water (as that term is defined in ~~40-CFR-144.3~~ § 270.2 of this regulation).

\*\*\*\*\*

139. At **Section 265.316** paragraph (d), revise “§ 260.10(a)” to read “§ 260.10”.

**§ 265.316 Disposal of small containers of hazardous waste in overpacked drums (“lab packs”).**

\*\*\*\*\*

(d) Incompatible wastes, as defined in ~~§ 260.10(a)~~ § 260.10 of this regulation, must not be placed in the same

outside container.

\*\*\*\*\*

**Subsection Q—Chemical, Physical, and Biological Treatment**

140. In **Section 265.405**, amend paragraph (a)(1) by revising the citation “§ 261.21 or 261.23 or this chapter” to read “§§ 261.21 or 261.23 of this chapter”.

**§ 265.405 Special requirements for ignitable or reactive waste.**

(a) \*\*\*

(1) The waste is treated, rendered, or mixed before or immediately after placement in the treatment process or equipment so that (i) the resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under ~~§ 261.21 or 261.23 or this~~ §§ 261.21 or 261.23 of this regulation, and (ii) § 265.17(b) is complied with; or

\*\*\*\*\*

**Subsection W—Drip Pads**

141. **Section 265.441** is amended by revising paragraphs (a), (b), and (c) to read as follows:

**§ 265.441 Assessment of existing drip pad integrity.**

(a) For each existing drip pad as defined in § 265.440, the owner or operator must evaluate the drip pad and determine that it meets all of the requirements of this Subsection, except the requirements for liners and leak detection systems of § 265.443(b). No later than the effective date of this rule, the owner or operator must obtain and keep on file at the facility a written assessment of the drip pad, reviewed and certified by an independent qualified Arkansas-registered Professional Engineer that attests to the results of the evaluation. The assessment must be reviewed, updated, and re-certified annually until all upgrades, repairs, or modifications necessary to achieve compliance with all the standards of § 265.443 are complete. The evaluation must document the extent to which the drip pad meets each of the design and operating standards of § 265.443, except the standards for liners and leak detection systems, specified in § 265.443(b).

(b) The owner or operator must develop a written plan for upgrading, repairing, and modifying the drip pad to meet the requirements of § 265.443(b), and submit the plan to the Director no later than 2 years before the date that all repairs, upgrades, and modifications are complete. This written plan must describe all changes to be made to the drip pad in suf-



ficient detail to document compliance with all the requirements of § 265.443. The plan must be reviewed and certified by an independent qualified Arkansas-registered Professional Engineer.

(c) Upon completion of all repairs and modifications, the owner or operator must submit to the Director or state Director, the as-built drawings for the drip pad together with a certification by an independent qualified Arkansas-registered Professional Engineer attesting that the drip pad conforms to the drawings.

\*\*\*\*\*

142. Section 265.443 is amended by revising paragraphs (a)(4)(ii) and (g) to read as follows:

**§ 265.443 Design and operating requirements.**

(a) \*\*\*

(4)(i) \*\*\*

(ii) The owner or operator must obtain and keep on file at the facility a written assessment of the drip pad, reviewed and certified by an independent qualified Arkansas-registered Professional Engineer that attests to the results of the evaluation. The assessment must be reviewed, updated and recertified annually. The evaluation must document the extent to which the drip pad meets the design and operating standards of this section, except for paragraph (b) of this section.

\*\*\*\*\*

(g) The drip pad must be evaluated to determine that it meets the requirements of paragraphs (a) through (f) of this section and the owner or operator must obtain a statement from an independent qualified Arkansas-registered Professional Engineer certifying that the drip pad design meets the requirements of this section.

\*\*\*\*\*

143. Section 265.444 is amended by revising paragraph (a) to read as follows:

**§ 265.444 Inspections.**

(a) During construction or installation, liners and cover systems (e.g., membranes, sheets, or coatings) must be inspected for uniformity, damage and imperfections (e.g., holes, cracks, thin spots, or foreign materials). Immediately after construction or installation, liners must be inspected and certified as meeting the requirements of § 265.443 by an independent qualified Arkansas-registered Professional Engineer. This certification must be maintained at the facility as part of the facility operating record. After installation, liners and covers must be inspected to ensure tight seams and joints and the absence of tears, punctures, or blisters.

\*\*\*\*\*

144. In Section 265.445, amend paragraph (b) by revising “post/closure care” to read “post-closure care”.

**§ 265.445 Closure.**

\*\*\*\*\*

(b) If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in paragraph (a) of this section, the owner or operator finds that not all contaminated subsoils can be practically removed or decontaminated, he must close the facility and perform ~~post/closure care~~ post-closure care in accordance with closure and post-closure care requirements that apply to landfills (§ 265.310). For permitted units, the requirement to have a permit continues throughout the ~~postclosure~~ post-closure care period.

\*\*\*\*\*

**Subsection AA—Air Emission Standards for Process Vents**

145. In Section 265.1033, amend paragraph (f)(2)(ii) by replacing the period with a comma after 0.5 °C”.

**§ 265.1033 Standards: Closed-vent systems and control devices.**

\*\*\*\*\*

(f) \*\*\*

(2) \*\*\*

(ii) For a catalytic vapor incinerator, a temperature monitoring device equipped with a continuous recorder. The device shall be capable of monitoring temperature at two locations and have an accuracy of ±1 percent of the temperature being monitored in °C or ±0.5 °C, whichever is greater. One temperature sensor shall be installed in the vent stream at the nearest feasible point to the catalyst bed inlet and a second temperature sensor shall be installed in the vent stream at the nearest feasible point to the catalyst bed outlet.

\*\*\*\*\*

146. Amend Section 265.1035 as follows:

a. In paragraph (b)(2) introductory text, replace the period with a comma after the citation “§ 265.1032”;

b. In paragraph (b)(2)(i), revise “annual throughput end operating hours” to read “annual throughput and operating hours”;

c. In paragraph (c)(4)(i), replace the period with a comma after the first occurrence of “760 °C”.

§ 265.1035 Recordkeeping requirements.

\* \* \* \* \*

(b) \* \* \*

(2) Up-to-date documentation of compliance with the process vent standards in § 265.1032, including:

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(i) Information and data identifying all affected process vents, ~~annual throughput and operating hours~~ annual throughput and operating hours of each affected unit, estimated emission rates for each affected vent and for the overall facility (i.e., the total emissions for all affected vents at the facility), and the approximate location within the facility of each affected unit (e.g., identify the hazardous waste management units on a facility plot plan); and

\* \* \* \* \*

(c) \* \* \*

(4) \* \* \*

(i) For a thermal vapor incinerator designed to operate with a minimum residence time of 0.50 seconds at a minimum temperature of 760°C, ~~1~~ period when the combustion temperature is below 760°C.

\* \* \* \* \*

Subsection BB—Air Emission Standards for Equipment Leaks

147. Section 265.1061 is amended by removing paragraphs (b)(1) and (d), and redesignating paragraphs (b)(2) and (b)(3) as paragraphs (b)(1) and (b)(2).

§ 265.1061 Alternative standards for valves in gas/vapor service or in light liquid service; percentage of valves allowed to leak.

(a) An owner or operator subject to the requirements of § 265.1057 may elect to have all valves within a hazardous waste management unit comply with an alternative standard which allows no greater than 2 percent of the valves to leak.

(b) The following requirements shall be met if an owner or operator decides to comply with the alternative standard of allowing 2 percent of valves to leak:

~~(1) An owner or operator must notify the Director that the owner or operator has elected to comply with the requirements of this section.~~

(2) (1) A performance test as specified in paragraph (c) of this section shall be conducted initially upon designation, annually, and at other times requested by the Director.

~~(3) (2)~~ If a valve leak is detected, it shall be repaired in accordance with § 265.1057 (d) and (e).

(c) \* \* \* \* \*

~~(d) If an owner or operator decides no longer to comply with this section, the owner or operator must notify the Director in writing that the work practice standard described in § 265.1057 (a) through (e) will be followed.~~

148. Section 265.1062 is amended by removing paragraph (a)(2) and redesignating paragraph (a)(1) as paragraph (a).

§ 265.1062 Alternative standards for valves in gas/vapor or in light liquid service; skip period leak detection and repair.

(a) ~~(1)~~ An owner or operator subject to the requirements of § 265.1057 may elect for all valves within a hazardous waste management unit to comply with one of the alternative work practices specified in paragraphs (b) (2) and (3) of this section.

~~(2) An owner or operator must notify the Director before implementing one of the alternative work practices.~~

149. In § 265.1063, amend paragraph (b)(4)(ii) by replacing the period in “10.000” with a comma.

§ 265.1063 Test methods and procedures.

\* \* \* \* \*

(b) \* \* \*

(4) \* \* \*

(ii) A mixture of methane or n-hexane and air at a concentration of approximately, but less than, 10,000 ppm methane or n-hexane.

\* \* \* \* \*

SubSection CC—Air Emission Standards for Tanks, Surface Impoundments, and Containers

150. In Section 265.1080, amend paragraph (a) by revising the citation “Subsections I, J, or K” to read “Subsection I, J, or K”.

§ 265.1080 Applicability.

(a) The requirements of this subsection apply to owners and operators of all facilities that treat, store, or dispose of hazardous waste in tanks, surface impoundments, or containers subject to either ~~subsections I, J, or K~~ subsection I, J, or K of this Section except as § 265.1 and paragraph (b) of this section provide otherwise.

\* \* \* \* \*

151. In Section 265.1085, amend paragraph (h)(3) introductory text, by revising “under either or the following” to read “under either of the following”.

§ 265.1085 Standards: Tanks.

\*\*\*\*\*  
(h) \*\*\*

(3) Whenever a hazardous waste is in the tank, the tank shall be operated as a closed system that does not vent to the atmosphere except ~~under either or the following~~ under either of the following conditions as specified in paragraph (h)(3)(i) or (h)(3)(ii) of this section.

\*\*\*\*\*

152. In Section 265.1090, amend paragraph (f)(1) by revising the citation “§ 265.1084(c)(2)(i)” to read “§ 265.1083(c)(2)(i)”.

§ 265.1090 Recordkeeping requirements.

\*\*\*\*\*  
(f) \*\*\*

(1) For tanks, surface impoundments, or containers exempted under the hazardous waste organic concentration conditions specified in § 265.1083(c)(1) or or ~~§ 265.1084(c)(2)(i)~~ § 265.1083(c)(2)(i) through (c)(2)(vi) of this subsection, the owner or operator shall record the information used for each waste determination (e.g., test results, measurements, calculations, and other documentation) in the facility operating log. If analysis results for waste samples are used for the waste determination, then the owner or operator shall record the date, time, and location that each waste sample is collected in accordance with applicable requirements of § 265.1084 of this subsection.

\*\*\*\*\*

Subsection DD—Containment Buildings

153. Amend Section 265.1035 as follows:

a. amended by revising the introductory text to read as follows:

b. amend paragraph (d) by revising “permit” to read “prevent”.

§ 265.1100 Applicability.

The requirements of this Subsection apply to owners or operators who store or treat hazardous waste in units designed and operated under § 265.1101 of this subsection. ~~These provisions became effective on February 18, 1993, although the owner or operator may notify the Director of his intent~~

~~to be bound by this subsection at an earlier time.~~ The owner or operator is not subject to the definition of land disposal in RCRA section 3004(k) provided that the unit:

\*\*\*\*\*

(d) Has controls as needed to ~~permit~~ prevent fugitive dust emissions; and

\*\*\*\*\*

154. Amend Section 265.1101 as follows:

a. In paragraph (b)(3)(iii), revise the citation “§ 265.193(d)(1)” to read “§ 265.193(e)(1)”;

b. Amend revising paragraphs (c)(2) to read as follows:

c. In paragraph (c)(3) introductory text, revise “hazardous waste, must repair” to read “hazardous waste, the owner or operator must repair”;

d. Amend revising paragraphs (c)(4) to read as follows:

e. In paragraph (d) introductory text, revise “For containment” to read “For a containment”.

§ 265.1101 Design and operating standards.

\*\*\*\*\*

(b) \*\*\*

(3) \*\*\*

(iii) The secondary containment system must be constructed of materials that are chemically resistant to the waste and liquids managed in the containment building and of sufficient strength and thickness to prevent collapse under the pressure exerted by overlaying materials and by any equipment used in the containment building. (Containment buildings can serve as secondary containment systems for tanks placed within the building under certain conditions. A containment building can serve as an external liner system for a tank, provided it meets the requirements of ~~§ 265.193(d)(1)~~ § 265.193(e)(1). In addition, the containment building must meet the requirements of § 265.193 (b) and (c) to be considered an acceptable secondary containment system for a tank.)

\*\*\*\*\*

(c) \*\*\*

(2) Obtain and keep on-site a certification by an independent qualified Arkansas-registered Professional Engineer that the containment building design meets the requirements of paragraphs (a), (b), and (c) of this section.

\*\*\*\*\*

(3) Throughout the active life of the containment building, if the owner or operator detects a condition that could lead to or has caused a release of ~~hazardous waste, must repair~~ hazardous waste, the owner or operator must repair the condition promptly, in accordance with the following proce-

dures.

\*\*\*\*\*

(4) Inspect and record in the facility’s operating record at least once every seven days, **except for Performance Track member facilities, that must inspect up to once each month, upon approval of the director**, data gathered from monitoring and leak detection equipment as well as the containment building and the area immediately surrounding the containment building to detect signs of releases of hazardous waste. **To apply for reduced inspection frequency, the Performance Track member facility must follow the procedures described in § 265.15(b)(5).**

\*\*\*\*\*

(d) ~~For containment~~ **For a containment** building that contains both areas with and without secondary containment, the owner or operator must:

\*\*\*\*\*

155. Amend **Appendix I to Section 265** as follows:

a. In Table 1, add unit of measure codes for “Pounds,” “Short tons,” “Kilograms,” and “Tons” at the end of the table to read as set forth below;

b. In Table 2, Section 2.(d), revise “T75 Tricking filter” to read “T75 Tricking filter”;

c. In Table 2, Section 4., revise the heading “Miscellaneous (Subsection X)” to read “Miscellaneous”;

**Appendix I — Recordkeeping Instructions**

Table 1

\*\*\*\*\*

Unit of measure	Code1
Gallons	G
Gallons per Hour	E
Gallons per Day	U
Liters	L
Liters per Hour	H
Liters per Day	V
Short Tons per Hour	D
Metric Tons per Hour	W
Short Tons per Day	N
Metric Tons per Day	S
Pounds per Hour	J
Kilograms per Hour	R
Cubic Yards	Y
Cubic Meters	C
Acres	B
Acre-feet	A
Hectares	Q
Hectare-meter	F
Btu’s per Hour	I
<b><u>Pounds</u></b>	<b><u>P</u></b>
<b><u>Short tons</u></b>	<b><u>T</u></b>
<b><u>Kilograms</u></b>	<b><u>K</u></b>
<b><u>Tons</u></b>	<b><u>M</u></b>

\*\*\*\*\*

Table 2.

Handling Codes for Treatment, Storage and Disposal Methods

\*\*\*\*\*

2. Treatment

\*\*\*\*\*

(d) Biological Treatment

\*\*\*\*\*

~~T75 Tricking filter~~

**T75 Tricking filter**

\*\*\*\*\*

4. ~~Miscellaneous (Subsection X)~~ **Miscellaneous**

\*\*\*\*\*

156. In the table in **Appendix V to Section 265**, under the Group 1–A column, revise the phrase “Alkaline caustic liquids” to read “Alkaline caustic liquids”; and revise “Lime sludge and other corrosive alkalines” to read “Lime sludge and other corrosive alkalies”.

\*\*\*\*\*

**Appendix V — Examples of Potentially Incompatible Waste**

**Group 1-A**

\*\*\*\*\*

~~Alkaline caustic liquids~~ **Alkaline caustic liquids**

\*\*\*\*\*

157. Amend **Appendix VI to Section 265** as follows:

a. In the entry “Dichlorvos (DDVP)”, revise the CAS No. “62737” to read “62–73–7”;

b. In the entry “Ethylene thiourea (2-imidazolidinethione)” revise the CAS No. “9–64–” to read “96–45–7”;

c. In the entry “Neopentyl glycol (dimethylolpropane)” revise “dimethylolpropane” to read “dimethylpropane”;

d. In the entry “1,3-Propane sulfone”, revise “sulfone” to read “sultone”.

**Appendix VI to Section 265 — Compounds With Henry’s Law Constant Less Than 0.1 Y/X**

\*\*\*\*\*

Dichlorvos (DDVP).....~~62737~~**62–73–7**

\*\*\*\*\*

Ethylene thiourea (2-imidazolidinethione)..... ~~9-64-5796-~~**45-7**

\*\*\*\*\*

Neopentyl glycol (~~dimethylolpropane~~ **dimethylpropane**)..... 126-30-7

\*\*\*\*\*

1,3-Propane ~~sulfone~~ **sultone**..... 1120-71-4

\*\*\*\*\*

# Section 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

158. In § 266.80, amend the Table in paragraph (a) by inserting, in the third column, a comma after “(except for § 262.11)” in all four instances and change “undernotification” to read under notification.

## § 266.80 Applicability and requirements.

\*\*\*\*\*

(a)

Then you \*\*\*

#3

are exempt from Reg. 23 262 (except for 262.11), 263, 264, 265, 266, 270, and the provisions ~~undernotification~~ under notification requirements at section 3010 of RCRA.

#5

are exempt from Reg. 23 Sections 262 (except for 262.11), 263, 264, 265, 266, 270, and the notification requirements at section 3010 of RCRA.

\*\*\*\*\*

159. Amend Section 266.100 as follows:

a. Revise the first sentence of paragraph (b)(1) and adding paragraphs (b)(3) and (b)(4) to read as follows:

b. In paragraph (d)(2)(iv), revise “266.212” to read “266.112”;

c. In paragraph (d)(3)(i)(A), revise “appendix IX” to read “appendix XI”;

## § 266.100 Applicability.

\*\*\*\*\*

(b) \*\*\*

(1) Except as provided by paragraphs (b)(2), ~~(b)(3), and (b)(4)~~ of this section, the standards of this section ~~no longer apply when an affected source demonstrates compliance with the maximum achievable control technology (MACT) requirements of 40 CFR Part 63, subpart EEE, by conducting a comprehensive performance test and submitting to the Director a Notification of Compliance under 40 CFR §§ 63.1207(j) and 63.1210(b) documenting compliance with the requirements of 40 CFR Part 63, subpart EEE. Nevertheless, even after this demonstration of compliance with the MACT standards, RCRA permit conditions that were based on the standards of this part will con-~~

~~tinue to be in effect until they are removed from the permit or the permit is terminated or revoked, unless the permit expressly provides otherwise.~~ do not apply to a new hazardous waste boiler or industrial furnace unit that becomes subject to RCRA permit requirements after October 12, 2005; or no longer apply when an owner or operator of an existing hazardous waste boiler or industrial furnace unit demonstrates compliance with the maximum achievable control technology (MACT) requirements of 40 CFR part 63, subpart EEE by conducting a comprehensive performance test and submitting to the Director a Notification of Compliance under 40 CFR §§ 63.1207(j) and 63.1210(d) documenting compliance with the requirements of 40 CFR part 63, subpart EEE.

\*\*\*\*\*

(2) \*\*\*

(iv) The standards for regulation of residues of ~~§ 266.212~~ § 266.112; and

\*\*\*\*\*

(3) If you own or operate a boiler or hydrochloric acid production furnace that is an area source under 40 CFR § 63.2 and you elect not to comply with the emission standards under 40 CFR §§ 63.1216, 63.1217, and 63.1218 for particulate matter, semivolatile and low volatile metals, and total chlorine, you also remain subject to:

(i) Section 266.105—Standards to control particulate matter;

(ii) Section 266.106—Standards to control metals emissions, except for mercury; and

(iii) Section 266.107—Standards to control hydrogen chloride and chlorine gas.

(4) The particulate matter standard of § 266.105 remains in effect for boilers that elect to comply with the alternative to the particulate matter standard under 40 CFR §§ 63.1216(e) and 63.1217(e).

\*\*\*\*\*

(d) \*\*\*

(3) \*\*\*

(i) \*\*\*

(A) A waste listed in ~~appendix IX~~ appendix XI of this section must contain recoverable levels of lead, a waste listed in Appendix XII of this section must contain recoverable levels of nickel or chromium, a waste listed in Appendix XIII of this section must contain recoverable levels of mercury and contain less than 500 ppm of Section 261, Appendix VIII organic constituents, and baghouse bags used to capture metallic dusts emitted by steel manufacturing must contain recov-



erable levels of metal; and  
\* \* \* \* \*

160. Amend **Section 266.102** as follows:

- a. In paragraph (a)(2)(vi), revise “(Corrective Action)” to read “(Releases from Solid Waste Management Units)”;
- b. In paragraph (e)(3)(i)(E), revise the citation “§ 266.111(b)” to read “§ 266.105(a)”;
- c. In paragraph (e)(5)(i)(C), revise “chlorine” to read “chlorine”; and revise “feedstocks” to read “feedstocks”;
- d. In paragraph (e)(6)(ii)(B)(2), revise “of preceding” to read “of the preceding”;
- e. In paragraph (e)(8)(iii), revise “values” to read “valves”.
- f. Amend by revising paragraph (e)(10) to read as follows:

**§ 266.102 Permit standards for burners.**

- (a) \* \* \*
  - (2) \* \* \*
    - (vi) In subsection F (~~Corrective Action Releases from Solid Waste Management Units~~), §§ 264.90 and 264.101;  
\* \* \* \* \*
- (e) \* \* \*
  - (3)(i) \* \* \*
    - (E) Such other operating requirements as are necessary to ensure that the particulate standard in § ~~266.111(b)~~ **§ 266.105(a)** is met.  
\* \* \* \* \*
  - (5) \* \* \*
    - (i) \* \* \*
      - (C) A sampling and analysis program for total chloride and chlorine for the hazardous waste, other fuels, and industrial furnace ~~feedstocks~~ **feedstocks**;  
\* \* \* \* \*
  - (6) \* \* \*
    - (ii) \* \* \*
      - (B) \* \* \*
        - (2) The rolling average for the selected averaging period is defined as the arithmetic mean of one hour block averages for the averaging period. A one hour block average is the arithmetic mean of the one minute averages recorded during the 60- minute period beginning at one minute after the beginning of ~~pre-ceeding of the preceding~~ clock hour; and  
\* \* \* \* \*
  - (8) \* \* \*
    - (iii) The boiler or industrial furnace and as-

sociated equipment (pumps, ~~values~~ **valves**, pipes, fuel storage tanks, etc.) must be subjected to thorough visual inspection when it contains hazardous waste, at least daily for leaks, spills, fugitive emissions, and signs of tampering.  
\* \* \* \* \*

(10) Recordkeeping. The owner or operator must ~~keep~~ **maintain** in the operating record of the facility all information and data required by this section ~~until closure of the facility~~ **for five years.**  
\* \* \* \* \*

161. Amend **Section 266.103** as follows:

- a. In paragraph (a)(4)(vii), revise the citation “265.147–265.151” to read “265.147–265.150”;
- b. In paragraph (b)(2)(v)(B)(2), revise “meterological” to read “meteorological”;
- c. In paragraph (b)(5)(ii)(A), revise “on a hourly” to read “on an hourly”;
- d. Revise paragraphs (c)(1)(i) introductory text to read as follows:
  - e. In paragraph (c)(1)(ii)(A)(2), revise “feedsteams” to read “feedstreams”;
  - f. Revise paragraphs (c)(1)(ix) introductory text to read as follows:
    - g. In paragraph (c)(1)(ix)(A), revise “ration” to read “ratio”;
    - h. In paragraph (c)(4)(iv)(C)(1), revise “on a hourly” to read “on an hourly”;
    - i. Amend by revising paragraph (d) to read as follows:
    - j. In paragraph (g)(1)(i), revise “on a hourly” to read “on an hourly”.
    - k. Amend by revising paragraph (k) to read as follows:

**§ 266.103 Interim status standards for burners.**

- (a) \* \* \*
  - (4) \* \* \*
    - (vii) In subsection H (Financial requirements), §§ 265.141, 265.142, 265.143, and ~~265.147-265.151~~ **265.147–265.150**, except that States and the Federal government are exempt from the requirements of subsection H; and  
\* \* \* \* \*
- (b) \* \* \*
  - (2) \* \* \*
    - (v) \* \* \*
      - (B) \* \* \*
        - (2) Source of ~~meterological~~ **meteorological** data;  
\* \* \* \* \*
- (5) \* \* \*
  - (ii)
    - (A) The feed rate of each metal shall be



limited at any time to ten times the feed rate

that would be allowed ~~on a hourly~~ on an hourly rolling average basis;

\*\*\*\*\*

(c) \*\*\*

(1) \*\*\*

~~(i) Feed rate of total hazardous waste and (unless complying with the Tier I or adjusted Tier I metals feed rate screening limits under § 266.1~~

(i) Feed rate of total hazardous waste and (unless complying with the Tier I or adjusted Tier I metals feed rate screening limits under § 266.106(b) or (e)), pumpable hazardous waste;

\*\*\*\*\*

(ii) \*\*\*

(A) \*\*\*

(2) Industrial furnaces that must comply with the alternative metals implementation approach under paragraph (c)(3)(ii) of this section must specify limits on the concentration of each metal in the collected particulate matter in lieu of feed rate limits for total ~~feedstreams~~ feedstreams;

\*\*\*\*\*

~~(ix) For systems using wet scrubbers, including wet ionizing scrubbers (unless complying with Tier I or Adjusted Tier I metals feed rate screening limits under § 266.106(b) or (e) and the total chlorine and chloride feed rate screening limits under § 266.107(b)(1) or (e));~~ (ix) For systems using wet scrubbers, including wet ionizing scrubbers (unless complying with the Tier I or Adjusted Tier I metals feed rate screening limits under § 266.106(b) or (e) and the total chlorine and chloride feed rate screening limits under § 266.107(b)(1) or (e));

(A) Minimum liquid to flue gas ~~ration~~ ratio;

\*\*\*\*\*

(4) \*\*\*

(iv) \*\*\*

(C) \*\*\*

(I) The feed rate of each metal shall be limited at any time to ten times the feed rate that would be allowed ~~on a hourly~~ on an hourly rolling average basis;

\*\*\*\*\*

(d) *Periodic Recertifications.* The owner or operator must conduct compliance testing and submit to the Director a recertification of compliance under provisions of paragraph

(c) of this section within ~~three~~ five years from submitting the previous certification or recertification. If the owner or operator seeks to recertify compliance under new operating conditions, he/she must comply with the requirements of paragraph (c)(8) of this section.

\*\*\*\*\*

(g) \*\*\*

(1) \*\*\*

(i) If compliance with the combustion chamber temperature limit is based ~~on a hourly~~ on an hourly rolling average, the minimum temperature during the compliance test is considered to be the average over all runs of the lowest hourly rolling average for each run;

or  
\*\*\*\*\*

(k) *Recordkeeping.* The owner or operator must keep in the operating record of the facility all information and data required by this section ~~until closure of the boiler or industrial furnace unit.~~ for five years.

\*\*\*\*\*

162. In **Section 266.106**, amend paragraph (d)(1) by deleting the second appearance of the phrase “dispersion modeling to predict the maximum annual average off-site ground level concentration for each”.

**§ 266.106 Standards to control metals emissions.**

\*\*\*\*\*

(d) \*\*\*

(1) General. Conformance with the Tier III metals controls must be demonstrated by emissions testing to determine the emission rate for each metal. In addition, conformance with either the Tier III or Adjusted Tier I metals controls must be demonstrated by air dispersion modeling to predict the maximum annual average off-site ground level concentration for each ~~dispersion modeling to predict the maximum annual average off-site ground level concentration for each~~ metal, and a demonstration that acceptable ambient levels are not exceeded.

\*\*\*\*\*

163. Amend § 266.109 paragraph (a)(2)(ii), revise “constituent” to read “constituent” in both instances;

**§ 266.109 Low risk waste exemption.**

(a) \*\*\*

(2) \*\*\*

(ii) Calculate reasonable, worst case emission rates for each ~~constituent~~ constituent identified in paragraph (a)(2)(i) of this section by assuming the device achieves 99.9 percent destruction and removal efficiency.

That is, assume that 0.1 percent of the mass weight of each ~~constituent~~ constituent fed to the device is emitted.  
\* \* \* \* \*

**Subsection N—Conditional Exemption for Low-Level Mixed Waste Storage, Treatment, Transportation and Disposal.**

164. Amend **Section 266** by revising the Subsection heading to read as set forth above.

~~**Subsection N—Conditional Exemption for Low-Level Mixed Waste Storage and Disposal**~~  
**Subsection N—Conditional Exemption for Low-Level Mixed Waste Storage, Treatment, Transportation and Disposal.**  
\* \* \* \* \*

165. Amend **Section 266, Appendix III** column headings by revising “Cl<sub>2</sub>” to read “Cl<sub>2</sub>,” three times, and by revising “HCl” to read “HCl” three times (i.e., revise the “1” (one) to be a lower-case letter L in all six cases).

**Appendix III-Tier II Emission Rate Screening Limits for Free Chlorine and Hydrogen Chloride Noncomplex terrain Complex terrain**  
\* \* \* \* \*

~~Cl<sub>2</sub> (g/hr) HCl (g/hr) Cl<sub>2</sub> (g/hr) HCl (g/hr) Cl<sub>2</sub> (g/hr) HCl (g/hr)~~  
Cl<sub>2</sub> (g/hr) HCl (g/hr) Cl<sub>2</sub> (g/hr) HCl (g/hr) Cl<sub>2</sub> (g/hr) HCl (g/hr)  
\* \* \* \* \*

166. Amend **Section 266, Appendix IV** by Revising the entry “Maleic Anyhdride” to read “Maleic Anhydride”;

**Appendix IV-Reference Air Concentrations\***  
\* \* \* \* \*  
~~Maleic Anyhdride~~ Maleic Anhydride  
\* \* \* \* \*

167. Amend **Section 266, Appendix V** as follows:  
a. Revise the third column heading “Unit risk (m3/?g)” to read “Unit risk (m3/g)”;  
b. Revise the fourth column heading “RsD (?g/m3)” to read “RsD (g/m3)”;  
c. Revise the entry “Benxene” to read “Benzene”;  
d. Revise the entry “Hexachlorodibenxo-p-dioxin (1,2 Mixture)” to read “Hexachlorodibenzo-p-dioxin (1,2 Mixture)”.

**Appendix V-Risk Specific Doses (10<sup>5</sup>)**  
\* \* \* \* \*  
~~Unit risk~~

~~(m3/ug)~~  
Unit risk (m3/g)  
\* \* \* \* \*  
~~RsD~~  
~~(ug/m3)~~  
RsD (g/m3)  
\* \* \* \* \*  
~~Benxene~~ Benzene  
\* \* \* \* \*  
~~Hexachlorodibenxo-p-dioxin(1,2 Mixture)~~ Hexachlorodibenzo-p-dioxin (1,2 Mixture)  
\* \* \* \* \*

168. Amend **Section 266, Appendix VI** by revising the first column heading “Flow rate (m<sup>3</sup>/s)” to read “Flow rate (m<sup>3</sup>/s)”.

**Appendix VI-Stack Plume Rise**  
\* \* \* \* \*  
~~Flow rate (m3/s)~~  
Flow rate (m3/s)  
\* \* \* \* \*

169. Amend **Section 266, Appendix XIII** at item number 14 by revising “levels or mercury” to read “levels of mercury”.

**Appendix XIII to Section 266 - Mercury Bearing Wastes That May Be Processed in Exempt Mercury Recovery Units**  
\* \* \* \* \*  
~~Recoverable levels or mercury~~ levels of mercury contained in soil  
\* \* \* \* \*

170. **Section 267** is added to read as follows:

**Section 267—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE FACILITIES OPERATING UNDER A STANDARDIZED PERMIT**

**Subsection A—General**  
267.1 What are the purpose, scope and applicability of this section?  
267.2 What is the relationship to interim status standards?  
267.3 How does this section affect an imminent hazard action?

**Subsection B—General Facility Standards**  
267.10 Does this subsection apply to me?  
267.11 What must I do to comply with this subsection?  
267.12 How do I obtain an identification number?  
267.13 What are my waste analysis requirements?  
267.14 What are my security requirements?  
267.15 What are my general inspection requirements?

- 267.16 What training must my employees have?
- 267.17 What are the requirements for managing ignitable, reactive, or incompatible wastes?
- 267.18 What are the standards for selecting the location of my facility?

Subsection C—Preparedness and Prevention

- 267.30 Does this subsection apply to me?
- 267.31 What are the general design and operation standards?
- 267.32 What equipment am I required to have?
- 267.33 What are the testing and maintenance requirements for the equipment?
- 267.34 When must personnel have access to communication equipment or an alarm system?
- 267.35 How do I ensure access for personnel and equipment during emergencies?
- 267.36 What arrangements must I make with local authorities for emergencies?

Subsection D—Contingency Plan and Emergency Procedures

- 267.50 Does this subsection apply to me?
- 267.51 What is the purpose of the contingency plan and how do I use it?
- 267.52 What must be in the contingency plan?
- 267.53 Who must have copies of the contingency plan?
- 267.54 When must I amend the contingency plan?
- 267.55 What is the role of the emergency coordinator?
- 267.56 What are the required emergency procedures for the emergency coordinator?
- 267.57 What must the emergency coordinator do after an emergency?
- 267.58 What notification and recordkeeping must I do after an emergency?

Subsection E Manifest System, Recordkeeping, Reporting, and Notifying

- 267.70 Does this subsection apply to me?
- 267.71 Use of the manifest system.
- 267.72 Manifest discrepancies.
- 267.73 What information must I keep?
- 267.74 Who sees the records?
- 267.75 What reports must I prepare and to whom do I send them?
- 267.76 What notifications must I make?

Subsection F—Releases from Solid Waste Management Units

- 267.90 Who must comply with this section?
- 267.91–267.100 [Reserved]
- 267.101 What must I do to address corrective action for solid waste management units?

Subsection G—Closure

- 267.110 Does this subsection apply to me?
- 267.111 What general standards must I meet when I stop operating the unit?
- 267.112 What procedures must I follow?
- 267.113 Will the public have the opportunity to comment on the plan?
- 267.114 [Reserved]
- 267.115 After I stop operating, how long until I must close?
- 267.116 What must I do with contaminated equipment, structure, and soils?
- 267.117 How do I certify closure?

Subsection H—Financial Requirements

- 267.140 Who must comply with this subsection, and briefly, what do they have to do?
- 267.141 Definitions of terms as used in this subsection.
- 267.142 Cost estimate for closure.
- 267.143 Financial assurance for closure.
- 267.144–267.146 [Reserved]
- 267.147 Liability requirements.
- 267.148 Incapacity of owners or operators, guarantors, or financial institutions.
- 267.149 [Reserved]

- 267.150 State assumption of responsibility.
- 267.151 Wording of the instruments

Subsection I—Use and Management of Containers

- 267.170 Does this subsection apply to me?
- 267.171 What standards apply to the containers?
- 267.172 What are the inspection requirements?
- 267.173 What standards apply to the container storage areas?
- 267.174 What special requirements must I meet for ignitable or reactive waste?
- 267.175 What special requirements must I meet for incompatible wastes?
- 267.176 What must I do when I want to stop using the containers?
- 267.177 What air emission standards apply?

Subsection J—Tank Systems

- 267.190 Does this subsection apply to me?
- 267.191 What are the required design and construction standards for new tank systems or components?
- 267.192 What handling and inspection procedures must I follow during installation of new tank systems?
- 267.193 What testing must I do?
- 267.194 What installation requirements must I follow?
- 267.195 What are the secondary containment requirements?
- 267.196 What are the required devices for secondary containment and what are their design, operating and installation requirements?
- 267.197 What are the requirements for ancillary equipment?
- 267.198 What are the general operating requirements for my tank systems?
- 267.199 What inspection requirements must I meet?
- 267.200 What must I do in case of a leak or a spill?
- 267.201 What must I do when I stop operating the tank system?
- 267.202 What special requirements must I meet for ignitable or reactive wastes?
- 267.203 What special requirements must I meet for incompatible wastes?
- 267.204 What air emission standards apply?

Subsections K Through CC [Reserved]

Subsection DD—Containment buildings

- 267.1100 Does this subsection apply to me?
- 267.1101 What design and operating standards must my containment building meet?
- 267.1102 What other requirements must I meet to prevent releases?
- 267.1103 What additional design and operating standards apply if liquids will be in my containment building?
- 267.1104 How may I obtain a waiver from secondary containment requirements?
- 267.1105 What do I do if my containment building contains areas both with and without secondary containment?
- 267.1106 What do I do if I detect a release?
- 267.1107 Can a containment building itself be considered secondary containment?
- 267.1108 What must I do when I stop operating the containment building?

Subsection A—General

§ 267.1 What are the purpose, scope and applicability of this section?

(a) The purpose of this section is to establish minimum national standards which define the acceptable management of hazardous waste under a Section 270, subsection J standardized permit.

(b) This section applies to owners and operators of facilities who treat or store hazardous waste under a

Section 270, subsection J standardized permit, except as provided otherwise in Section 261, subsection A, or Section 264.1(f) and (g) of this Regulation.

**§ 267.2 What is the relationship to interim status standards?**

If you are a facility owner or operator who has fully complied with the requirements for interim status—as defined in Section 3005(e) of RCRA and Section 270.70 of this Regulation—you must comply with the regulations specified in Section 265 of this Regulation instead of the regulations in this section, until final administrative disposition of the standardized permit application is made, except as provided under Section 264, subsection S.

**§ 267.3 How does this section affect an imminent hazard action?**

Notwithstanding any other provisions of this section, enforcement actions may be brought pursuant to section 7003 of RCRA.

**Subsection B—General Facility Standards**

**§ 267.10 Does this subsection apply to me?**

This subsection applies to you if you own or operate a facility that treats or stores hazardous waste under a Section 270, subsection J standardized permit, except as provided in § 267.1(b) of this Regulation.

**§ 267.11 What must I do to comply with this subsection?**

To comply with this subsection, you must obtain an EPA identification number, and follow the requirements below for waste analysis, security, inspections, training, special waste handling, and location standards.

**§ 267.12 How do I obtain an EPA identification number?**

You must apply to the Department for an EPA identification number following the current notification procedures and using forms as provided by the Department. You may obtain these forms by contacting the Department, or from the ADEQ web site at <http://www.adeg.state.ar.us>

**§ 267.13 What are my waste analysis requirements?**

(a) Before you treat or store any hazardous wastes, you must obtain a detailed chemical and physical analysis of a representative sample of the wastes. At a minimum, the analysis must contain all the information needed to treat or store the waste to comply with this section and Section 268 of this Regulation.

(1) You may include data in the analysis that was developed under Section 261, and published or documented data on the hazardous waste or on hazardous waste generated from similar processes.

(2) You must repeat the analysis as necessary to ensure that it is accurate and up to date. At a minimum, you must repeat the analysis if the process or operation generating the hazardous wastes has changed.

(b) You must develop and follow a written waste analysis plan that describes the procedures you will follow to comply with paragraph (a) of this section. You must keep this plan at the facility. If you receive wastes generated from off-site, and are eligible for a standardized permit, you also must have submitted the waste analysis plan with the Notice of Intent. At a minimum, the plan must specify all of the following:

(1) The hazardous waste parameters that you will analyze and the rationale for selecting these parameters (that is, how analysis for these parameters will provide sufficient information on the waste's properties to comply with paragraph (a) of this section).

(2) The test methods you will use to test for these parameters.

(3) The sampling method you will use to obtain a representative sample of the waste to be analyzed. You may obtain a representative sample using either:

(i) One of the sampling methods described in appendix I of Section 261; or

(ii) An equivalent sampling method.

(4) How frequently you will review or repeat the initial analysis of the waste to ensure that the analysis is accurate and up to date.

(5) Where applicable, the methods you will use to meet the additional waste analysis requirements for specific waste management methods as specified in §§ 264.17, 264.1034(d), 264.1063(d), and 264.1083.

**§ 267.14 What are my security requirements?**

(a) You must prevent, and minimize the possibility for, livestock and unauthorized people from entering the active portion of your facility.

**(b) Your facility must have:**

(1) A 24-hour surveillance system (for example, television monitoring or surveillance by guards or facility personnel) that continuously monitors and controls entry onto the active portion of the facility; or

(2) An artificial or natural barrier (for example, a fence in good repair or a fence combined with a cliff) that completely surrounds the active portion of the facility; and

(3) A means to control entry, at all times, through the gates or other entrances to the active portion of the facility (for example, an attendant, television monitors, locked entrance, or controlled roadway access to the facility).

(c) You must post a sign at each entrance to the active portion of a facility, and at other prominent locations, in sufficient numbers to be seen from any approach to this active portion. The sign must bear the legend "Danger—Unauthorized Personnel Keep Out." The legend must be in English and in any other language predominant in the area surrounding the facility (for example, facilities in counties bordering the Canadian province of Quebec must post signs in French, and facilities in counties bordering Mexico must post signs in Spanish), and must be legible from a distance of at least 25 feet. You may use existing signs with a legend other than "Danger—Unauthorized Personnel Keep Out" if the legend on the sign indicates that only authorized personnel are allowed to enter the active portion, and that entry onto the active portion can be dangerous.

**§ 267.15 What are my general inspection requirements?**

(a) You must inspect your facility for malfunctions and deterioration, operator errors, and discharges that may be causing, or may lead to:

(1) Release of hazardous waste constituents to the environment; or

(2) A threat to human health. You must conduct these inspections often enough to identify problems in time to correct them before they result in harm to human health or the environment.

(b) You must develop and follow a written schedule for inspecting, monitoring equipment, safety and emergency equipment, security devices, and operating and structural equipment (such as dikes and sump pumps) that are important to preventing, detecting, or responding to environmental or human health hazards.

(1) You must keep this schedule at the facility.

(2) The schedule must identify the equipment and devices you will inspect and what problems you look for, such as malfunctions or deterioration of equipment (for example, inoperative

sump pump, leaking fitting, etc.).

(3) The frequency of your inspections may vary for the items on the schedule. However, the frequency should be based on the rate of deterioration of the equipment and the probability of an environmental or human health incident if the deterioration, malfunction, or any operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, must be inspected daily when in use. At a minimum, the inspection schedule must include the items and frequencies required in §§ 267.174, 267.193, 267.195, 267.1103, and §§ 264.1033, 264.1052, 264.1053, 264.1058, and 264.1083 through 264.1089, where applicable.

(c) You must remedy any deterioration or malfunction of equipment or structures that the inspection reveals in time to prevent any environmental or human health hazard. Where a hazard is imminent or has already occurred, you must take remedial action immediately.

(d) You must record all inspections. You must keep these records for at least three years from the date of inspection. At a minimum, you must include the date and time of the inspection, the name of the inspector, a notation of the observations made, and the date and nature of any repairs or other remedial actions.

**§ 267.16 What training must my employees have?**

(a) Your facility personnel must successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of this section. You must ensure that this program includes all the elements described in the documents that are required under paragraph (d)(3) of this section.

(1) A person trained in hazardous waste management procedures must direct this program, and must teach facility personnel hazardous waste management procedures (including contingency plan implementation) relevant to their employment positions.

(2) At a minimum, the training program must be designed to ensure that facility personnel are able to respond effectively to emergencies by including instruction on emergency procedures, emergency equipment, and emergency systems, including all of the following, where applicable:

(i) Procedures for using, inspecting, repairing, and replacing facility emergency and monitoring equipment

(ii) Key parameters for automatic waste feed cut-off systems.

(iii) Communications or alarm systems.

(iv) Response to fires or explosions.



(v) Response to ground water contamination incidents.

(vi) Shutdown of operations.

(b) Facility personnel must successfully complete the program required in paragraph (a) of this section within six months after the date of their employment or assignment to a facility, or to a new position at a facility, whichever is later. Employees hired after the effective date of your standardized permit must not work in unsupervised positions until they have completed the training requirements of paragraph (a) of this section.

(c) Facility personnel must take part in an annual review of the initial training required in paragraph (a) of this section.

(d) You must maintain the following documents and records at your facility:

(1) The job title for each position at the facility related to hazardous waste management, and the name of the employee filling each job;

(2) A written job description for each position listed under paragraph (d)(1) of this section. This description must include the requisite skill, education, or other qualifications, and duties of employees assigned to each position;

(3) A written description of the type and amount of both introductory and continuing training that will be given to each person filling a position listed under paragraph (d)(1) of this section;

(4) Records that document that facility personnel have received and completed the training or job experience required under paragraphs (a), (b), and (c) of this section.

(e) You must keep training records on current personnel until your facility closes. You must keep training records on former employees for at least three years from the date the employee last worked at your facility. Personnel training records may accompany personnel transferred within your company.

(f) Additionally, you must meet the following requirements:

(1) No employee may be assigned the duties of transferring, handling, sorting, mixing, treating or disposing of hazardous waste unless that employee meets the requirements set out in § 267.16 (a), (b) and (c) above.

(2) No employee may be assigned the duties of transferring, handling, sorting, mixing, treating or disposing of hazardous waste unless that employee has demonstrated his/her capabilities of:

(i) Reading and comprehending label instructions, operational procedures, contingency plans and regulatory directives;

(ii) 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

(iii) Operating all equipment which he/she is assigned to operate, including personal safety and emergency equipment.

(3) You must promptly modify the training required of your 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, shall 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.

**§ 267.17 What are the requirements for managing ignitable, reactive, or incompatible wastes?**

(a) You must take precautions to prevent accidental ignition or reaction of ignitable or reactive waste by following these requirements:

(1) You must separate these wastes and protect them from sources of ignition or reaction such as: open flames, smoking, cutting and welding, hot surfaces, frictional heat, sparks (static, electrical, or mechanical), spontaneous ignition (for example, from heat-producing chemical reactions), and radiant heat.

(2) While ignitable or reactive waste is being handled, you must confine smoking and open flames to specially designated locations.

(3) "No Smoking" signs must be conspicuously placed wherever there is a hazard from ignitable or reactive waste.

(b) If you treat or store ignitable or reactive waste, or mix incompatible waste or incompatible wastes and other materials, you must take precautions to prevent reactions that:

(1) Generate extreme heat or pressure, fire or explosions, or violent reactions.

(2) Produce uncontrolled toxic mists, fumes, dusts, or gases in sufficient quantities to threaten human health or the environment.

(3) Produce uncontrolled flammable fumes or gases in sufficient quantities to pose a risk of fire or explosions.

(4) Damage the structural integrity of the device or facility.

(5) Threaten human health or the environment in any similar way.

(c) You must document compliance with paragraph (a) or (b) of this section. You may base this documentation on references to published scientific or engineering



literature, data from trial tests (for example bench scale or pilot scale tests), waste analyses (as specified in § 267.13), or the results of the treatment of similar wastes by similar treatment processes and under similar operating conditions.

**§ 267.18 What are the standards for selecting the location of my facility?**

(a) You may not locate portions of new facilities where hazardous waste will be treated or stored within 61 meters (200 feet) of a fault that has had displacement in Holocene time.

(1) “Fault” means a fracture along which rocks on one side have been displaced with respect to those on the other side.

(2) “Displacement” means the relative movement of any two sides of a fault measured in any direction.

(3) “Holocene” means the most recent epoch of the Quaternary period, extending from the end of the Pleistocene to the present.

Note to paragraph (a)(3): Procedures for demonstrating compliance with this standard are specified in Section 270.14(b)(11) of this Regulation. Facilities which are located in political jurisdictions other than those listed in appendix VI to Section 264, are assumed to be in compliance with this requirement.

(b) If your facility is located in a 100-year flood plain, it must be designed, constructed, operated, and maintained to prevent washout of any hazardous waste by a 100-year flood.

(1) “100-year flood plain” means any land area that is subject to a one percent or greater chance of flooding in any given year from any source.

(2) “Washout” means the movement of hazardous waste from the active portion of the facility as a result of flooding.

(3) “100-year flood” means a flood that has a one percent chance of being equaled or exceeded in any given year.

**Subsection C—Preparedness and Prevention**

**§ 267.30 Does this subsection apply to me?**

This subsection applies to you if you own or operate a facility that treats or stores hazardous waste under a Section 270, subsection J standardized permit, except as provided in § 267.1(b).

**§ 267.31 What are the general design and operation standards?**

You must design, construct, maintain, and operate your

facility to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water that could threaten human health or the environment.

**§ 267.32 What equipment am I required to have?**

Your facility must be equipped with all of the following, unless none of the hazards posed by waste handled at the facility could require a particular kind of equipment specified below:

(a) An internal communications or alarm system capable of providing immediate emergency instruction (voice or signal) to facility personnel.

(b) A device, such as a telephone (immediately available at the scene of operations) or a hand-held two-way radio, capable of summoning emergency assistance from local police departments, fire departments, or State or local emergency response teams.

(c) Portable fire extinguishers, fire control equipment (including special extinguishing equipment, such as that using foam, inert gas, or dry chemicals), spill control equipment, and decontamination equipment.

(d) Water at adequate volume and pressure to supply water hose streams, or foam-producing equipment, or automatic sprinklers, or water spray systems.

**§ 267.33 What are the testing and maintenance requirements for the equipment?**

You must test and maintain all required facility communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment, as necessary, to assure its proper operation in time of emergency.

**§ 267.34 When must personnel have access to communication equipment or an alarm system?**

(a) Whenever hazardous waste is being poured, mixed, spread, or otherwise handled, all personnel involved in the operation must have immediate access to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, unless the device is not required under § 267.32.

(b) If just one employee is on the premises while the facility is operating, that person must have immediate access to a device, such as a telephone (immediately available at the scene of operation) or a hand-held two-way radio, capable of summoning external emergency assistance, unless not required under § 267.32.

**§ 267.35 How do I ensure access for personnel and equipment during emergencies?**

You must maintain enough aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, as appropriate, considering the type of waste being stored or treated.

**§ 267.36 What arrangements must I make with local authorities for emergencies?**

(a) You must attempt to make the following arrangements, as appropriate, for the type of waste handled at your facility and the potential need for the services of these organizations:

(1) Arrangements to familiarize police, fire departments, and emergency response teams with the layout of the facility, properties of hazardous waste handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to and roads inside the facility, and possible evacuation routes.

(2) Agreements designating primary emergency authority to a specific police and a specific fire department where more than one police and fire department might respond to an emergency, and agreements with any others to provide support to the primary emergency authority.

(3) Agreements with State emergency response teams, emergency response contractors, and equipment suppliers.

(4) Arrangements to familiarize local hospitals with the properties of hazardous waste handled at the facility and the types of injuries or illnesses that could result from fires, explosions, or releases at the facility.

(b) If State or local authorities decline to enter into such arrangements, you must document the refusal in the operating record.

**Subsection D—Contingency Plan and Emergency Procedures**

**§ 267.50 Does this subsection apply to me?**

This subsection applies to you if you own or operate a facility that treats or stores hazardous waste under a Section 270, subsection J standardized permit, except as provided in § 267.1(b).

**§ 267.51 What is the purpose of the contingency**

**plan and how do I use it?**

(a) You must have a contingency plan for your facility. You must design the plan to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water.

(b) You must implement the provisions of the plan immediately whenever there is a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment.

**§ 267.52 What must be in the contingency plan?**

(a) Your contingency plan must:

(1) Describe the actions facility personnel will take to comply with §§ 267.51 and 267.56 in response to fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water at the facility.

(2) Describe all arrangements agreed upon under § 267.36 by local police departments, fire departments, hospitals, contractors, and state and local emergency response teams to coordinate emergency services.

(3) List names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator (see § 267.55), and you must keep the list up to date. Where more than one person is listed, one must be named as primary emergency coordinator and others must be listed in the order in which they will assume responsibility as alternates.

(4) Include a current list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment), where this equipment is required. In addition, you must include the location and a physical description of each item on the list, and a brief outline of its capabilities.

(5) Include an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. You must describe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes (in cases where the primary routes could be blocked by releases of hazardous waste or fires).

(b) If you have already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan under 40 CFR part 112, or some other emergency or contingency plan, you need only amend that plan to incorporate haz-

ardous waste management provisions that will comply with the requirements of this section.

#### § 267.53 Who must have copies of the contingency plan?

(a) You must maintain a copy of the plan with all revisions at the facility; and

(b) You must submit a copy with all revisions to all local police departments, fire departments, hospitals, and state and local emergency response teams that may be called upon to provide emergency services.

#### § 267.54 When must I amend the contingency plan?

You must review, and immediately amend the contingency plan, if necessary, whenever:

(a) The facility permit is revised.

(b) The plan fails in an emergency.

(c) You change the facility (in its design, construction, operation, maintenance, or other circumstances) in a way that materially increases the potential for fires, explosions, or releases of hazardous waste or hazardous waste constituents, or changes the response necessary in an emergency.

(d) You change the list of emergency coordinators.

(e) You change the list of emergency equipment.

#### § 267.55 What is the role of the emergency coordinator?

At least one employee must be either on the facility premises or on call at all times (that is, available to respond to an emergency by reaching the facility within a short period of time) who has the responsibility for coordinating all emergency response measures. This emergency coordinator must be thoroughly familiar with all aspects of the facility's contingency plan, all operations and activities at the facility, the location and characteristics of waste handled, the location of all records within the facility, and the facility layout. In addition, this person must have the authority to commit the resources needed to carry out the contingency plan.

#### § 267.56 What are the required emergency procedures for the emergency coordinator?

(a) Whenever there is an imminent or actual emergency situation, the emergency coordinator (or his designee when the emergency coordinator is on call) must immediately:

(1) Activate internal facility alarm or commu-

nication systems, where applicable, to notify all facility personnel, and

(2) Notify appropriate State or local agencies with designated response roles if their help is needed.

(b) Whenever there is a release, fire, or explosion, the emergency coordinator must:

(1) Immediately identify the character, exact source, amount, and areal extent of any released materials. He may do this by observation or review of facility records or manifests, and, if necessary, by chemical analysis.

(2) Assess possible hazards to human health or the environment that may result from the release, fire, or explosion. This assessment must consider both direct and indirect effects of the release, fire, or explosion. For example, the assessment would consider the effects of any toxic, irritating, or asphyxiating gases that are generated, or the effects of any hazardous surface water run-off from water or chemical agents used to control fire and heat-induced explosions.

(c) If the emergency coordinator determines that the facility has had a release, fire, or explosion which could threaten human health, or the environment, outside the facility, he must report his findings as follows:

(1) If his assessment indicates that evacuation of local areas may be advisable, he must immediately notify appropriate local authorities. He must be available to help appropriate officials decide whether local areas should be evacuated; and

(2) He must immediately notify either the government official designated as the on-scene coordinator for that geographical area, or the National Response Center (using their 24-hour toll-free number 800/ 424-8802). The report must include:

(i) Name and telephone number of the reporter.

(ii) Name and address of facility.

(iii) Time and type of incident (for example, a release or a fire).

(iv) Name and quantity of material(s) involved, to the extent known.

(v) The extent of injuries, if any.

(vi) The possible hazards to human health or the environment outside the facility.

(d) During an emergency, the emergency coordinator must take all reasonable measures necessary to ensure that fires, explosions, and releases do not occur, recur, or spread to other hazardous waste at the facility. These measures must include, where applicable, stopping processes and operations, collecting and containing release waste, and removing or isolating containers.

(e) If the facility stops operations in response to a fire, explosion, or release, the emergency coordinator

must monitor for leaks, pressure buildup, gas generation, or ruptures in valves, pipes, or other equipment, when appropriate.

**§ 267.57 What must the emergency coordinator do after an emergency?**

(a) Immediately after an emergency, the emergency coordinator must provide for treating, storing, or disposing of recovered waste, contaminated soil or surface water, or any other material that results from a release, fire, or explosion at the facility.

(b) The emergency coordinator must ensure that, in the affected area(s) of the facility:

(1) No waste that may be incompatible with the released material is treated, stored, or disposed of until cleanup procedures are completed.

(2) All emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed.

**§ 267.58 What notification and recordkeeping must I do after an emergency?**

(a) You must notify the Director, and other appropriate State and local authorities, that the facility is in compliance with § 267.57(b) before operations are resumed in the affected area(s) of the facility.

(b) You must note the time, date, and details of any incident that requires implementing the contingency plan in the operating record. Within 15 days after the incident, you must submit a written report on the incident to the Director. You must include the following in the report:

(1) The name, address, and telephone number of the owner or operator.

(2) The name, address, and telephone number of the facility.

(3) The date, time, and type of incident (e.g., fire, explosion).

(4) The name and quantity of material(s) involved.

(5) The extent of injuries, if any.

(6) An assessment of actual or potential hazards to human health or the environment, where this is applicable.

(7) The estimated quantity and disposition of recovered material that resulted from the incident.

**Subsection E—Recordkeeping, Reporting, and Notifying**

**§ 267.70 Does this subsection apply to me?**

This subsection applies to you if you own or operate a facility that stores or non-thermally treats a hazardous waste under a Section 270, subsection J standardized permit, except as provided in § 267.1(b). In addition, you must comply with the manifest requirements of Section 262 of this Regulation whenever a shipment of hazardous waste is initiated from your facility.

**§ 267.71 Use of the manifest system.**

(a) If a facility receives hazardous waste accompanied by a manifest, the owner or operator, or his agent, must:

(1) Sign and date each copy of the manifest to certify that the hazardous waste covered by the manifest was received;

(2) Note any significant discrepancies in the manifest (as defined in § 267.72(a)) on each copy of the manifest;

(3) Immediately give the transporter at least one copy of the signed manifest;

(4) Within 30 days after the delivery, send a copy of the manifest to the generator; and

(5) Retain at the facility a copy of each manifest for at least three years from the date of delivery.

(b) If a facility receives, from a rail or water (bulk shipment) transporter, hazardous waste which is accompanied by a shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator’s certification, and signatures), the owner or operator, or his agent, must:

(1) Sign and date each copy of the manifest or shipping paper (if the manifest has not been received) to certify that the hazardous waste covered by the manifest or shipping paper was received;

(2) Note any significant discrepancies (as defined in § 267.72(a)) in the manifest or shipping paper (if the manifest has not been received) on each copy of the manifest or shipping paper. Note that the Commission does not intend that the owner or operator of a facility whose procedures under § 267.13(c) include waste analysis must perform that analysis before signing the shipping paper and giving it to the transporter. Section 267.72(b), however, requires reporting an unreconciled discrepancy discovered during later analysis.

(3) Immediately give the rail or water (bulk shipment) transporter at least one copy of the manifest or shipping paper (if the manifest has not been received);

(4) Within 30 days after the delivery, send a



copy of the signed and dated manifest to the generator; however, if the manifest has not been received within 30 days after delivery, the owner or operator, or his agent, must send a copy of the shipping paper signed and dated to the generator. Note that § 262.23(c) of this Regulation requires the generator to send three copies of the manifest to the facility when hazardous waste is sent by rail or water (bulk shipment); and

(5) Retain at the facility a copy of the manifest and shipping paper (if signed in lieu of the manifest at the time of delivery) for at least three years from the date of delivery.

(c) Whenever a shipment of hazardous waste is initiated from a facility, the owner or operator of that facility must comply with the requirements of section 262 of this Regulation. The Commission notes that the provisions of § 262.34 are applicable to the on-site accumulation of hazardous wastes by generators. Therefore, the provisions of § 262.34 only apply to owners or operators who are shipping hazardous waste which they generated at that facility.

(d) Within three working days of the receipt of a shipment subject to Section 262, subsection H, the owner or operator of the facility must provide a copy of the tracking document bearing all required signatures to the notifier, to the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and to competent authorities of all other concerned countries. The original copy of the tracking document must be maintained at the facility for at least three years from the date of signature.

#### § 267.72 Manifest discrepancies.

(a) Manifest discrepancies are differences between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity or type of hazardous waste a facility actually receives. Significant discrepancies in quantity are:

(1) For bulk waste, variations greater than 10 percent in weight; and

(2) For batch waste, any variation in piece count, such as a discrepancy of one drum in a truckload. Significant discrepancies in type are obvious differences which can be discovered by inspection or waste analysis, such as waste solvent substituted for waste acid, or toxic constituents not reported on the manifest or shipping paper.

(b) Upon discovering a significant discrepancy, the owner or operator must attempt to reconcile the discrepancy with the waste generator or transporter (e.g., with telephone conversations). If the discrepancy is not re-

solved within 15 days after receiving the waste, the owner or operator must immediately submit to the Director a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping paper at issue.

#### § 267.73 What information must I keep?

(a) You must keep a written operating record at your facility.

(b) You must record the following information, as it becomes available, and maintain the operating record until you close the facility:

(1) A description and the quantity of each type of hazardous waste generated, and the method(s) and date(s) of its storage and/or treatment at the facility as required by Appendix I of Section 264;

(2) The location of each hazardous waste within the facility and the quantity at each location;

(3) Records and results of waste analyses and waste determinations you perform as specified in §§ 267.13, 267.17, and Sections 264.1034, 264.1063, 264.1083, and 268.7;

(4) Summary reports and details of all incidents that require you to implement the contingency plan as specified in § 267.58(b));

(5) Records and results of inspections as required by § 267.15(d) (except you need to keep these data for only three years);

(6) Monitoring, testing or analytical data, and corrective action when required by subsection F of this section and §§ 267.191, 267.193, 267.195, and Sections 264.1034(c) through 264.1034(f), 264.1035, 264.1063(d) through 264.1063(i), 264.1064, 264.1088, 264.1089, and 264.1090;

(7) All closure cost estimates under § 267.142;

(8) Your certification, at least annually, that you have a program in place to reduce the volume and toxicity of hazardous waste that you generate to the degree that you determine to be economically practicable; and that the proposed method of treatment or storage is that practicable method currently available to you that minimizes the present and future threat to human health and the environment;

(9) For an on-site treatment facility, the information contained in the notice (except the manifest number), and the certification and demonstration, if applicable, required by you under Section 268.7 of this Regulation; and

(10) For an on-site storage facility, the information in the notice (except the manifest number), and the certification and demonstration, if applicable, required by you under § 268.7.

(11) For an off-site treatment facility, a copy

of the notice, and the certification and demonstration, if applicable, required by the generator or the owner or operator under § 268.7 or § 268.8;

(12) For an off-site storage facility, a copy of the notice, and the certification and demonstration, if applicable, required by the generator or the owner or operator under § 268.7 or § 268.8.

#### **§ 267.74 Who sees the records?**

(a) You must furnish all records, including plans, required under this section upon the request of any officer, employee, or representative of ADEQ who is duly designated by the Director, and make them available at all reasonable times for inspection.

(b) The retention period for all records required under this section is extended automatically during the course of any unresolved enforcement action involving the facility or as requested by the Director.

#### **§ 267.75 What reports must I prepare and to whom do I send them?**

You must prepare an annual report and other reports listed in paragraph (b) of this section.

(a) Annual report. You must prepare and submit a single copy of an annual report to the Director by March 1 of each year. The annual report must be submitted on forms as provided by the Department. The report must cover facility activities during the previous calendar year and must include:

- (1) The EPA identification number, name, and address of the facility;
- (2) The calendar year covered by the report;
- (3) The method of treatment or storage for each hazardous waste;
- (4) The most recent closure cost estimate under § 267.142;
- (5) A description of the efforts undertaken during the year to reduce the volume and toxicity of generated waste.
- (6) A description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for the years prior to 1984.
- (7) The certification signed by you.

(b) Additional reports. In addition to submitting the biennial reports, you must also report to the Director:

- (1) Releases, fires, and explosions as specified in § 267.58(b);
- (2) Facility closures specified in § 267.117; and
- (3) As otherwise required by subsections I, J, and DD of this section and Section 264, subsec-

tions AA, BB, CC.

(c) For off-site facilities, the EPA identification number of each hazardous waste generator from which the facility received a hazardous waste during the year; for imported shipments, the report must give the name and address of the foreign generator;

(d) A description and the quantity of each hazardous waste the facility received during the year. For off-site facilities, this information must be listed by EPA identification number of each generator.

#### **§ 267.76 What notifications must I make?**

Before transferring ownership or operation of a facility during its operating life, you must notify the new owner or operator in writing of the requirements of this section and Section 270, subsection J.

#### **Subsection F—Releases from Solid Waste Management Units**

#### **§ 267.90 Who must comply with this section?**

This subsection applies to you if you own or operate a facility that treats or stores hazardous waste under a Section 270, subsection J standardized permit, except as provided in § 267.1(b), or unless your facility already has a permit that imposes requirements for corrective action under Section 264.101 of this Regulation.

#### **§ 267.91–267.100 [Reserved]**

#### **§ 267.101 What must I do to address corrective action for solid waste management units?**

(a) You must institute corrective action as necessary to protect human health and the environment for all releases of hazardous waste or constituents from any solid waste management unit at the facility, regardless of the time at which waste was placed in such unit.

(b) The Director will specify corrective action in the supplemental portion of your standardized permit in accordance with this section and Section 264, subsection S of this Regulation. The Director will include in the supplemental portion of your standardized permit schedules of compliance for corrective action (where corrective action cannot be completed prior to issuance of the permit) and assurances of financial responsibility for completing corrective action.

(c) You must implement corrective action beyond the facility property boundary, where necessary to protect human health and the environment, unless you demonstrate to the satisfaction of the Director that, despite your best efforts, you were unable to obtain the necessary permission to undertake such actions. You are not relieved



of all responsibility to clean up a release that has migrated beyond the facility boundary where off -site access is denied. On-site measures to address such releases will be determined on a case-by-case basis. You must provide assurances of financial responsibility for such corrective action.

(d) You do not have to comply with this section if you are the owner or operator of a remediation waste site unless your site is part of a facility that is subject to a permit for treating, storing, or disposing of hazardous wastes that are not remediation wastes.

**Subsection G—Closure**

**§ 267.110 Does this subsection apply to me?**

This subsection applies to you if you own or operate a facility that treats or stores hazardous waste under a Section 270, subsection J standardized permit, except as provided in § 267.1(b).

**§ 267.111 What general standards must I meet when I stop operating the unit?**

You must close the storage and treatment units in a manner that:

- (a) Minimizes the need for further maintenance; and
- (b) Controls, minimizes, or eliminates, to the extent necessary to protect human health and the environment, post-closure escape of hazardous waste, hazardous constituents, leachate, contaminated run-off, or hazardous waste decomposition products to the ground or surface waters or to the atmosphere; and
- (c) Meets the closure requirements of this subsection and the requirements of §§ 267.176, 267.201, and 267.1108. If you determine that, when applicable, the closure requirements of § 267.201(tanks) or § 267.1108 (containment buildings) cannot be met, then you must close the unit in accordance with the requirements that apply to landfills (§ 264.310). In addition, for the purposes of post-closure and financial responsibility, such a tank system or containment building is then considered to be a landfill, and you must apply for a post-closure care permit in accordance with Section 270 of this Regulation.

**§ 267.112 What procedures must I follow?**

- (a) To close a facility, you must follow your approved closure plan, and follow notification requirements.
  - (1) Your closure plan must be submitted at the time you submitted your Notice of Intent to operate under a standardized permit. Final issuance of the standardized permit constitutes approval of the closure plan, and the plan be-

comes a condition of the RCRA standardized permit.

(2) The Director’s approval of the plan must ensure that the approved plan is consistent with §§ 267.111 through 267.115, 267.176, 267.201, and 267.1108.

(b) Satisfy the requirements for content of closure plan. The closure plan must identify steps necessary to perform partial and/or final closure of the facility. The closure plan must include, at least:

- (1) A description of how each hazardous waste management unit at the facility subject to this subsection will be closed following § 267.111.
- (2) A description of how final closure of the facility will be conducted in accordance with § 267.111. The description must identify the maximum extent of the operations which will be unclosed during the active life of the facility.
- (3) An estimate of the maximum inventory of hazardous wastes ever on site during the active life of the facility and a detailed description of the methods you will use during partial and /or final closure, such as methods for removing, transporting, treating, storing, or disposing of all hazardous wastes, and identification of the type(s) of off-site hazardous waste management units to be used, if applicable.
- (4) A detailed description of the steps needed to remove or decontaminate all hazardous waste residues and contaminated containment system components, equipment, structures, and soils during partial or final closure. These might include procedures for cleaning equipment and removing contaminated soils, methods for sampling and testing surrounding soils, and criteria for determining the extent of decontamination required to satisfy the closure performance standard;
- (5) A detailed description of other activities necessary during the closure period to ensure that partial or final closure satisfies the closure performance standards.
- (6) A schedule for closure of each hazardous waste management unit, and for final closure of the facility. The schedule must include, at a minimum, the total time required to close each hazardous waste management unit and the time required for intervening closure activities that allow tracking of progress of partial or final closure.
- (7) For facilities that use trust funds to establish financial assurance under § 267.143 and that are expected to close prior to the expiration of the permit, an estimate of the expected year of final closure.

(c) You may submit a written notification to the Director for a permit modification to amend the closure

plan at any time prior to the notification of partial or final closure of the facility, following the applicable procedures in 40 CFR 124.211.

(1) Events leading to a change in the closure plan, and therefore requiring a modification, may include:

(i) A change in the operating plan or facility design;

(ii) A change in the expected year of closure, if applicable; or

(iii) In conducting partial or final closure activities, an unexpected event requiring a modification of the approved closure plan.

(2) The written notification or request must include a copy of the amended closure plan for review or approval by the Director. The Director will approve, disapprove, or modify this amended plan in accordance with the procedures in 40 CFR 124.211, 270.320 of this Regulation, and Regulation No. 8.

(d) Notification before final closure.

(1) You must notify the Director in writing at least 45 days before the date that you expect to begin final closure of a treatment or storage tank, container storage area, or containment building.

(2) The date when you “expect to begin closure” must be no later than 30 days after the date that any hazardous waste management unit receives the known final volume of hazardous wastes.

(3) If your facility’s permit is terminated, or if you are otherwise ordered, by judicial decree or final order under section 3008 of RCRA, to cease receiving hazardous wastes or to close, then the requirements of this paragraph (d) do not apply. However, you must close the facility following the deadlines established in § 267.115.

§ 267.113 Will the public have the opportunity to comment on the plan?

(a) The Director will provide you and the public, when the draft standardized permit is public noticed, the opportunity to submit written comments on the plan and to the draft permit as allowed by Regulation No. 8. The Director will also, in response to a request or at his/her own discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning the closure plan, and the permit.

(b) The Director will give public notice of the hearing 30 days before it occurs. Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined.

§ 267.114 [Reserved]

§ 267.115 After I stop operating, how long until I must close?

(a) Within 90 days after the final volume of hazardous waste is sent to a unit, you must treat or remove from the unit all hazardous wastes following the approved closure plan.

(b) You must complete final closure activities in accordance with the approved closure plan within 180 days after the final volume of hazardous wastes is sent to the unit. The Director may approve an extension of 180 days to the closure period if you comply with all applicable requirements for requesting a modification to the permit and demonstrate that:

(1) The final closure activities will take longer than 180 days to complete due to circumstances beyond your control, excluding ground water contamination; and

(2) You have taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed, but not operating hazardous waste management unit or facility, including compliance with all applicable permit requirements.

(3) The demonstration must be made at least 30 days prior to the expiration of the initial 180-day period.

(c) Nothing in this section precludes you from removing hazardous wastes and decontaminating or dismantling equipment in accordance with the approved final closure plan at any time before or after notification of final closure.

§ 267.116 What must I do with contaminated equipment, structure, and soils?

You must properly dispose of or decontaminate all contaminated equipment, structures, and soils during the partial and final closure periods. By removing any hazardous wastes or hazardous constituents during partial and final closure, you may become a generator of hazardous waste and must handle that waste following all applicable requirements of Section 262 of this Regulation.

§ 267.117 How do I certify closure?

Within 60 days of the completion of final closure of each unit under a Section 270 subsection J standardized permit, you must submit to the Director, by registered mail, a certification that each hazardous waste management unit or facility, as applicable, has been closed following the specifications in the closure plan. Both you and an independent qualified Arkansas-registered professional engineer must sign the certification. You must furnish

documentation supporting the independent registered professional engineer's certification to the Director upon request until he releases you from the financial assurance requirements for closure under § 267.143(i).

#### Subsection H—Financial Requirements

##### § 267.140 Who must comply with this subsection, and briefly, what do they have to do?

(a) The regulations in this subsection apply to owners and operators who treat or store hazardous waste under a standardized permit, except as provided in § 267.1(b), or § 267.140(d) below.

(b) The owner or operator must:

(1) Prepare a closure cost estimate as required in § 267.142;

(2) Demonstrate financial assurance for closure as required in § 267.143; and

(3) Demonstrate financial assurance for liability as required in § 267.147.

(c) The owner or operator must notify the Director if the owner or operator is named as a debtor in a bankruptcy proceeding under Title 11 (Bankruptcy), U.S. Code (See also § 267.148).

(d) States and the Federal government are exempt from the requirements of this subsection.

##### § 267.141 Definitions of terms as used in this subsection.

(a) Closure plan means the plan for closure prepared in accordance with the requirements of § 267.112.

(b) Current closure cost estimate means the most recent of the estimates prepared in accordance with § 267.142 (a), (b), and (c).

(c) [Reserved]

(d) Parent corporation means a corporation which directly owns at least 50 percent of the voting stock of the corporation which is the facility owner or operator; the latter corporation is deemed a "subsidiary" of the parent corporation.

(e) [Reserved]

(f) The following terms are used in the specifications for the financial tests for closure and liability coverage. The definitions are intended to assist in the understanding of these regulations and are not intended to limit the meanings of terms in a way that conflicts with generally accepted accounting practices:

"Assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity.

"Current plugging and abandonment cost estimate" means the most recent of the estimates prepared in accordance with 40 CFR 144.62(a),

(b), and (c).

"Independently audited" refers to an audit performed by an independent certified public accountant in accordance with generally accepted auditing standards.

"Liabilities" means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

"Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets would not include intangibles such as goodwill and rights to patents or royalties.

(g) In the liability insurance requirements, the terms bodily injury and property damage shall have the meanings given these terms by applicable State law. However, these terms do not include those liabilities which, consistent with standard industry practices, are excluded from coverage in liability policies for bodily injury and property damage. The Commission intends the meanings of other terms used in the liability insurance requirements to be consistent with their common meanings within the insurance industry. The definitions given below of several of the terms are intended to assist in the understanding of these regulations and are not intended to limit their meanings in a way that conflicts with general insurance industry usage.

"Accidental occurrence" means an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured.

"Legal defense costs" means any expenses that an insurer incurs in defending against claims of third parties brought under the terms and conditions of an insurance policy.

"Sudden accidental occurrence" means an occurrence which is not continuous or repeated in nature.

(h) "Substantial business relationship" means the extent of a business relationship necessary under applicable State law to make a guarantee contract issued incident to that relationship valid and enforceable. A "substantial business relationship" must arise from a pattern of recent or ongoing business transactions, in addition to the guarantee itself, such that a currently existing business relationship between the guarantor and the owner or operator is demonstrated to the satisfaction of the Director.

##### § 267.142 Cost estimate for closure.

(a) The owner or operator must have at the facility a

detailed written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in §§ 267.111 through 267.115 and applicable closure requirements in §§ 267.176, 267.201, 267.1108.

(1) The estimate must equal the cost of final closure at the point in the facility's active life when the extent and manner of its operation would make closure the most expensive, as indicated by the closure plan (see § 267.112(b)); and

(2) The closure cost estimate must be based on the costs to the owner or operator of hiring a third party to close the facility. A third party is a party who is neither a parent nor a subsidiary of the owner or operator. (See definition of parent corporation in § 267.141(d).) The owner or operator may use costs for onsite disposal if he can demonstrate that on-site disposal capacity will exist at all times over the life of the facility.

(3) The closure cost estimate may not incorporate any salvage value that may be realized with the sale of hazardous wastes, or non-hazardous wastes, facility structures or equipment, land, or other assets associated with the facility at the time of partial or final closure.

(4) The owner or operator may not incorporate a zero cost for hazardous wastes, or non-hazardous wastes that might have economic value.

(b) During the active life of the facility, the owner or operator must adjust the closure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with § 267.143. For owners and operators using the financial test or corporate guarantee, the closure cost estimate must be updated for inflation within 30 days after the close of the firm's fiscal year and before submission of updated information to the Director as specified in § 267.143(f)(2)(iii). The adjustment may be made by recalculating the maximum costs of closure in current dollars, or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross Domestic Product published by the U.S. Department of Commerce in its Survey of Current Business, as specified in paragraphs (b)(1) and (2) of this section. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

(1) The first adjustment is made by multiplying the closure cost estimate by the inflation factor. The result is the adjusted closure cost estimate.

(2) Subsequent adjustments are made by multiplying the latest adjusted closure cost estimate by the latest inflation factor.

(c) During the active life of the facility, the owner or operator must revise the closure cost estimate no later than 30 days after the Director has approved the request to modify the closure plan, if the change in the closure

plan increases the cost of closure. The revised closure cost estimate must be adjusted for inflation as specified in § 267.142(b).

(d) The owner or operator must keep the following at the facility during the operating life of the facility: The latest closure cost estimate prepared in accordance with paragraphs (a) and (c) of this section and, when this estimate has been adjusted in accordance with paragraph (b) of this section, the latest adjusted closure cost estimate.

#### § 267.143 Financial assurance for closure.

The owner or operator must establish financial assurance for closure of each storage or treatment unit that he owns or operates. In establishing financial assurance for closure, the owner or operator must choose from the financial assurance mechanisms in paragraphs (a), (b), (c), (d), (e), (f), and (g) of this section. The owner or operator can also use a combination of mechanisms for a single facility if they meet the requirement in paragraph (h) of this section, or may use a single mechanism for multiple facilities as in paragraph (i) of this section. The Director will release the owner or operator from the requirements of this section after the owner or operator meets the criteria under paragraph (j) of this section.

(a) Closure Trust Fund. Owners and operators can use the "closure trust fund," that is specified in Sections 264.143(a)(1) and (2), and 264.143(a)(6)–(11) of this Regulation. For purposes of this paragraph, the following provisions also apply:

(1) Payments into the trust fund for a new facility must be made annually by the owner or operator over the remaining operating life of the facility as estimated in the closure plan, or over 3 years, whichever period is shorter. This period of time is hereafter referred to as the "pay-in period."

(2) For a new facility, the first payment into the closure trust fund must be made before the facility may accept the initial storage. A receipt from the trustee must be submitted by the owner or operator to the Director before this initial storage of waste. The first payment must be at least equal to the current closure cost estimate, divided by the number of years in the pay-in period, except as provided in paragraph (h) of this section for multiple mechanisms. Subsequent payments must be made no later than 30 days after each anniversary date of the first payment. The owner or operator determines the amount of each subsequent payment by subtracting the current value of the trust fund from the current closure cost estimate, and dividing this difference by the number of years remaining in the pay-in period. Mathematically, the formula is Next Payment =



(Current Closure Estimate ÷ Current Value of the Trust Fund) Divided by Years Remaining in the Pay-In Period.

(3) The owner or operator of a facility existing on the effective date of this paragraph can establish a trust fund to meet this paragraph's financial assurance requirements. If the value of the trust fund is less than the current closure cost estimate when a final approval of the permit is granted for the facility, the owner or operator must pay the difference into the trust fund within 60 days.

(4) The owner or operator may accelerate payments into the trust fund or deposit the full amount of the closure cost estimate when establishing the trust fund. However, he must maintain the value of the fund at no less than the value that the fund would have if annual payments were made as specified in paragraph (a)(2) or (a)(3) of this section.

(5) The owner or operator must submit a trust agreement with the wording specified in § 264.151(a)(1).

(b) Surety Bond Guaranteeing Payment into a Closure Trust Fund. Owners and operators can use the "surety bond guaranteeing payment into a closure trust fund," as specified in § 264.143(b) of this Regulation, including the use of the surety bond instrument specified at § 264.151(b), and the standby trust specified at § 264.143(b)(3).

(c) Surety Bond Guaranteeing Performance of Closure. Owners and operators can use the "surety bond guaranteeing performance of closure," as specified in § 264.143(c), the submission and use of the surety bond instrument specified at § 264.151(c), and the standby trust specified at § 264.143(c)(3).

(d) Closure Letter of Credit. Owners and operators can use the "closure letter of credit" specified in § 264.143(d), the submission and use of the irrevocable letter of credit instrument specified in § 264.151(d), and the standby trust specified in § 264.143(d)(3).

(e) Closure Insurance. Owners and operators can use "closure insurance," as specified in § 264.143(e), utilizing the certificate of insurance for closure specified at § 264.151(e).

(f) Corporate financial test. An owner or operator that satisfies the requirements of this paragraph may demonstrate financial assurance up to the amount specified in this paragraph:

(1) Financial component.

(i) The owner or operator must satisfy one of the following three conditions:

(A) A current rating for its senior unsecured debt of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; or

(B) A ratio of less than 1.5 comparing

total liabilities to net worth; or

(C) A ratio of greater than 0.10 comparing the sum of net income plus depreciation, depletion and amortization, minus \$10 million, to total liabilities.

(ii) The tangible net worth of the owner or operator must be greater than:

(A) The sum of the current environmental obligations (see paragraph (f)(2)(i)(A)(1) of this section), including guarantees, covered by a financial test plus \$10 million, except as provided in paragraph (f)(1)(ii)(B) of this section.

(B) \$10 million in tangible net worth plus the amount of any guarantees that have not been recognized as liabilities on the financial statements provided all of the environmental obligations (see paragraph (f)(2)(i)(A)(1) of this section) covered by a financial test are recognized as liabilities on the owner's or operator's audited financial statements, and subject to the approval of the Director.

(iii) The owner or operator must have assets located in the United States amounting to at least the sum of environmental obligations covered by a financial test as described in paragraph (f)(2)(i)(A)(1) of this section.

(2) Recordkeeping and reporting requirements.

(i) The owner or operator must submit the following items to the Director:

(A) A letter signed by the owner's or operator's chief financial officer that:

(1) Lists all the applicable current types, amounts, and sums of environmental obligations covered by a financial test. These obligations include both obligations in the programs which EPA directly operates and obligations where EPA has delegated authority to a State or approved a State's program. These obligations include, but are not limited to:

(i) Liability, closure, post-closure and corrective action cost estimates required for hazardous waste treatment, storage, and disposal facilities under §§ 264.101, 264.142, 264.144, 264.147, 265.142, 265.144, and 265.147 of this Regulation;

(ii) Cost estimates required

for municipal solid waste management facilities under 40 CFR 258.71, 258.72, and 258.73;

(iii) Current plugging cost estimates required for UIC facilities under 40 CFR 144.62;

(iv) Cost estimates required for petroleum underground storage tank facilities under 40 CFR 280.93;

(v) Cost estimates required for PCB storage facilities under 40 CFR 761.65;

(vi) Any financial assurance required under, or as part of an action undertaken under, the Comprehensive Environmental Response, Compensation, and Liability Act; and

(vii) Any other environmental obligations that are assured through a financial test.

(2) Provides evidence demonstrating that the firm meets the conditions of either paragraph (f)(1)(i)(A) or (f)(1)(i)(B) or (f)(1)(i)(C) of this section and paragraphs (f)(1)(ii) and (f)(1)(iii) of this section.

(B) A copy of the independent certified public accountant's unqualified opinion of the owner's or operator's financial statements for the latest completed fiscal year. To be eligible to use the financial test, the owner's or operator's financial statements must receive an unqualified opinion from the independent certified public accountant. An adverse opinion, disclaimer of opinion, or other qualified opinion will be cause for disallowance, with the potential exception for qualified opinions provided in the next sentence. The Director may evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the Director deems that the matters which form the basis for the qualification are insufficient to warrant disallowance of the test. If the Director does not allow use of the test, the owner or operator must provide alternate financial assurance that meets the requirements of this section within 30 days after the notification of disallowance.

(C) If the chief financial officer's let-

ter providing evidence of financial assurance includes financial data showing that the owner or operator satisfies paragraph (f)(1)(i)(B) or (f)(1)(i)(C) of this section that are different from data in the audited financial statements referred to in paragraph (f)(2)(i)(B) of this section or any other audited financial statement or data filed with the SEC, then a special report from the owner's or operator's independent certified public accountant to the owner or operator is required. The special report shall be based upon an agreed upon procedures engagement in accordance with professional auditing standards and shall describe the procedures performed in comparing the data in the chief financial officer's letter derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of that comparison, and the reasons for any differences.

(D) If the chief financial officer's letter provides a demonstration that the firm has assured for environmental obligations as provided in paragraph (f)(1)(ii)(B) of this section, then the letter shall include a report from the independent certified public accountant that verifies that all of the environmental obligations covered by a financial test have been recognized as liabilities on the audited financial statements, how these obligations have been measured and reported, and that the tangible net worth of the firm is at least \$10 million plus the amount of any guarantees provided.

(ii) The owner or operator of a new facility must submit the items specified in paragraph (f)(2)(i) of this section to the Director at least 60 days before placing waste in the facility.

(iii) After the initial submission of items specified in paragraph (f)(2)(i) of this section, the owner or operator must send updated information to the Director within 90 days following the close of the owner or operator's fiscal year. The Director may provide up to an additional 45 days for an owner or operator who can demonstrate that 90 days is insufficient time to acquire audited financial statements. The updated information must consist of all items specified in paragraph (f)(2)(i) of this section.



(iv) The owner or operator is no longer required to submit the items specified in this paragraph (f)(2) of this section or comply with the requirements of this paragraph (f) when:

(A) The owner or operator substitutes alternate financial assurance as specified in this section that is not subject to these recordkeeping and reporting requirements; or

(B) The Director releases the owner or operator from the requirements of this section in accordance with paragraph (j) of this section.

(v) An owner or operator who no longer meets the requirements of paragraph (f)(1) of this section cannot use the financial test to demonstrate financial assurance. Instead an owner or operator who no longer meets the requirements of paragraph (f)(1) of this section, must:

(A) Send notice to the Director of intent to establish alternate financial assurance as specified in this section. The owner or operator must send this notice by certified mail within 90 days following the close the owner or operator's fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements of this section.

(B) Provide alternative financial assurance within 120 days after the end of such fiscal year.

(vi) The Director may, based on a reasonable belief that the owner or operator may no longer meet the requirements of paragraph (f)(1) of this section, require at any time the owner or operator to provide reports of its financial condition in addition to or including current financial test documentation as specified in paragraph (f)(2) of this section. If the Director finds that the owner or operator no longer meets the requirements of paragraph (f)(1) of this section, the owner or operator must provide alternate financial assurance that meets the requirements of this section.

(g) Corporate Guarantee.

(1) An owner or operator may meet the requirements of this section by obtaining a written guarantee. The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guar-

antor must meet the requirements for owners or operators in paragraph (f) of this section and must comply with the terms of the guarantee. The wording of the guarantee must be identical to the wording in § 264.151(h). The certified copy of the guarantee must accompany the letter from the guarantor's chief financial officer and accountants' opinions. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter from the guarantor's chief financial officer must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee.

(2) For a new facility, the guarantee must be effective and the guarantor must submit the items in paragraph (g)(1) of this section and the items specified in paragraph (f)(2)(i) of this section to the Director at least 60 days before the owner or operator places waste in the facility.

(3) The terms of the guarantee must provide that:

(i) If the owner or operator fails to perform closure at a facility covered by the guarantee, the guarantor will:

(A) Perform, or pay a third party to perform closure (performance guarantee); or

(B) Establish a fully funded trust fund as specified in paragraph (a) of this section in the name of the owner or operator (payment guarantee).

(ii) The guarantee will remain in force for as long as the owner or operator must comply with the applicable financial assurance requirements of this subsection unless the guarantor sends prior notice of cancellation by certified mail to the owner or operator and to the Director. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Director as evidenced by the return receipts.

(iii) If notice of cancellation is given, the owner or operator must, within 90 days following receipt of the cancellation notice by the owner or operator and the Director, obtain alternate financial assurance, and submit documentation for that alternate financial assurance to the Director. If the owner or operator fails to provide alternate financial assurance and obtain the written approval of such alternative assurance from

the Director within the 90-day period, the guarantor must provide that alternate assurance in the name of the owner or operator and submit the necessary documentation for the alternative assurance to the Director within 120 days of the cancellation notice.

(4) If a corporate guarantor no longer meets the requirements of paragraph (f)(1) of this section, the owner or operator must, within 90 days, obtain alternative assurance, and submit the assurance to the Director for approval. If the owner or operator fails to provide alternate financial assurance within the 90-day period, the guarantor must provide that alternate assurance within the next 30 days, and submit it to the Director for approval.

(5) The guarantor is no longer required to meet the requirements of this paragraph (g) when:

(i) The owner or operator substitutes alternate financial assurance as specified in this section; or

(ii) The owner or operator is released from the requirements of this section in accordance with paragraph (j) of this section.

(h) Use of Multiple Financial Mechanisms. An owner or operator may use more than one mechanism at a particular facility to satisfy the requirements of this section. The acceptable mechanisms are trust funds, surety bonds guaranteeing payment into a trust fund, letters of credit, insurance, the financial test, and the guarantee, except owners or operators cannot combine the financial test with the guarantee. The mechanisms must be as specified in paragraphs (a), (b), (d), (e), (f), and (g) respectively of this section, except it is the combination of mechanisms rather than a single mechanism that must provide assurance for an amount at least equal to the cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or letter of credit, he may use the trust fund as the standby trust for the other mechanisms. A single trust fund can be established for two or more mechanisms. The Director may use any or all of the mechanisms to provide for closure of the facility.

(i) Use of a financial mechanism for multiple facilities. An owner or operator may use a financial mechanism for multiple facilities, as specified in § 264.143(h) of this Regulation.

(j) Release of the owner or operator from the requirements of this section. Within 60 days after receiving certifications from the owner or operator and an independent Arkansas-registered professional engineer that final closure has been completed in accordance with the approved closure plan, the Director will notify the owner or operator in writing that the owner or operator is no longer required by this section to maintain financial as-

surance for final closure of the facility, unless the Director has reason to believe that final closure has not been completed in accordance with the approved closure plan. The Director shall provide the owner or operator with a detailed written statement of any such reasons to believe that closure has not been conducted in accordance with the approved closure plan.

#### § 267.144–267.146 [Reserved]

#### § 267.147 Liability requirements.

(a) Coverage for sudden accidental occurrences. An owner or operator of a hazardous waste treatment or storage facility, or a group of such facilities, must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage for sudden accidental occurrences in the amount of at least \$1 million per occurrence with an annual aggregate of at least \$2 million, exclusive of legal defense costs. This liability coverage may be demonstrated as specified in paragraphs (a)(1) through (a)(7) of this section:

(1) Trust fund for liability coverage. An owner or operator may meet the requirements of this section by obtaining a trust fund for liability coverage as specified in 40 CFR 264.147(j).

(2) Surety bond for liability coverage. An owner or operator may meet the requirements of this section by obtaining a surety bond for liability coverage as specified in 40 CFR 264.147(i).

(3) Letter of credit for liability coverage. An owner or operator may meet the requirements of this section by obtaining a letter of credit for liability coverage as specified in 40 CFR 264.147(h).

(4) Insurance for liability coverage. An owner or operator may meet the requirements of this section by obtaining liability insurance as specified in 40 CFR 264.147(a)(1).

(5) Financial test for liability coverage. An owner or operator may meet the requirements of this section by passing a financial test as specified in paragraph (f) of this section.

(6) Guarantee for liability coverage. An owner or operator may meet the requirements of this section by obtaining a guarantee as specified in paragraph (g) of this section.

(7) Combination of mechanisms. An owner or operator may demonstrate the required liability coverage through the use of combinations of mechanisms as allowed by 40 CFR 264.147(a)(6).

(8) An owner or operator shall notify the Director in writing within 30 days whenever:

(i) A claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in paragraphs (a)(1) through (a)(7) of this section; or

(ii) A Certification of Valid Claim for bodily injury or property damages caused by a sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is entered between the owner or operator and third-party claimant for liability coverage under paragraphs (a)(1) through (a)(7) of this section; or

(iii) A final court order establishing a judgment for bodily injury or property damage caused by a sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under paragraphs (a)(1) through (a)(7) of this section.

(b)–(d) [Reserved]

(e) Period of coverage. Within 60 days after receiving certifications from the owner or operator and an independent Arkansas-registered professional engineer that final closure has been completed in accordance with the approved closure plan, the Director will notify the owner or operator in writing that he is no longer required by this section to maintain liability coverage from that facility, unless the Director has reason to believe that closure has not been in accordance with the approved closure plan.

(f) Financial test for Liability Coverage. An owner or operator that satisfies the requirements of this paragraph (f) may demonstrate financial assurance for liability up to the amount specified in this paragraph (f):

(1) Financial component.

(i) If using the financial test for only liability coverage, the owner or operator must have tangible net worth greater than the sum of the liability coverage to be demonstrated by this test plus \$10 million.

(ii) The owner or operator must have assets located in the United States amounting to at least the amount of liability covered by this financial test.

(iii) An owner or operator who is demonstrating coverage for liability and any other environmental obligations, including closure under § 267.143(f), through a financial test must meet the requirements of § 267.143(f).

(2) Recordkeeping and reporting requirements.

(i) The owner or operator must submit the following items to the Director:

(A) A letter signed by the owner's or operator's chief financial officer that provides evidence demonstrating that the firm meets the conditions of paragraphs (f)(1)(i) and (f)(1)(ii) of this section. If the firm is providing only liability coverage through a financial test for a facility or facilities with a permit under § 267, the letter should use the wording in § 267.151(b). If the firm is providing only liability coverage through a financial test for facilities regulated under part 267 and also Section 264 or Section 265, it should use the letter in § 264.151(g). If the firm is providing liability coverage through a financial test for a facility or facilities with a permit under § 267, and it assures closure costs or any other environmental obligations through a financial test, it must use the letter in § 267.151(a) for the facilities issued a permit under § 267.

(B) A copy of the independent certified public accountant's unqualified opinion of the owner's or operator's financial statements for the latest completed fiscal year. To be eligible to use the financial test, the owner's or operator's financial statements must receive an unqualified opinion from the independent certified public accountant. An adverse opinion, disclaimer of opinion, or other qualified opinion will be cause for disallowance, with the potential exception for qualified opinions provided in the next sentence. The Director may evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the Director deems that the matters which form the basis for the qualification are insufficient to warrant disallowance of the test. If the Director does not allow use of the test, the owner or operator must provide alternate financial assurance that meets the requirements of this section (§ 267.147) within 30 days after the notification of disallowance.

(C) If the chief financial officer's letter providing evidence of financial assurance includes financial data showing that the owner or operator satisfies paragraphs (f)(1)(i) and (ii) of this section that are different from data in the audited financial statements referred to

in paragraph (f)(2)(i)(B) of this section or any other audited financial statement or data filed with the SEC, then a special report from the owner's or operator's independent certified public accountant to the owner or operator is required. The special report shall be based upon an agreed upon procedures engagement in accordance with professional auditing standards and shall describe the procedures performed in comparing the data in the chief financial officer's letter derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of that comparison, and the reasons for any differences.

(ii) The owner or operator of a new facility must submit the items specified in paragraph (f)(2)(i) of this section to the Director at least 60 days before placing waste in the facility.

(iii) After the initial submission of items specified in paragraph (f)(2)(i) of this section, the owner or operator must send updated information to the Director within 90 days following the close of the owner or operator's fiscal year. The Director may provide up to an additional 45 days for an owner or operator who can demonstrate that 90 days is insufficient time to acquire audited financial statements. The updated information must consist of all items specified in paragraph (f)(2)(i) of this section.

(iv) The owner or operator is no longer required to submit the items specified in this paragraph (f)(2) or comply with the requirements of this paragraph (f) when:

(A) The owner or operator substitutes alternate financial assurance as specified in this section that is not subject to these recordkeeping and reporting requirements; or

(B) The Director releases the owner or operator from the requirements of this section in accordance with paragraph (j) of this section.

(v) An owner or operator who no longer meets the requirements of paragraph (f)(1) of this section cannot use the financial test to demonstrate financial assurance. An owner or operator who no longer meets the requirements of paragraph (f)(1) of this section, must:

(A) Send notice to the Director of intent to establish alternate financial as-

surance as specified in this section. The owner or operator must send this notice by certified mail within 90 days following the close of the owner or operator's fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements of this section.

(B) Provide alternative financial assurance within 120 days after the end of such fiscal year.

(vi) The Director may, based on a reasonable belief that the owner or operator may no longer meet the requirements of paragraph (f)(1) of this section, require at any time the owner or operator to provide reports of its financial condition in addition to or including current financial test documentation as specified in paragraph (f)(2) of this section. If the Director finds that the owner or operator no longer meets the requirements of paragraph (f)(1) of this section, the owner or operator must provide alternate financial assurance that meets the requirements of this section.

(g) Guarantee for liability coverage. (1) Subject to paragraph (g)(2) of this section, an owner or operator may meet the requirements of this section by obtaining a written guarantee, hereinafter referred to as "guarantee." The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor must meet the requirements for owners or operators in paragraphs (f)(1) through (f)(3) of this section. The wording of the guarantee must be identical to the wording specified in 40 CFR 264.151(h)(2). A certified copy of the guarantee must accompany the items sent to the Director as specified in paragraph (f)(2) of this section. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, this letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee.

(i) If the owner or operator fails to satisfy a judgment based on a determination of liability for bodily injury or property damage to third parties caused by sudden accidental occurrences arising from the operation guarantee, or fails to pay an amount agreed to in settlement of claims arising from or alleged to arise from such injury



or damage, the guarantor will do so up to the limits of coverage.

(ii) [Reserved]

(2)(i) In the case of corporations incorporated in the United States, a guarantee may be used to satisfy the requirements of this section only if the Attorneys General or Insurance Commissioners of the State in which the guarantor is incorporated, and each State in which a facility covered by the guarantee is located, have submitted a written statement to EPA that a guarantee executed as described in this section and § 264.151(h)(2) is a legally valid and enforceable obligation in that State.

(ii) In the case of corporations incorporated outside the United States, a guarantee may be used to satisfy the requirements of this section only if:

(A) The non-U.S. corporation has identified a registered agent for service of process in each State in which a facility covered by the guarantee is located and in the State in which it has its principal place of business; and

(B) The Attorney General or Insurance Commissioner of each State in which a facility covered by the guarantee is located and the State in which the guarantor corporation has its principal place of business, has submitted a written statement to EPA that a guarantee executed as described in this section and § 264.151(h)(2) is a legally valid and enforceable obligation in that State.

#### § 267.148 Incapacity of owners or operators, guarantors, or financial institutions.

(a) An owner or operator must notify the Director by certified mail of the commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming the owner or operator as debtor, within 10 days after commencement of the proceeding. A guarantor of a corporate guarantee as specified in §§ 267.143(g) and 267.147 (g) must make such a notification if he is named as debtor, as required under the terms of the corporate guarantee (§ 264.151(h)).

(b) An owner or operator who fulfills the requirements of § 267.143 or § 267.147 by obtaining a trust fund, surety bond, letter of credit, or insurance policy will be deemed to be without the required financial assurance or liability coverage in the event of bankruptcy of the trustee or issuing institution, or a suspension or revocation of the authority of the trustee institution to act as trustee or of the institution issuing the surety bond, letter of credit, or insurance policy to issue such instruments.

The owner or operator must establish other financial assurance or liability coverage within 60 days after such an event.

#### § 267.149 [Reserved]

#### § 267.150 State assumption of responsibility.

(a) If a State either assumes legal responsibility for an owner's or operator's compliance with the closure care or liability requirements of this section or assures that funds will be available from State sources to cover those requirements, the owner or operator will be in compliance with the requirements of § 267.143 or § 267.147 if the Director determines that the State's assumption of responsibility is at least equivalent to the financial mechanisms specified in this subsection. The Director will evaluate the equivalency of State guarantees principally in terms of: Certainty of the availability of funds for the required closure care activities or liability coverage; and the amount of funds that will be made available. The Director may also consider other factors as he deems appropriate. The owner or operator must submit to the Director a letter from the State describing the nature of the State's assumption of responsibility together with a letter from the owner or operator requesting that the State's assumption of responsibility be considered acceptable for meeting the requirements of this subsection. The letter from the State must include, or have attached to it, the following information: The facility's EPA Identification Number, name, and address, and the amount of funds for closure care or liability coverage that are guaranteed by the State. The Director will notify the owner or operator of his determination regarding the acceptability of the State's guarantee in lieu of financial mechanisms specified in this subsection. The Director may require the owner or operator to submit additional information as is deemed necessary to make this determination. Pending this determination, the owner or operator will be deemed to be in compliance with the requirements of § 267.143 or § 267.147, as applicable.

(b) If a State's assumption of responsibility is found acceptable as specified in paragraph (a) of this section except for the amount of funds available, the owner or operator may satisfy the requirements of this subsection by use of both the State's assurance and additional financial mechanisms as specified in this subsection. The amount of funds available through the State and Federal mechanisms must at least equal the amount required by this subsection.

#### § 267.151 Wording of the instruments.

(a) The chief financial officer of an owner or operator of a facility with a standardized permit who uses a financial test to demonstrate financial assurance for that

facility must complete a letter as specified in § 267.143(f) of this Regulation. The letter must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

I am the chief financial officer of [name and address of firm]. This letter is in support of this firm's use of the financial test to demonstrate financial assurance for closure costs, as specified in [insert "subsection H of Regulation No. 23 § 267" or the citation to the corresponding state regulation]. This firm qualifies for the financial test on the basis of having [insert "a current rating for its senior unsecured debt of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's" or "a ratio of less than 1.50 comparing total liabilities to net worth" or "a ratio of greater than 0.10 comparing the sum of net income plus depreciation, depletion and amortization, minus \$10 million, to total liabilities."]

This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

[If this firm qualifies on the basis of its bond rating fill in the requested information: "This firm has a rating of its senior unsecured debt of "[insert the bond rating] "from" [insert "Standard and Poor's" or "Moody's"].

Complete Line 1, Total Liabilities below and then skip the remaining questions in the next section and resume completing the form at the section entitled Obligations Covered by a Financial Test or Corporate Guarantee.]

[If this firm qualifies for the financial test on the basis of its ratio of liabilities to net worth, or sum of income, depreciation, depletion, and amortization to net worth, please complete the following section.]

- \*1. Total Liabilities ..... \$
\*2. Net Worth ..... \$
\*3. Net Income ..... \$
\*4. Depreciation ..... \$
\*5. Depletion (if applicable) ..... \$
\*6. Amortization ..... \$
\*7. Sum of Lines 3., 4., 5. & 6 ..... \$

[If the above figures are taken directly from the most recent audited financial statements for this firm insert "The above figures are taken directly from the most recent audited financial statements for this firm." If they are not, insert "The following items are not taken directly from the firms most recent audited financial statements" [insert the numbers of the items and attach an explanation of how they were derived.]

[Complete the following calculations]

- 8. Line 1. ??Line 2. = .....
9. Line 7. ??Line 1. = .....
Is Line 8. less than 1.5? Yes No
Is Line 9 greater than 0.10? ..... Yes No

[If you did not answer Yes to either of these two questions, you cannot use the financial test and need not complete this letter. Instead, you must notify the permitting authority for the facility that you intend to establish alternate financial assurance as specified in 40 CFR 267.143. The owner or operator must send this notice by certified mail within 90 days following the close of the owner or operator's fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements of this section. The owner or operator must also provide alternative financial assurance within 120 days after the end of such fiscal year.]

Obligations Covered by a Financial Test or Corporate Guarantee [On the following lines list all obligations that are covered by a

financial test or a corporate guarantee extended by your firm. You may add additional lines and leave blank entries that do not apply to your situation.]

Hazardous Waste Facility Name and ID State Closure Post-Closure Corrective Action

Hazardous Waste Third Party Liability \$
Municipal Waste Facilities State Closure Post-Closure Corrective Action

Underground Injection Control State Plugging Action

Petroleum Underground Storage Tanks

PCB Storage Facility Name and ID State Closure

Any financial assurance required under, or as part of an action undertaken under, the Comprehensive Environmental Response, Compensation, and Liability Act.

Site name State Amount \$

Any other environmental obligations that are assured through a financial test.

Table with columns Name and Amount. Rows include \*10. Total of all amounts, \*11. Line 10 + \$10,000,000 =, \*12. Total Assets, \*13. Intangible Assets, \*14. Tangible Assets, \*15. Tangible Net Worth, \*16. Assets in the United States, and two yes/no questions.

[You must be able to answer Yes to both these questions to use the financial test for this facility.]

I hereby certify that the wording of this letter is identical to the wording specified in 40 CFR 267.151 as such regulations were constituted on the date shown immediately below.

[Signature]
[Name]
[Title]
[Date]

[After completion, a signed copy of the form must be sent to the permitting authority of the state or territory where the facility is located. In addition, a signed copy must be sent to every authority who (1) requires a demonstration through a financial test for each of the other obligations in the letter that are assured through a financial test, or (2) accepts a guarantee for an obligation listed in this letter.]

(b)The chief financial officer of an owner or operator of a facility with a standardized permit who use a financial test to demonstrate financial assurance only for third party liability for that (or other standardized permit) facility(ies) must complete a letter as specified in Section 267.147(f) of this Regulation. The letter must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

I am the chief financial officer of [name and address of firm]. This letter is in support of this firm's use of the financial test to demonstrate



financial assurance for third party liability, as specified in [insert “sub-section H of 40 CFR section 267” or the citation to the corresponding state regulation]. This firm qualifies for the financial test on the basis of having tangible net worth of at least \$10 million more than the amount of liability coverage and assets in the United States of at least the amount of liability coverage.

This firm [insert “is required” or “is not required”] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm’s independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

[Please complete the following section.]

- \*1. Total Assets ..... \$ \_\_\_\_\_
- \*2. Intangible Assets ..... \$ \_\_\_\_\_
- \*3. Tangible Assets (Line 1\Line 2) ..... \$ \_\_\_\_\_
- \*4. Total Liabilities ..... \$ \_\_\_\_\_
- 5. Tangible Net Worth (Line 3\Line 4) ..... \$ \_\_\_\_\_
- \*6. Assets in the United States ..... \$ \_\_\_\_\_
- 7. Amount of liability coverage ..... \$ \_\_\_\_\_
- Is Line 5 At least \$10 million greater than Line 7? ..... Yes No
- Is Line 6 at least equal to Line 7? ..... Yes No

[You must be able to answer Yes to both these questions to use the financial test for this facility.]

I hereby certify that the wording of this letter is identical to the wording specified in 40 CFR 267.151 as such regulations were constituted on the date shown immediately below.

[Signature] \_\_\_\_\_  
 [Name] \_\_\_\_\_  
 [Title] \_\_\_\_\_  
 [Date] \_\_\_\_\_

[After completion, a signed copy of the form must be sent to the permitting authority of the state or territory where the facility(ies) is(are) located.]

**Subsection I—Use and Management of Containers**

**§ 267.170 Does this subsection apply to me?**

This subsection applies to you if you own or operate a facility that treats or stores hazardous waste in containers under a 40 CFR section 270 subsection J standardized permit, except as provided in § 267.1(b).

**§ 267.171 What standards apply to the containers?**

Standards apply to the condition of the containers, to the compatibility of waste with the containers, and to the management of the containers.

(a) Condition of containers. If a container holding hazardous waste is not in good condition (for example, it exhibits severe rusting or apparent structural defects) or if it begins to leak, you must either:

(1) Transfer the hazardous waste from this container to a container that is in good condition; or

(2) Manage the waste in some other way that complies with the requirements of this section.

(b) Compatibility of waste with containers. To ensure that the ability of the container to contain the waste is not impaired, you must use a container made of or lined with materials that are compatible and will not react with the hazardous waste to be stored.

(c) Management of containers. (1) You must always keep a container holding hazardous waste closed during storage, except when you add or remove waste.

(2) You must never open, handle, or store a container holding hazardous waste in a manner that may rupture the container or cause it to leak.

**§ 267.172 What are the inspection requirements?**

At least weekly, you must inspect areas where you store containers, looking for leaking containers and for deterioration of containers and the containment system caused by corrosion or other factors.

**§ 267.173 What standards apply to the container storage areas?**

(a) You must design and operate a containment system for your container storage areas according to the requirements in paragraph (b) of this section, except as otherwise provided by paragraph (c) of this section.

(b) The design and operating requirements for a containment system are:

(1) A base must underlie the containers that is free of cracks or gaps and is sufficiently impervious to contain leaks, spills, and accumulated precipitation until the collected material is detected and removed.

(2) The base must be sloped or the containment system, must be otherwise designed and operated to drain and remove liquids resulting from leaks, spills, or precipitation, unless the containers are elevated or are otherwise protected from contact with accumulated liquids.

(3) The containment system must have sufficient capacity to contain 10% of the volume of containers, or the volume of the largest container, whichever is greater. This requirement does not apply to containers that do not contain free liquids.

(4) You must prevent run-on into the containment system unless the collection system has sufficient excess capacity, in addition to that required in paragraph (b)(3) of this section, to contain the liquid.

(5) You must remove any spilled or leaked

waste and accumulated precipitation from the sump or collection area as promptly as is necessary to prevent overflow of the collection system.

(c) Except as provided in paragraph (d) of this section, you do not need a containment system as defined in paragraph (b) of this section for storage areas that store containers holding only wastes with no free liquids, if:

(1) The storage area is sloped or is otherwise designed and operated to drain and remove liquid resulting from precipitation; or

(2) The containers are elevated or are otherwise protected from contact with accumulated liquid.

(d) You must have a containment system defined by paragraph (b) of this section for storage areas that store containers holding FO20, FO21, FO22, FO23, FO26, and FO27 wastes, even if the wastes do not contain free liquids.

#### § 267.174 What special requirements must I meet for ignitable or reactive waste?

You must locate containers holding ignitable or reactive waste at least 15 meters (50 feet) from your facility property line. You must also follow the general requirements for ignitable or reactive wastes that are specified in § 267.17(a).

#### § 267.175 What special requirements must I meet for incompatible wastes?

(a) You must not place incompatible wastes, or incompatible wastes and materials (see appendix V to Section 264 for examples), in the same container, unless you comply with § 267.17(b).

(b) You must not place hazardous waste in an unwashed container that previously held an incompatible waste or material.

(c) You must separate a storage container holding a hazardous waste that is incompatible with any waste or with other materials stored nearby in other containers, piles, open tanks, or surface impoundments from the other materials, or protect the containers by means of a dike, berm, wall, or other device.

#### § 267.176 What must I do when I want to stop using the containers?

You must remove all hazardous waste and hazardous waste residues from the containment system. You must decontaminate or remove remaining containers, liners, bases, and soil containing, or contaminated with, hazardous waste or hazardous waste residues.

#### § 267.177 What air emission standards apply?

You must manage all hazardous waste placed in a container according to the requirements of subsections AA, BB, and CC of 40 CFR section 264. Under a standardized permit, the following control devices are permissible: Thermal vapor incinerator, catalytic vapor incinerator, flame, boiler, process heater, condenser, and carbon absorption unit.

#### Subsection J—Tank Systems

#### § 267.190 Does this subsection apply to me?

This subsection applies to you if you own or operate a facility that treats or stores hazardous waste in above-ground or on-ground tanks under a 40 CFR section 270 subsection J standardized permit, except as provided in § 267.1(b).

(a) You do not have to meet the secondary containment requirements in § 267.195 if your tank systems do not contain free liquids and are situated inside a building with an impermeable floor. You must demonstrate the absence or presence of free liquids in the stored/treated waste, using Method 9095B (Paint Filter Liquids Test) as described in “Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,” EPA Publication SW-846, as incorporated by reference in 40 CFR 260.11.

(b) You do not have to meet the secondary containment requirements of § 267.195(a) if your tank system, including sumps, as defined in 40 CFR 260.10, is part of a secondary containment system to collect or contain releases of hazardous wastes.

#### § 267.191 What are the required design and construction standards for new tank systems or components?

You must ensure that the foundation, structural support, seams, connections, and pressure controls (if applicable) are adequately designed and that the tank system has sufficient structural strength, compatibility with the waste(s) to be stored or treated, and corrosion protection to ensure that it will not collapse, rupture, or fail. You must obtain a written assessment, reviewed and certified by an independent, qualified Arkansas-registered professional engineer, following 40 CFR 270.11(d), attesting that the tank system has sufficient structural integrity and is acceptable for the storing and treating of hazardous waste. This assessment must include, at a minimum, the following information:

(a) Design standard(s) for the construction of tank(s) and/or the ancillary equipment.

(b) Hazardous characteristics of the waste(s) to be handled.

(c) For new tank systems or components in which the external shell of a metal tank or any external metal component of the tank system will be in contact with the soil or with water, a determination by a corrosion expert of:

(1) Factors affecting the potential for corrosion, such as:

- (i) Soil moisture content.
- (ii) Soil pH.
- (iii) Soil sulfides level.
- (iv) Soil resistivity.
- (v) Structure to soil potential.
- (vi) Existence of stray electric current.
- (vii) Existing corrosion-protection measures (for example, coating, cathodic protection).

(2) The type and degree of external corrosion protection needed to ensure the integrity of the tank system during the use of the tank system or component, consisting of one or more of the following:

- (i) Corrosion-resistant materials of construction such as special alloys, fiberglass reinforced plastic, etc.
- (ii) Corrosion-resistant coating (such as epoxy, fiberglass, etc.) with cathodic protection (for example, impressed current or sacrificial anodes) and
- (iii) Electrical isolation devices such as insulating joints, flanges, etc.

(d) Design considerations to ensure that:

- (1) Tank foundations will maintain the load of a full tank.
- (2) Tank systems will be anchored to prevent flotation or dislodgment where the tank system is placed in a saturated zone, or is located within a seismic fault zone subject to the standards of § 267.18(a).
- (3) Tank systems will withstand the effects of frost heave.

§ 267.192 What handling and inspection procedures must I follow during installation of new tank systems?

(a) You must ensure that you follow proper handling procedures to prevent damage to a new tank system during installation. Before placing a new tank system or component in use, an independent, qualified installation inspector or an independent, qualified, Arkansas-registered professional engineer, either of whom is trained and experienced in the proper installation of tank systems or components, must inspect the system for the presence of any of the following items:

- (1) Weld breaks.
- (2) Punctures.
- (3) Scrapes of protective coatings.

(4) Cracks.

(5) Corrosion.

(6) Other structural damage or inadequate construction/installation.

(b) You must remedy all discrepancies before the tank system is placed in use.

§ 267.193 What testing must I do?

You must test all new tanks and ancillary equipment for tightness before you place them in use. If you find a tank system that is not tight, you must perform all repairs necessary to remedy the leak(s) in the system before you cover, enclose, or place the tank system into use.

§ 267.194 What installation requirements must I follow?

(a) You must support and protect ancillary equipment against physical damage and excessive stress due to settlement, vibration, expansion, or contraction.

(b) You must provide the type and degree of corrosion protection recommended by an independent corrosion expert, based on the information provided under § 267.191(c), to ensure the integrity of the tank system during use of the tank system. An independent corrosion expert must supervise the installation of a corrosion protection system that is field fabricated to ensure proper installation.

(c) You must obtain, and keep at the facility, written statements by those persons required to certify the design of the tank system and to supervise the installation of the tank system as required in §§ 267.192, 267.193, and paragraphs (a) and (b) of this section. The written statement must attest that the tank system was properly designed and installed and that you made repairs under §§ 267.192 and 267.193. These written statements must also include the certification statement as required in 40 CFR 270.11(d).

§ 267.195 What are the secondary containment requirements?

To prevent the release of hazardous waste or hazardous constituents to the environment, you must provide secondary containment that meets the requirements of this section for all new and existing tank systems.

(a) Secondary containment systems must be:

(1) Designed, installed, and operated to prevent any migration of wastes or accumulated liquid out of the system to the soil, groundwater, or surface water at any time during the use of the tank system; and

(2) Capable of detecting and collecting re-

leases and accumulated liquids until the collected material is removed.

(b) To meet the requirements of paragraph (a) of this section, secondary containment systems must be, at a minimum:

(1) Constructed of or lined with materials that are compatible with the wastes(s) to be placed in the tank system and must have sufficient strength and thickness to prevent failure owing to pressure gradients (including static head and external hydrological forces), physical contact with the waste to which it is exposed, climatic conditions, and the stress of daily operation (including stresses from nearby vehicular traffic).

(2) Placed on a foundation or base capable of providing support to the secondary containment system, resistance to pressure gradients above and below the system, and capable of preventing failure due to settlement, compression, or uplift.

(3) Provided with a leak-detection system that is designed and operated so that it will detect the failure of either the primary or secondary containment structure or the presence of any release of hazardous waste or accumulated liquid in the secondary containment system within 24 hours.

(4) Sloped or otherwise designed or operated to drain and remove liquids resulting from leaks, spills, or precipitation. You must remove spilled or leaked waste and accumulated precipitation from the secondary containment system within 24 hours, or as promptly as possible, to prevent harm to human health and the environment.

**§ 267.196 What are the required devices for secondary containment and what are their design, operating and installation requirements?**

(a) Secondary containment for tanks must include one or more of the following:

- (1) A liner (external to the tank).
- (2) A double-walled tank.
- (3) An equivalent device; you must maintain documentation of equivalency at the facility.

(b) External liner systems must be:

(1) Designed or operated to contain 100 percent of the capacity of the largest tank within its boundary.

(2) Designed or operated to prevent run-on or infiltration of precipitation into the secondary containment system unless the collection system has sufficient excess capacity to contain run-on or infiltration. The additional capacity must be sufficient to contain precipitation from a 25-year, 24-hour rainfall event.

(3) Free of cracks or gaps.

(4) Designed and installed to surround the tank completely and to cover all surrounding earth likely to come into contact with the waste if the waste is released from the tank(s) (that is, capable of preventing lateral as well as vertical migration of the waste).

(c) Double-walled tanks must be:

(1) Designed as an integral structure (that is, an inner tank completely enveloped within an outer shell) so that any release from the inner tank is contained by the outer shell.

(2) Protected, if constructed of metal, from both corrosion of the primary tank interior and of the external surface of the outer shell.

(3) Provided with a built-in continuous leak detection system capable of detecting a release within 24 hours.

**§ 267.197 What are the requirements for ancillary equipment?**

You must provide ancillary equipment with secondary containment (for example, trench, jacketing, doublewalled piping) that meets the requirements of § 267.195 (a) and (b), except for:

(a) Above ground piping (exclusive of flanges, joints, valves, and other connections) that are visually inspected for leaks on a daily basis;

(b) Welded flanges, welded joints, and welded connections, that are visually inspected for leaks on a daily basis;

(c) Sealless or magnetic coupling pumps and sealless valves, that are visually inspected for leaks on a daily basis; and

(d) Pressurized above ground piping systems with automatic shut-off devices (for example, excess flow check valves, flow metering shutdown devices, loss of pressure actuated shut-off devices) that are visually inspected for leaks on a daily basis.

**§ 267.198 What are the general operating requirements for my tank systems?**

(a) You must not place hazardous wastes or treatment reagents in a tank system if they could cause the tank, its ancillary equipment, or the containment system to rupture, leak, corrode, or otherwise fail.

(b) You must use appropriate controls and practices to prevent spills and overflows from tank or containment systems. These include, at a minimum:

(1) Spill prevention controls (for example, check valves, dry disconnect couplings).

(2) Overfill prevention controls (for example, level sensing devices, high level alarms, automatic feed cutoff, or bypass to a standby tank).



(3) Sufficient freeboard in uncovered tanks to prevent overtopping by wave or wind action or by precipitation.

(c) You must comply with the requirements of § 267.200 if a leak or spill occurs in the tank system.

### § 267.199 What inspection requirements must I meet?

You must comply with the following requirements for scheduling, conducting, and documenting inspections.

(a) Develop and follow a schedule and procedure for inspecting overflow controls.

(b) Inspect at least once each operating day:

(1) Aboveground portions of the tank system to detect corrosion or releases of waste.

(2) Data gathered from monitoring and leak detection equipment (for example, pressure or temperature gauges, monitoring wells) to ensure that the tank system is being operated according to its design.

(3) The construction materials and the area immediately surrounding the externally accessible portion of the tank system, including the secondary containment system (for example, dikes) to detect erosion or signs of releases of hazardous waste (for example, wet spots, dead vegetation).

(c) Inspect cathodic protection systems, if present, according to, at a minimum, the following schedule to ensure that they are functioning properly:

(1) Confirm that the cathodic protection system is operating properly within six months after initial installation and annually thereafter.

(2) Inspect and/or test all sources of impressed current, as appropriate, at least every other month.

(d) Document, in the operating record of the facility, an inspection of those items in paragraphs (a) through (c) of this section.

### § 267.200 What must I do in case of a leak or a spill?

If there has been a leak or a spill from a tank system or secondary containment system, or if either system is unfit for use, you must remove the system from service immediately, and you must satisfy the following requirements:

(a) Immediately stop the flow of hazardous waste into the tank system or secondary containment system and inspect the system to determine the cause of the release.

(b) Remove the waste from the tank system or secondary containment system.

(1) If the release was from the tank system,

you must, within 24 hours after detecting the leak, remove as much of the waste as is necessary to prevent further release of hazardous waste to the environment and to allow inspection and repair of the tank system to be performed.

(2) If the material released was to a secondary containment system, you must remove all released materials within 24 hours or as quickly as possible to prevent harm to human health and the environment.

(c) Immediately conduct a visual inspection of the release and, based upon that inspection:

(1) Prevent further migration of the leak or spill to soils or surface water.

(2) Remove, and properly dispose of, any visible contamination of the soil or surface water.

(d) Report any release to the environment, except as provided in paragraph (d)(1) of this section, to the Director within 24 hours of its detection. If you have reported the release pursuant to 40 CFR part 302, that report will satisfy this requirement.

(1) You need not report on a leak or spill of hazardous waste if it is:

(i) Less than or equal to a quantity of one (1) pound; and

(ii) Immediately contained and cleaned up.

(2) Within 30 days of detection of a release to the environment, you must submit a report to the Director containing the following information:

(i) The likely route of migration of the release.

(ii) The characteristics of the surrounding soil (soil composition, geology, hydrogeology, climate).

(iii) The results of any monitoring or sampling conducted in connection with the release (if available). If sampling or monitoring data relating to the release are not available within 30 days, you must submit these data to the Director as soon as they become available.

(iv) The proximity to downgradient drinking water, surface water, and populated areas.

(v) A description of response actions taken or planned.

(e) Either close the system or make necessary repairs.

(1) Unless you satisfy the requirements of paragraphs (e)(2) and (3) of this section, you must close the tank system according to § 267.201.

(2) If the cause of the release was a spill that has not damaged the integrity of the system, you may return the system to service as soon as you

remove the released waste and make any necessary repairs.

(3) If the cause of the release was a leak from the primary tank system into the secondary containment system, you must repair the system before returning the tank system to service.

(f) If you have made extensive repairs to a tank system in accordance with paragraph (e) of this section (for example, installation of an internal liner; repair of a ruptured primary containment or secondary containment vessel), you may not return the tank system to service unless the repair is certified by an independent, qualified, Arkansas-registered, professional engineer in accordance with § 270.11(d).

(1) The engineer must certify that the repaired system is capable of handling hazardous wastes without release for the intended life of the system.

(2) You must submit this certification to the Director within seven days after returning the tank system to use.

#### § 267.201 What must I do when I stop operating the tank system?

When you close a tank system, you must remove or decontaminate all waste residues, contaminated containment system components (liners, etc.), contaminated soils, and structures and equipment contaminated with waste, and manage them as hazardous waste, unless 40 CFR 261.3(d) applies. The closure plan, closure activities, cost estimates for closure, and financial responsibility for tank systems must meet all of the requirements specified in subsections G and H of this section.

#### § 267.202 What special requirements must I meet for ignitable or reactive wastes?

(a) You may not place ignitable or reactive waste in tank systems, unless:

(1) You treat, render, or mix the waste before or immediately after placement in the tank system so that:

(i) You comply with § 267.17(b); and (ii) The resulting waste, mixture, or dissolved material no longer meets the definition of ignitable or reactive waste under § 261.21 or § 261.23 of this Regulation; or

(2) You store or treat the waste in such a way that it is protected from any material or conditions that may cause the waste to ignite or react; or

(3) You use the tank system solely for emergencies.

(b) If you store or treat ignitable or reactive waste in

a tank, you must comply with the requirements for the maintenance of protective distances between the waste management area and any public ways, streets, alleys, or an adjoining property line that can be built upon as required in Tables 2–1 through 2–6 of the National Fire Protection Association’s “Flammable and Combustible Liquids Code,” (1977 or 1981), (incorporated by reference, see § 260.11).

#### § 267.203 What special requirements must I meet for incompatible wastes?

(a) You may not place incompatible wastes, or incompatible wastes and materials, in the same tank system, unless you comply with § 267.17(b).

(b) You may not place hazardous waste in a tank system that has not been decontaminated and that previously held an incompatible waste or material, unless you comply with § 267.17(b).

#### § 267.204 What air emission standards apply?

You must manage all hazardous waste placed in a tank following the requirements of subsections AA, BB, and CC of Section 264 of this Regulation. Under a standardized permit, the following control devices are permissible: Thermal vapor incinerator, catalytic vapor incinerator, flame, boiler, process heater, condenser, and carbon absorption unit.

#### Subsections K through CC [Reserved]

#### Subsection DD—Containment buildings

#### § 267.1100 Does this subsection apply to me?

This subsection applies to you if you own or operate a facility that treats or stores hazardous waste in containment buildings under a 40 CFR section 270 subsection J standardized permit, except as provided in § 267.1(b). Storage and/or treatment in your containment building is not land disposal as defined in 40 CFR 268.2 if your unit meets the requirements of §§ 267.1101, 267.1102, and 267.1103.

#### § 267.1101 What design and operating standards must my containment building meet?

Your containment building must comply with the design and operating standards in this section. EPA will consider standards established by professional organizations generally recognized by the industry such as the American Concrete Institute (ACI) and the American Society



of Testing Materials (ASTM) in judging the structural integrity requirements of this section.

(a) The containment building must be completely enclosed with a floor, walls, and a roof to prevent exposure to the elements, (e.g., precipitation, wind, run-on), and to assure containment of managed wastes.

(b) The floor and containment walls of the unit, including the secondary containment system, if required under § 267.1103, must be designed and sufficient strength and thickness to:

(1) Support themselves, the waste contents, and any personnel and heavy equipment that operates within the unit.

(2) Prevent failure due to:

(i) Pressure gradients, settlement, compression, or uplift.

(ii) Physical contact with the hazardous wastes to which they are exposed.

(iii) Climatic conditions.

(iv) Stresses of daily operation, including the movement of heavy equipment within the unit and contact of such equipment with containment walls.

(v) Collapse or other failure.

(c) All surfaces to be in contact with hazardous wastes must be chemically compatible with those wastes.

(d) You must not place incompatible hazardous wastes or treatment reagents in the unit or its secondary containment system if they could cause the unit or secondary containment system to leak, corrode, or otherwise fail.

(e) A containment building must have a primary barrier designed to withstand the movement of personnel, waste, and handling equipment in the unit during the operating life of the unit and appropriate for the physical and chemical characteristics of the waste to be managed.

(f) If appropriate to the nature of the waste management operation to take place in the unit, an exception to the structural strength requirement may be made for light-weight doors and windows that meet these criteria:

(1) They provide an effective barrier against fugitive dust emissions under § 267.1102(d).

(2) The unit is designed and operated in a fashion that assures that wastes will not actually come in contact with these openings.

(g) You must inspect and record in the facility's operating record, at least once every seven days, data gathered from monitoring equipment and leak detection equipment, as well as the containment building and the area immediately surrounding the containment building to detect signs of releases of hazardous waste.

(h) You must obtain certification by a qualified registered professional engineer that the containment building design meets the requirements of §§ 267.1102, 267.1103, and paragraphs (a) through (f) of this section.

§ 267.1102 What other requirements must I meet to prevent releases?

You must use controls and practices to ensure containment of the hazardous waste within the unit, and must, at a minimum:

(a) Maintain the primary barrier to be free of significant cracks, gaps, corrosion, or other deterioration that could cause hazardous waste to be released from the primary barrier. (b) Maintain the level of the stored/ treated hazardous waste within the containment walls of the unit so that the height of any containment wall is not exceeded.

(c) Take measures to prevent personnel or by equipment used in handling the waste from tracking hazardous waste out of the unit. You must designate an area to decontaminate equipment, and you must collect and properly manage any rinsate.

(d) Take measures to control fugitive dust emissions such that any openings (doors, windows, vents, cracks, etc.) exhibit no visible emissions (see 40 CFR part 60, appendix A, Method 22—Visual Determination of Fugitive Emissions from Material Sources and Smoke Emissions from Flares). In addition, you must operate and maintain all associated particulate collection devices (for example, fabric filter, electrostatic precipitator) with sound air pollution control practices. You must effectively maintain this state of no visible emissions at all times during routine operating and maintenance conditions, including when vehicles and personnel are entering and exiting the unit.

§ 267.1103 What additional design and operating standards apply if liquids will be in my containment building?

If your containment building will be used to manage hazardous wastes containing free liquids or treated with free liquids, as determined by the paint filter test, by a visual examination, or by other appropriate means, you must include:

(a) A primary barrier designed and constructed of materials to prevent the migration of hazardous constituents into the barrier (for example, a geomembrane covered by a concrete wear surface).

(b) A liquid collection and removal system to minimize the accumulation of liquid on the primary barrier of the containment building.

(1) The primary barrier must be sloped to drain liquids to the associated collection system; and

(2) You must collect and remove liquids and waste to minimize hydraulic head on the containment system at the earliest practicable time.

(c) A secondary containment system, including a secondary barrier designed and constructed to prevent mi-

gration of hazardous constituents into the barrier, and a leak detection system capable of detecting failure of the primary barrier and collecting accumulated hazardous wastes and liquids at the earliest practical time.

(1) You may meet the requirements of the leak detection component of the secondary containment system by installing a system that is, at a minimum:

(i) Constructed with a bottom slope of 1 percent or more; and

(ii) Constructed of a granular drainage material with a hydraulic conductivity of  $1 \times 10^{-2}$  cm/sec or more and a thickness of 12 inches (30.5 cm) or more, or constructed of synthetic or geonet drainage materials with a transmissivity of  $3 \times 10^{-5}$  m<sup>2</sup>/sec or more.

(2) If you will be conducting treatment in the building, you must design the area in which the treatment will be conducted to prevent the release of liquids, wet materials, or liquid aerosols to other portions of the building.

(3) You must construct the secondary containment system using materials that are chemically resistant to the waste and liquids managed in the containment building and of sufficient strength and thickness to prevent collapse under the pressure exerted by overlaying materials and by any equipment used in the containment building.

#### § 267.1104 How may I obtain a waiver from secondary containment requirements?

Notwithstanding any other provision of this subsection, the Director may waive requirements for secondary containment for a permitted containment building where:

(a) You demonstrate that the only free liquids in the unit are limited amounts of dust suppression liquids required to meet occupational health and safety requirements, and

(b) Containment of managed wastes and dust suppression liquids can be assured without a secondary containment system.

#### § 267.1105 What do I do if my containment building contains areas both with and without secondary containment?

For these containment buildings, you must:

(a) Design and operate each area in accordance with the requirements enumerated in §§ 267.1101 through 267.1103.

(b) Take measures to prevent the release of liquids or wet materials into areas without secondary containment. (c) Maintain in the facility's operating log a written description of the operating procedures used to maintain the integrity of areas without secondary containment.

#### § 267.1106 What do I do if I detect a release?

Throughout the active life of the containment building, if you detect a condition that could lead to or has caused a release of hazardous waste, you must repair the condition promptly, in accordance with the following procedures.

(a) Upon detection of a condition that has led to a release of hazardous waste (for example, upon detection of leakage from the primary barrier), you must:

(1) Enter a record of the discovery in the facility operating record;

(2) Immediately remove the portion of the containment building affected by the condition from service;

(3) Determine what steps you must take to repair the containment building, to remove any leakage from the secondary collection system, and to establish a schedule for accomplishing the cleanup and repairs; and

(4) Within 7 days after the discovery of the condition, notify the Director of the condition, and within 14 working days, provide a written notice to the Director with a description of the steps taken to repair the containment building, and the schedule for accomplishing the work.

(b) The Director will review the information submitted, make a determination regarding whether the containment building must be removed from service completely or partially until repairs and cleanup are complete, and notify you of the determination and the underlying rationale in writing.

(c) Upon completing all repairs and cleanup, you must notify the Director in writing and provide a verification, signed by a qualified, registered professional engineer, that the repairs and cleanup have been completed according to the written plan submitted in accordance with paragraph (a)(4) of this section.

#### § 267.1107 Can a containment building itself be considered secondary containment?

Containment buildings can serve as secondary containment systems for tanks placed within the building under certain conditions.

(a) A containment building can serve as an external liner system for a tank, provided it meets the requirements of § 267.196(a).

(b) The containment building must also meet the requirements of § 267.195(a), (b)(1) and (2) to be considered an acceptable secondary containment system for a tank.

#### § 267.1108 What must I do when I stop operating the containment building?

When you close a containment building, you must remove or decontaminate all waste residues, contaminated containment system components (liners, etc.), contaminated subsoils, and structures and equipment contaminated with waste and leachate and manage them as hazardous waste unless 40 CFR 261.3(d) applies. The closure plan, closure activities, cost estimates for closure, and financial responsibility for containment buildings must meet all of the requirements specified in subsections G and H of this section.

## Section 268—LAND DISPOSAL RESTRICTIONS

### Subsection A—General

171. In **Section 268.2**, amend paragraph (g) by revising “A manufactured” to read “a manufactured”; “Any material” to read “any material”; “Process residuals” to read “process residuals”; and “and Intact” to read “and intact”.

#### § 268.2 Definitions applicable in this section.

\* \* \* \* \*

(g) “Debris” means solid material exceeding a 60 mm particle size that is intended for disposal and that is: **A manufactured a manufactured** object; or plant or animal matter; or natural geologic material. However, the following materials are not debris: **Any material any material** for which a specific treatment standard is provided in Subsection D, section 268, namely lead acid batteries, cadmium batteries, and radioactive lead solids; **Process residuals process residuals** such as smelter slag and residues from the treatment of waste, wastewater, sludges, or air emission residues; **and Intact and intact** containers of hazardous waste that are not ruptured and that retain at least 75% of their original volume. A mixture of debris that has not been treated to the standards provided by § 268.45 and other material is subject to regulation as debris if the mixture is comprised primarily of debris, by volume, based on visual inspection.

\* \* \* \* \*

172. In **Section 268.4**, amend paragraph (a)(3) introductory text by revising the citation “of section 264 or section 264” to read “of section 264 or section 265”.

#### § 268.4 Treatment surface impoundment exemption.

(a) \* \* \*

(3) The impoundment meets the design requirements of § 264.221(c) or § 265.221(a) of this regu-

lation, regardless that the unit may not be new, expanded, or a replacement, and be in compliance with applicable ground water monitoring requirements of Subsection F ~~of section 264 or section 264~~ of Section 264 or Section 265 of this regulation unless:

\* \* \* \* \*

173. In **Section 268.6**, amend paragraph (c)(5) introductory text by revising “section meet” to read “section meets”.

#### § 268.6 Petitions to allow land disposal of a waste prohibited under Subsection C of Section 268.

\* \* \* \* \*

(c) \* \* \*

(5) The monitoring program specified under paragraph (c)(1) of this ~~section meet~~ section meets the following criteria:

\* \* \* \* \*

174. Amend **Section 268.7** as follows:

a. Amend by revising paragraphs (a)(1) and (a)(2), and (b)(6) to read as follows:

b. In paragraph (a)(3)(ii), second sentence, insert the word “column” after the phrase “information in”, and insert a closing quotation mark after the citation “268.7(a)(3)”;

c. In paragraph (b)(4)(ii), revise the citation “§ 261.3(e)” to read “§ 261.3(f)”;

d. Amend by revising paragraph (b)(6) to read as follows:

e. In paragraph (c)(2), remove the closing parenthesis from “Leaching Procedure”;

f. In paragraph (d) introductory text, revise the citation “§ 261.3(e)” to read “§ 261.3(f)”;

g. Revise paragraph (d)(1) to read as set forth below;

h. In paragraph (d)(2), revise the citation “§ 261.2(e)(1)” to read “§ 261.3(f)(1)”;

i. In paragraph (d)(3), revise the citation “§ 261.3(e)(1)” to read “§ 261.3(f)(1)”.

#### § 268.7 Testing, tracking and recordkeeping requirements for generators, treaters, and disposal facilities.

(a) *Requirements for generators:*

(1) A generator of hazardous waste must determine if the waste has to be treated before it can be land disposed. This is done by determining if the hazardous waste meets the treatment standards in § 268.40, 268.45, or § 268.49. This determination can be made concurrently with the hazardous waste determination required in § 262.11 of this Regulation, in either of two ways: testing the waste or using knowledge of the waste. If the generator tests

the waste, testing would normally determine the total concentration of hazardous constituents, or the concentration of hazardous constituents in an extract of the waste obtained using test method 1311 in “Test Methods of Evaluating Solid Waste, Physical/Chemical Methods,” EPA Publication SW-846, ~~as referenced in §260.11 of this regulation~~ **(incorporated by reference, see § 260.11 of this Regulation),** depending on whether the treatment standard for the waste is expressed as a total concentration or concentration of hazardous constituent in the waste’s extract. **(Alternatively, the generator must send the waste to a RCRA-permitted hazardous waste treatment facility, where the waste treatment facility must comply with the requirements of § 264.13 of this Regulation and paragraph (b) of this section.)** In addition, some hazardous wastes must be treated by particular treatment methods before they can be land disposed and some soils are contaminated by such hazardous wastes. These treatment standards are also found in § 268.40, and are described in detail in § 268.42, Table 1. These wastes, and solids contaminated with such wastes, do not need to be tested (however, if they are in a waste mixture, other wastes with concentration level treatment standards would have to be tested). If a generator determines they are managing a waste or soil contaminated with a waste, that displays a hazardous characteristic of ignitability, corrosivity, reactivity, or toxicity, they must comply with the special requirements of § 268.9 of this section in addition to any applicable requirements in this section.

~~(2) If the waste or contaminated soil does not meet the treatment standards, or if the generator chooses not to make the determination of whether his waste must be treated, with the initial shipment of waste to each treatment or storage facility, the generator must send a one-time written notice to each treatment or storage facility receiving the waste, and place a copy in the file. The notice must include the information in column “268.7(a)(2)” of the Generator Paperwork Requirements Table in paragraph (a)(4) of this section. (Alternatively, if the generator chooses not to make the determination of whether the waste must be treated, the notification must include the EPA Hazardous Waste Numbers and Manifest Number of the first shipment and must state “This hazardous waste may or may not be subject to the LDR treatment standards. The treatment facility must make the determination.”) No further notification is necessary until such time that the waste or facility change, in which case a new notification must be sent and a copy placed in the generator’s file. If the waste or contaminated soil does not meet the treatment standard: With the initial shipment of waste to each treat-~~

**ment or storage facility, the generator must send a one-time written notice to each treatment or storage facility receiving the waste, and place a copy in the file. The notice must include the information in column “268.7(a)(2)” of the Generator Paperwork Requirements Table in § 268.7(a)(4). No further notification is necessary until such time that the waste or facility changes, in which case a new notification must be sent and a copy placed in the generator’s file.**

\* \* \* \* \*

(3) \* \* \*

(ii) For contaminated soil, with the initial shipment of wastes to each treatment, storage, or disposal facility, the generator must send a one-time written notice to each facility receiving the waste and place a copy in the file. The notice must include the information in column “268.7(a)(3)” of the Generator Paperwork Requirements Table in § 268.7(a)(4).

\* \* \* \* \*

(4) \* \* \*

(ii) Debris excluded from the definition of hazardous waste ~~under § 261.3(e)~~ **§ 261.3(f)** of this regulation (i.e., debris treated by an extraction or destruction technology provided by Table 1, § 268.45, and debris that the Director has determined does not contain hazardous waste), however, is subject to the notification and certification requirements of paragraph (d) of this section rather than the certification requirements of this paragraph.

\* \* \* \* \*

(b) \* \* \*

(6) Where the wastes are recyclable materials used in a manner constituting disposal subject to the provisions of § 266.20(b) of this Regulation regarding treatment standards and prohibition levels, the owner or operator of a treatment facility (i.e., the recycler) ~~is not required to notify the receiving facility, pursuant to paragraph (b)(3) of this section.~~ **must, for the initial shipment of waste, prepare a one-time certification described in paragraph (b)(4) of this section, and a one-time notice which includes the information in paragraph (b)(3) of this section (except the manifest number). The certification and notification must be placed in the facility’s on-site files. With each shipment of such wastes the owner or operator of the recycling facility must submit a certification described in paragraph (b)(4) of this section, and a notice which includes the information listed in paragraph (b)(3) of this section (except the manifest number) to the Director, or his delegated representative. If the waste or the receiving facility changes, a new certification and notification must be prepared**



and placed in the on site files. In addition, the recycling facility ~~also must~~ **must also** keep records of the name and location of each entity receiving the hazardous waste-derived product.

\* \* \* \* \*

(c) \* \* \*

(2) Test the waste, or an extract of the waste or treatment residue developed using test method 1311 (the Toxicity Characteristic Leaching Procedure), described in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846 as incorporated by reference in § 260.11 of this chapter), to assure that the wastes or treatment residues are in compliance with the applicable treatment standards set forth in subsection D of this Section. Such testing must be performed according to the frequency specified in the facility's waste analysis plan as required by § 264.13 or § 265.13 of this regulation.

\* \* \* \* \*

(d) Generators or treaters who first claim that hazardous debris is excluded from the definition of hazardous waste under ~~§ 261.3(e)~~ **§ 261.3(f)** of this regulation (i.e., debris treated by an extraction or destruction technology provided by Table 1, § 268.45, and debris that the EPA Regional Administrator (or his designated representative) or State authorized to implement 40 CFR Part 268 requirements has determined does not contain hazardous waste) are subject to the following notification and certification requirements:

\* \* \* \* \*

(d) \* \* \*

(1) A one-time notification, including the following information, must be submitted to the ADEQ.

**(i) The name and address of the Subsection D facility receiving the treated debris;**

**(ii) A description of the hazardous debris as initially generated, including the applicable EPA Hazardous Waste Number(s); and**

**(iii) For debris excluded under § 261.3(f)(1) of this regulation, the technology from Table 1, § 268.45, used to treat the debris.**

(2) The notification must be updated if the debris is shipped to a different facility, and, for debris excluded under ~~§ 261.2(e)(1)~~ **§ 261.3(f)(1)** of this chapter, if a different type of debris is treated or if a different technology is used to treat the debris.

(3) For debris excluded under ~~§ 261.2(e)(1)~~ **§ 261.3(f)(1)** of this chapter, the owner or operator of the treatment facility must document and certify compliance with the treatment standards of Table 1, § 268.45, as follows:

\* \* \* \* \*

175. Section 268.9 is amended by revising paragraphs (a)

and (d) introductory text to read as follows:

**§ 268.9 Special rules regarding wastes that exhibit a characteristic.**

(a) The initial generator of a solid waste must determine each EPA Hazardous Waste Number (waste code) applicable to the waste in order to determine the applicable treatment standards under Subsection D of this section. **This determination may be made concurrently with the hazardous waste determination required in § 262.11 of this Regulation.** For purposes of section 268, the waste will carry the waste code for any applicable listed waste (Section 261, subsection D of this Regulation). In addition, where the waste exhibits a characteristic, the waste will carry one or more of the characteristic waste codes (Section 261, Subsection C of this Regulation), except when the treatment standard for the listed waste operates in lieu of the treatment standard for the characteristic waste, as specified in paragraph (b) of this section. If the generator determines that their waste displays a hazardous characteristic (and is not D001 nonwastewaters treated by CMBST, RORGS, OR POLYM of § 268.42, Table 1), the generator must determine the underlying hazardous constituents (as defined at § 268.2(i)) in the characteristic waste.

\* \* \* \* \*

(d) Wastes that exhibit a characteristic are also subject to § 268.7 requirements, except that once the waste is no longer hazardous, a one-time notification and certification must be placed in the generator's or treater's on-site files. The notification and certification **that is placed in the generators or treaters files** must be updated if the process or operation generating the waste changes and/or if the subtitle D facility receiving the waste changes. ~~and/or if the subtitle D facility receiving the waste changes. However, the generator or treater need only notify the EPA region or an authorized state on an annual basis if such changes occur. Such notification and certification should be sent to the EPA region or authorized state by the end of the calendar year, but no later than December 31.~~

\* \* \* \* \*

176. In § 268.14, amend paragraphs (b) and (c) by revising "not withstanding" to read "notwithstanding" in both instances.

**§ 268.14 Surface impoundment exemptions.**

\* \* \* \* \*

(b) Wastes which are newly identified or listed under section 3001 after November 8, 1984, and stored in a surface impoundment that is newly subject to subtitle C of RCRA as a result of the additional identification or listing, may continue to be stored in the surface impoundment for 48 months after the promulgation of the additional listing or characteristic, ~~not withstanding~~ **notwithstanding** that the

waste is otherwise prohibited from land disposal, provided that the surface impoundment is in compliance with the requirements of Subsection F of section 265 of this regulation within 12 months after promulgation of the new listing or characteristic.

(c) Wastes which are newly identified or listed under section 3001 after November 8, 1984, and treated in a surface impoundment that is newly subject to subtitle C of RCRA as a result of the additional identification or listing, may continue to be treated in that surface impoundment, ~~not withstanding~~ **notwithstanding** that the waste is otherwise prohibited from land disposal, provided that surface impoundment is in compliance with the requirements of Subsection F of section 265 of this regulation within 12 months after the promulgation of the new listing or characteristic. In addition, if the surface impoundment continues to treat hazardous waste after 48 months from promulgation of the additional listing or characteristic, it must then be in compliance with § 268.4.

\*\*\*\*\*

177. Amend **Section 268.40** as follows:

a. In paragraph (g), revise “as defined” to read “as defined”.

b. Amend the table TREATMENT STANDARDS FOR HAZARDOUS WASTES as follows:

1. At the column heading “Wastewaters”, revise “Concentration in mg/L3” to read “Concentration 3 in mg/L”;

2. At the column heading “Nonwastewaters”, revise “Concentration in mg/kg5” to read “Concentration5 in mg/kg”;

3. At the entry “K047”, in the waste description column, revise “water form TNT” to read “water from TNT”;

4. At the entries “K049” and “K051”, revise the CAS number for “Chrysene” from “2218-01-9” to read “218-01-9”;

5. At the entry “K088”, revise the common name “Benz(a)anthracene” to read “Benz(a)anthracene”; and revise the common name “Indeno(1,2,3,-c,d)pyrene” to read “Indeno(1,2,3-cd)pyrene”;

6. At the entry “K111”, revise the CAS number for “2,4-Dinitrotoluene” from “121-1-2” to read “121-14-2”;

7. At the entry “K114”, in the waste description column, revise the common name “dinitrotoluene” to read “dinitrotoluene”;

8. At the entry “K156”, revise the CAS number for “Acetophenone” from “96-86-2” to read “98-86-2”;

9. At the entry “U202” “Acetone” following “U001”, revise “U202” to read “U002”;

10. At the entry “U134”, revise the CAS number “16984-48-8” to read “7664-39-3”;

11. At the entry “U137”, revise in the waste description and in the common name columns “Indeno(1,2,3-c,d)pyrene” to read “Indeno(1,2,3-cd)pyrene” in both instances.

**§ 268.40 Applicability of Treatment Standards.**

\*\*\*\*\*

(g) Between August 26, 1996 and March 4, 1999 the treatment standards for the wastes specified in § 261.32 as EPA Hazardous Waste numbers K156-K161; and in § 261.33 as EPA Hazardous Waste numbers P127, P128, P185, P188-P192, P194, P196-P199, P201-P205, U271, U277-U280, U364-U367, U372, U373, U375-U379, U381-U387, U389-U396, U400-U404, U407, and U409-U411; and soil contaminated with these wastes; may be satisfied by either meeting the constituent concentrations presented in the table “Treatment Standards for Hazardous Wastes” in this section, or by treating the waste by the following technologies: combustion, as defined by the technology code CMBST at §268.42 Table 1, for nonwaste-waters; and, biodegradation ~~as defined~~ **as defined** by the technology code BIODG, carbon adsorption as defined by the technology code CARBN, chemical oxidation as defined by the technology code CHOXD, or combustion as defined as technology code CMBST at §268.42 Table 1, for wastewaters.

\*\*\*\*\*

**§268.40 TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable \* \* \***

Wastewaters \* \* \*

~~Concentration in mg/L3;~~ **Concentration 3 in mg/L**

\*\*\*\*\*

Nonwastewaters \* \* \*

~~Concentration in mg/kg5~~ **Concentration5 in mg/kg**

\*\*\*\*\*

K047

Pink/red water ~~form~~ **from** TNT operations

\*\*\*\*\*

K049 Chrysene ~~2218-01-9~~ **218-01-9**

\*\*\*\*\*

K051 Chrysene ~~2218-01-9~~ **218-01-9**

\*\*\*\*\*

K088

~~Indeno(1,2,3,-c,d)pyrene~~ **Indeno(1,2,3-cd)pyrene**

\*\*\*\*\*

K111

~~121-1-2~~ **121-14-2**

\*\*\*\*\*

K114

Vicinals from the purification of toluenediamine in the production of toluenediamine via hydrogenation of ~~dinitrotoluene~~ **dinitrotoluene**.

\*\*\*\*\*

K156

Acetophenone 96-86-2 ~~98-86-2~~

\*\*\*\*\*

~~U202~~ **U002**

\*\*\*\*\*

“U134

~~16984-48-8~~ **7664-39-3**

\*\*\*\*\*

U137

~~Indeno(1,2,3-c,d)pyrene~~ **Indeno(1,2,3-cd)pyrene**

\*\*\*\*\*



Indeno(1,2,3-c,d)pyrene ~~Indeno(1,2,3-cd)pyrene~~

\*\*\*\*\*

178. In **Section 268.42, Table 1**, amend the entry for Technology code “SSTRP” in the second column as follows:

a. In the first sentence, revise “as well as, temperature and pressure ranges have” to read “as well as temperature and pressure ranges, have”;

b. In the second sentence, insert a comma after the phrase “parameters of the unit”; remove the comma in the phrase “such as, the number”; and replace the period at the end of “the internal column design.” with a comma;

c. In the third sentence, revise “Thus, resulting” to read “thus resulting”.

**§ 268.42 Treatment standards expressed as specified technologies**

\*\*\*\*\*

**Table 1**

\*\*\*\*\*

**SSTRP:** Steam stripping of organics from liquid wastes utilizing direct application of steam to the wastes operated such that liquid and vapor flow rates, ~~as well as, temperature and pressure ranges have~~ as well as temperature and pressure ranges, have been optimized, monitored, and maintained. These operating parameters are dependent upon the design parameters of the unit, such as; the number of separation stages and the internal column design. ~~Thus, resulting thus resulting~~ in a condensed extract high in organics that must undergo either incineration, reuse as a fuel, or other recovery/reuse and an extracted wastewater that must undergo further treatment as specified in the standard

\*\*\*\*\*

179. In **Section 268.44**, amend paragraph (c), last sentence of the certification statement, by revising “I am aware that these are” to read “I am aware that there are”.

**§ 268.44 Variance from a treatment standard**

\*\*\*\*\*

(c) Each petition must include the following statement signed by the petitioner or an authorized representative: “I certify under penalty of law that I have personally examined and am familiar with the information submitted in this petition and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. ~~I am aware that these are~~ I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment”

\*\*\*\*\*

180. Amend **Section 268.45, Table 1**, as follows:

a. At item B.1., first column, revise “biodegradation” to read “biodegradation”;

b. At item B.2.a., first column, revise “electolytic” to read “electrolytic”; and under number (8), revise “permanganates” to read “permanganates”.

**§ 268.45 Treatment standards for hazardous debris**

\*\*\*\*\*

**Table 1.-Alternative Treatment Standards For Hazardous Debris<sup>1</sup>**

\*\*\*\*\*

B. Destruction Technologies: \*\*\*

1. Biological Destruction (Biodegradation):

and ~~biodegration~~ biodegradation of organic or nonmetallic inorganic

\*\*\*\*\*

2. \*\*\*

a. Chemical Oxidation: Chemical or ~~electolytic~~ electrolytic

\*\*\*\*\*

181. Amend **Section 268.48 Table, UNIVERSAL TREATMENT STANDARDS**, as follows:

a. In Table UTS, amend by adding in alphabetical sequence the following entries under organic constituents:

b. Amend the Footnote by changing “thisSection” to read “this Section:

**§ 268.48 Table UTS – Universal Treatment Standards**

(a) \*\*\*

**Universal Treatment Standards Table**

**TABLE UTS - UNIVERSAL TREATMENT STANDARDS**

NOTE: NA means not applicable

Chemical Name	CAS No1		Waste
Nonwaste			
waters2	waters3		
<b>Organic Constituents</b>			
Acenaphthylene	208-96-8	0.059	3.4
Acenaphthene	83-32-9	0.059	3.4
Acetone	67-64-1	0.28	160
Acetonitrile	75-05-8	5.6	38
Acetophenone	96-86-2	0.010	9.7
2-Acetylaminofluorene	53-96-3	0.059	140
Acrolein	107-02-8	0.29	NA
Acrylamide	79-06-1	19	23
Acrylonitrile	107-13-1	0.24	84
Aldicarb sulfone	1646-88-4	0.056	0.28

\6\			
Aldrin	309-00-2	0.021	0.066
4-Aminobiphenyl	92-67-1	0.13	NA
Aniline	62-53-3	0.81	14
o-Anisidine (2-methoxyaniline)	90-04-0	0.010	0.66
Anthracene	120-12-7	0.059	3.4
Aramite	140-57-8	0.36	NA
alpha-BHC	319-84-6	0.00014	0.066
beta-BHC	319-85-7	0.00014	0.066
delta-BHC	319-86-8	0.023	0.066
gamma-BHC	58-89-9	0.0017	0.066
Barban \6\	101-27-9	0.056	1.4
Bendiocarb \6\	22781-23-3	0.056	1.4
Benomyl \6\	17804-35-2	0.056	1.4
Benzene	71-43-2	0.14	10
Benz(a)anthracene	56-55-3	0.059	3.4
Benzal chloride	98-87-3	0.055	6.0
Benzo(b)fluoranthene (difficult to distinguish from benzo(k)fluoranthene)	205-99-2	0.11	6.8
Benzo(k)fluoranthene (difficult to distinguish from benzo(b)fluoranthene)	207-08-9	0.11	6.8
Benzo(g,h,i)perylene	191-24-2	0.0055	1.8
Benzo(a)pyrene	50-32-8	0.061	3.4
Bromodichloromethane	75-27-4	0.35	15
Bromomethane/Methyl bromide	74-83-9	0.11	15
4-Bromophenyl phenyl ether	101-55-3	0.055	15
n-Butyl alcohol	71-36-3	5.6	2.6
Butylate \6\	2008-41-5	0.042	1.4
Butyl benzyl phthalate	85-68-7	0.017	28
2-sec-Butyl-4,6-	88-85-7	0.066	2.5

dinitrophenol/Dinoseb			
Carbaryl \6\	63-25-2	0.006	0.14
Carbenzadim \6\	10605-21-7	0.056	1.4
Carbofuran \6\	1563-66-2	0.006	0.14
Carbofuran phenol \6\	1563-38-8	0.056	1.4
Carbon disulfide	75-15-0	3.8	4.8 mg/l TCLP
Carbon tetrachloride	56-23-5	0.057	6.0
Carbosulfan \6\	55285-14-8	0.028	1.4
Chlordane (alpha and gamma isomers)	57-74-9	0.0033	0.26
p-Chloroaniline	106-47-8	0.46	16
Chlorobenzene	108-90-7	0.057	6.0
Chlorobenzilate	510-15-6	0.10	NA
2-Chloro-1,3-butadiene	126-99-8	0.057	0.28
Chlorodibromomethane	124-48-1	0.057	15
Chloroethane	75-00-3	0.27	6.0
bis(2-Chloroethoxy)methane	111-91-1	0.036	7.2
bis(2-Chloroethyl)ether	111-44-4	0.033	6.0
Chloroform	67-66-3	0.046	6.0
bis(2-Chloroisopropyl) ether	39638-32-9	0.055	7.2
p-Chloro-m-cresol	59-50-7	0.018	14
2-Chloroethyl vinyl ether	110-75-8	0.062	NA
Chloromethane/Methyl chloride	74-87-3	0.19	30
2-Chloronaphthalene	91-58-7	0.055	5.6
2-Chlorophenol	95-57-8	0.044	5.7
3-Chloropropylene	107-05-1	0.036	30
Chrysene	218-01-9	0.059	3.4
p-Cresidine	120-71-8	0.010	0.66
o-Cresol	95-48-7	0.11	5.6

m-Cresol (difficult to distinguish from p-cresol)	108-39-4	0.77	5.6
p-Cresol (difficult to distinguish from m-cresol)	106-44-5	0.77	5.6
m-Cumenyl methylcarbamate (6)	64-00-6	0.056	1.4
Cyclohexanone	108-94-1	0.36	0.75 mg/l TCLP
o,p[prime]-DDD	53-19-0	0.023	0.087
p,p[prime]-DDD	72-54-8	0.023	0.087
o,p[prime]-DDE	3424-82-6	0.031	0.087
p,p[prime]-DDE	72-55-9	0.031	0.087
o,p[prime]-DDT	789-02-6	0.0039	0.087
p,p[prime]-DDT	50-29-3	0.0039	0.087
Dibenz(a,h)anthracene	53-70-3	0.055	8.2
Dibenz(a,e)pyrene	192-65-4	0.061	NA
1,2-Dibromo-3-chloropropane	96-12-8	0.11	15
1,2-Dibromoethane/ Ethylene dibromide	106-93-4	0.028	15
Dibromomethane	74-95-3	0.11	15
m-Dichlorobenzene	541-73-1	0.036	6.0
o-Dichlorobenzene	95-50-1	0.088	6.0
p-Dichlorobenzene	106-46-7	0.090	6.0
Dichlorodifluoromethane	75-71-8	0.23	7.2
1,1-Dichloroethane	75-34-3	0.059	6.0
1,2-Dichloroethane	107-06-2	0.21	6.0
1,1-Dichloroethylene	75-35-4	0.025	6.0
trans-1,2-Dichloroethylene	156-60-5	0.054	30
2,4-Dichlorophenol	120-83-2	0.044	14
2,6-Dichlorophenol	87-65-0	0.044	14
2,4-Dichlorophenoxyacetic acid/2,4-D			

1,2-Dichloropropane	78-87-5	0.85	18
cis-1,3-Dichloropropylene	10061-01-5	0.036	18
trans-1,3-Dichloropropylene	10061-02-6	0.036	18
Dieldrin	60-57-1	0.017	0.13
Diethyl phthalate	84-66-2	0.20	28
p-Dimethylaminoazobenzene	60-11-7	0.13	NA
2,4-Dimethylaniline (2,4-xylydine)	95-68-1	0.010	0.66
2,4-Dimethylphenol	105-67-9	0.036	14
Dimethyl phthalate	131-11-3	0.047	28
Di-n-butyl phthalate	84-74-2	0.057	28
1,4-Dinitrobenzene	100-25-4	0.32	2.3
4,6-Dinitro-o-cresol	534-52-1	0.28	160
2,4-Dinitrophenol	51-28-5	0.12	160
2,4-Dinitrotoluene	121-14-2	0.32	140
2,6-Dinitrotoluene	606-20-2	0.55	28
Di-n-octyl phthalate	117-84-0	0.017	28
Di-n-propylnitrosamine	621-64-7	0.40	14
1,4-Dioxane	123-91-1	12.0	170
Diphenylamine (difficult to distinguish from diphenylnitrosamine)	122-39-4	0.92	13
Diphenylnitrosamine (difficult to distinguish from diphenylamine)	86-30-6	0.92	13
1,2-Diphenylhydrazine	122-66-7	0.087	NA

Disulfoton	298-04-4	0.017	6.2
Dithiocarbamates (total) \6\	NA	0.028	28
Endosulfan I	959-98-8	0.023	0.066
Endosulfan II	33213-65-9	0.029	0.13
Endosulfan sulfate	1031-07-8	0.029	0.13
Endrin	72-20-8	0.0028	0.13
Endrin aldehyde	7421-93-4	0.025	0.13
EPTC \6\	759-94-4	0.042	1.4
Ethyl acetate	141-78-6	0.34	33
Ethyl benzene	100-41-4	0.057	10
Ethyl cyanide/ Propanenitrile	107-12-0	0.24	360
Ethyl ether	60-29-7	0.12	160
Ethyl methacrylate	97-63-2	0.14	160
Ethylene oxide	75-21-8	0.12	NA
Famphur	52-85-7	0.017	15
Fluoranthene	206-44-0	0.068	3.4
Fluorene	86-73-7	0.059	3.4
Formetanate hydrochloride \6\	23422-53-9	0.056	1.4
Heptachlor	76-44-8	0.0012	0.066
1,2,3,4,6,7,8-Heptachlorodibenzo-p-dioxin (1,2,3,4,6,7,8-HpCDD)	35822-46-9	0.000035	.0025
1,2,3,4,6,7,8-Heptachlorodibenzo-furan (1,2,3,4,6,7,8-HpCDF)	67562-39-4	0.000035	.0025
1,2,3,4,7,8,9-Heptachlorodibenzo-furan (1,2,3,4,7,8,9-HpCDF)	55673-89-7	0.000035	.0025
Heptachlor epoxide	1024-57-3	0.016	0.066
Hexachlorobenzene	118-74-1	0.055	10
Hexachlorobutadiene	87-68-3	0.055	5.6

Hexachlorocyclopentadiene	77-47-4	0.057	2.4
HxCDDs (All Hexachlorodibenzo-p-dioxins)	NA	0.000063	0.001
HxCDFs (All Hexachlorodibenzo-furans)	NA	0.000063	0.001
Hexachloroethane	67-72-1	0.055	30
Indeno(1,2,3-c,d)pyrene	193-39-5	0.0055	3.4
Iodomethane	74-88-4	0.19	65
Isobutyl alcohol	78-83-1	5.6	170
Isodrin	465-73-6	0.021	0.066
Isosafrole	120-58-1	0.081	2.6
Kepone	143-50-0	0.0011	0.13
Methacrylonitrile	126-98-7	0.24	84
Methanol	67-56-1	5.6	0.75 mg/l TCLP
Methapyrilene	91-80-5	0.081	1.5
Methiocarb \6\	2032-65-7	0.056	1.4
Methomyl \6\	16752-77-5	0.028	0.14
Methoxychlor	72-43-5	0.25	0.18
3-Methylcholanthrene	56-49-5	0.0055	15
4,4-Methylene bis(2-chloroaniline)	101-14-4	0.50	30
Methylene chloride	75-09-2	0.089	30
Methyl ethyl ketone	78-93-3	0.28	36
Methyl isobutyl ketone	108-10-1	0.14	33
Methyl methacrylate	80-62-6	0.14	160
Methyl methanesulfonate	66-27-3	0.018	NA
Methyl parathion	298-00-0	0.014	4.6
Metolcarb \6\	1129-41-5	0.056	1.4
Mexacarbate \6\	315-18-4	0.056	1.4
Molinate \6\	2212-67-1	0.042	1.4
Naphthalene	91-20-3	0.059	5.6

2-Naphthylamine	91-59-8	0.52	NA
o-Nitroaniline	88-74-4	0.27	14
p-Nitroaniline	100-01-6	0.028	28
Nitrobenzene	98-95-3	0.068	14
5-Nitro-o-toluidine	99-55-8	0.32	28
o-Nitrophenol	88-75-5	0.028	13
p-Nitrophenol	100-02-7	0.12	29
N-Nitrosodiethylamine	55-18-5	0.40	28
N-Nitrosodimethylamine	62-75-9	0.40	2.3
N-Nitroso-di-n-butylamine	924-16-3	0.40	17
N-Nitrosomethylethylamine	10595-95-6	0.40	2.3
N-Nitrosomorpholine	59-89-2	0.40	2.3
N-Nitropiperidine	100-75-4	0.013	35
N-Nitrosopyrrolidine	930-55-2	0.013	35
1,2,3,4,6,7,8,9-Octachlorodibenz o-p-dioxin (OCDD)	3268-87-9	0.000063	0.005
1,2,3,4,6,7,8,9-Octachlorodibenz ofluran (OCDF)	39001-02-0	0.000063	0.005
Oxamyl \6\	23135-22-0	0.056	0.28
Parathion	56-38-2	0.014	4.6
Total PCBs (sum of all PCB isomers, or all Aroclors)\8\	1336-36-3	0.10	10
Pebulate \6\	1114-71-2	0.042	1.4
Pentachlorobenzene	608-93-5	0.055	10
PeCDDs (All Pentachlorodibenzo-p-dioxins)	NA	0.000063	0.001
PeCDFs (All Pentachlorodibenzofurans)	NA	0.000035	0.001
Pentachloroethane	76-01-7	0.055	6.0
Pentachloronitrobenzene	82-68-8	0.055	4.8

enzene			
Pentachlorophenol	87-86-5	0.089	7.4
Phenacetin	62-44-2	0.081	16
Phenanthrene	85-01-8	0.059	5.6
Phenol	108-95-2	0.039	6.2
1,3-Phenylenediamine	108-45-2	0.010	0.66
Phorate	298-02-2	0.021	4.6
Phthalic acid	100-21-0	0.055	28
Phthalic anhydride	85-44-9	0.055	28
Physostigmine \6\	57-47-6	0.056	1.4
Physostigmine salicylate \6\	57-64-7	0.056	1.4
Promecarb \6\	2631-37-0	0.056	1.4
Pronamide	23950-58-5	0.093	1.5
Propham \6\	122-42-9	0.056	1.4
Propoxur \6\	114-26-1	0.056	1.4
Prosulfocarb \6\	52888-80-9	0.042	1.4
Pyrene	129-00-0	0.067	8.2
Pyridine	110-86-1	0.014	16
Safrole	94-59-7	0.081	22
Silvex/2,4,5-TP	93-72-1	0.72	7.9
1,2,4,5-Tetrachlorobenzene	95-94-3	0.055	14
TCDDs (All Tetrachlorodibenzo-p-dioxins)	NA	0.000063	0.001
TCDFs (All Tetrachlorodibenzofurans)	NA	0.000063	0.001
1,1,1,2-Tetrachloroethane	630-20-6	0.057	6.0
1,1,2,2-Tetrachloroethane	79-34-5	0.057	6.0
Tetrachloroethylene	127-18-4	0.056	6.0
2,3,4,6-Tetrachlorophenol	58-90-2	0.030	7.4
Thiodicarb \6\	59669-26-0	0.019	1.4
Thiophanate-methyl \6\	23564-05-8	0.056	1.4

Toluene	108-88-3	0.080	10
Toxaphene	8001-35-2	0.0095	2.6
Triallate \6\	2303-17-5	0.042	1.4
Tribromomethane/ Bromofom	75-25-2	0.63	15
1,2,4- Trichlorobenzene	120-82-1	0.055	19
1,1,1- Trichloroethane	71-55-6	0.054	6.0
1,1,2- Trichloroethane	79-00-5	0.054	6.0
Trichloroethylene	79-01-6	0.054	6.0
Trichlorofluorome thane	75-69-4	0.020	30
2,4,5- Trichlorophenol	95-95-4	0.18	7.4
2,4,6- Trichlorophenol	88-06-2	0.035	7.4
2,4,5- Trichlorophenoxy acetic acid/ 2,4,5-T	93-76-5	0.72	7.9
1,2,3- Trichloropropane	96-18-4	0.85	30
1,1,2-Trichloro- 1,2,2- trifluoroethane	76-13-1	0.057	30
Triethylamine \6\	121-44-8	0.081	1.5
tris-(2,3- Dibromopropyl) phosphate	126-72-7	0.11	0.10
Vernolate \6\	1929-77-7	0.042	1.4
Vinyl chloride	75-01-4	0.27	6.0
Xylenes-mixed isomers (sum of o-, m-, and p- xylene concentrations)	1330-20-7	0.32	30
Inorganic Constituents			
Antimony	7440-36-0	1.9	1.15 mg/l TCLP
Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
Barium	7440-39-3	1.2	21 mg/l TCLP
Beryllium	7440-41-7	0.82	1.22 mg/l TCLP
Cadmium	7440-43-9	0.69	0.11 mg/l TCLP
Chromium (Total)	7440-47-3	2.77	0.60 mg/l TCLP
Cyanides (Total) \4\	57-12-5	1.2	590

Cyanides (Amenable) \4\	57-12-5	0.86	30
Fluoride \5\	16984-48-8	35	NA
Lead	7439-92-1	0.69	0.75 mg/l TCLP
Mercury_Nonwastew ater from Retort	7439-97-6	NA	0.20 mg/l TCLP
Mercury_All Others	7439-97-6	0.15	0.025 mg/l TCLP
Nickel	7440-02-0	3.98	11 mg/l TCLP
Selenium \7\	7782-49-2	0.82	5.7 mg/l TCLP
Silver	7440-22-4	0.43	0.14 mg/l TCLP
Sulfide \5\	18496-25-8	14	NA
Thallium	7440-28-0	1.4	0.20 mg/l TCLP
Vanadium \5\	7440-62-2	4.3	1.6 mg/l TCLP
Zinc \5\	7440-66-6	2.61	4.3 mg/l TCLP

\* \* \* \* \*

FOOTNOTES TO TABLE UTS

1 CAS means Chemical Abstract Services When the waste code and/or regulated constituents are described as a combination of a chemical with its salts and/or esters, the CAS number is given for the parent compound only .

2 Concentration standards for wastewaters are expressed in mg/l and are based on analysis of composite samples.

3 Except for Metals (EP or TCLP) and Cyanides (Total and Amenable) the nonwastewater treatment standards expressed as a concentration were established, in part, based upon incineration in units operated in accordance with the technical requirements of Section 264, subsection O or Section 265, subsection O, or based upon combustion in fuel substitution units operating in accordance with applicable technical requirements A facility may comply with these treatment standards according to provisions in § 26840(d) All concentration standards for nonwastewaters are based on analysis of grab samples.

4 Both Cyanides (Total) and Cyanides (Amenable) for nonwastewaters are to be analyzed

using Method 9010C or 9012B, found in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in § 26011, with a sample size of 10 grams and a distillation time of one hour and 15 minutes.

5 These constituents are not "underlying hazardous constituents" in characteristic wastes, according to the definition at §2682(i).

6 Between August 26, 1998 and March 4, 1999, these constituents are not "underlying hazardous constituents" as defined in § 2682(i) of this section)

7 This constituent is not an underlying hazardous constituent as defined at § 2682(i) of ~~this Section~~ this Section because its UTS level is greater than its TC level, thus a treated selenium waste would always be characteristically hazardous, unless it is treated to below its characteristic level 8 mg/L, TCLP

9 This standard is temporarily deferred for soil exhibiting a hazardous characteristic due to D004-D011 only.

\* \* \* \* \*

182. In **Section 268.49**, amend paragraph (d) by revising "fluoride" to read "fluoride".

**§ 268.49 Alternative LDR treatment standards for contaminated soil \* \* \***

\* \* \* \* \*

(d) Constituents subject to treatment. When applying



the soil treatment standards in paragraph (c) of this section, constituents subject to treatment are any constituents listed in §268.48 Table UTS-Universal Treatment Standards that are reasonably expected to be present in any given volume of contaminated soil, except ~~fluoride~~ fluoride, selenium, sulfides, vanadium, zinc, and that are present at concentrations greater than ten times the universal treatment standard. PCBs are not a constituent subject to treatment in any given volume of soil which exhibits the toxicity characteristic solely because of the presence of metals.

\*\*\*\*\*

183. Amend **Section 268.50** as follows:

a. In paragraph (c), revise “A owner/operator” to read “An owner/operator”;

b. In paragraph (g), revise “requirements in this do not” to read “requirements in this section do not”.

**§ 268.50 Prohibitions on storage of restricted wastes**

\*\*\*\*\*

(c) ~~A owner/operator~~ An owner/operator of a treatment, storage or disposal facility may store such wastes beyond one year; however, the owner/operator bears the burden of proving that such storage was solely for the purpose of accumulation of such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment, or disposal.

\*\*\*\*\*

(g) The prohibition and ~~requirements in this do not~~ requirements in this section do not apply to hazardous remediation wastes stored in a staging pile approved pursuant to § 264.554 of this regulation.

\*\*\*\*\*

184. Amend **Section 268, Appendix VIII**, by removing the second instances of the entries for “K011” “Nonwastewater” and for “K011” “Wastewater”.

**Appendix VIII to Section 268 — LDR Effective Dates of Injected Prohibited Hazardous Wastes**

\*\*\*\*\*

K011 Nonwastewater June 8, 1991

K011 Wastewater May 8, 1992

~~K011 Nonwastewater June 8, 1991~~

~~K011 Wastewater May 8, 1992~~

\*\*\*\*\*

**Section 270— ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM**

**Subsection A—General Information**

185. Amend **Section 270.1** as follows:

a. Amend by adding sentences after the second sentence of paragraph (b) introductory text, and by adding paragraphs (b)(1) and (2) to read as follows:

b. In paragraph (c)(1)(iii), revise “it they” to read “if they?”;

c. In paragraph (c)(3)(i) introductory text, revise “obtain an RCRA” to read “obtain a RCRA”.

**§ 270.1 Purpose and scope of these regulations. \***

\*\*\*\*\*

(b) Overview of the HWM Permit Program. Not later than 90 days after the promulgation or revision of regulations in Section 261 of this regulation (identifying and listing hazardous wastes) generators and transporters of hazardous waste, and owners or operators of hazardous waste treatment, storage, or disposal facilities may be required to file a notification of that activity under RCRA section 3010.

Treatment, storage, and disposal facilities (TSDs) that are otherwise subject to permitting under RCRA and that meet the criteria in paragraph (b)(1), or paragraph (b)(2) of this section, may be eligible for a standardized permit under subsection J of this section. Six months after the initial promulgation of the Section 261 regulations, treatment, storage, or disposal of hazardous waste by any person who has not applied for or received an HWM permit is prohibited. An HWM permit application consists of two parts, *Part A* (see § 270.13) and *Part B* (see § 270.14 and applicable sections in §§ 270.15 through 270.29). For “existing HWM facilities,” the requirement to submit an application is satisfied by submitting only Part A of the permit application until the date the Director sets for submitting Part B of the application. (Part A consists of Forms 1 and 3 of the Consolidated Permit Application Forms.) Timely submission of both notification under section 3010 and Part A qualifies owners and operators of existing HWM facilities (who are required to have a permit) for interim status under the Arkansas Hazardous Waste Management Act (A.C.A. §§ 8-7-201 *et seq.*) Facility owners and operators with interim status are treated as having been issued a permit until EPA or a State with either interim authorization for Phase II or final authorization under 40 CFR part 271 makes a final determination on the permit application. Facility owners and operators with interim status must comply with interim status standards set forth at 40 CFR part 265 and 266 or with the analogous provisions at Sections 265 and 266 of this Regulation. Facility owners and operators with interim status are not relieved from complying with other State requirements. For existing HWM facilities, the Director shall set a date, giving at least six months notice, for submission of Part B of the application. There is no form for Part B of the application; rather, Part B must be submitted in narrative form and contain the information set forth in the applicable sections of §§

270.14 through 270.29. Owners or operators of new HWM facilities must submit parts A and B of the permit application at least 180 days before physical construction is expected to commence.

**(1) The facility generates hazardous waste and then non-thermally treats or stores hazardous waste on-site in tanks, containers, or containment buildings; or**

**(2) The facility receives hazardous waste generated off-site by a generator under the same ownership as the receiving facility, and then stores or non-thermally treats the hazardous waste in containers, tanks, or containment buildings.**

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(iii) Barges or vessels that dispose of hazardous waste by ocean disposal and onshore hazardous waste treatment or storage facilities associated with an ocean disposal operation. However, the owner and operator will be deemed to have an HWM permit for ocean disposal from the barge or vessel itself ~~if they~~ **if they** comply with the requirements of § 270.60(a) (permit-by-rule for ocean disposal barges and vessels).

\* \* \* \* \*

(3) Further exclusions. (i) A person is not required to ~~obtain an HWM~~ **obtain a HWM** permit for treatment or containment activities taken during immediate response to any of the following situations:

\* \* \* \* \*

186. **Section 270.2** is amended by adding definitions for “Permit” and “Standardized permit” in alphabetical order to read as follows:

**§ 270.2 Definitions.**

\* \* \* \* \*

**“Permit” means an authorization, license, or equivalent control document issued by EPA or an approved State to implement the requirements of this Section and 40 CFR Parts 271 and 124. Permit includes permit by rule (§ 270.60), emergency permit (§ 270.61) and standardized permit (subsection J of this section). Permit does not include RCRA interim status (subsection G of this section), or any permit which has not been the subject of final agency action, such as a draft permit or a proposed permit.**

\* \* \* \* \*

**“Standardized permit” means a RCRA permit issued under 40 CFR Part 124, subsection G, Regulation No. 8, and Subsection J of this Section authorizing the facility owner or operator to manage hazardous waste. The stan-**

**darized permit may have two parts: A uniform portion issued in all cases and a supplemental portion issued at the Director’s discretion.**

\* \* \* \* \*

187. **Section 270.6** is revised to read as follows:

**§ 270.6 References.**

(a) When used in Section 270 of this Regulation, the following publications are incorporated by reference. ~~(See 40 CFR 260.11 References) “Test Methods for Evaluating Solid Waste, Physical/Chemical Methods”, EPA Publication SW-846 [Second Edition, 1982 as amended by Update I (April, 1984), and Update II (April, 1985)]. The second edition of SW-846 and Updates I, II and III are available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, (703) 487-4600, as document no. PB 87-120-291. The cost is \$48.95 for paper and \$13.50 for microfiche. ~~These incorporations by reference were approved by the Director of the Federal Register pursuant to 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of approval and a notice of any change in these materials will be published in the Federal Register. Copies may be inspected at the Library, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., (3403T), Washington, DC 20460, libraryhq@epa.gov; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal register/code of federal regulations/ibr locations.html.~~~~

~~(b) The references listed in paragraph (a) of this section are also available for inspection at the Office of the Federal Register, 26400 L Street, NW., Washington, DC 20408. These incorporations by reference were approved by the Director of the Federal Register. These materials are incorporated as they exist on the date of approval and a notice of any change in these materials will be published in the Federal Register. The following materials are available for purchase from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703) 605-6000 or (800) 553-6847; or for purchase from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512-1800:~~

~~(1) “APTI Course 415: Control of Gaseous Emissions,” EPA Publication EPA-450/2-81-005, December 1981, IBR approved for §§ 270.24 and 270.25.~~

~~(2) [Reserved].~~

**Subsection B—Permit Application**

188. Amend **Section 270.10** as follows:

- a. Amend by revising paragraphs (a) and (h) and adding new paragraph (l) to read as follows:
- b. Amend paragraph (j) by revising “stores, treats, or dispose of” to read “stores, treats, or disposes”.
- c. Amend by revising paragraph (l) to read as follows:

**§ 270.10 General application requirements.**

~~(a) Permit application. Any person who is required to have a permit (including new applicants and permittees with expiring permits) shall complete, sign, and submit an application to the Director as described in this section and §§ 270.70 through 270.73. Persons currently authorized with interim status shall apply for permits when required by the Director. Persons covered by HWM permits by rule (§ 270.60), need not apply. Procedures for applications, issuance and administration of emergency permits are found exclusively in § 270.61. Procedures for application, issuance and administration of research, development, and demonstration permits are found exclusively in § 270.65. Applying for a permit. Below is information on how to obtain a permit and where to find requirements for specific permits:~~

(1) If you are covered by RCRA permits by rule (§ 270.60), you need not apply.

(2) If you currently have interim status, you must apply for permits when required by the Director.

(3) If you are required to have a permit (including new applicants and permittees with expiring permits), you must complete, sign, and submit an application to the Director, as described in this section and §§ 270.70 through 270.73.

(4) If you are seeking an emergency permit, the procedures for application, issuance, and administration are found exclusively in § 270.61.

(5) If you are seeking a research, development, and demonstration permit, the procedures for application, issuance, and administration are found exclusively in § 270.65.

(6) If you are seeking a standardized permit, the procedures for application and issuance are found in 40 CFR Part 124, subsection G, Regulation No. 8, and and Subsection J of this Section.

\*\*\*\*\*

~~(h) Reapplications. Any HWM facility with an effective permit shall submit a new application at least 180 days before the expiration date of the effective permit, unless permission for a later date has been granted by the Director. (The Director shall not grant permission for applications to be submitted later than the expiration date of the existing permit.) Reapplying for a permit. If you have an effective permit and you want to reapply for a new one, you have two options:~~

(1) You may submit a new application at least

180 days before the expiration date of the effective permit, unless the Director allows a later date; or

(2) If you intend to be covered by a standardized permit, you may submit a Notice of Intent as described in § 270.51(e)(1) at least 180 days before the expiration date of the effective permit, unless the Director allows a later date. The Director may not allow you to submit applications or Notices of Intent later than the expiration date of the existing permit, except as allowed by § 270.51(e)(2).

\*\*\*\*\*

(j) Exposure information. (1) After August 8, 1985, any Part B permit application submitted by an owner or operator of a facility that ~~stores, treats, or dispose of~~ stores, treats, or disposes hazardous waste in a surface impoundment or a landfill must be accompanied by information, reasonably ascertainable by the owner or operator, on the potential for the public to be exposed to hazardous wastes or hazardous constituents through releases related to the unit. At a minimum, such information must address:

\*\*\*\*\*

(1) If the Director concludes, based on one or more of the factors listed in paragraph (l)(1) of this section that compliance with the standards of 40 CFR part 63, subpart EEE alone may not be protective of human health or the environment, the Director shall require the additional information or assessment(s) necessary to determine whether additional controls are necessary to ensure protection of human health and the environment. This includes information necessary to evaluate the potential risk to human health and/or the environment resulting from both direct and indirect exposure pathways. The Director may also require a permittee or applicant to provide information necessary to determine whether such an assessment(s) should be required.

(1) The Director shall base the evaluation of whether compliance with the standards of 40 CFR part 63, subpart EEE alone is protective of human health or the environment on factors relevant to the potential risk from a hazardous waste combustion unit, including, as appropriate, any of the following factors:

(i) Particular site-specific considerations such as proximity to receptors (such as schools, hospitals, nursing homes, day care centers, parks, community activity centers, or other potentially sensitive receptors), unique dispersion patterns, etc.;

(ii) Identities and quantities of emissions of persistent, bioaccumulative or toxic pollutants considering enforceable controls in place to limit those pollutants;

(iii) Identities and quantities of nondioxin products of incomplete combustion most likely to be emitted and to pose significant

risk based on known toxicities (confirmation of which should be made through emissions testing);

(iv) Identities and quantities of other off-site sources of pollutants in proximity of the facility that significantly influence interpretation of a facility-specific risk assessment;

(v) Presence of significant ecological considerations, such as the proximity of a particularly sensitive ecological area;

(vi) Volume and types of wastes, for example wastes containing highly toxic constituents;

(vii) Other on-site sources of hazardous air pollutants that significantly influence interpretation of the risk posed by the operation of the source in question;

(viii) Adequacy of any previously conducted risk assessment, given any subsequent changes in conditions likely to affect risk; and

(ix) Such other factors as may be appropriate.

**(2) [Reserved]**

\*\*\*\*\*

189. Amend **Section 270.11** as follows:

a. In paragraph (d)(1), revise “paragraph (a) or (b) of this must” to read “paragraph (a) or (b) of this section must”;

b. In paragraph (d)(2), certification statement, revise “upon information and belief” to read “to the best of my knowledge and belief”.

**§ 270.11 Signatories to permit applications and reports.**

\*\*\*\*\*

(d)(1) Any person signing a document under ~~paragraph (a) or (b) of this must~~ paragraph (a) or (b) of this section must make the following certification:

\*\*\*\*\*

(d) \*\*\*

(2) For remedial action plans (RAPs) under subsection H of this section, if the operator certifies according to paragraph (d)(1) of this section, then the owner may choose to make the following certification instead of the certification in paragraph (d)(1) of this section:

Based on my knowledge of the conditions of the property described in the RAP and my inquiry of the person or persons who manage the system referenced in the operator’s certification, or those persons directly responsible for gathering the information, the information submitted is, ~~upon information and belief~~ to the best of my knowledge and

belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

\*\*\*\*\*

190. Amend **Section 270.14** as follows:

a. Paragraph (a) is amended to read as follows:

b. In paragraph (b)(11)(ii)(B), revise “with 200 feet” to read “within 200 feet”;

**§ 270.14 Contents of part B: General requirements.**

(a) Part B of the permit application consists of the general information requirements of this section, and the specific information requirements in §§ 270.14 through 270.29 applicable to the facility. The Part B information requirements presented in §§ 270.14 through 270.29 reflect the standards promulgated in Section 264 of this Regulation. These information requirements are necessary in order for ADEQ to determine compliance with the Section 264 standards. If owners and operators of HWM facilities can demonstrate that the information prescribed in part B can not be provided to the extent required, the Director may make allowance for submission of such information on a case-by-case basis. Information required in part B shall be submitted to the Director and signed in accordance with the requirements in § 270.11. Certain technical data, such as design drawings and specification, and engineering studies shall be certified by an independent qualified Arkansas-registered Professional Engineer. For post-closure permits, only the information specified in § 270.28 is required in part B of the permit application.

\*\*\*\*\*

(b) \*\*\*

(11) \*\*\*

(ii) \*\*\*

(B) If faults (to include lineations) which have had displacement in Holocene time are present within 3,000 feet of a facility, no faults pass ~~with 200 feet~~ within 200 feet of the portions of the facility where treatment, storage, or disposal of hazardous waste will be conducted, based on data from a comprehensive geologic analysis of the site. Unless a site analysis is otherwise conclusive concerning the absence of faults within 200 feet of such portions of the facility data shall be obtained from a subsurface exploration (trenching) of the area within a distance no less than 200 feet from portions of the facility where treatment, storage, or disposal of hazardous waste will be conducted. Such trenching shall be performed in a direction that is



perpendicular to known faults (which have had displacement in Holocene time) passing within 3,000 feet of the portions of the facility where treatment, storage, or disposal of hazardous waste will be conducted. Such investigation shall document with supporting maps and other analyses, the location of faults found.

\*\*\*\*\*

191. Section 270.16 is amended by revising paragraph (a) to read as follows:

**§ 270.16 Specific part B information requirements for tank systems.**

\*\*\*\*\*

(a) A written assessment that is reviewed and certified by an independent qualified Arkansas-registered Professional Engineer as to the structural integrity and suitability for handling hazardous waste of each tank system, as required under §§ 264.191 and 264.192 of this regulation;

\*\*\*\*\*

192. In Section 270.17, amend paragraph (f) by revising “detailed-plans” to read “detailed plans”.

**§ 270.17 Specific Part B information requirements for surface impoundments.** \*\*\*

\*\*\*\*\*

(f) A description of how hazardous waste residues and contaminated materials will be removed from the unit at closure, as required under § 264.228(a)(1). For any wastes not to be removed from the unit upon closure, the owner or operator must submit ~~detailed-plans~~ **detailed plans** and an engineering report describing how § 264.228(a)(2) and (b) will be complied with. This information should be included in the closure plan and, where applicable, the post-closure plan submitted under § 270.14(b)(13);

\*\*\*\*\*

193. In Section 270.18, amend paragraph (b) by revising the citation “§ 264.90(2)” to read “§ 264.90(b)(2)”; and amend paragraph (g) by revising “place” to read “placed”.

**§ 270.18 Specific Part B information requirements for waste piles**

\*\*\*\*\*

(b) If an exemption is sought to § 264.251 and Subsection F of Section 264 as provided by § 264.250(c) or ~~§ 264.90(2)~~ **§ 264.90(b)(2)**, an explanation of how the standards of § 264.250(c) will be complied with or detailed plans and an engineering report describing how the requirements

of § 264.90(b)(2) will be met.

\*\*\*\*\*

(g) If incompatible wastes, or incompatible wastes and materials will be ~~place~~ **placed** in a waste pile, an explanation of how § 264.257 will be complied with;

\*\*\*\*\*

194. Section 270.19 is amended by revising paragraph (e) to read as follows:

**§ 270.19 Specific part B information requirements for incinerators.**

\*\*\*\*\*

(e) When an owner or operator **of a hazardous waste incineration unit becomes subject to RCRA permit requirements after October 12, 2005, or when** an owner or operator **of an existing hazardous waste incineration unit** demonstrates compliance with the air emission standards and limitations in part 63, subpart EEE, (*i.e.*, by conducting a comprehensive performance test and submitting a Notification of Compliance **under 40 CFR 63.1207(j) and 63.1210(d)** documenting compliance with all applicable requirements of part 63, subpart EEE, ), the requirements of this section do not apply, except those provisions the Director determines are necessary to ensure compliance with §§ 264.345(a) and 264.345(c) of this Regulation if you elect to comply with § 270.235(a)(1)(i) to minimize emissions of toxic compounds from startup, shutdown, and malfunction events. Nevertheless, the Director may apply the provisions of this section, on a case-by-case basis, for purposes of information collection in accordance with §§ 270.10(k), **270.10(l)**, 270.32(b)(2), **and 270.32(b)(3)**.

195. In Section 270.20, amend paragraph (i)(2) by revising “attenuative” to read “attenuative”.

**§ 270.20 Specific Part B information requirements for land treatment facilities.**

\*\*\*\*\*

(i) \*\*\*

(2) The ~~attenuative~~ **attenuative** properties of underlying and surrounding soils or other materials;

196. Section 270.22 is amended by revising the introductory text to read as follows:

**§ 270.22 Specific part B information requirements for boilers and industrial furnaces burning hazardous waste.**

When an owner or operator of a cement **kiln**, or lightweight

aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace becomes subject to RCRA permit requirements after October 12, 2005, or when an owner or operator of an existing cement kiln, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace demonstrates compliance with the air emission standards and limitations in 40 CFR Part 63, subpart EEE, (i.e., by conducting a comprehensive performance test and submitting a Notification of Compliance under 40 CFR Part 63.1207(j) and 63.1210(~~b~~)(d) documenting compliance with all applicable requirements of part 63, subpart EEE, ), the requirements of this section do not apply ~~except those provisions the Director determines are necessary to ensure compliance with §§ 266.102(e)(1) and 266.102(e)(2)(iii) of this regulation if you elect to comply with § 270.235(a)(1)(i) to minimize emissions of toxic compounds from startup, shutdown, and malfunction events. Nevertheless, the Director may apply the provisions of this section, on a case-by-case basis, for purposes of information collection in accordance with §§ 270.10(k) and 270.32(b)(2): . The requirements of this section do apply, however, if the Director determines certain provisions are necessary to ensure compliance with §§ 266.102(e)(1) and 266.102(e)(2)(iii) of this Regulation if you elect to comply with § 270.235(a)(1)(i) to minimize emissions of toxic compounds from startup, shutdown, and malfunction events; or if you are an area source and elect to comply with the §§ 266.105, 266.106, and 266.107 standards and associated requirements for particulate matter, hydrogen chloride and chlorine gas, and non-mercury metals; or the Director determines certain provisions apply, on a case-by-case basis, for purposes of information collection in accordance with §§ 270.10(k), 270.10(l), 270.32(b)(2), and 270.32(b)(3).~~

\*\*\*\*\*

197. Section 270.24 is amended by revising paragraph (d)(3) to read as follows:

**§ 270.24 Specific part B information requirements for process vents.**

\*\*\*\*\*

(d) \*\*\*

(3) A design analysis, specifications, drawings, schematics, and piping and instrumentation diagrams based on the appropriate sections of “APTI Course 415: Control of Gaseous Emissions” (incorporated by reference as specified in ~~§ 260.11 § 270.6~~) or other engineering texts acceptable to the Director that present basic control device information. The design analysis shall address the vent stream characteristics and control device operation parameters as specified in § 264.1035(b)(4)(iii).

\*\*\*\*\*

198. Section 270.25 is amended by revising paragraph (e)(3) to read as follows:

**§ 270.25 Specific part B information requirements for equipment.**

\*\*\*\*\*

(e) \*\*\*

(3) A design analysis, specifications, drawings, schematics, and piping and instrumentation diagrams based on the appropriate sections of “APTI Course 415: Control of Gaseous Emissions” (incorporated by reference as specified in ~~§ 260.11 § 270.6~~) or other engineering texts acceptable to the Director that present basic control device information. The design analysis shall address the vent stream characteristics and control device operation parameters as specified in § 264.1035(b)(4)(iii).

\*\*\*\*\*

199. Section 270.26 is amended by revising paragraph (c)(15) to read as follows:

**§ 270.26 Special part B information requirements for drip pads.**

\*\*\*\*\*

(c) \*\* \*

(15) A certification signed by an independent qualified Arkansas-registered Professional Engineer, stating that the drip pad design meets the requirements of paragraphs (a) through(f) § 264.573 of this regulation.

\*\*\*\*\*

**Subsection C—PERMIT CONDITIONS**

200. Section 270.32 is amended by adding paragraph (b)(3) to read as follows:

**§ 270.32 Establishing permit conditions.**

\*\*\*\*\*

(b) \*\*\*

(3) If, as the result of an assessment(s) or other information, the Director determines that conditions are necessary in addition to those required under 40 CFR Part 63, subsection EEE, and Sections 264 or 266 of this Regulation to ensure protection of human health and the environment, he shall include those terms and conditions in a RCRA permit for a hazardous waste combustion unit.

\*\*\*\*\*



201. In Section 270.33, amend paragraph (b) introductory text by revising “An RCRA permit” to read “A RCRA permit”.

§ 270.33 Schedules of compliance.

\*\*\*\*\*

(b) Alternative schedules of compliance. ~~An HWM permit~~ A HWM permit applicant or permittee may cease conducting regulated activities (by receiving a terminal volume of hazardous waste and, for treatment and storage HWM facilities, closing pursuant to applicable requirements; and, for disposal HWM facilities, closing and conducting post-closure care pursuant to applicable requirements) rather than continue to operate and meet permit requirements as follows:

\*\*\*\*\*

Subsection D—Changes to Permits

202. Section 270.40 is amended by revising the first sentence of paragraph (b) to read as follows:

§ 270.40 Transfer of permits.

\*\*\*\*\*

(b) Changes in the ownership or operational control of a facility may be made as a Class 1 modification with prior written approval of the Director in accordance with § 270.42 or as a routine change with prior approval under 40 CFR 124.213. The new owner or operator must submit a revised permit application no later than 90 days prior to the scheduled change. A written agreement containing a specific date for transfer of permit responsibility between the current and new permittees must also be submitted to the Director. When a transfer of ownership or operational control occurs, the old owner or operator shall comply with the requirements of Section 264, Subsection H (Financial Requirements) until the new owner or operator has demonstrated that he or she is complying with the requirements of that Subsection. The new owner or operator must demonstrate compliance with Subsection H requirements *not later than* the date of the change of ownership or operational control of the facility. Upon demonstration to the Director by the new owner or operator of compliance with Subsection H, the Director shall notify the old owner or operator that he or she no longer needs to comply with Subsection H as of the date of demonstration.

203. Amend Section 270.41 as follows:

a. Amend by revising the next to last sentence of the introductory paragraph and adding paragraph (b)(3) to read as follows:

b. Amend paragraph (c) by revising “environmental” to read “environment”.

§ 270.41 Modification or revocation and reissuance of permits.

When the Director receives any information (for example, inspects the facility, receives information submitted by the permittee as required in the permit (see § 270.30), receives a request for revocation and reissuance under 40 CFR 124.5 or conducts a review of the permit file), he or she may determine whether one or more of the causes listed in paragraphs (a) and (b) of this section for modification, or revocation and reissuance or both exist. If cause exists, the Director may modify or revoke and reissue the permit accordingly, subject to the limitations of paragraph (c) of this section, and may request an updated application if necessary. When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision and the permit is reissued for a new term. (See 40 CFR 124.5(c)(2).) If cause does not exist under this section, the Director shall not modify or revoke and reissue the permit, except on request of the permittee. If a permit modification is requested by the permittee, the Director shall approve or deny the request according to the procedures of Section 270.42. If a permit modification is requested by the permittee, the Director shall approve or deny the request according to the procedures of § 270.42, or § 270.320 and 40 CFR part 124, subpart G. Otherwise, a draft permit must be prepared and other procedures in 40 CFR 124 and APC&EC Regulation No. 8 followed.

\*\*\*\*\*

(b) \*\*\*

(3) The Director has received notification under 40 CFR Part 124.202(b) of a facility owner or operator’s intent to be covered by a standardized permit.

\*\*\*\*\*

(c) Facility siting. Suitability of the facility location will not be considered at the time of permit modification or revocation and reissuance unless new information or standards indicate that a threat to human health or the environmental environment exists which was unknown at the time of permit issuance.

\*\*\*\*\*

204. Section 270.42 is amended by:

a. Amend paragraph (d)(2)(i) by revising “do no” to read “do not”.

a. Revising paragraph (j)(1).

b. Redesignating paragraph (j)(2) as (j)(3).

c. Adding new paragraph (j)(2).

d. Adding new paragraphs (k) and (l)

e. Adding a new entry 10 in numerical order and adding new entry O in the table under section L of Appendix I, to read as follows:

§ 270.42 Permit modification at the request of the Permittee. \* \* \*

\* \* \* \* \*

(d) \* \* \*

(2) \* \* \*

(i) Class 1 modifications apply to minor changes that keep the permit current with routine changes to the facility or its operation. These changes ~~do not~~ do not substantially alter the permit conditions or reduce the capacity of the facility to protect human health or the environment. In the case of Class 1 modifications, the Director may require prior approval.

\* \* \* \* \*

(j) Combustion facility changes to meet 40 CFR Part 63 MACT standards. The following procedures apply to hazardous waste combustion facility permit modifications requested under Appendix I of this section, section L(9).

(1) Facility owners or operators must have complied with the Notification of Intent to Comply (NIC) requirements of 40 CFR 63.1210 that were in effect prior to October 11, 2000 (See 40 CFR Part 63 §§ 63.1200–63.1499 Revised as of July 1, 2000) in order to request a permit modification under this section for the purpose of technology changes needed to meet the standards under 40 CFR Part 63.1203, 63.1204, and 63.1205.

~~(2) If the Director does not approve or deny the request within 90 days of receiving it, the request shall be deemed approved. The Director may, at his or her discretion, extend this 90 day deadline one time for up to 30 days by notifying the facility owner or operator.~~ Facility owners or operators must comply with the Notification of Intent to Comply (NIC) requirements of 40 CFR Part 63.1210(b) and 63.1212(a) before a permit modification can be requested under this section for the purpose of technology changes needed to meet the 40 CFR Part 63.1215, 63.1216, 63.1217, 63.1218, 63.1219, 63.1220, and 63.1221 standards promulgated on October 12, 2005.

(k) Waiver of RCRA permit conditions in support of transition to the part 63 MACT standards. (1) You may request to have specific RCRA operating and emissions limits waived by submitting a Class 1 permit modification request under Appendix I of this section, section L(10). You must:

(i) Identify the specific RCRA permit operating and emissions limits which you are requesting to waive;

(ii) Provide an explanation of why the changes are necessary in order to minimize or eliminate conflicts between the RCRA permit and MACT compliance; and

(iii) Discuss how the revised provisions will be sufficiently protective.

(iv) The Director shall approve or deny the request within 30 days of receipt of the request. The Director may, at his or her discretion, extend this 30 day deadline one time for up to 30 days by notifying the facility owner or operator.

(2) To request this modification in conjunction with MACT performance testing where permit limits may only be waived during actual test events and pretesting, as defined under 40 CFR Part 63.1207(h)(2)(i) and (ii), for an aggregate time not to exceed 720 hours of operation (renewable at the discretion of the Director) you must:

(i) Submit your modification request to the Director at the same time you submit your test plans to the EPA Regional Administrator; and

(ii) The Director may elect to approve or deny the request contingent upon approval of the test plans.

(l) Performance Track member facilities. The following procedures apply to Performance Track member facilities that request a permit modification under Appendix I of this section, section O(1).

(1) Performance Track member facilities must have complied with the requirements of § 264.15(b)(5) in order to request a permit modification under this section.

(2) The Performance Track member facility should consider the application approved if the Director does not: deny the application, in writing; or notify the Performance Track member facility, in writing, of an extension to the 60-day deadline within 60 days of receiving the request. In these situations, the Performance Track member facility must adhere to the revised inspection schedule outlined in its application and maintain a copy of the application in the facility's operating record.

\* \* \* \* \*

205. Amend § 270.42 Appendix I as follows:

- a. At item C.4, revise the modification class code (second column) “12” to read “2”;
- b. At item C.6, revise the citation “264.98(j)” to read “264.98(h)”;
- c. At item C.7.a, revise the citation “264.98(h)(4)” to read “264.98(g)(4)”;
- d. At item C.7.b, revise the citation “264.99(k)” to read “264.99(j)”;
- e. At item C.8.a, revise the citation “264.99(i)(2)” to read “264.99(h)(2)”;
- f. At item F.2, amend by replacing the colon after “2” with a period;
- g. At item G.1, amend by replacing the colon after “1”

with a period;

h. At item H.6, revise the modification class code ‘\*1’ to read ‘11’;

i. At item J.7, revise the modification class code ‘\*1’ to read ‘11’;

j. At item L.9, revise ‘Changes Needed to meet Standards’ to read ‘changes needed to meet standards’.

k. Add item L.10 to read as follows:

l. Add permit modification class O, as follows:

Appendix 1 To § 270.42—Classification of Permit Modification

Modifications Class

\*\*\*\*\*

C. Ground-Water Protection

\* \* \* \* \*

4. Changes in point of compliance. +22

\* \* \* \* \*

6. Changes to a detection monitoring program as required by § 264.98(j), unless otherwise specified in this appendix.

7. \* \* \*

a. Addition of compliance monitoring program as required by §§ 264.98(h)(+) 264.98(g)(4) and 264.99.

\* \* \* \* \*

b. Changes to a compliance monitoring program as required by § 264.99(k) 264.99(j), unless otherwise specified in this appendix.

\* \* \* \* \*

8. \* \* \*

a. Addition of a corrective action program as required by §§ 264.99(i)(2) 264.99(h)(2) and 264.100.

\* \* \* \* \*

F. Containers

\* \* \* \* \*

2. \*

\* \* \* \* \*

G. Tanks

1. \*

\* \* \* \* \*

H. Surface Impoundments

\* \* \* \* \*

6. \* \* \* +11

\* \* \* \* \*

J. Landfills and Unenclosed Waste Piles

\* \* \* \* \*

7. \* \* \* +11

\* \* \* \* \*

L. Incinerators, Boilers, and Industrial Furnaces:

\* \* \* \* \*

9. Technology Changes Needed to meet Standards changes needed to meet standards under 40 CFR part 63 (Subpart EEE— National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors), provided the procedures of § 270.42(j) are followed.

\* \* \* \* \*

L. \* \* \*

10. Changes to RCRA permit provisions needed to support transition to 40 CFR part 63 (Subsection EEE—National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors), provided the procedures of § 270.42(k) are followed..... 1<sup>1</sup>

\*\*\*\*\*

O. Burden Reduction

1. Approval of reduced inspection frequency for Performance Track member facilities for:

a. Tanks systems pursuant to § 264.195..... 1<sup>1</sup>

b. Containers pursuant to § 264.174 ..... 1<sup>1</sup>

c. Containment buildings pursuant to § 264.1101(c)(4) ..... 1<sup>1</sup>

d. Areas subject to spills pursuant to § 264.15(b)(4) ..... 1<sup>1</sup>

Development of one contingency plan based on Integrated Contingency Plan Guidance pursuant to § 264.52(b) ..... 1

Changes to recordkeeping and reporting requirements pursuant to: §§ 264.56(i), 264.343(a)(2), 264.1061(b)(1),(d), 264.1062(a)(2), 264.196(f), 264.100(g), and 264.113(e)(5) ..... 1

Changes to inspection frequency for tank systems pursuant to § 264.195(b) ..... 1

Changes to detection and compliance monitoring program pursuant to §§ 264.98(d), (g)(2), and (g)(3), 264.99(f), and (g) ..... 1

<sup>1</sup> Class 1 modifications requiring prior Agency approval.

Subsection E—Expiration and Continuation of Permits

206. Section 270.51 is amended by adding paragraph (e) to read as follows:

§ 270.51 Continuation of expiring permits.

\* \* \* \* \*

(e) Standardized permits.

(1) The conditions of your expired standardized permit continue until the effective date of your new permit (see 40 CFR 124.15) if all of the following are true:

(i) If EPA is the permit-issuing authority.

(ii) If you submit a timely and complete Notice of Intent under 40 CFR 124.202(b) requesting coverage under a RCRA standardized permit; and

(iii) If the Director, through no fault on your part, does not issue your permit before your previous permit expires (for example, where it is impractical to make the permit effective by that date because of time or resource constraints).

(2) In some cases, the Director may notify you that you are not eligible for a standardized permit (see 40 CFR 124.206). In those cases, the conditions of your expired permit will continue if you submit the information specified in paragraph (a)(1) of this section (that is, a complete application for a new permit) within 60 days after you receive our notification that you are not eligible for a standardized permit.

Subsection F—Special Forms of Permits

207. Section 270.62 is amended by revising the introductory text to read as follows:

**§ 270.62 Hazardous waste incinerator permits.**

When an owner or operator of a hazardous waste incineration unit becomes subject to RCRA permit requirements after October 12, 2005, or when an owner or operator of an existing hazardous waste incineration unit demonstrates compliance with the air emission standards and limitations in 40 CFR Part 63, subpart EEE, (*i.e.*, by conducting a comprehensive performance test and submitting a Notification of Compliance under 40 CFR Part 63.1207(j) and 63.1210~~(b)~~(d) documenting compliance with all applicable requirements of 40 CFR Part 63, subpart EEE, ), the requirements of this section do not apply, except those provisions the Director determines are necessary to ensure compliance with Sections 264.345(a) and 264.345(c) of this Regulation if you elect to comply with § 270.235(a)(1)(i) to minimize emissions of toxic compounds from startup, shutdown, and malfunction events. Nevertheless, the Director may apply the provisions of this section, on a case-by-case basis, for purposes of information collection in accordance with §§ 270.10(k), 270.10(l), 270.32(b)(2), and 270.32(b)(3) of this Regulation.

\* \* \* \* \*

208. Section 270.66 is amended by revising the introductory text to read as follows:

**§ 270.66 Permits for boilers and industrial furnaces burning hazardous waste.**

When an owner or operator of a cement ~~kiln, or~~ lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace becomes subject to RCRA permit requirements after October 12, 2005 or when an owner or operator of an existing cement kiln, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace demonstrates compliance with the air emission standards and limitations in 40 CFR Part 63, subpart EEE, (*i.e.*, by conducting a comprehensive performance test and submitting a Notification of Compliance under 40 CFR Part 63.1207(j) and 63.1210~~(b)~~(d) documenting compliance with all applicable requirements of 40 CFR Part 63, subpart EEE, ), the requirements of this section do not apply. ~~except those provisions the Director determines are necessary to ensure compliance with §§ 266.102(e)(1) and 266.102(e)(2)(iii) of this regulation if you elect to comply with § 270.235(a)(1)(i) to minimize emissions of toxic compounds from startup, shutdown, and malfunction events. Nevertheless, the Director may apply the provisions of this section, on a case-by-case basis, for purposes of information collection in accordance with §§ 270.10(k) and 270.32(b)(2). The requirements of this section do apply, however, if the Director determines certain provisions are necessary to ensure compliance with §§ 266.102(e)(1) and 266.102(e)(2)(iii) of this Regulation if you elect to comply with § 270.235(a)(1)(i) to~~

minimize emissions of toxic compounds from startup, shutdown, and malfunction events; or if you are an area source and elect to comply with the §§ 266.105, 266.106, and 266.107 standards and associated requirements for particulate matter, hydrogen chloride and chlorine gas, and non-mercury metals; or the Director determines certain provisions apply, on a case-by-case basis, for purposes of information collection in accordance with §§ 270.10(k), 270.10(l), 270.32(b)(2), and 270.32(b)(3) of this Regulation.

\* \* \* \* \*

209. Section 270.67 is added to subsection F to read as follows:

**§ 270.67 RCRA standardized permits for storage and treatment units.**

RCRA standardized permits are special forms of permits for TSD owners or operators that:

(a) Generate hazardous waste and then non-thermally treat or store the hazardous waste on-site in tanks, containers, or containment buildings; or

(b) Receive hazardous waste generated off-site by a generator under the same ownership as the receiving facility, and then store or non-thermally treat the hazardous waste in containers, tanks, or containment buildings. Standardized permit facility owners or operators are regulated under Subsection J of this Section, 40 CFR Part 124 Subsection G, Regulation No. 8, and Section 267 of this Regulation.

\* \* \* \* \*

210. Section 270.235 is amended by:

a. Revising the section heading and paragraphs (a)(1) introductory text and (a)(2) introductory text.

b. Revising paragraphs (b)(1) introductory text and (b)(2).

c. Adding new paragraph (c). The revisions read as follows:

**§ 270.235 Options for incinerators, cement kilns, lightweight aggregate kilns, solid fuel boilers, liquid fuel boilers and hydrochloric acid production furnaces to minimize emissions from startup, shutdown, and malfunction events.**

(a) \* \* \*

(1) *Revisions to permit conditions after documenting compliance with MACT.* The owner or operator of a RCRA-permitted incinerator, cement kiln, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace may request that the Director address permit conditions that minimize emissions from startup, shutdown, and malfunction events under



any of the following options when requesting removal of permit conditions that are no longer applicable according to §§ 264.340(b) and 266.100(b) of this Regulation:

\* \* \* \* \*

(2) *Addressing permit condition upon permit reissuance.* The owner or operator of an incinerator, cement kiln, lightweight aggregate kiln, **solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace** that has conducted a comprehensive performance test and submitted to the Director a Notification of Compliance documenting compliance with the standards of 40 CFR Part 63, subpart EEE, may request in the application to re-issue the permit for the combustion unit that the Director control emissions from startup, under any of the following options:

\* \* \* \* \*

(b) \* \* \*

(1) *Interim status operations.* In compliance with §§ 265.340 and 266.100(b) of this Regulation, the owner or operator of an incinerator, cement kiln, lightweight aggregate kiln, **solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace** that is operating under the interim status standards of Section 265 or 266 of this Regulation may control emissions of toxic compounds during startup, shutdown, and malfunction events under either of the following options after conducting a comprehensive performance test and submitting to the Director a Notification of Compliance documenting compliance with the standards of 40 CFR Part 63, subpart EEE, .

\* \* \* \* \*

(2) *Operations under a subsequent RCRA permit.* When an owner or operator of an incinerator, cement kiln, lightweight aggregate kiln, **solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace** that is operating under the interim status standards of Sections 265 or 266 of this Regulation submits a RCRA permit application, the owner or operator may request that the Director control emissions from startup, shutdown, and malfunction events under any of the options provided by paragraphs (a)(2)(i), (a)(2)(ii), or (a)(2)(iii) of this subsection.

**(c) New units. Hazardous waste incinerator, cement kiln, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace units that become subject to RCRA permit requirements after October 12, 2005 must control emissions of toxic compounds during startup, shutdown, and malfunction events under either of the following options:**

**(1) Comply with the requirements specified in 40 CFR Part 63.1206(c)(2) ; or**

**(2) Request to include in the RCRA permit, conditions that ensure emissions of toxic com-**

**pounds are minimized from startup, shutdown, and malfunction events, including releases from emergency safety vents, based on review of information including the source’s startup, shutdown, and malfunction plan and design. The director will specify that these permit conditions apply only when the facility is operating under its startup, shutdown, and malfunction plan.**

\* \* \* \* \*

211. **Subsection J** is added to **Section 270** to read as follows:

**Subsection J—RCRA Standardized Permits for Storage and Treatment Units**

**General Information About Standardized Permits**

- 270.250 What is a RCRA standardized permit?**
- 270.255 Who is eligible for a standardized permit?**
- 270.260 What requirements of Section 270 apply to a standardized permit?**

**Applying for a Standardized Permit**

- 270.270 How do I apply for a standardized permit?**
- 270.275 What information must I submit to the permitting agency to support my standardized permit application?**
- 270.280 What are the certification requirements?**

**Information That Must Be Kept at Your Facility**

- 270.290 What general types of information must I keep at my facility?**
- 270.300 What container information must I keep at my facility?**
- 270.305 What tank information must I keep at my facility?**
- 270.310 What equipment information must I keep at my facility?**
- 270.315 What air emissions control information must I keep at my facility?**

**Modifying a Standardized Permit**

- 270.320 How do I modify my RCRA standardized permit?**

**Subsection J—RCRA Standardized Permits for Storage and Treatment Units**

**General Information About Standardized Permits**

**§ 270.250 What is a RCRA standardized permit?**

**A RCRA standardized permit (RCRA) is a special type of permit that authorizes you to manage hazardous waste. It is issued under 40 CFR part 124, subsection G, Regulation No. 8, and Subsection J of this Section.**

**§ 270.255 Who is eligible for a standardized permit?**

- (a) You may be eligible for a standardized permit if:**
  - (1) You generate hazardous waste and then store or non-thermally treat the hazardous waste**

on-site in containers, tanks, or containment buildings; or

(2) You receive hazardous waste generated off-site by a generator under the same ownership as the receiving facility, and then store or non-thermally treat the hazardous waste in containers, tanks, or containment buildings.

(3) We will inform you of your eligibility when we make a decision on your permit application.

(b) [Reserved]

**§ 270.260 What requirements of Section 270 apply to a standardized permit?**

The following subsections of this Section 270 apply to a standardized permit:

(a) Subsection A—General Information: All sections.

(b) Subsection B—Permit Application: §§ 270.10, 270.11, 270.12, 270.13 and 270.29.

(c) Subsection C—Permit Conditions: All sections.

(d) Subsection D—Changes to Permit: §§ 270.40, 270.41, and 270.43.

(e) Subsection E—Expiration and Continuation of Permits: All sections.

(f) Subsection F—Special Forms of Permits: § 270.67.

(g) Subsection G—Interim Status: All sections.

(h) Subsection H—Remedial Action Plans: Does not apply.

(i) Subsection J—Standardized Permits: All sections.

**Applying for a Standardized Permit**

**§ 270.270 How do I apply for a standardized permit?**

You apply for a standardized permit by following the procedures in 40 CFR Part 124, subsection G, Regulation No. 8, and this Subsection.

**§ 270.275 What information must I submit to the permitting agency to support my standardized permit application?**

The information in paragraphs (a) through (j) of this section will be the basis of your standardized permit application. You must submit it to the Director when you submit your Notice of Intent under 40 CFR 124.202(b) requesting coverage under a RCRA standardized permit:

(a) The Part A information described in § 270.13.

(b) A meeting summary and other materials required by 40 CFR 124.31.

(c) Documentation of compliance with the location standards of Section 267.18 and § 270.14(b)(11) of this Regulation.

(d) Information that allows the Director to carry out our obligations under other Federal laws required in § 270.3.

(e) Solid waste management unit information required by § 270.14(d).

(f) A certification meeting the requirements of § 270.280, and an audit of the facility's compliance status with Section 267 as required by § 270.280.

(g) A closure plan prepared in accordance with Section 267, Subsection G.

(h) The most recent closure cost estimate for your facility prepared under § 267.142 and a copy of the documentation required to demonstrate financial assurance under § 267.143. For a new facility, you may gather the required documentation 60 days before the initial receipt of hazardous wastes.

(i) If you manage wastes generated offsite, the waste analysis plan.

(j) If you manage waste generated from off-site, documentation showing that the waste generator and the off-site facility are under the same ownership.

**§ 270.280 What are the certification requirements?**

You must submit a signed certification based on your audit of your facility's compliance with Section 267.

(a) Your certification must read: I certify under penalty of law that:

(1) I have personally examined and am familiar with the report containing the results of an audit conducted of my facility's compliance status with APC&EC Regulation No. 23, Section 267, which supports this certification. Based on my inquiry of those individuals immediately responsible for conducting the audit and preparing the report, I believe that my (include paragraph (a)(1)(i) and (ii) this section, whichever applies):

(i) My existing facility complies with all applicable requirements of APC&EC Regulation No. 23, Section 267 and will continue to comply until the expiration of the permit; or

(ii) My facility has been designed, and will be constructed and operated to comply with all applicable requirements of Regulation No. 23, Section 267, and will continue to comply until expiration of the permit.

(2) I will make all information that I am required to maintain at my facility by §§ 270.290 through 277.315 readily available for review by the permitting agency and the public; and,

(3) I will continue to make all information required by §§ 270.290 through 277.315 available until the permit expires. I am aware that there are significant penalties for submitting false in-



formation, including the possibility of fine and imprisonment for knowing violation.

(b) You must sign this certification following the requirements of § 270.11(a)(1) through (3).

(c) This certification must be based upon an audit that you conduct of your facility's compliance status with Section 267 of this Regulation. A written audit report, signed and certified as accurate by the auditor, must be submitted to the Director with the 40 CFR 124.202(b) Notice of Intent.

### Information That Must Be Kept at Your Facility

#### § 270.290 What general types of information must I keep at my facility?

You must keep the following information at your facility:

(a) A general description of the facility.

(b) Chemical and physical analyses of the hazardous waste and hazardous debris handled at the facility. At a minimum, these analyses must contain all the information you must know to treat or store the wastes properly under the requirements of Section 267 of this Regulation.

(c) A copy of the waste analysis plan required by § 267.13(b).

(d) A description of the security procedures and equipment required by § 267.14.

(e) A copy of the general inspection schedule required by § 267.15(b). You must include in the inspection schedule applicable requirements of §§ 267.174, 267.193, 267.195, 264.1033, 264.1052, 264.1053, 264.1058, and 264.1088.

(f) A justification of any modification of the preparedness and prevention requirements of Section 267, Subsection C (§§ 267.30 to 267.35).

(g) A copy of the contingency plan required by Section 267, subsection D.

(h) A description of procedures, structures, or equipment used at the facility to:

(1) Prevent hazards in unloading operations (for example, use ramps, special forklifts),

(2) Prevent runoff from hazardous waste handling areas to other areas of the facility or environment, or to prevent flooding (for example, with berms, dikes, trenches),

(3) Prevent contamination of water supplies,

(4) Mitigate effects of equipment failure and power outages,

(5) Prevent undue exposure of personnel to hazardous waste (for example, requiring protective clothing), and

(6) Prevent releases to atmosphere,

(i) A description of precautions to prevent accidental ignition or reaction of ignitable, reactive, or incom-

patible wastes as required by § 267.17.

(j) Traffic pattern, estimated volume (number, types of vehicles) and control (for example, show turns across traffic lanes, and stacking lanes; describe access road surfacing and load bearing capacity; show traffic control signals).

(k) [Reserved]

(l) An outline of both the introductory and continuing training programs you will use to prepare employees to operate or maintain your facility safely as required by § 267.16. A brief description of how training will be designed to meet actual job tasks under § 267.16(a)(3) requirements.

(m) A copy of the closure plan required by § 267.112. Include, where applicable, as part of the plans, specific requirements in §§ 267.176, 267.201, and 267.1108.

(n) [Reserved]

(o) The most recent closure cost estimate for your facility prepared under § 267.142 and a copy of the documentation required to demonstrate financial assurance under § 267.143. For a new facility, you may gather the required documentation 60 days before the initial receipt of hazardous wastes.

(p) [Reserved]

(q) Where applicable, a copy of the insurance policy or other documentation that complies with the liability requirements of § 267.147. For a new facility, documentation showing the amount of insurance meeting the specification of § 267.147(a) that you plan to have in effect before initial receipt of hazardous waste for treatment or storage.

(r) Where appropriate, proof of coverage by a State financial mechanism, as required by §§ 267.149 or 267.150.

(s) A topographic map showing a distance of 1,000 feet around your facility at a scale of 2.5 centimeters (1 inch) equal to not more than 61.0 meters (200 feet). The map must show elevation contours. The contour interval must show the pattern of surface water flow in the vicinity of and from each operational unit of the facility. For example, contours with an interval of 1.5 meters (5 feet), if relief is greater than 6.1 meters (20 feet), or an interval of 0.6 meters (2 feet), if relief is less than 6.1 meters (20 feet). If your facility is in a mountainous area, you should use large contour intervals to adequately show topographic profiles of facilities. The map must clearly show the following:

(1) Map scale and date.

(2) 100-year flood plain area.

(3) Surface waters including intermittent streams.

(4) Surrounding land uses (residential, commercial, agricultural, recreational).

(5) A wind rose (i.e., prevailing windspeed and direction).

- (6) Orientation of the map (north arrow).
- (7) Legal boundaries of your facility site.
- (8) Access control (fences, gates).
- (9) Injection and withdrawal wells both on-site and off-site.

(10) Buildings; treatment, storage, or disposal operations; or other structure (recreation areas, runoff control systems, access and internal roads, storm, sanitary, and process sewerage systems, loading and unloading areas, fire control facilities, etc.)

(11) Barriers for drainage or flood control.

(12) Location of operational units within your facility, where hazardous waste is (or will be) treated or stored. (Include equipment cleanup areas.)

### § 270.300 What container information must I keep at my facility?

If you store or treat hazardous waste in containers, you must keep the following information at your facility:

(a) A description of the containment system to demonstrate compliance with the container storage area provisions of § 267.173. This description must show the following:

(1) Basic design parameters, dimensions, and materials of construction.

(2) How the design promotes drainage or how containers are kept from contact with standing liquids in the containment system.

(3) Capacity of the containment system relative to the number and volume of containers to be stored.

(4) Provisions for preventing or managing run-on.

(5) How accumulated liquids can be analyzed and removed to prevent overflow.

(b) For storage areas that store containers holding wastes that do not contain free liquids, a demonstration of compliance with § 267.173(c), including:

(1) Test procedures and results or other documentation or information to show that the wastes do not contain free liquids.

(2) A description of how the storage area is designed or operated to drain and remove liquids or how containers are kept from contact with standing liquids.

(c) Sketches, drawings, or data demonstrating compliance with § 267.174 (location of buffer zone (15m or 50ft) and containers holding ignitable or reactive wastes) and § 267.175(c) (location of incompatible wastes in relation to each other), where applicable.

(d) Where incompatible wastes are stored or otherwise managed in containers, a description of the procedures used to ensure compliance with §§ 267.175(a) and

(b), and 267.17(b) and (c).

(e) Information on air emission control equipment as required by § 270.315.

### § 270.305 What tank information must I keep at my facility?

If you use tanks to store or treat hazardous waste, you must keep the following information at your facility:

(a) A written assessment that is reviewed and certified by an independent, qualified, Arkansas-registered professional engineer on the structural integrity and suitability for handling hazardous waste of each tank system, as required under §§ 267.191 and 267.192.

(b) Dimensions and capacity of each tank.

(c) Description of feed systems, safety cutoff, bypass systems, and pressure controls (e.g., vents).

(d) A diagram of piping, instrumentation, and process flow for each tank system.

(e) A description of materials and equipment used to provide external corrosion protection, as required under § 267.191.

(f) For new tank systems, a detailed description of how the tank system(s) will be installed in compliance with §§ 267.192 and 267.194.

(g) Detailed plans and description of how the secondary containment system for each tank system is or will be designed, constructed, and operated to meet the requirements of §§ 267.195 and 267.196.

(h) [Reserved].

(i) Description of controls and practices to prevent spills and overflows, as required under § 267.198.

(j) For tank systems in which ignitable, reactive, or incompatible wastes are to be stored or treated, a description of how operating procedures and tank system and facility design will achieve compliance with the requirements of §§ 267.202 and 267.203.

(k) Information on air emission control equipment as required by § 270.315.

### § 270.310 What equipment information must I keep at my facility?

If your facility has equipment to which Section 264, subsection BB of this Regulation applies, you must keep the following information at your facility:

(a) For each piece of equipment to which Section 264 subsection BB applies:

(1) Equipment identification number and hazardous waste management unit identification.

(2) Approximate locations within the facility (e.g., identify the hazardous waste management unit on a facility plot plan).

(3) Type of equipment (e.g., a pump or a pipeline valve).

(4) Percent by weight of total organics in the hazardous waste stream at the equipment.

(5) Hazardous waste state at the equipment (e.g., gas/vapor or liquid).

(6) Method of compliance with the standard (e.g., monthly leak detection and repair, or equipped with dual mechanical seals).

(b) For facilities that cannot install a closed-vent system and control device to comply with Section 264, subsection BB on the effective date that the facility becomes subject to the subsection BB provisions, an implementation schedule as specified in § 264.1033(a)(2) of this Regulation.

(c) Documentation that demonstrates compliance with the equipment standards in §§ 264.1052 and 264.1059. This documentation must contain the records required under § 264.1064.

(d) Documentation to demonstrate compliance with § 264.1060 must include the following information:

(1) A list of all information references and sources used in preparing the documentation.

(2) Records, including the dates, of each compliance test required by § 264.1033(j).

(3) A design analysis, specifications, drawings, schematics, and piping and instrumentation diagrams based on the appropriate sections of “Course 415: Control of Gaseous Emissions” (incorporated by reference as specified in § 260.11) or other engineering texts acceptable to the Director that present basic control device design information. The design analysis must address the vent stream characteristics and control device operation parameters as specified in § 264.1035(b)(4)(iii).

(4) A statement you signed and dated certifying that the operating parameters used in the design analysis reasonably represent the conditions that exist when the hazardous waste management unit is operating at the highest load or capacity level reasonable expected to occur.

(5) A statement you signed and dated certifying that the control device is designed to operate at an efficiency of 95 weight percent or greater.

**§ 270.315 What air emissions control information must I keep at my facility?**

**If you have air emission control equipment subject to Section 264, subsection CC of this Regulation, you must keep the following information at your facility:**

**(a) Documentation for each floating roof cover installed on a tank subject to §§ 264.1084(d)(1) or (d)(2) that includes information you prepared or the cover manufacturer/vendor provided describing the cover design, and your certification that the cover meets applicable design specifications listed in §§ 264.1084(e)(1) or**

**(f)(1).**

**(b) Identification of each container area subject to the requirements of Section 264, subsection CC of this Regulation, and your certification that the requirements of this subsection are met.**

**(c) Documentation for each enclosure used to control air pollutant emissions from tanks or containers under requirements of § 264.1084(d)(5) or 264.1086(e)(1)(ii). You must include records for the most recent set of calculations and measurements you performed to verify that the enclosure meets the criteria of a permanent total enclosure as specified in “Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure” under 40 CFR 52.741, appendix B.**

**(d) [Reserved]**

**(e) Documentation for each closed vent system and control device installed under requirements of § 264.1087 that includes design and performance information as specified in § 270.24 (c) and (d).**

**(f) An emission monitoring plan for both Method 21 in 40 CFR Part 60, appendix A and control device monitoring methods. This plan must include the following information: monitoring point(s), Monitoring methods for control devices, monitoring frequency, procedures for documenting exceedances, and procedures for mitigating noncompliances.**

**Modifying a Standardized Permit**

**§ 270.320 How do I modify my RCRA standardized permit?**

**You can modify your RCRA standardized permit by following the procedures found in 40 CFR 124.211 through 124.214.**

**Section 273—STANDARDS FOR UNIVERSAL WASTE MANAGEMENT**

212. Amend **Section 273.14**, in paragraph (a), by adding closing quotation marks after the phrase “Universal Waste—Battery(ies),”.

**§ 273.14 Labeling/markings. \* \* \***

(a) Universal waste batteries (i.e., each battery), or a container in which the batteries are contained, must be labeled or marked clearly with any one of the following phrases: ~~“Universal Waste—Battery(ies);~~ **“Universal Waste—Battery(ies).”** or “Waste Battery(ies),” or “Used Battery(ies);”

\* \* \* \* \*

213. In Section 273.34, amend paragraph (a) by revising “clearly with the any one” to read “clearly with any one”.

§ 273.34 Labeling/markings.

(a) Universal waste batteries (i.e., each battery), or a container or tank in which the batteries are contained, must be labeled or marked ~~clearly with the any one~~ clearly with any one of the following phrases: “Universal Waste - Battery(ies),” or “Waste Battery(ies),” or “Used Battery(ies);”  
\* \* \* \* \*

SECTION 279—STANDARDS FOR THE MANAGEMENT OF USED OIL

214. In Section 279.1, amend the definition of “Petroleum refining facility” by revising “kerosine” to read “kerosene”.

§ 279.1 Definitions.

\* \* \* \* \*

“Petroleum refining facility” means an establishment primarily engaged in producing gasoline, ~~kerosine~~ kerosene, distillate fuel oils, residual fuel oils, and lubricants, through fractionation, straight distillation of crude oil, redistillation of unfinished petroleum derivatives, cracking or other processes (i.e., facilities classified as SIC 2911).  
\* \* \* \* \*

215. In Section 279.10, amend paragraph (b)(2) introductory text by revising “solely exhibits” to read “solely exhibit”; and by revising “hazardous waste characteristic” to read “hazardous waste characteristics”.

§ 279.10 Applicability.

\* \* \* \* \*

(b) \* \* \*

\* \* \* \* \*

(2) Characteristic hazardous waste. Mixtures of used oil and hazardous waste that ~~solely exhibits~~ solely exhibit one or more of the hazardous waste characteristics identified in Subsection C of Section 261 of this regulation and mixtures of used oil and hazardous waste that is listed in Subsection D of Section 261 solely because it exhibits one or more of the characteristics of hazardous waste identified in Subsection C are subject to :  
\* \* \* \* \*

216. Amend Section 279.11 as follows:

a. In the first sentence, delete “in the specification”; and in the second sentence, revise “not to exceed any specification” to read “not to exceed any allowable level”;

b. In Table 1, revise the title of the table to read “TABLE 1—USED OIL NOT EXCEEDING ANY ALLOWABLE LEVEL SHOWN BELOW IS NOT SUBJECT TO THIS PART WHEN BURNED FOR ENERGY RECOVERY<sup>1</sup>”, and in the first footnote, revise “The specification does not” to read “The allowable levels do not”.

§ 279.11 Used oil specifications.

Used oil burned for energy recovery, and any fuel produced from used oil by processing, blending, or other treatment is subject to regulation under this Section unless it is shown not to exceed any of the allowable levels of the constituents and properties ~~in the specification~~ shown in Table 1. Once used oil that is to be burned for energy recovery has been shown not to exhibit any specification and the person and the person making that showing complies with §§ 279.72, 279.73, and 279.74(b), the used oil is no longer subject to this Section.

\* \* \* \* \*

**TABLE 1:  
Used Oil Not Exceeding Any Specification Level is Not Subject to this Section When Burned for Energy Recovery. (1)**

**TABLE 1  
USED OIL NOT EXCEEDING ANY ALLOWABLE LEVEL SHOWN BELOW IS NOT SUBJECT TO THIS PART WHEN BURNED FOR ENERGY RECOVERY<sup>1</sup>**

(1) ~~The specification does not~~ The allowable levels do not apply to mixtures of used oil and hazardous waste that continue to be regulated as hazardous waste (See § 279.10(b)).

\* \* \* \* \*

217. Amend Section 279.52 paragraph (b)(6)(ii), revise “a real extent” to read “areal extent”; revise “facility records of manifests” to read “facility records or manifests”; and revise “analysts” to read “analyses”;

§ 279.52 General facility standards.

\* \* \* \* \*

(b) \* \* \*

(6) \* \* \*

(ii) Whenever there is a release, fire, or explosion, the emergency coordinator must immediately identify the character, exact source, amount, and areal extent of any released materials. He may do this by observation or review of facility records or manifests, and, if necessary, by chemical ~~analysis~~ analyses.

\* \* \* \* \*

218. Amend **Section 279.56** in paragraph (a)(2), by revising “processor/re-refining” to read “processor/re-refiner”.

**§ 279.56 Tracking.**

(a) \* \* \*

\* \* \* \* \*

(2) The name and address of the generator or processor/re-refiner from whom the used oil was shipped for ~~processing/re-refining~~ processor/re-refiner;

\* \* \* \* \*

**EXHIBIT B:**

**Questionnaire for Filing  
Proposed Rules and Regulations  
with the  
Arkansas Legislative Council  
and the  
Joint Interim Committee**



**QUESTIONNAIRE  
FOR FILING PROPOSED RULES & REGULATIONS  
WITH THE ARKANSAS LEGISLATIVE COUNCIL AND THE  
JOINT INTERIM COMMITTEE**

**FROM:**

**AGENCY:** Arkansas Department of Environmental Quality  
**DIVISION:** Hazardous Waste Division  
**CONTACT PERSON:** Karen Bassett  
**ADDRESS:** 8001 National Drive, Little Rock, AR 72219  
**PHONE NUMBER:** 682-0744 **FAX NUMBER:** 682-0880

**TO:**

Attention: Donna Davis  
Subcommittee on Administrative Rules and Regulations  
Arkansas Legislative Council  
Room 315, State Capitol  
Little Rock, Arkansas 72201

=====  
**1. What is the short title of this rule?** APC&EC Regulation No. 23 (Hazardous Waste Management);  
2007 Annual Update

**2. What is the subject of the proposed rule?** State adoption and implementation of regulations for the  
management of hazardous wastes

**3. Is this rule required to comply with federal statute or regulations?** Yes.  
**If Yes, please provide the federal statute and or regulation citation:** 40 CFR Part 271

**4. Was this rule filed under the emergency provisions of the Administrative Procedure Act?** No  
**If Yes, what is the date of the emergency rule?** N/A  
**When does the emergency rule expire?** N/A  
**Will this emergency rule be promulgated under the regular provisions of the Administrative  
Procedures Act?** N/A

**5. Is this a new rule?** No – update of existing regulations.  
**Does this repeal an existing rule?** No  
**If yes, please provide a copy of the repealed rule.**

**Is this an amendment to an existing rule?** Yes  
**If yes, please attach a markup showing the changes in the existing rule and a summary of the  
substantive changes.** Attached.

**6. What State or federal law or regulation grants the authority for this proposed rule?**

Arkansas Hazardous Waste Management Act, A.C.A. §§ 8-7-209(b)(1)  
Arkansas Remedial Action Trust Fund Act, A.C.A. §§ 8-7-506

**7. What is the purpose of this proposed rule? Why is it necessary?** Adopts newly-revised federal rules  
published between August 5, 2005, and December 31, 2007.

**8. Will a public hearing be held on this proposed rule?** Yes.

**(If yes, state the date, time, and location of the public hearing.** 2:00 p.m., February 27, 2008, in the Commission Room at the Department headquarters at 5301 Northshore Drive, North Little Rock.

**9. When does the public comment period expire?** 4:30 p.m., March 12, 2008

**10. What is the proposed effective date of this rule?** May, 2008 (10 days following filing, after April 25, 2008 APC&E Commission meeting)

**11. Do you expect this rule be controversial?** No.  
**If yes, please explain.**

**12. Please give the names, addresses, and phone numbers of all persons, groups, organizations, etc. interested in or affected by this proposed rule and the position taken by each.**

Categorize them according to the following:

(A) Those you contacted.

(B) Those who contacted you.

(C) Those whom you anticipate will participate in the public hearing.

<b>NAMES, ADDRESSES, &amp; PHONE NUMBERS</b>	<b>CATEGORY</b>	<b>FOR</b>	<b>AGAINST</b>
Arkansas Environmental Federation, 1400 W. Markham Street, Little Rock, AR 72201, (501) 374-0263	A,C	X	
Tokusen, USA, Conway, AR	B	X	

**EXHIBIT C:**

**Financial Impact Statement**



<b>Total:</b>	\$0.00		<b>Total:</b>	\$0.00
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*Regulation No. 23 affects all businesses and facilities which generate or manage hazardous wastes, used oil, and universal wastes. As of December 1, 2007, this addresses approximately 2,200 facilities and businesses in Arkansas. The regulatory changes in this proposal are equivalent or in some cases less stringent than the previous state and federal requirements, so regulated facilities are anticipated to incur no additional costs to doing business or maintaining compliance. Businesses which are able to take advantage of the lessened requirements such as the conditional exemption for cathode ray tubes may see some decrease in these costs. These costs will vary widely by the nature of each affected facility, and it would be speculative to estimate these costs over the wide range of businesses and operations subject to the hazardous waste management program.*

**5. What is the total estimated cost by fiscal year to the agency to implement this regulation?**

<u>Current Fiscal Year (2008)</u>		<u>Next Fiscal Year (2009)</u>	
Federal Funds:	\$0.00	Federal Funds:	\$0.00
Special Revenue:	\$0.00	Special Revenue:	\$0.00
<b>Total:</b>	<b>\$0.00</b>	<b>Total:</b>	<b>\$0.00</b>

*Implementing these proposed revisions will not discernibly increase nor decrease program operational or administrative costs.*

**EXHIBIT D:**

**Compliance with  
Act 143 of 2007**



## **Compliance with Act 143 of 2007 (formerly Executive Order 05-04)**

Act 143 of 2007 requires that “[b]efore submitting proposed rules for adoption, amendment, or repeal, the agency shall first determine whether the proposed rules affect small businesses.” The agency shall consider “whether a means exists to make the rules less costly for small businesses without compromising the objective of the rules.” If the agency determines that the proposed rule will affect small businesses, the agency must prepare an economic impact statement in accordance with Act 143 of 2007.

The Act is not applicable to rules that are federally mandated, or that substantially codify existing state or federal laws. ADEQ determines that Act 143 of 2007 is not applicable to this proposed rule because the amendments to Regulation No. 23 included in this proposed rulemaking substantially codify existing state and federal regulations. (Ark. Code of 1987, Ann., § 25-15-302(a)(1)(C)). This proposal incorporates a number of revisions to the federal hazardous waste regulations previously promulgated by the U.S. EPA to the corresponding sections of Regulation No. 23, and additionally makes a number of typographic corrections to existing state provisions in the Regulation.

Pursuant to the Federal Resource Conservation and Recovery Act (“RCRA”), 33 U.S.C. §1251 *et seq.*, Arkansas has been delegated the authority to establish and administer the federal hazardous waste management program within its borders. This program is administered through the Arkansas Hazardous Waste Management Act, and state and federal regulations codified in the Arkansas Pollution Control & Ecology Commission’s Regulation No. 23. RCRA requires that states authorized to carry out the hazardous waste management program in lieu of EPA must review their program regulations on an annual basis and adopt new federal revisions to ensure that the state program regulations remain consistent with and no less stringent than the corresponding federal regulations. As a result of this review process, ADEQ proposes to adopt specific federal regulations promulgated by EPA between August 2005 and December 2007, and incorporate these provisions into portions of Regulation No. 23, Hazardous Waste Management. The regulatory revisions that are subject of this rulemaking have been deemed necessary through this federally mandated review. In addition to these federal revisions, a number of typographic corrections are made to existing state provisions in the regulation. No additional requirements are being proposed that substantially affect small businesses beyond the current requirements.

In August through December of 2007, ADEQ initiated a series of meetings with affected stakeholders to evaluate the impact of adopting (or not adopting) the regulatory changes included in this proposal. These stakeholders included the Arkansas Department of Health, the Arkansas Highway and Transportation Department, Arkansas Department of Emergency Management, and the Arkansas Department of Economic Development, in addition to representatives from the Arkansas Environmental Federation, Audubon Society, and the Arkansas Municipal League. The revisions brought forward in this proposal represent the consensus of that stakeholder group.

**EXHIBIT E:**

**ENVIRONMENTAL IMPACT/ECONOMIC  
BENEFIT ANALYSIS**

# **ECONOMIC IMPACT/ENVIRONMENTAL BENEFIT ANALYSIS**

*Answer to best of the proponent's ability, as required by ADPCEC Regulation 8,  
Chapter 3.5*

## **APC&EC Regulation No. 23 (Hazardous Waste Management) 2007 Annual Update**

### **RULE SUMMARY:**

#### **I. Federal Revisions**

##### **I.1: Hazardous Waste Management System; Standardized Permit for RCRA Hazardous Waste Management Facilities; 70 FR 53420-53478, September 8, 2005.**

This federal revision allows for a “standardized permit,” which will be available to noncommercial RCRA treatment, storage, and disposal facilities (TSDFs) otherwise subject to RCRA permitting that generate and then store or non-thermally treat hazardous wastes on-site in tanks, containers, or containment buildings. Standardized permits may also be made available to facilities which receive hazardous wastes generated off-site by a generator belonging to the same parent company or under the same ownership as the receiving facility, and then store or non-thermally treat these wastes in tanks, containers, or containment buildings. Standardized permits would consist of two parts: a set of standard “one-size-fits-all” conditions which apply uniformly to all facilities using a particular treatment or storage process, and a second, facility-specific portion to address any additional, site-specific requirements applicable to the individual facility. The standardized permit is intended to streamline the permitting process by allowing facilities to obtain and modify permits more easily, while still achieving the same level of environmental protectiveness as individual facility permits. No change is made to the permit fee schedule at Section 6 of this regulation; standardized permits will be assessed the same application, maintenance, and renewal fees as normal RCRA permits.

##### **I.2: Revision of Wastewater Treatment Exemptions for Hazardous Waste Mixtures (“Headworks Exemptions”); 70 FR 57784-57785, October 4, 2005.**

In developing this rule, EPA developed an economic cost and environmental benefit analysis which was summarized in the Final Rule at 70 FR 57780-57782, as well as published as an “Economic Background Document” as a component of the administrative record for this rule. ADEQ staff have reviewed these documents and compared them to the universe of facilities potentially subject to these proposed requirements, and concurs with EPA that if implemented, these proposed rules would result in a lessened burden and cost savings for affected facilities which take advantage of this new rule.

**I.3: National Emission Standards for Hazardous Air Pollutants: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (Phase I Final Replacement Standards and Phase II); 70 FR 59539-59579, October 12, 2005.**

In developing this rule, EPA developed an economic cost and environmental benefit analysis which was summarized in the Final Rule at 70 FR 59529-59535, as well as published as an “Economic Background Document” as a component of the administrative record for this rule. ADEQ staff has reviewed these documents and compared them to the universe of facilities potentially subject to these proposed requirements, and concurs with EPA’s assessment.

**I.4: Resource Conservation and Recovery Act Burden Reduction Initiative; 71 FR 16902-16915, April 4, 2006.**

In developing this rule, EPA developed an economic cost and environmental benefit analysis which was summarized in the Final Rule at 71 FR 16899-16902, as well as published as an “Economic Background Document” as a component of the administrative record for this rule. ADEQ staff has reviewed these documents and compared them to the universe of facilities potentially subject to these proposed requirements, and concurs with EPA’s assessment of the costs and benefits of these measures.

**I.5: Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Removal of Final Rule; 71 FR 35395-35396 (June 20, 2006).**

This federal revision amended **Section 261, Appendix IX** to remove an earlier Federal delisting decision for wastewater treatment sludges generated by the Tokusen, USA facility in Conway, Faulkner County. Changes in the production operations at the facility invalidated the conditions of the delisting.

Economic and environmental impact of this revision affects only this single facility.

**I.6. Hazardous Waste and Used Oil; Corrections to Errors in the Code of Federal Regulations; 71 FR 40258-40280, July 14, 2006.**

This federal revision corrected a variety of errors in the federal hazardous waste and used oil regulations, as a result of printing omissions, typographical errors, misspellings, citations to paragraphs and other references that have been deleted or moved to new locations without correcting the citations, and similar mistakes appearing in numerous final rules published in the *Federal Register*. Corresponding text in Regulation No. 23

has been edited so as to remain consistent with these Federal provisions. This revision does not create any new regulatory requirements.

## **I. 7. Hazardous Waste Management System; Modification of the Hazardous Waste Program; Cathode Ray Tubes; 71 FR 42947-42949, July 28, 2006.**

This federal revision provides a conditional exemption from the RCRA definition of solid waste for cathode ray tubes (CRTs) and processed glass from CRTs if these items are recycled under the provisions of this rule. This rule is intended to encourage recycling and reuse of used CRTs and CRT glass, and provides clarification of the regulatory status of CRT and electronic waste processing operations such as that performed by Unicor in Texarkana. Adoption and implementation of this rule does not affect the Commission's provisions for managing these items as well as other consumer electronic items as universal wastes (APC&EC Regulation No. 23 § 273.6); the universal waste management standards continue to be an alternative for managing and disposing of these wastes.

## **II. State Revisions**

**II. 1. Section 264.18(d)** is amended to reflect the recent name change of the Arkansas Natural Resources Conservation Commission. This State-only revision edits language in the state-specific standards for locating hazardous waste management facilities to be consistent with the recent name change of the Arkansas Soil and Water Conservation Commission to the Natural Resources Conservation Commission. No other provisions are affected by this revision.

**II. 2. Section 264.151** is amended to correct typographic errors and clarify specific terms in the various model instruments for financial assurance. These revisions do not otherwise modify the requirements of these documents or create any new or additional requirements.

<p style="text-align: center;"><b>STEP 1: DETERMINATION OF ANALYSIS REQUIREMENT (to be included in petition to initiate rulemaking)</b></p>
---

**1A.** Is the proposal expressly addressed by a Federal requirement?

**Yes. See 1B.**

No. Economic Impact/Environmental Benefit Analysis is not required.

**Yes.**

**1B.** If 1A is YES, is proposed regulation equivalent, or more stringent, or less stringent than federal requirement?

State provisions implementing this rule are equivalent to and no more stringent than the corresponding Federal regulations.

- **If equivalent – Economic Impact/Environmental Benefit Analysis is not required**
- If more stringent - Economic Impact/Environmental Benefit Analysis is required
- If less stringent - Economic Impact/Environmental Benefit Analysis is not required, but does require federal agency approval prior to adoption if the proposal is part of an authorized state program.

<p style="text-align: center;"><b>STEP 2: THE ANALYSIS</b> <b>(to be included in petition to initiate rulemaking, if required)</b></p>
--

**2A. ECONOMIC IMPACT**

Not Required.  
(Equivalent to corresponding Federal Rule.)

**2B. ENVIRONMENTAL BENEFIT**

Not Required.  
(Equivalent to corresponding Federal Rule.)



# **EXHIBIT F:**

## **STATEMENT OF BASIS AND PURPOSE**

## Statement of Basis and Purpose

The Arkansas Department of Environmental Quality maintains and administers a hazardous waste management program to implement the provisions of the Arkansas Hazardous Waste Management Act (Arkansas Code, Annotated, §§ 8-7-201 *et seq.*) and to provide a program which is, at a minimum, equivalent in force and effect to the Federal program as established by the Resource Conservation and Recovery Act, as amended, including but not limited to the Hazardous and Solid Waste Amendments. To this end, the Department, through the procedures of the Arkansas Pollution Control and Ecology Commission, conducts rulemaking at least annually in order to adopt the additions and revisions to the federal hazardous waste regulations promulgated by EPA during the preceding year and update the State hazardous waste program in order to maintain its equivalency to federal requirements.

The background, purpose, and specific need for each revision is discussed separately below.

### **I. Federally-initiated changes to Regulation No. 23 fall under five measures as follows:**

#### **1. Hazardous Waste Management System; Standardized Permit for RCRA Hazardous Waste Management Facilities; 70 FR 53420-53478, September 8, 2005.**

This federal revision allows for a “standardized permit,” which will be available to noncommercial RCRA treatment, storage, and disposal facilities (TSDFs) otherwise subject to RCRA permitting that generate and then store or non-thermally treat hazardous wastes on-site in tanks, containers, or containment buildings. Standardized permits may also be made available to facilities which receive hazardous wastes generated off-site by a generator belonging to the same parent company or under the same ownership as the receiving facility, and then store or non-thermally treat these wastes in tanks, containers, or containment buildings. Standardized permits would consist of two parts: a set of standard “one-size-fits-all” conditions which apply uniformly to all facilities using a particular treatment or storage process, and a second, facility-specific portion to address any additional, site-specific requirements applicable to the individual facility. The standardized permit is intended to streamline the permitting process by allowing facilities to obtain and modify permits more easily, while still achieving the same level of environmental protectiveness as individual facility permits. No change is made to the permit fee schedule at Section 6 of this regulation; standardized permits will be assessed the same application, maintenance, and renewal fees as normal RCRA permits.

## **2. Revision of Wastewater Treatment Exemptions for Hazardous Waste Mixtures (“Headworks Exemptions”); 70 FR 57784-57785, October 4, 2005.**

Facilities which treat and subsequently discharge their hazardous wastes through a wastewater treatment facility or publicly-owned treatment works which is subject to a permit under the federal Clean Water Act generally do not require an additional RCRA permit for such treatment since protection of human health and the environment must be addressed by the standards of the wastewater discharge permit. Hazardous wastes which are treated in this manner are considered to be conditionally-exempt under the provisions of Regulation No. 23 § 261.5(c)(2).

This federal revision adds benzene and 2-ethoxyethanol to the list of solvents whose mixtures with wastewaters are so exempted from the definition of hazardous waste. The scrubber waters derived from the combustion of any of the exempted solvents also are included in this exemption. This revision also adds an option to allow generators to directly measure solvent chemical levels at the headworks of their wastewater treatment system to determine whether the wastewater mixture is exempt from the definition of hazardous waste. Finally, this revision extends the eligibility for the *de minimis* exemption to other listed hazardous wastes (beyond discarded commercial chemical products) and to non-manufacturing facilities.

## **3. National Emission Standards for Hazardous Air Pollutants: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (Phase I Final Replacement Standards and Phase II); 70 FR 59539-59579, October 12, 2005.**

This federal revision finalized the national emission standards for hazardous air pollutants (NESHAP) which apply to hazardous waste combustion facilities (HWCs), i.e., hazardous waste-burning incinerators, cement kilns, lightweight aggregate kilns, industrial, commercial, and institutional boilers and process heaters, and hydrochloric acid production furnaces. This is a multimedia rule which affects both air regulations addressed by 40 CFR 63 and hazardous waste requirements in 40 CFR Parts 264, 265, 266, and 270. This proposal incorporates the RCRA hazardous waste components of this rule into Sections 264, 265, 266, and 270 of Regulation No. 23.

## **4. Resource Conservation and Recovery Act Burden Reduction Initiative; 71 FR 16902-16915, April 4, 2006.**

In developing this rule, EPA developed an economic cost and environmental benefit analysis which was summarized in the Final Rule at 71 FR 16899-16902, as well as published as an “Economic Background Document” as a component of the administrative record for this rule. ADEQ staff has reviewed these documents and compared them to the universe of facilities potentially subject to these proposed requirements, and concurs with EPA’s assessment of the costs and benefits of these measures.

This proposal retains existing state-specific requirements for the qualifications of professionals who prepare and certify specific construction and inspection documents, to include the requirement that professional engineers who prepare and certify these documents must be registered by the Arkansas Board of Professional Engineers and Land Surveyors, as well as the requirement that they be independent of the regulated facility owner or operator. These requirements have been previously determined by the Department and the U.S. EPA to be more stringent than the corresponding federal requirements, and as such are not superseded by the revisions to the corresponding federal rules.

**5. Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Removal of Final Rule; 71 FR 35395-35396 (June 20, 2006).**

This federal revision amended **Section 261, Appendix IX** to remove an earlier Federal delisting decision for wastewater treatment sludges generated by the Tokusen, USA facility in Conway, Faulkner County. Changes in the production operations at the facility invalidated the conditions of the delisting.

**6. Hazardous Waste and Used Oil; Corrections to Errors in the Code of Federal Regulations; 71 FR 40258-40280, July 14, 2006.**

This federal revision corrected a variety of errors in the federal hazardous waste and used oil regulations, as a result of printing omissions, typographical errors, misspellings, citations to paragraphs and other references that have been deleted or moved to new locations without correcting the citations, and similar mistakes appearing in numerous final rules published in the *Federal Register* over the past several years. This revision does not create any new regulatory requirements.

**7. Hazardous Waste Management System; Modification of the Hazardous Waste Program; Cathode Ray Tubes; 71 FR 42947-42949, July 28, 2006.**

This federal revision provides a conditional exemption from the RCRA definition of solid waste for cathode ray tubes (CRTs) and processed glass from CRTs if these items are recycled under the provisions of this rule. This rule is intended to encourage recycling and reuse of used CRTs and CRT glass, and provides clarification of the regulatory status of CRT and electronic waste processing operations such as that performed by Unicor in Texarkana. Adoption and implementation of this rule does not affect the Commission's provisions for managing these items as well as other consumer electronic items as universal wastes (APC&EC Regulation No. 23 § 273.6); the universal waste management standards continue to be an alternative for managing and disposing of these wastes.

***Compliance with Act 143 of 2007 (formerly Executive Order 05-04):*** This proposed rulemaking would substantially codify existing, revised Federal regulations into the corresponding State regulation (See A.C.A. § 25-15-302(a)(1)(C)). As such, they are not subject to the provisions of A.C.A. § 25-15-302. As this proposal seeks to adopt and incorporate federal regulations into corresponding state rules in order to implement a federally authorized program, market-based or other alternatives were not considered.

The delegation and program cooperative agreements between ADEQ and U.S. EPA require that the Department make an earnest effort to maintain consistency between State and Federal regulations. While all components proposed in this revision are optional for the state to adopt them or not, the current State requirements corresponding to these proposed revisions are in the main more stringent, and Arkansas businesses would face a greater burden in maintaining compliance than those in neighboring and other states.

Actions & activities required pursuant to these revisions will be carried out with existing Departmental staff and resources. No additional costs are anticipated other than the current costs of implementing the program.

Small businesses which generate and/or manage hazardous wastes, used oils, and universal wastes are required to comply with the provisions of Regulation No. 23 in managing, shipping, treating, and disposing of these wastes. As of December 1, 2007, approximately 2200 businesses fall within the regulated universe of the RCRA waste management program. ADEQ does not track whether regulated businesses fall within the definition of a “small business,” but the RCRA regulations provide for varying degrees of regulatory requirements and compliance oversight based upon the amount of waste that a business generates at any time. Small businesses in Arkansas typically fall within those categories regulated as small quantity generators (SQGs) and conditionally-exempt small quantity generators (CESQGs). As of December 1, 2007, 279 SQGs and 1,504 CESQGs were known to be active in Arkansas. However, only a small number of these facilities fall within the economic definition of “small business” as defined by the Act.

Regulation No. 23 does not create any barrier to entry for small businesses, and the proposed revisions will not affect this. Businesses subject to this regulation are obligated to comply pursuant to federal and state law.

These amendments create no additional requirements or costs for small business. The Federal revisions proposed to be adopted pursuant to this rulemaking are actually less stringent than the pre-existing Federal regulations they are replacing and the state adoption of these provisions will maintain equivalence and equity with the corresponding federal rules. Affected small businesses should recognize reduced compliance costs once these new rules are in effect within the State.

Requirements under Regulation No. 23 are not based upon the size of a particular business, but upon the amount of wastes which a particular business generates from month to month, regardless of the business’ size or number of employees. This is consistent with the corresponding federal regulations for managing hazardous wastes.

ADEQ does not anticipate any difficulty for small businesses implementing these revised rules. In most cases since many of the proposed revisions will reduce the reporting and administrative burden of compliance in comparison to than the existing regulations, small businesses should realize reduced burden and costs in carrying out these provisions within their operations.

The revisions proposed here are equivalent to the corresponding federal rules in 40 CFR. Surrounding states are also required as a condition of their program delegation to consider adoption of these revisions and update their regulations appropriately, so there is and will be no significant differences in the compliance requirements from those is adjacent states. Note that for easy reference, ADEQ identifies specific provisions in the body of Regulation No. 23 which are more stringent than or in addition to the corresponding federal regulations by printing them in italic text.

## **II. State-initiated changes in the provisions of Regulation No. 23.**

ADEQ is not proposing substantive changes in the State provisions of Regulation No. 32 with the exception of the following:

1. **Section 264.18(d)** is amended to reflect the recent name change of the Arkansas Natural Resources Conservation Commission.
2. **Section 264.151** is amended to correct typographic errors and clarify specific terms in the various model instruments for financial assurance. These revisions do not otherwise modify the requirements of these documents or create any new or additional requirements.

***Compliance with Act 143 of 2007 (formerly Executive Order 05-04):*** These revisions make typographic corrections to existing state provisions in the Regulation. As such, they substantially codify existing State regulations and are not subject to the provisions of A.C.A. § 25-15-302.



# **EXHIBIT G:**

## **Economic Impact Statement: Regulatory Flexibility**

**ECONOMIC IMPACT STATEMENT  
OF PROPOSED RULES OR REGULATIONS**

EO 05-04: Regulatory Flexibility

**Department:** Dept. of Environmental Quality

**Division:** Hazardous Waste

**Contact Person:** Tom Ezell

**Date:** December 13, 2007

**Contact Phone:** (501) 682-0854

**Contact E-Mail:** ezell@adeq.state.ar.us

**Title or Subject:** APC&EC Regulation No. 23 (Hazardous Waste Management) 2007 Update

**Benefits of the Proposed Rule or Regulation**

1. Explain the need for the proposed change(s). Did any complaints motivate you to pursue regulatory action? If so, please explain the nature of such complaints.

ADEQ has been delegated responsibility for implement both federal and state provisions for the RCRA hazardous waste management program in Arkansas. This delegation is contingent upon the State maintaining a regulatory program that is consistent with and no less stringent than the corresponding federal requirements. Annually, ADEQ initiates rulemaking procedures via the Arkansas Pollution Control and Ecology Commission to incorporate and adopt recent changes to the federal regulations in order to maintain equivalence and consistency between the state and federal hazardous waste management regulations. This proposal seeks to incorporate relevant changes to federal regulations published since August 2005. Complaints played no role in the development of these draft revisions.

2. What are the top three benefits of the proposed rule or regulation?

- Maintains equivalence between State and new Federal hazardous waste management regulations;
- Provides a lower-cost alternative means for the reclamation and recycling of cathode-ray tubes; and
- Clarifies outdated languages and corrects errors found in the current text of Regulation No. 23.

3. What, in your estimation, would be the consequence of taking no action, thereby maintaining the status quo?

The delegation and program cooperative agreements between ADEQ and U.S. EPA require that the Department make an earnest effort to maintain consistency between State and Federal regulations. While all components proposed in this revision are optional for the state to adopt them or not, the current State requirements corresponding to these proposed revisions are in the main more stringent, and Arkansas businesses would face a greater burden in maintaining compliance than those in neighboring and other states.

4. Describe market-based alternatives or voluntary standards that were considered in place of the proposed regulation and state the reason(s) for not selecting these alternatives.

This rulemaking substantially codifies existing, revised Federal regulations into the corresponding State regulation. As such, they are not subject to the provisions of Sections 3-5 of Executive Order 05-04. As this proposal seeks to adopt and incorporate federal regulations into corresponding state rules in order to implement a federally authorized program, market-based or other alternatives were not considered.

### **Impact of Proposed Rule or Regulation**

5. Estimate the cost to state government of collecting information, completing paperwork, filing, recordkeeping, auditing and inspecting associated with this new rule or regulation.

Actions & activities required pursuant to these revisions will be carried out with existing Departmental staff and resources. No additional costs are anticipated other than the current costs of implementing the program.

6. What types of small businesses will be required to comply with the new rule or regulation? Please estimate the number of small businesses affected.

Small businesses which generate and/or manage hazardous wastes, used oils, and universal wastes are required to comply with the provisions of Regulation No. 23 in managing, shipping, treating, and disposing of these wastes. As of December 1, 2007, approximately 2200 businesses fall within the regulated universe of the RCRA waste management program. ADEQ does not track whether regulated businesses fall within the definition of a "small business," but the RCRA regulations provide for varying degrees of regulatory requirements and compliance oversight based upon the amount of waste that a business generates at any time. Small businesses in Arkansas typically fall within those categories regulated as small quantity generators (SQGs) and conditionally-exempt small quantity generators (CESQGs). As of December 1, 2007, 279 SQGs and 1,504 CESQGs were known to be active in Arkansas. However, only a small number of these facilities fall within the economic definition of "small business."

7. Does the proposed regulation create barriers to entry? If so, please describe those barriers and why those barriers are necessary.

Regulation No. 23 does not create any barrier to entry for small businesses, and the proposed revisions will not affect this. Businesses subject to this regulation are obligated to comply pursuant to federal and state law.

8. Explain the additional requirements with which small business owners will have to comply and estimate the costs associated with compliance.

These amendments create no additional requirements or costs for small business. The Federal revisions proposed to be adopted pursuant to this rulemaking are actually less stringent than the pre-existing Federal regulations they are replacing and the state adoption of these provisions will maintain equivalence and equity with the corresponding federal rules. Affected small businesses should recognize reduced compliance costs once these new rules are in effect within the State.

9. State whether the regulation contains different requirements for different-sized entities, and explain why this is, or is not, necessary.

As noted above, requirements under Regulation No. 23 are not based upon the size of a particular business, but upon the amount of wastes which a particular business generates from month to month, regardless of the business' size or number of employees. This is consistent with the corresponding federal regulations for managing hazardous wastes.

10. Describe your understanding of the ability of small business owners to implement changes required by the proposed regulation.

ADEQ does not anticipate any difficulty for small businesses implementing these revised rules. In most cases since many of the proposed revisions will reduce the reporting and administrative burden of compliance in comparison to than the existing regulations, small businesses should realize reduced burden and costs in carrying out these provisions within their operations.

11. How does this rule or regulation compare to similar rules or regulations in other states or the federal government?

The revisions proposed here are equivalent to the corresponding federal rules in 40 CFR. Surrounding states are also required as a condition of their program delegation to consider adoption of these revisions and update their regulations appropriately, so there is and will be no significant differences in the compliance requirements from those in adjacent states. Note that for easy reference, ADEQ identifies specific provisions in the body of Regulation No. 23 which are more stringent than or in addition to the corresponding federal regulations by printing them in italic text.

12. Provide a summary of the input your agency has received from small business or small business advocates about the proposed rule or regulation.

In August through December of 2007 ADEQ initiated a series of meetings with stakeholders to evaluate the impact of adopting (or not adopting) the regulatory changes included in this proposal. These stakeholders included the Arkansas Department of Health, the Arkansas Highway and Transportation Department, Arkansas Department of Emergency Management, and the Arkansas Department of Economic Development, in addition to representatives from the Arkansas Environmental Federation, Arkansas Audubon Society, and the Arkansas Municipal League. The revisions brought forward in this proposal represent the consensus of that stakeholder group.

# **EXHIBIT H:**

## **Scheduling Minute Order**

**ARKANSAS POLLUTION CONTROL  
AND ECOLOGY COMMISSION**

**LOCATION - SUBJECT**

**Regulation No. 23  
Docket No. 08- -R**

**MINUTE ORDER NO. 08 -**

**PAGE 1 OF 4**

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On January 11, 2008, The Arkansas Department of Environmental Quality ("Department") filed a Petition to Amend Regulation No. 23 (Hazardous Waste Management) (hereafter "Petition"). The Petition has been designated as Docket No. 08-00\_-R.

The Commission's Regulations Committee met on January 25, 2008 to review the Petition. Having considered the Petition, the Regulations Committee recommends the Commission institute a rulemaking proceeding to consider amending Regulation No. 23.

1. The Arkansas Department of Environmental Quality ("Department") shall file an original and two (2) copies and a computer disk in Microsoft Word of all materials required under this Minute Order.

2. Persons submitting written public comments shall submit their written comments to the Department. Within ten (10) business days following the adoption or denial of the proposed rule, the Department shall deliver the originals of all comments to the Commission Secretary.

3. A public hearing shall be conducted on February 27, 2008, at 2:00 p.m. in the Commission Room at the Department's offices at 5301 Northshore Drive North Little Rock.

4. The period for receiving all written comments shall conclude ten (10) business days after the date of the public hearing pursuant to Regulation No. 8, Part 3, Section 3.2.3, unless an extension of time is granted.

5. The Department has filed a Statement of Basis and Purpose as required by Regulation No. 8, Part 3, Section 3.6.2(1), (2) and (3) as a component of this proposed rulemaking.



**ARKANSAS POLLUTION CONTROL  
AND ECOLOGY COMMISSION**

**LOCATION - SUBJECT**

**Regulation No. 23  
Docket No. 08-00\_-R**

**MINUTE ORDER NO. 08 -**

**PAGE 2 OF 4**

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6. The Department shall file, not later than April 11, 2008, a proposed Minute Order deciding this matter.

7. The Department shall seek review of the proposed rule from the Joint Interim Committee on Public Health and Welfare and/or from the Joint Interim Committee on Administrative Rules and Regulations.

8. The Regulations Committee will consider this matter at its April 2008 meeting. Members of the Regulations Committee may ask questions of the Department and any person that made oral or written comments. The Regulations Committee will make a recommendation to the Commission.

9. At its regularly scheduled April 2008 meeting, the presentation of oral statements and legal arguments shall be regulated as follows:

a. The Chair of the Commission will permit members of the public to make a statement to the Commission. No more than three (3) minutes will be allowed for each statement. The period for statements will close at the end of one (1) hour, or sooner if all interested persons have completed their statements. The Chair in his discretion, may extend the one (1) hour public comment period.

ARKANSAS POLLUTION CONTROL  
AND ECOLOGY COMMISSION

LOCATION - SUBJECT

Regulation No. 23  
Docket No. 08-00\_-R

MINUTE ORDER NO. 08 -

PAGE 3 OF 4

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b. At the discretion of the Chair, an attorney representing one or more individuals, a corporation or other legal entity may be permitted five (5) minutes in which to address the Commission.

c. Department legal counsel or other designated Department employee will be permitted ten (10) minutes in which to address the Commission.

d. At the conclusion of all comments, the Chairman will call on each Commissioner for the purpose of asking the attorneys or persons sponsoring comments who are present, any questions they may have. Attorneys will not be permitted to respond or ask follow-up questions of any person questioned by a Commissioner.

After each Commissioner has had an opportunity to ask questions, the Chair will entertain a motion on the matter, allow discussion, and call for a vote of the Commission members.

10. The Commission finds the proposed regulation is exempt from Act 143 of 2007 (formerly Executive Order 05-04) because the proposed rule is federally mandated or it codifies existing state or federal law.

ARKANSAS POLLUTION CONTROL  
AND ECOLOGY COMMISSION

LOCATION - SUBJECT

Regulation No. 23  
Docket No. 08-00\_-R

MINUTE ORDER NO. 08 -

PAGE 4 OF 4

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The Commission accepts the recommendation of the Regulations Committee and initiates the rulemaking proceeding in Docket No. 07-007-R effective January 25, 2008. The Commission adopts, without modification, the procedural schedule set forth above.

**COMMISSIONERS:**

_____ L. Bengal	_____ J. Shannon
_____ S. Henderson	_____ L. Sickel
_____ D. Hendrix	_____ J. Simpson
_____ C. McGrew	_____ W. Thompson
_____ D. Samples	_____ E. Valdez
_____ T. Schueck	_____ B. White
	_____ R. Young

\_\_\_\_\_ **SUBMITTED BY:** J.R. Benefield **DATE PASSED:** 1/25/2008  
T. Schueck,  
Chairman



Date:  
Comments/Approval:

By:

12. Present proposed final regulation and minute order to the **Commission** for adoption.

Date:  
Comments/Approval:

By:

13. Send two (2) copies of adopted regulation to **Secretary of State** (regulation goes into effect twenty calendar days after filing).

Date mailed:

15. Provide fifteen (15) copies to the **Arkansas State Library**.

16. Formally submit adopted regulation to **EPA** (if necessary) with Governor's submittal letter.  
Date mailed:

17. Provide (1) record and electronic copies to **ADEQ Legal Division** for Department repository.

# ADEQ

ARKANSAS  
Department of Environmental Quality

TO: Pollution Control and Ecology Commission Members

FROM: Elizabeth Hoover *E Hoover*  
Executive Secretary  
Solid Waste Licensing Committee

DATE: January 9, 2008

SUBJECT: Solid Waste Licensing Committee  
Member Appointments

Arkansas Code Annotated §8-6-904 (2005 Supp.) establishes the Solid Waste Licensing Committee and authorizes the Commission to appoint nine of the ten Committee members.

This information packet is submitted for use in selecting individuals to fill the two current vacancies on the Committee. This item of business has been placed on the agenda for the January meeting.

Established in 1985 as a voluntary Committee involved primarily with the development of a certification program for sanitary landfill operators, today, the Solid Waste Licensing Committee continues to advise and assist in the administration of this Program, which now certifies approximately 950 solid waste management facility operators, and has become one of the largest nationwide with virtually every solid waste management facility worker in the state holding a license.

Attached to this memo as a part of this packet, you will find a List of Nominees for the two vacancies. Other items attached include Profile Forms of Nominees and a proposed minute order.

cc: Teresa Marks, Director  
Karen Bassett, Chief Deputy Director  
Steve Martin, Chief, Solid Waste Management Division  
Susan Speake, Programs Branch Mgr., Solid Waste Management Division



Categories and nominees for three-year terms on the Solid Waste Licensing Committee are as follows:

REGIONAL SOLID WASTE MANAGEMENT  
DISTRICT REPRESENTATIVE

James S. Abbey, Northeast Arkansas RSWMD

EDUCATIONAL REPRESENTATIVE

Gary L. Oden, Arkansas Environmental Academy

### SOLID WASTE LICENSING COMMITTEE MEMBERSHIP NOMINEE PROFILE FORM

**Return Completed Form and Attachments to:**  
Arkansas Department of Environmental Quality  
Attn: Elizabeth Hoover - SWMD  
5301 Northshore Drive  
North Little Rock, AR 72118-5317  
Fax #: (501) 682-0611

**Date Received:**

Name of Nominee: (First) James (Jim) (Middle Initial) S. (Last) Abbey

Employer: Northeast Arkansas Regional Solid Waste Management District

Licenses Held: (check all that apply)

Type of Facility: Class 1 and Class 4 Landfill and Recycling Operations

1A 1B  1C

Business Address: P.O. Box 753

2A 2B 2C

City: Paragould

3A 3B 3C

County: Greene State: AR

Zip: 72451

Job Title: Executive Director

Business Phone: (870) 236-7447

#### PERSONAL INFORMATION

Home Address: 1001 Northwood Drive

City: Paragould State: AR Zip: 72450

Home Phone: (870) 236-2602

Date of high school diploma or GED: (month/year) May 1970

Do you have any college credits?  YES  NO

Number of credit hours:

Did you complete college?  YES  NO

Type of degree? Master of Public Administration

Are you currently licensed?  YES  NO

Enter License number: 1271

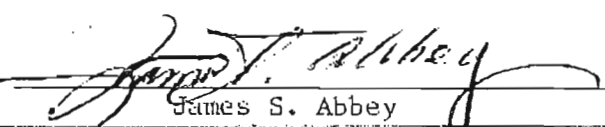
How long have you been a licensed operator? Since 1996

How many years of solid waste experience do you have? 14 Hours of solid waste training?

Previous Employment: U.S. Air Force

Please provide any additional information you feel pertinent:

To the best of my knowledge, I affirm the above information is true and correct.

Applicant Signature:   
James S. Abbey

Date: December 4, 2007

### SOLID WASTE LICENSING COMMITTEE MEMBERSHIP NOMINEE PROFILE FORM

Return Completed Form and Attachments to:  
Arkansas Department of Environmental Quality  
Attn: Elizabeth Hoover - SWMD  
5301 Northshore Drive  
North Little Rock, AR 72118-5317  
Fax #: (501) 682-0611

Date Received:

Name of Nominee: Gary (Middle Initial) L Oden (Last)

Employer: Southern Arkansas University Tech

Licenses Held: (check all that apply)  
NA

Type of Facility: NA

1A 1B 1C

Business Address: PO Box 3499

2A 2B 2C

City: Camden

3A 3B 3C

County: Ouachita

State: Arkansas

Zip: 71701

Job Title: Executive Vice Chancellor / CAO

Business Phone: (870) 574-4502

#### PERSONAL INFORMATION

Home Address: 3670 Pineview

City: Camden State: Ar Zip: 71701

Home Phone: (870) 231-9010

Date of high school diploma or GED: (month/year) High School May '63

Do you have any college credits?  YES  NO

Number of credit hours: MS Plus 60.0 Hours

Did you complete college?  YES  NO

Type of degree? Masters of Education

Are you currently licensed?  YES  NO

Enter License number: NA

How long have you been a licensed operator? NA

How many years of solid waste experience do you have? NA Hours of solid waste training? NA

Previous Employment:  
In March 2008 will begin my 41 year  
at SAU Tech. I have held administrative responsibility  
for the Arkansas Environmental Academy since 1975

Please provide any additional information you feel pertinent:  
The College has just hired  
a new Solid Waste Instructor/Coordinator to begin mid December.  
I want to serve very much on this board until that person is  
ready to take my place.

To the best of my knowledge, I affirm the above information is true and correct.

Applicant Signature: Gary Oden Date: 11-26-07

ARKANSAS POLLUTION CONTROL  
AND ECOLOGY COMMISSION

SUBJECT: SOLID WASTE  
LICENSING COMMITTEE

MINUTE ORDER NO. 08 -

PAGE 1 OF 1

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The Commission hereby appoints the following individuals to a three-year term on the Arkansas Solid Waste Licensing Committee to commence January 25, 2008, and to expire January 24, 2011:

<u>Position</u>	<u>Affiliation</u>	<u>Name</u>
Regional Solid Waste Management District Representative	Northeast Arkansas RSWMD	James S. Abbey
Educational Representative	Arkansas Environmental Academy	Gary L. Oden

Commissioners:

_____ D. Hendrix	_____ J. Shannon
_____ L. Bengal	_____ L. Sickel
_____ S. Henderson	_____ W. Thompson
_____ C. McGrew	_____ B. White
_____ J. Simpson	_____ R. Young
_____ D. Samples	_____ E. Valdez
_____ T. Schueck	

\_\_\_\_\_ SUBMITTED BY: Steve Martin PASSED: \_\_\_\_\_  
Thomas Schueck, Chair



ARKANSAS POLLUTION CONTROL & ECOLOGY COMMISSION

101 EAST CAPITOL  
SUITE 205  
LITTLE ROCK, ARKANSAS 72201  
PHONE: (501) 682-7890  
FAX: (501) 682-7891

December 12, 2007

CERTIFIED MAIL 7007 1490 0003 3819 9016  
Samuel E. Ledbetter  
McMath Woods, P.A.  
711 West Third Street  
Little Rock, AR 72201

Benjamin Jones  
Arkansas Department of Environmental Quality  
5301 Northshore Dr.  
North Little Rock, AR 72118

RE: In the Matter of Ozark Interest, Inc.; Docket No. 07-012-P

Dear Mr. Ledbetter and Mr. Jones:

On December 12, 2007 you filed a Permit Appeal Resolution ("PAR") in the above-referenced docket. Pursuant to Regulation No. 8, Section 2.5.15, the appeal has been withdrawn and no further action is required by the parties or administrative hearing officer in order to close this docket. Therefore, this docket is officially closed. However, the Commission may reopen the docket if it initiates a review of the PAR or if it grants a petition to set aside the PAR.

The administrative hearing officer will report this matter to the Commission at its next meeting, which is scheduled for Friday, January 25, 2008. Please contact me if you have any questions.

Respectfully,

A handwritten signature in cursive script that reads "Michael O'Malley".

Michael O'Malley  
Administrative Hearing Officer





increase in the amount of sampling events per year from four quarterly samples to twelve monthly samples, and a specification that Ozark's facility requires a Class II wastewater treatment operator as stipulated by Regulation 3 of the Arkansas Pollution Control and Ecology Commission.

4. Ozark filed a Request for Commission Review and Adjudicatory Hearing disputing the addition of these requirements and provision on the grounds that they were arbitrary and capricious, an abuse of discretion, along with other allegations.

5. Ozark and ADEQ reached a settlement agreement in this matter. The terms of the agreement are described below.

#### **ORDER**

1. The issued permit will be revoked and re-issued as follows:
  - (a) Samples will be taken four times per year during the months prescribed in the schedule and in accordance with the chart attached and labeled as Exhibit A.
  - (b) Ammonia-Nitrogen (NH<sub>3</sub>-N) shall be sampled during the month of April each year.
  - (c) A two (2) year compliance schedule for the new dissolved oxygen requirement will be granted by ADEQ to Ozark. The two year compliance period will begin at the re-issuance of the permit.
  - (d) Ozark will be required to submit a report every six months to update ADEQ on Ozark's progress in meeting the dissolved oxygen requirement.

(e) ADEQ will grant Ozark a two (2) year compliance schedule to hire a Class II wastewater treatment operator. The two year compliance period will begin on the re-issuance of the permit.

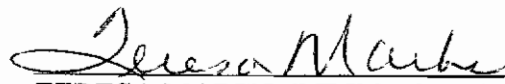
(f) The current permit will remain in effect until the permit is revoked and re-issued.

2. The revocation and re-issuance of the permit will need to meet all the applicable requirements found in Arkansas Code Annotated § 8-4-203 and Regulation 8 of the Arkansas Pollution Control and Ecology Commission.

3. This Permit Appeal Resolution is subject to public review and comment. However, this Permit Appeal Resolution is effective immediately upon signature of the Director. ADEQ retains the right and discretion to set aside this Permit Appeal Resolution based upon comments received within the thirty (30) day public comment period; however, ADEQ's right to set aside the Permit Appeal Resolution shall expire sixty (60) days after the close of the public comment period. If the Permit Appeal Resolution is set aside, this appeal shall be simultaneously reinstated.

4. In accordance with § 2.5.15 of the Arkansas Pollution Control and Ecology Commission Regulation Number 8, Ozark's Request for Commission Review and for Adjudicatory Hearing is hereby withdrawn.

ENTERED into this 12<sup>th</sup> day of December, 2007

  
TERESA MARKS, DIRECTOR OF  
ARKANSAS DEPARTMENT OF  
ENVIRONMENTAL QUALITY

APPROVED AS TO FORM AND CONTENT  
OZARK INTEREST, INC.

BY: C. Eugene Monk (SIGNATURE)  
C. Eugene Monk (TYPED OR PRINTED NAME)

TITLE: Associate Director  
DATE: 12/3/2007

Effective date: 1/1/2008  
 Expiration date: 12/31/2012  
 Issued Date: 12/31/2007

**PART I  
 PERMIT REQUIREMENTS**

**SECTION A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS: OUTFALL  
 001 – treated domestic wastewater**

During the period beginning on the effective date and lasting until the date of expiration, the permittee is authorized to discharge from Outfall 001. Such discharges shall be limited and monitored by the permittee as specified below:

Effluent Characteristics	Discharge Limitations				Monitoring Requirements	
	Mass (lbs/day, unless otherwise specified)		Concentration (mg/l, unless otherwise specified)		Frequency	Sample Type
	Monthly Avg.	Daily Max.	Monthly Avg.	Daily Max.		
Flow <sup>1</sup>	N/A	N/A	Report	Report	two/week	pump run time
Carbonaceous Biochemical Oxygen Demand (CBOD5)	3.4	5.1	10.0	15.0	See permit <sup>3</sup>	grab
Total Suspended Solids (TSS)	5.1	7.7	15.0	22.5	See permit <sup>3</sup>	grab
Ammonia Nitrogen (NH3-N)						
(April)	Report	1.8	Report	5.2	once/month	grab
(May-October)	1.7	2.6	5.0	7.5	See permit <sup>3</sup>	grab
(November-March)	3.4	5.1	10.0	14.7	See permit <sup>3</sup>	grab
Dissolved Oxygen <sup>2</sup>	N/A	N/A	2.0 (Monthly Avg. Min.)		See permit <sup>3</sup>	grab
Fecal Coliform Bacteria (FCB)	N/A	N/A	(colonies/100 ml)		See permit <sup>3</sup>	grab
			1,000	2,000		
Oil and Grease (O & G)	3.4	5.1	10.0	15.0	See permit <sup>3</sup>	grab
pH	N/A	N/A	Minimum 6.0 s.u.	Maximum 9.0 s.u.	once/month	grab

- 1 Report monthly average and daily maximum as MGD.
- 2 See Item #27(a) of Part IV (Dissolved Oxygen Requirements).
- 3

Year	(Jan. - Mar.)	(Apr. - June)	(July - Sept.)	(Oct. - Dec.)
2008	January	May	July	October
2009	February	June	August	November
2010	March	April	September	December
2011	January	May	July	October
2012	February	June	August	November

There shall be no discharge of distinctly visible solids, scum, or foam of a persistent nature, nor shall there be any formation of slime, bottom deposits, or sludge banks. There shall be no visible sheen due to the presence of oil (Sheen means an iridescent appearance on the surface of the water).

Samples taken in compliance with the monitoring requirements specified above shall be taken at the discharge from the final treatment unit



ARKANSAS POLLUTION CONTROL & ECOLOGY COMMISSION

101 EAST CAPITOL  
SUITE 205  
LITTLE ROCK, ARKANSAS 72201  
PHONE: (501) 682-7890  
FAX: (501) 682-7891

January 16, 2008

CERTIFIED MAIL 7007 1490 0003 3819 9108

Julie D. Greathouse  
Perkins & Trotter, PLLC  
PO Box 251618  
Little Rock, AR 72225-1618

Elizabeth Anne Weinstein  
Arkansas Department of  
Environmental Quality  
8001 National Drive  
Little Rock, AR 72219-8913

RE: In the Matter of Waste Corporation of Arkansas, Inc.;  
Docket No. 07-004-NOV

Dear Ms. Greathouse and Ms. Weinstein:

On January 15, 2008 you filed a Settlement Agreement in the above-referenced docket. Pursuant to Regulation No. 8, Section 2.5.15, the appeal has been withdrawn and no further action is required by the parties or administrative hearing officer in order to close this docket. Therefore, this docket is officially closed. However, the Commission may reopen the docket if it initiates a review of the Settlement Agreement or if it grants a petition to set aside the Settlement Agreement.

The administrative hearing officer will report this matter to the Commission at its next meeting, which is scheduled for Friday, January 25, 2008. Please contact me if you have any questions.

Respectfully,

A handwritten signature in cursive script that reads "Michael O'Malley".

Michael O'Malley  
Administrative Hearing Officer

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:  
WASTE CORPORATION OF ARKANSAS, INC.  
ROLLING MEADOWS LANDFILL  
ONE RIVERWAY, #1400  
HOUSTON, TX 77056  
AFIN 59-00036  
PERMIT NUMBER 0253-S1-R5

2008 JAN 15 PM 3:51

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY  
POLYMER COMPOSITE  
FILED  
MLO/MW

LIS 07-075

**SETTLEMENT AGREEMENT**

This Settlement Agreement is issued pursuant to the authority of the Arkansas Solid Waste Management Act (Act 237 of 1971, as amended; A.C.A. § 8-6-201 et seq.) the Arkansas Pollution Control and Ecology Commission Regulation 22 (hereinafter "Reg. 22") and the Arkansas Pollution Control and Ecology Commission Regulation 8 (hereinafter "Reg. 8"). The issues herein as they pertain to Waste Corporation of Arkansas, Inc., Rolling Meadows Class 1 Landfill, (hereinafter "Waste Corp"), have been settled by the agreement of Waste Corp and the Director of the Arkansas Department of Environmental Quality (hereinafter "ADEQ").

NOW THEREFORE, without any admission of fact or law, and without any admission of the violations alleged in the Notice of Violation, LIS 07-075 (NOV) or this Settlement Agreement, it is hereby agreed and stipulated by all parties that the following Findings of Fact and Order and Agreement be entered herein.

**ALLEGATIONS AND FINDINGS OF FACT**

1. ADEQ, as administered by its Director, is the state agency charged with ensuring compliance with the Arkansas Solid Waste Management Act, A.C.A. § 8-6-201 et



seq., and the regulations promulgated thereunder including the Arkansas Pollution Control and Ecology Commission Regulation 22 (Reg. 22).

2. On August 24, 2006, an ADEQ Solid Waste Management Division Inspector conducted an inspection at the Rolling Meadows Landfill, which is owned and operated by Waste Corp, under ADEQ permit number 0253-S1-R5. The Inspector noted and/or photographed the following violations of Regulation 22:
  - The facility was using tarps for alternate daily cover in cell 8. This practice is not approved under facility permit condition 26 of Rolling Meadows class 1 permit documents. This is a violation of Regulation 22.411(a).
  - The landfill is not covering waste with (6) inches of earth material at the end of each operating day in cell 8. Also noted an unusually strong odor coming from exposed waste. This is a violation of Regulation 22.413(a).
  - Exposed waste was noted on the north and east slopes of cell 7. This is a violation of Regulation 22.411(o).
  
3. On December 14, 2006, an ADEQ Solid Waste Management Division Inspector conducted a follow-up inspection at the Rolling Meadows Landfill, which is owned and operated by Waste Corp, under ADEQ permit number 0253-S1-R5. The Inspector verified that the alleged violations had been corrected and did not note any violations at that time, as a result of which Waste Corp received a zero score.

## ORDER AND CIVIL PENALTY ASSESSMENT

1. Waste Corp shall comply with the Arkansas Solid Waste Management Act, A.C.A. § 8-6-201 et seq., permit number 0253-S1-R5, and the Arkansas Pollution Control and Ecology Commission Regulation 22.
  
2. In compromise and full settlement of civil penalties for instances of alleged noncompliance specified in the FINDINGS OF FACT (paragraph 1-2), Waste Corp agrees to pay the sum of Three Thousand Dollars (\$3,000) as a voluntary civil penalty. The total of Three Thousand Dollars (\$3,000) shall be due within thirty (30) days of the effective date of this Order. Penalty payment shall be made payable to the Arkansas Department of Environmental Quality. Payment shall be mailed to Fiscal Division, attention of: Sherry Gage, Fiscal Division, Arkansas Department of Environmental Quality, 8001 National Drive, P.O. Box 8913, Little Rock, AR 72219-8913. The publication of this Settlement Agreement shall occur on or about the 10<sup>th</sup> day of the month following the date this Settlement Agreement is executed.
  
3. If any event occurs which causes or may cause delay in the achievement and completion by Waste Corp of the requirements of the deadlines established in this Settlement Agreement, Waste Corp shall notify ADEQ, in writing, within five (5) days of knowledge of such delay, specifying in detail the anticipated length of the delay, the precise cause of the delay and measures being taken to correct and minimize the delay.

4. ADEQ may grant an extension of any provision of the Settlement Agreement, in its discretion, provided that the delay has been or will be caused by circumstances beyond the control of and without the fault of Waste Corp. The burden of proving such cause of delay rests with Waste Corp. Failure to notify ADEQ of any delay within the time frames specified in this Agreement may be grounds for denying an extension.

5. Waste Corp shall pay to ADEQ civil penalties as authorized by the Arkansas Solid Waste Management Act and Solid Waste Reg. 22, for failure to meet any deadlines required by this Order as follows:

- (a) First day through the tenth day: \$250.00 per day
- (b) Eleventh day through the twentieth day: \$500.00 per day
- (c) Twenty-first day through the thirtieth day: \$750.00 per day
- (d) Each day beyond the thirtieth day: \$1,000.00 per day

Any such penalties shall be due and payable upon demand to ADEQ except for good cause shown as specified in paragraphs 3 and 4 of this section. These stipulated penalties for delay in performance shall be in addition to any other remedies or sanctions which may be available to ADEQ by reason of Waste Corp's failure to comply with this Settlement Agreement.

6. Nothing contained in this Settlement Agreement shall be construed as a waiver by ADEQ of its enforcement authority over alleged violations not specifically addressed herein. Likewise, nothing contained in this Settlement Agreement shall be construed as an admission on the part of WCA related to the allegations contained in the NOV or this Settlement Agreement, nor shall any language in

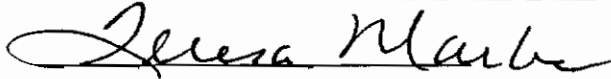
this Settlement Agreement be construed as a waiver or preclusion of defenses in any subsequent matter. Also, this Settlement Agreement does not purport in any way to relieve Waste Corp of its responsibility for obtaining any necessary permits; nor does it exonerate any past, present, or future conduct which is not expressly addressed.

7. ADEQ will submit this Settlement Agreement for public review and comment.

The Settlement Agreement, therefore, is not final until thirty (30) days after public notice of the Settlement Agreement is given. ADEQ retains the right and discretion to rescind this Settlement Agreement based on comments received within the thirty-day public comment period.

8. This Settlement Agreement is executed to resolve the issues stated in the NOV, LIS 07-075. In accordance with Subsection 2.5.15 of APC&EC Regulation No. 8, the Request for Commission Review and Adjudicatory Hearing in this matter is hereby withdrawn. However, as provided by Regulation No. 8, this matter is subject to being reopened upon Commission initiative or in the event a petition to set aside this Settlement Agreement is granted by the Commission.

SO ORDERED THIS 11<sup>th</sup> day of Jan., 2008.



Teresa Marks, Director, ADEQ

**APPROVED AS TO FORM AND CONTENT**

BY  (Signature)

Michael A. Roy (Typed or Printed Name)

TITLE Vice President & General Counsel

DATE January 9, 2008

# ARKANSAS POLLUTION CONTROL & ECOLOGY COMMISSION

101 EAST CAPITOL  
SUITE 205

LITTLE ROCK, ARKANSAS 72201

PHONE: (501) 682-7890

FAX: (501) 682-7891



## M E M O R A N D U M

**TO:** Commissioners

**FROM:** Michael O'Malley, Administrative Hearing Officer

**DATE:** January 9, 2008

**SUBJECT:** 2007 Case Filing Report

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In January 1995, a new docket numbering system was initiated to better track the number and types of cases filed during a calendar year. For the year 2007, a total of thirty-eight (38) matters were filed. A total of thirty-six (36) matters were docketed during calendar year 2006.

The matters docketed in 2007 were:

- a. Fourteen (14) Permit Appeal cases,
- b. Eight (8) Notice of Violation cases,
- c. Twelve (12) Regulation matters, and
- d. Four (4) Miscellaneous cases.

Thirty-eight (38) matters were docketed in 2007 and twenty-one (21) of them were closed by the end of the year. The Commission closed six (6) of the fourteen (14) Permit Appeal cases, three (3) of the eight (8) Notice of Violation cases, four (4) of the four (4) Miscellaneous cases, and eight (8) of the twelve (12) Regulation matters. All other cases are pending.

Attached for your information is a listing of each matter showing the type of docket, name, date filed, docket number, and status as of December 31, 2007.

If you have any questions concerning this information, please contact me.



### PERMIT APPEALS DOCKET

<u>IN THE MATTER OF:</u>	<u>FILED</u>	<u>NUMBER</u>	<u>STATUS</u>
Guy King & Sons, Inc.	01/03/07	07-001-P	CLOSED
Guy King & Sons, Inc.	02/05/07	07-002-P	CLOSED
City of Jonesboro, Arkansas Landfill	02/21/07	07-003-P	CLOSED
Russellville City Corporation	02/22/07	07-004-P	PENDING
Town of Highfill	02/28/07	07-005-P	CLOSED
El Dorado Joint Pipeline Group Permits	03/27/07	07-006-P	PENDING
El Dorado Water Utilities, Permits AR0049743/AR0049743C; Great Lakes Chemical Corp. Permit AR0001171; Lion Oil Company Permit AR0000646; El Dorado Chemical Company Permit AR0000752; and El Dorado Water Utilities, Great Lakes Chemical Corporation, Lion Oil Company, El Dorado Chemical Company Joint Permit AR0050296	03/28/07	07-007-P	PENDING
State of Louisiana v. Arkansas Department of Environmental Quality	03/29/07	07-008-P	PENDING
Lion Oil Company, Great Lakes Chemical Corporation, El Dorado Water Utilities, and El Dorado Chemical Company Joint Pipeline	03/30/07	07-009-P	PENDING
Equity AU Inc.	04/18/07	07-010-P	CLOSED
Gerald Weber, General Permit No. 0001-MN-AG1	04/30/07	07-011-P	CLOSED

**PERMIT APPEALS DOCKET**

<u>IN THE MATTER OF:</u>	<u>FILED</u>	<u>NUMBER</u>	<u>STATUS</u>
Ozark Interests, Inc., Camp Ozark	06/26/07	07-012-P	PENDING
Green Bay Packaging Inc., Arkansas Kraft Division	06/28/07	07-013-P	PENDING
General Permit No. 00000-WG-P	12/31/07	07-014-P	PENDING

## NOTICE OF VIOLATION DOCKET

<u>IN THE MATTER OF:</u>	<u>FILED</u>	<u>NUMBER</u>	<u>STATUS</u>
John Reddish Auction Marketing Service, Inc. and John Reddish	02/27/07	07-001-NOV	CLOSED
Joel Burgos and J. S. Burgos Co., Inc.	05/14/07	07-002-NOV	CLOSED
William Perry	07/17/07	07-003-NOV	CLOSED
Waste Corporation of Arkansas, Inc.	08/27/07	07-004-NOV	PENDING
B & J Coal Company	10/24/07	07-005-NOV	PENDING
Clint Skiver, Individually and Skiver Development of Arkansas, Inc.	11/29/07	07-006-NOV	PENDING
HLV Development, LLC	12/19/20	07-007-NOV	PENDING
Co-Bar Contracting, Inc.	12/21/07	07-008-NOV	PENDING

## REGULATION DOCKET

<u>IN THE MATTER OF:</u>	<u>FILED</u>	<u>NUMBER</u>	<u>STATUS</u>
Clean Harbors El Dorado, LLC, Regulation No. 2 Third Party Rulemaking	01/12/07	07-001-R	CLOSED
Regulation No. 6, Regulations for State Administration of the National Pollutant Discharge Elimination System (NPDES)	02/09/07	07-002-R	CLOSED
Regulation No. 2, Regulations Establishing Water Quality Standards for Surface Waters in the State of Arkansas.	04/13/07	07-003-R	CLOSED
Regulation No. 2, Bayou Meto Water Management District Third Party Rulemaking	04/13/07	07-004-R	CLOSED
Regulation No. 12, Storage Tank Regulations	05/11/07	07-005-R	CLOSED
Regulation No. 19, Regulations of the Arkansas Plan of Implementation for Air Pollution Control	05/15/07	07-006-R	CLOSED
Regulation No. 23, Hazardous Waste Management	06/08/07	07-007-R	CLOSED
Regulation No. 32, Environmental Professional Certification	06/08/07	07-008-R	CLOSED
Regulation No. 9, Fee Regulations	09/14/07	07-009-R	PENDING
Regulation No. 5, Liquid Animal Waste Management Systems	10/12/07	07-010-R	PENDING

## REGULATION DOCKET

<u>IN THE MATTER OF:</u>	<u>FILED</u>	<u>NUMBER</u>	<u>STATUS</u>
Regulation No. 3, Licensing of Wastewater Treatment Plant Operators	10/12/07	07-011-R	PENDING
Regulation No. 22, Solid Waste Management Rules	11/20/07	07-012-R	PENDING

### MISCELLANEOUS DOCKET

<u>IN THE MATTER OF:</u>	<u>FILED</u>	<u>NUMBER</u>	<u>STATUS</u>
Eaton-Moery Environmental services, Inc.	01/25/07	07-001-MISC	CLOSED
Two-Lane Blacktop Drag Strip	02/09/07	07-002-MISC	CLOSED
Eaton-Moery Environmental Services, Inc.	02/23/07	07-003-MISC	CLOSED
Parker Solvents Company, Inc.	03/29/07	07-004-MISC	CLOSED



BEFORE THE ARKANSAS POLLUTION CONTROL AND ECOLOGY  
COMMISSION

IN THE MATTER OF AMENDMENTS TO ) 07-009-R  
REGULATION NO. 9, FEE REGULATIONS )

MOTION TO ADOPT CHANGES TO REGULATION NO. 9

Pursuant to APC&EC Regulation No. 8, the Arkansas Department of Environmental Quality submits the following documents before the Commission for its consideration:

- Exhibit A) The signed Statement of Basis and Purpose;
- Exhibit B) The signed Responsive Summary;
- Exhibit C) The final revised Regulation No. 9;
- Exhibit D) The Regulations Tracking Sheet; and
- Exhibit E) The Proposed Minute Order adopting the proposed revisions to the Regulation.

WHEREFORE, the Arkansas Department of Environmental Quality prays that the Commission adopt the proposed Minute Order adopting the revisions to APC&EC Regulation No. 9.

Respectfully submitted,  
ARKANSAS DEPARTMENT OF  
ENVIRONMENTAL QUALITY

By: \_\_\_\_\_

Jamie L. Ewing

2008 JAN -4 PM 1:22

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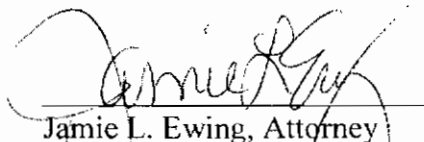


state that any miscellaneous general permits that are not specifically listed in the regulation will be subject to an initial fee not to exceed \$500 and an annual fee not to exceed \$500.

Regulation No. 9 will also be amended to clarify Section 9.507. The language concerning general air permits is being amended to clarify that a \$200.00 initial fee will be required at the time of the submission of the Notice of Intent (“NOI”) to the Department and the applicant will be charged a \$200.00 annual fee thereafter until the Department receives a Notice of Termination (“NOT”) from the applicant. Reg. 9.507 will also be revised to state that Non-part 70 General Permits in which the tons/year predominant air contaminant is less than 10 tons per year will not be assessed or billed an annual fee. These amendments are intended to provide clarification of the applicable fee structure.

Regulation No. 9 is also being revised to add the language in Section 9.609. This section applies to solid waste general permits and states that the Department will assess a \$900.00 initial fee to be remitted with the NOI, a \$450.00 annual fee, a \$450.00 modification fee, and a \$450.00 permit transfer fee. In addition, if a solid waste general permit is revised, no additional initial fee will be required if the facility has maintained coverage under the existing general permit.

Submitted by:



Jamie L. Ewing, Attorney

Arkansas Dept. of Environmental Quality  
5301 Northshore Drive  
North Little Rock, AR 72118

BEFORE THE ARKANSAS POLLUTION CONTROL & ECOLOGY  
COMMISSION

IN THE MATTER OF AMENDMENTS TO )  
REGULATION NO. 9, FEE REGULATIONS )

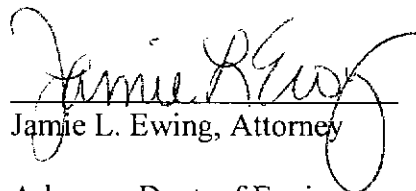
07-009-R

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY'S  
RESPONSIVE SUMMARY

Pursuant to Minute Order 07-34, the Arkansas Department of Environmental Quality ("ADEQ") submits the following Responsive Summary regarding proposed changes to Regulation No. 9, Fee Regulations.

A public hearing was held on November 7, 2007. No oral comments were received at the public hearing. The public comment period ended on November 26, 2007. No written comments were received on the proposed changes.

Submitted by:



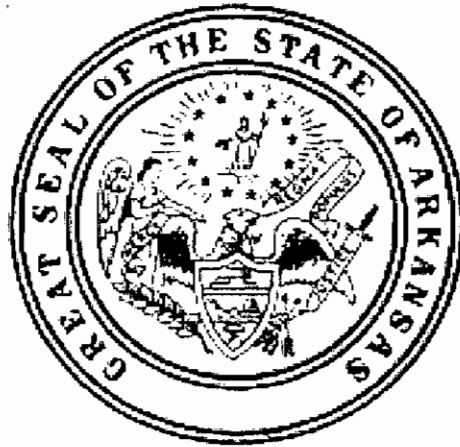
Jamie L. Ewing, Attorney

Arkansas Dept. of Environmental Quality  
8001 National Drive  
P.O. Box 8913  
Little Rock, AR 72219-8913



# ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION

## Regulation No. 9



## Fee Regulation

Approved by the PC&E Commission: January 25, 2008



**REGULATION NO. 9  
FEE REGULATION  
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## CHAPTER 1: TITLE

### **Reg.9.101 Title**

This regulation shall be known by and may be cited by the short title "Regulation No. 9: Fees."

### **Reg.9.102 Purpose**

It is the purpose of this regulation to develop and implement a system of fees for permits issued by the Arkansas Department of Environmental Quality pursuant to the provisions of the Water and Air Pollution Control Act (Act 472 of 1949, as amended, A.C.A. §8-4-101 et seq.) or the Solid Waste Management Act (Act 237 of 1971, as amended, A.C.A. §8-6-201 et seq.). Act 817 of 1983, as amended, Act 1254 of 1993, as amended, and Act 1052 of 1999 (A.C.A. § 8-1-101 et seq.) authorize the collection and enforcement of these fees and authorize their use to defray the costs of operating the Department.

It is also the purpose of this regulation to assess reasonable fees to establish and to administer the State Environmental Laboratory Certification Program Act (Act 876 of 1985, as amended, A.C.A. § 8-2-201 et seq.)

### **Reg.9.103 Applicability**

Permit fees established by this regulation shall be applicable to all water permits, including no-discharge and closed system permits, issued under the provisions of the Water and Air Pollution Control Act, as amended, all air permits issued under the Water and Air Pollution Control Act, as amended, or any federal water or air permit program where permitting authority has been delegated to the Department (unless fees for such a program are otherwise provided by law), and all solid waste disposal permits issued under the provisions of the Solid Waste Management Act, as amended, and the Solid Waste Management Code. Facilities operating under the provisions of the "Permits by Rule" or "Authorization by Rule" will be exempted from this regulation until such time that the facility submits an application for an individual permit within each applicable permit category.

Laboratory certification fees established by this regulation shall be applicable to all laboratories certified by the Department. The fees include, but are not limited to, the reasonable costs of administering the provisions of the program and the reasonable administrative costs of initial issuance, initial certificate, renewed certificates, and the expenses associated with conducting evaluations.

### **Reg.9.104 Severability**

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

## CHAPTER 2: DEFINITIONS

All terms used in this regulation, unless the context otherwise requires, or unless specifically defined in the enabling legislation or in federal regulations adopted by reference for program management, shall have their usual meaning. In addition, for purposes of this regulation, the following definitions apply:

**“Administrative Permit Amendment”** means a minor change or permit revision which is not typically considered a permit modification, as defined by applicable statutes or regulations, or a minor modification which does not require public notice and opportunity for comment. For example, typographical corrections or revisions, or other changes initiated by the Department, might be considered administrative permit amendments. Some minor changes requested by the permittee may also qualify as administrative permit amendments. For purposes of Chapter 5, administrative permit amendments are defined in Regulations 18, 19, and 26. The Director, in his discretion, may decide whether a revision would be considered an administrative amendment. No fee will be charged for administrative permit amendments.

**“Annual Fee”** means the fee required to be submitted upon the facility-specific annual invoice date for a permit issued pursuant to the Water and Air Pollution Control Act, as amended, or the Solid Waste Management Act, as amended.

**“Category”** means one type of laboratory test or group of laboratory tests for similar materials or classes of materials or which utilize similar methods or related methods.

**“Certificate”** means the annual document showing those parameters for which a laboratory has received certification. The annual period begins at receipt of fee payments or at the expiration of a current certificate.

**“Commission”** means the Arkansas Pollution Control and Ecology Commission.

**“Confined Animal Operation”** means any lot or facility where livestock or fowl have been, are, or will be stabled or confined and fed or maintained, and where crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any significant portion of the lot or facility.

**“Department”** means the Arkansas Department of Environmental Quality (ADEQ) or its successor.

**“Director”** means the Director of the Arkansas Department of Environmental Quality or his designated representative.

**“Discretionary Major Facility”** means an industrial facility discharging wastewater under the terms of a National Pollutant Discharge Elimination System (NPDES) permit that does not meet the numerical rating criteria as an NPDES non-municipal major facility, but which is designated as a major permittee by the Department or the U.S. Environmental Protection Agency (EPA). Such facilities are assigned an Major Rating Code (MRAT) greater than 500.

**“EPA”** means the United States Environmental Protection Agency.

**“Evaluation”** means a review of the quality control and quality assurance procedures, records keeping, reporting procedures, methodology, and analytical techniques of a laboratory for measuring or establishing specific parameters.

**“Facility”** means an activity or operation within a specific geographical location including property contiguous thereto. A facility may consist of several manufacturing, treatment, storage, or disposal operational units. For purposes of this permit fee regulation, a facility shall be considered to be all property, facilities, or operations owned, leased, or operated by a single entity, whether a municipal, county, or state government, corporation, partnership, or proprietorship in the same geographical area, forming an integral part of the same activity or operation, whether or not such activity lies within the boundaries of the city or county. For purposes of permit fee assessment only, such property, facilities, or operations shall be considered as a single facility if they are regulated by a common state or federal permit within each permit category, or in the future such consolidation of multiple permits can be realized within the scope of applicable permitting regulations, and the facilities or operations are under the supervision of a single plant manager/superintendent.

**“Initial Fee”** means the fee which is required by law to be submitted with all applications for permits issued pursuant to the Water and Air Pollution Control Act, as amended, and the Solid Waste Management Act, as amended, and which must be received by the Department prior to the issuance of such a permit.

**“Issue Date”** means the date the Department signed the permit.

**“Laboratory”** means any facility that performs analyses to determine the chemical, physical, or biological properties of air, water, solid waste, hazardous waste, wastewater, soil or subsoil materials, or any other analyses related to environmental quality evaluations.

**“Major Municipal Facility”** means a publicly owned treatment works (POTW) with a design flow or daily average flow of 1.0 million gallons per day (mgd) or greater, or a POTW designated as a major facility by the Department or EPA.

**“Modification Fee”** means that fee required by law to be submitted for modification of any existing or future permit required by the Water and Air Pollution Control Act, as amended, or the Solid Waste Management Act, as amended, such modification being either at the request of the permittee or as required by law or regulation. The fee may vary depending upon whether the permit modification or renewal is considered to be a minor or major modification, as defined in applicable statutes or regulations, or otherwise determined by the Director.

**“Non-Municipal Major Facility”** means a facility subject to the National Pollution Discharge Elimination System (NPDES) whose status is determined following completion of an NPDES Permit Rating Worksheet (current version) in which points are allocated on the basis of toxic pollutant potential, permitted flow or the ratio of wastewater to stream flow volume, conventional pollutants mass loadings, public health impacts (including proximity to drinking water supplies and potential for human health toxicity), and water quality factors. Additional

points can be assessed for certain steam electric power plants or for separate storm sewers serving a population greater than 100,000. The total points accumulated is known as the Major Rating Code or MRAT, which is the numeric total of ranking points assigned to non-municipal facilities and used to delineate them as a major or minor facility. Currently, a facility with an MRAT of eighty (80) points or more is designated as a “non-municipal major” facility. Additionally, EPA or the Department may designate an NPDES permittee as a “discretionary major” facility. Once an MRAT for a major facility is calculated and approved by EPA, the Department may recommend increases or decreases to an MRAT, but only EPA is authorized to change an individual permittee’s MRAT or designation as a “major” facility.

**“Non-Part 70 Permit”** means an air permit that is issued pursuant to a regulation other than Part 70 of Title 40 of the Code of Federal Regulations (40 CFR Part 70).

**“Parameter”** means the characteristic or characteristics of a laboratory sample determined by an analytic laboratory testing procedure.

**“Part 70 Permit”** means an air permit that is issued pursuant to 40 CFR Part 70.

**“Program”** means the Arkansas State Environmental Laboratory Certification Program.

**“Renewal Permit”** means a permit issued to a facility upon expiration of an existing permit. A modification fee may be assessed, depending upon whether the renewal is considered to be a minor or major modification, as defined in applicable statutes or regulations, or otherwise determined by the Director.

## CHAPTER 3: PERMIT FEE PAYMENT

### Reg.9.301 Permit Fee Payment

(A) Fee Calculation

The applicant may calculate the initial permit application fee or permit modification fee and include it with the permit application, or the applicant may request that the Department calculate the fee after reviewing the application and forward an invoice to the applicant for payment.

(B) Fee Payment

Applicable permit fees shall be paid by check or money order payable to the Department for deposit in the State Treasury. The permit will not be issued until such fee is received by the Department.

(C) Annual Fee Payment

Annual fees shall be due forty-five (45) days after the first day of the month in which the Permittee is billed for the required annual fee. Failure to receive this bill does not relieve the Permittee from liability for the annual fee, but late charges will not be assessed until forty-five (45) days after the Permittee has been notified that the annual fee is due. The Director may waive annual fees or a portion thereof, for new facilities which are not in operation, unless such waiver is otherwise prohibited by State or Federal law.

(D) Failure to Pay Annual Fees

A permitted facility failing or refusing to pay the annual fee in a timely manner shall be subject to a late payment charge as established in these regulations. Continued refusal to pay the required fees after a reasonable notice shall constitute grounds for legal action by the Department, which may result in revocation of the permit. When payment of fees is made by check which is subsequently returned due to insufficient funds, all review work on the particular application will immediately cease until the fee is paid in cash or by money order.

(E) First Annual Fee Payment

The annual fee shall be assessed upon the facility-specific annual invoice date. The Department shall credit the first annual fee, on a prorated basis, if the initial fee for the permit was assessed within 12 months of the first annual fee for the permit. The Department may credit the annual fee, on a prorated basis, if a modification fee for the permit was assessed within 12 months of the annual fee for the permit.

(F) Annual Fee Late Payment Charge



A late payment charge shall be assessed to facilities failing to pay the annual fee within forty-five (45) days of the billing date, and shall be assessed at the rate of ten percent (10%) of the annual fee.

**LATE PAYMENT CHARGE = TEN PERCENT (10%) OF ANNUAL FEE**

**Reg.9.302      Refunds**

Except for pre-site investigation fees and interim authority or variance application fees as described in Chapters 6 and 7, up to forty percent (40%) of a fee submitted pursuant to this regulation is refundable in the event that the request for the permit action for which the fee was submitted is withdrawn by the applicant prior to the final permit decision. The Director shall retain as much of the above-cited forty percent (40%) as he in his sole discretion, determines is necessary to cover the reasonable administrative and technical review costs incurred in the review process.

## CHAPTER 4: WATER PERMIT FEES

**WATER PERMIT FEES.** The following permit fee schedule shall be applicable to the affected water permit programs in the state of Arkansas.

### **Reg.9.401 Maximum Water Permit Fees**

The following maximum fees for water permits, including construction permits and initial, annual, renewal and modified permits, shall apply to each such permit issued by the Department. Actual permit fees will be calculated and assessed in accordance with the provisions of this section.

(A) Construction Permits

Construction permits issued pursuant to the Water and Air Pollution Control Act, as amended, for construction, alteration, or modification, or any combination thereof, of a treatment system shall not exceed \$500 per permit.

(B) NPDES and UIC Program Permits

Permits issued under the National Pollutant Discharge Elimination System (NPDES) and the Underground Injection Control (UIC) Programs.

(1) Initial and Annual .....\$30,000

(2) Modification of Permit

(a) Major Modification .....\$10,000

(b) Minor Modification\* .....\$1,000

NOTE: \* Minor modifications for NPDES and UIC permits are restricted to those as defined in 40 CFR 122.63 and 144.41, respectively.

(C) Non-NPDES "No-Discharge" Permits .....\$500

(D) Short Term Activity Authorizations

Fees for Short Term Activity Authorizations under the provisions of Regulation No. 2: Water Quality Standards shall not exceed \$200.

### **Reg.9.402 General Provisions**

(A) Construction Permits

All applicants for construction permits required by A.C.A. § 8-4-217(b) shall be assessed a fee which shall not exceed \$500 for each permit or modification thereto, except for liquid animal waste management systems which will be assessed a fee of \$200 for each permit or modification thereto. Construction

permit fees shall be in addition to any water permit fees required in Reg.9.403, Reg.9.404, and Reg.9.405 below.

(B) Permits Fees

Permit fees (initial, annual, or modification) shall be required for each water permit, as described below.

(C) Inactive Status Fees

The owner or operator of a hog farm that has been issued a permit under Regulation No. 5, Liquid Animal Waste Management Systems, shall not pay an annual fee if the permit is placed on inactive status by the Department. An NPDES or non-NPDES permit may be placed on inactive status if the owner's or operator's contract with the integrator has been terminated by the integrator. To obtain inactive status, the owner or operator must submit a written request to the Department seeking inactive status and provide the Department with a copy of the integrator's letter terminating the contract. The Department shall notify the owner or operator that the permit has been placed on inactive status. The owner or operator will not pay an annual fee during the time the permit is on inactive status. A permit that is placed on inactive status may remain on inactive status for a maximum of two (2) years following the date of contract termination. The owner or operator must comply with all permit conditions in order for the permit to remain on inactive status. Failure to comply with permit condition may result in the possible repayment of the annual fees, in addition to any assessed penalties. If the permit has not been reactivated at the end of the two (2) year period, the owner or operator must file a closure plan with the Department. The owner or operator must reactivate the permit if the owner or operator begins operating the hog farm and shall notify the Department within thirty (30) days after the owner or operator begins operating the hog farm that the permit is being reactivated.

**Reg.9.403 Fees for Permits Issued Under the National Pollutant Discharge Elimination System (NPDES) Permits.**

(A) Non-Municipal Major Facilities

(1) All facilities classified as Non-Municipal Major Facilities, as defined in Chapter 2, with a Major/Minor Permit Rating (MRAT) equal to or greater than 100, except for Discretionary Major Facilities [see Reg.9.403(A)(2)], are subject to fees as follows:

(a)	Initial Fee	\$15,000
(b)	Annual Fee	\$15,000
(c)	Modification Fee	
	(i) Major .....	\$5,000

(ii) Minor\* .....\$1,000

(3) Non-Municipal Major Facilities with MRAT less than 100 and Discretionary Major Facilities are subject to fees as follows:

(a) Initial Fee .....\$11,000

(b) Annual Fee .....\$11,000

(c) Modification Fee

(i) Major .....\$5,000

(ii) Minor\* .....\$1,000

(B) Major Municipal Facilities

All Major Municipal Facilities, as defined in Chapter 2, are subject to fees as follows:

(1) Initial and annual fees shall be calculated as follows:

$$\text{Fee} = \$5,000 + 900 Q' \text{ (mgd)}$$

**where Q' = Design flow (Q) - 1 mgd**

(4) Modification Fee

(a) Major .....\$5,000

(b) Minor\* .....\$1,000

(C) Minor Municipal and Non-Municipal Facilities

(1) Facilities without toxics, priority pollutants, or hazardous substances, as defined in 40 CFR 122, Appendix D, Tables II, III, and V, or Whole Effluent Toxicity (WET) limits, limited in the permit:

(a) Initial and annual fees shall be calculated as follows:

$$\text{Fee} = \$200 + 5600 X Q \text{ (mgd)}$$

**with Maximum Fee = \$10,000**

(b) Modification Fee

(i) Major .....\$2,000

(ii) Minor\* .....\$1,000

(2) Facilities with toxics, priority pollutants or hazardous substances, as defined in 40 CFR 122, Appendix D, Tables II, III and V, or Whole Effluent Toxicity (WET) limits, limited in the permit:

(a) Initial and annual fees shall be calculated as follows:

$$\text{Fee} = \$200 + 21500 \times Q(\text{mgd})$$

**with Maximum Fee = \$15,000**

(b) Modification Fee

- (i) Major ..... \$2,000
- (ii) Minor\* ..... \$1,000

(5) Non-contact cooling water (including discharges from power plants not subject to fees described in 9.403(A) above) and non-contaminated storm water discharges:

(a) Initial and annual fees shall be calculated as follows:

$$\text{Fee} = \$200 + 700 \times Q(\text{mgd})$$

**with Maximum Fee = \$10,000**

(b) Modification Fee

- (i) Major ..... \$2,000
- (ii) Minor\* ..... \$1,000

(6) Aquatic animal production facilities (fish hatcheries, etc.) with flow-through systems shall be subject to the following fees:

- (a) Initial and Annual ..... \$2,500
- (b) Modification
  - (i) Major ..... \$2,000
  - (ii) Minor\* ..... \$ 500

(7) Variable Discharge (i.e., storm water and land clearing not addressed in Reg.9.403(C), aggregate facilities, mining, etc.)

- (a) Initial and Annual ..... \$ 300
- (b) Modification
  - (Major and Minor) ..... \$ 300

\*Minor modifications to NPDES permits are restricted to those defined in 40CFR 122.63

**Reg.9.404      General Permits**

(A) In lieu of the fee schedules described above, and except as provided in Reg.9.404(B) below, permittees authorized to discharge wastewater under a Water Division general permit issued by the Department shall be subject to an initial fee and an annual fee as described below. The initial fee shall be remitted with the Notice of Intent (NOI) for coverage under the applicable general permit. Until a Notice of Termination (NOT) is submitted to and approved by the Department, the Permittee shall be billed annually thereafter by the Department on the anniversary date of coverage. When general permits are revised, no additional initial fee will be required to be submitted if the currently permitted facility has maintained coverage under the existing general permit.

General Permit Number & Name	
ARG040000 (Coal Mining)	\$400
ARG160000 (Sanitary Landfill Runoff)	\$400
ARG340000 (Bulk Petroleum Storage)	\$400
ARG550000 (Individual Treatment Unit)	\$200
ARG640000 (Water Plant Backwash Filters)	\$400
ARG670000 (Pipeline Hydrostatic Testing)	\$200
ARG750000 (Car/Truck Wash Facilities)	\$200
ARG790000 (Ground Water Clean-up)	\$500
ARG190000 (Laundromats)	\$200
ARR000000 (Storm Water - Mfg)	\$200
ARR150000 (Storm Water- Construction)	\$200
ARR040000 (Storm Water – MS4 Phase II)	\$200
ARG500000 (Aggregate Facilities)	\$200
00000-WG-P (Oil and Gas Drilling Pits)	\$300
00000-WG-LA (Land Application of Drilling Fluids)	\$500
0000-WG-CW (Carwash)	\$200
0000-WG-WR (Wastewater Treatment Plant Residuals)	\$500
0000-WG-SW (Salt Water Disposal)	\$250
0000-WG-AW (Confined Animal)	\$200

(B) Homeowners covered under general permit ARG550000 (Individual Treatment Units) are exempt from fees required herein.

(C) Miscellaneous general permits not specifically mentioned above that are issued by the Water Division shall be subject to an initial fee not to exceed \$500 and an annual fee not to exceed \$500.

**Reg.9.405      Fees for Non-NPDES Permits.**

(A) Salt Water Disposal	
(1) Initial Fee .....	\$250
(2) Annual Fee .....	\$250

	(3)	Modification Fee *	.....	\$250
(B)	Confined Animal and Small Commercial Septic Tank Systems (<5000 gpd)			
	(1)	Initial Fee	.....	\$200
	(2)	Annual Fee	.....	\$200
	(3)	Modification Fee	.....	\$200
(C)	Commercial or industrial (non-agricultural, non-UIC, commercial septic tank systems) (> 5000 gpd)			
	(1)	Initial Fee	.....	\$500
	(2)	Annual Fee	.....	\$500
	(3)	Modification Fee *	.....	\$500
(D)	Industrial sludge application (i.e. food processing, reserve pit, hatchery systems, etc.)			
	(1)	Initial Fee	.....	\$500
	(2)	Annual Fee	.....	\$500
	(3)	Modification Fee *	.....	\$500
(E)	Publicly Owned Treatment Works (POTW) Non-NPDES with Land Application of Wastewater			
	(1)	Initial Fee	.....	\$500
	(2)	Annual Fee	.....	\$500
	(3)	Modification Fee *	.....	\$500

NOTE: \* Defined as a ten percent (10%) or greater change in application or storage volumes or a change in the method of application or disposal

**Reg.9.406 Fees for Underground Injection Control (UIC) Permits (Injection well classifications are defined in 40 CFR 144.6.)**

(A)	Class I, III and IV			
	(1)	Initial Fee	.....	\$15,000
	(2)	Annual Fee	.....	\$15,000
	(3)	Modification Fee*		
	(a)	Major	.....	\$10,000
	(b)	Minor*	.....	\$1,000

\* Minor modifications are limited to those actions defined in 40 CFR 144.41.



(B)	Class V	
(1)	Initial Fee .....	\$500
(2)	Annual Fee .....	\$500
(3)	Modification Fee .....	\$500

**Reg.9.407 Administrative Permit Amendments**

There shall be no fee charged for minor water permit modifications involving only administrative amendments or revisions to a permit. For purposes of this Chapter, minor modifications are restricted to those defined in 40 CFR 122.63 or 40 CFR 144.41. The Director, in his discretion, may decide whether a minor modification is considered to be an administrative amendment.

## CHAPTER 5: AIR PERMIT FEES

### AIR PERMIT FEES.

#### Reg.9.501      **Applicability**

The air permit fees contained in this section are applicable to (1) non-part 70 permits, (2) part 70 permits, and (3) general permits.

#### Reg.9.502      **Terms Used in Fee Formulas**

(A)    **\$/ton factor** is \$16/ton until September, 1994, after which time it shall be increased annually by the percentage, if any, by which the federal Consumer Price Index exceeds that of the previous year. The Director may, after considering the factors contained in Reg.9.8901 of this regulation, decide not to increase the \$/ton factor in a year when the fee fund has a balance greater than 150% of the amount of money expended from that fund in the previous year.

(B)    **tons/year predominant air contaminant** is the permitted emission rate of the most predominant air contaminant (other than carbon monoxide). The maximum value shall be no greater than 4,000 tons/year per facility.

(C)    **tons/year chargeable emissions** is the sum of the permitted emission rates of all air contaminants (other than carbon monoxide). The maximum value per air contaminant shall not exceed 4,000 tons/year per facility.

#### Reg.9.503      **Initial Fees**

Initial fees shall be assessed according to the following formulas:

(A)    Non-part 70 permits

**initial fee = \$/ton factor x tons/year predominant air contaminant**

Provided, however, no initial fee shall be less than \$500 except for general permits issued to Non-part 70 sources.

(B)    Part 70 permits

(1)    Permits issued to part 70 sources already holding an active air permit not issued pursuant to Department Regulation #26:

**initial fee = [\$/ton factor x tons/year chargeable emissions]  
- amount of last annual air permit fee invoice**

Provided, however, that no initial fee shall be less than \$1,000.

(4)    Permits issued to part 70 sources which do not hold an active air permit:

**initial fee = \$/ton factor x tons/year chargeable emissions**

Provided, however, that no initial fee shall be less than the \$/ton factor x 100.

**Reg.9.504 Annual Fees**

Annual fees shall be assessed according to the following formulas:

- (A) Non-part 70 permits

**annual fee = \$/ton factor x tons/year predominant air contaminant**

Provided, however, that no annual fee shall be charged for a permit in which the tons/year predominant air contaminant is less than 10 tons/year.

- (B) Part 70 permits

**annual fee = \$/ton factor x tons/year chargeable emissions**

Provided, however, that no annual fee shall be less than the \$/ton factor x 100.

**Reg.9.505 Modification Fees**

Modification and renewal fees for air permits shall be assessed according to the following formulas:

- (A) Non-part 70 permits

**modification fee = \$/ton factor x tons/year net emissions increase of predominant air contaminant**

However, no modification fee shall be less than \$400, or more than the \$/ton factor x 4,000.

- (B) Part 70 permits

- (1) For each non-minor permit modification or each renewal permit involving a non-minor permit modification:

**fee = \$/ton factor x tons/year net emission increase of chargeable emissions**

However, no fee shall be less than \$1,000 or more than the \$/ton factor x 4,000.

- (2) \$500 for each minor permit modification or each renewal permit involving only a minor permit modification.

**Reg.9.506      Administrative Permit Amendments and Renewal Permits**

There shall be no fee charged for administrative permit amendments or renewal permits not involving a permit modification, as such are defined in Regulation 26: Arkansas Operating Air Permit Program, Regulation 19: State Implementation Plan for Air Pollution Control, or Regulation 18: Arkansas Air Pollution Control Code, as applicable.

**Reg.9.507      General Permits**

(A) In lieu of the fees schedules above, and except as provided in 9.507(B) below, sources which qualify for a General Air Permit issued pursuant to APC&EC Reg. Nos. 18, 19, or 26 shall be subject to an Initial Fee and Annual Fee as described below:

(1) The Initial Fee of \$200.00 shall be remitted with the Notice of Intent (NOI) for coverage under the applicable General Permit.

(2) Until a Notice of Termination (NOT) is submitted and approved by the Department, the Permittee shall be billed \$200.00 annually thereafter on the anniversary date of coverage.

(3) When general permits are revised, no additional initial fee will be required to be submitted if the currently permitted facility has maintained coverage under the existing general permit.

(B) The following General Permit holders shall not be assessed or billed an Annual Fee:

(1) Non-part 70 General Permits in which the tons/year predominant air contaminant is less than 10 tons per year.

**Reg.9.508      Permit Fees for Certain Small Businesses Subject to Part 70 Permitting Requirements**

(A) For purposes of this section, the term “small business stationary source” means a stationary source that :

- (1) is owned or operated by a person that employs 100 or fewer individuals
- (2) is a small business concern as defined in the federal Small Business Act ([www.sba.gov](http://www.sba.gov));
- (3) is not a major stationary source;
- (4) is permitted to emit less than 50 tons per year of any regulated pollutant; and
- (5) is permitted to emit less than 75 tons per year of all regulated pollutants.

(B) Upon written request, the Director may reduce the Part 70 initial, Part 70 annual, or Part 70 modification fee for a small business stationary source if the source demonstrates to the satisfaction of the Director that they do not have the financial resources to pay the fee as calculated.

(C) When reducing permit fees in accordance with Reg.9.508(B), the Director shall calculate the fee as if the source is a non-Part 70 source.



## CHAPTER 6: SOLID WASTE PERMIT FEES

### SOLID WASTE PERMIT FEES.

#### **Reg.9.601 Maximum Amount of Solid Waste Permit Fee Collections**

In accordance with A.C.A. § 8-1-103, the total amount of fees for solid waste management facility permits shall be calculated to generate revenues in any fiscal year not to exceed 4.25 times the total amount collected from Class 1 and Class 3 landfills in fiscal year 1992-93, provided that the total fee revenues cannot exceed one and one-quarter (1.25) times the total amount collected from solid waste permit fees in fiscal year 1994-95. Further, should the amount of permit fees levied on or received from permit holders exceed the amount specified above in a fiscal year, the over-collections may be retained by the Department to be used to reduce permit fees in subsequent years by relative amounts.

#### **Reg.9.602 Fee Categories**

Separate fees for the Initial fees (Pre-Application and Application), Annual Fees, Modification Fees, Permit Transfer Fees, and Post Closure Fees will be assessed for each applicable permit category. For purposes of assessing fees, permit categories include the following types of solid waste management facilities: Class 1, Class 3C (Commercial), Class 3N (Non-Commercial), Class 3T (Tire), and Class 4 Landfills; Transfer Stations, Composting Facilities and Solid Waste Material Recovery Facilities; provided, however, fees for a Solid Waste Material Recovery Facility will not be assessed where limited recycling and material recovery activities occur at a Transfer Station site. Solid waste management facilities, subject to the permit fees as set forth in this regulation, are further defined and regulated under Regulation No. 22: Solid Waste Management.

#### **Reg.9.603 Initial Fees**

Due to the unique requirements for a preliminary site survey (pre-site), which may include a geotechnical site review, of a proposed solid waste management facility prior to the submission of a permit application, the initial fee for solid waste permits is composed of two parts, i.e., (A) the pre-application fee, and (B) the application fee. The pre-application fee will help to recover the costs of the preliminary engineering site survey conducted by the various regulating agencies in association with this Department. This pre-site fee shall be nonrefundable and shall be paid prior to conducting the pre-site investigation. Upon a finding of site suitability based on the pre-site investigation, or at the owner's risk if the site is judged to be unsuitable and the owner continues to seek a permit for the site, the initial fee shall be paid as specified in Chapter 3. These fees are applicable to all types of facilities permitted under the Solid Waste Management Act, as amended, and any regulations promulgated thereto.

##### (A) Pre-Application Fees

- |  |         |
|--|---------|
| (1) Class 1, Class 3C, Class 3N, Class 3T..... | \$2,000 |
| (2) Class 4.....                               | \$1,000 |

- (B) Application Fees
  - (1) Class 1, Class 3C .....\$10,000
  - (2) Class 3N, Class 3T .....\$5,000
  - (3) Class 4 .....\$1,000
  - (4) Transfer Stations, Composting, Material Recovery Facilities .....\$ 900

**Reg.9.604 Annual Fees**

Annual Fees are payable in accordance with Chapter 3 and are assessed for each calendar year that the solid waste management facility is in operation. For all solid waste management facilities, subject to fees named herein, annual fees are assessed each calendar year until the solid waste management facility stops receiving waste and the Department places the facility in post-closure status under Regulation No. 22: Solid Waste Management. No partial year refund of annual fees will be made.

- (A) Class 1.....\$6,000
- (B) Class 3C.....\$5,000
- (C) Class 3N, Class 3T.....\$3,000
- (D) Class 4.....\$500
- (E) Transfer Stations, Composting, Material Recovery Facilities.....\$450

**Reg.9.605 Modification Fees**

- (A) Class 1 Major Modification.....\$4,000
- (B) Class 1 Minor Modification.....\$3,000
- (C) Class 3C, Class 3N, Class 3T .....\$2,000
- (D) Class 4.....\$1,000
- (E) Transfer Stations, Composting, Material Recovery Facilities.....\$450

**Reg.9.606 Permit Transfer Fees**

- (A) Class 1, Class 3C, Class 3N, Class 3T, Class 4.....\$1,000
- (B) Transfer Stations, Composting, Material Recovery Facilities.....\$500

**Reg.9.607 Post Closure Fees**

Post Closure Fees are assessed annually throughout the post closure period for each permit category subject to post closure monitoring.

- Class 1, Class 3C, Class 3N, Class 3T, Class 4.....\$500

**Reg.9.608 Administrative Permit Amendments**

For purposes of this Chapter, there shall be no fee charged for minor permit modifications involving only administrative permit amendments or corrections.

**Reg.9.609 General Permits**



(A) In lieu of the fees schedules above in 9.603 through 9.606, solid waste management facility permit applicants which qualify for a General Solid Waste Permit shall be subject to an Initial Fee, an Annual Fee, a Modification Fee and a Permit Transfer Fee as described below:

(1) An Initial Fee of \$900.00 shall be remitted with the Notice of Intent (NOI) for coverage under the applicable solid waste General Permit.

(2) Until the Permittee notifies the Department to terminate its solid waste General Permit and the permit is voided, the Permittee shall be billed an Annual Fee of \$450.00 annually thereafter on the anniversary date of coverage.

(3) An application for the modification of an existing solid waste General Permit shall be accompanied by a \$450.00 permit Modification Fee.

(4) An application for the transfer of an existing solid waste General Permit shall be accompanied by a \$450.00 permit Transfer Fee.

(5) When solid waste General Permits are revised, no additional initial fee will be required to be submitted if the currently permitted facility has maintained coverage under the existing General Permit.

## **CHAPTER 7: VARIANCES OR INTERIM AUTHORITY REQUESTS**

### **Reg.9.701      Processing Fee**

In accordance with A.C.A. § 8-4-230(a)(3), as amended, there may be an initial processing fee of two hundred dollars (\$200.00) assessed for all requests for variances from the requirements of any permit issued by the Department, or any interim authority request to construct or operate during the permit application review and issuance process. The fee shall not be required for a request for an extension of any existing variance or interim authority.

### **Reg.9.702      Fees Non-Refundable**

If a variance or interim authority request is denied, the processing fee is non-refundable.

## CHAPTER 8: LABORATORY CERTIFICATION FEE PROGRAM

### Reg.9.801 Laboratory Certification Fees

All laboratory certificates previously issued under Regulation Number 13, Laboratory Certification Fee Regulation, shall remain in effect for the full period of time for which they were issued. Application for initial certificate and application for renewed certificate, whether issued under Regulation Number 13 or under Regulation Number 9, shall comply with the requirements of Reg.9.801 through Reg.9.803 and other applicable requirements of Regulation Number 9.

- (A) Initial certificate, including up to ten parameters .....\$500
- (B) Renewed certificate, including up to ten parameters.....\$500
- (C) For each parameter in addition to the first ten.....\$ 10
- (D) Each of the following categories:
  - (1) Dioxins and Furans.....\$ 50
  - (2) Herbicides.....\$ 50
  - (3) Volatile organics.....\$ 50
  - (4) Semivolatile organics .....\$ 50
  - (5) Pesticides and PCB's.....\$ 50
  - (6) Acute and/or Chronic Toxicity Testing.....\$250

### Reg.9.802 Laboratory Certification Travel Fees

- (A) The Department will assess reasonable fees for the cost of all expenses incurred during the evaluation of certified laboratories. This includes, but is not limited to, the reasonable cost of travel and travel related expenses related to the evaluation.
- (B) The Department will submit an itemized invoice for the incurred expenses and payment of the expenses will be due within thirty (30) days of invoicing the expenses.

### Reg.9.803 Failure to pay Laboratory Certification Fees

- (A) A laboratory which fails to remit payment of any fee assessed pursuant to this Chapter, including but not limited to, initial certificate, renewed certificate, fees for additional parameters; fees for categories, reasonable cost of travel, or travel related

expenses will be assessed a late payment charge of ten percent (10%) forty five (45) days after the invoice date.

(B) A certified laboratory which refuses to pay fees upon reasonable notice will be subject to enforcement action which may include revocation of the certificate.

## **CHAPTER 9: ADMINISTRATIVE PROCEDURES**

### **Reg.9.901 Department Review of Fees**

The Department shall undertake a biennial re-evaluation of the permit fee schedule as contained in this regulation within sixty (60) days of receiving its approved budget for the next biennium. The evaluation shall reflect the current needs of the Department to perform essential permitting, compliance, enforcement and monitoring activities; the resources available; the balance of the permit fee fund from the previous biennium; anticipated state and federal appropriations; status of delegation of federal programs; and any other factors deemed relevant to the study by the Department.

### **Reg.9.902 Appeals**

If any applicant/permittee disagrees with the Department's decision on an assessment of fees, the applicant/permittee may appeal such decision in accordance with the applicable provisions of the Water and Air Pollution Control Act, the Solid Waste Management Act, the State Environmental Laboratory Certification Program Act, and Pollution Control and Ecology Commission Regulation No. 8, Administrative Procedures.

### **Reg.9.903 Effective Date**

This regulation is effective ten (10) days after filing with the Secretary of State, the State Library, and the Bureau of Legislative Research.

# ADEQ REGULATIONS TRACKING SHEET

Regulation No. 9 Common Name: Fee Regulation

1. **Strawman review** of draft regulations by key groups.

	<u>initiated</u>	<u>completed</u>	<u>incorporated</u>
EPA	<u>√</u>	<u>√</u>	<u>√</u>
ADEQ Legal/Admin.	<u>√</u>	<u>√</u>	<u>√</u>
Industrial/ Environmental Groups	<u>√</u>	<u>√</u>	<u>√</u>

*Comments:* The amendment of Regulation No. 9 is necessary to update the regulation to include fee schedules for two new Water Division general permits, to exclude discontinued general permits and the clarify general permit procedures in the Air and Solid Waste Division.

2. Proposed regulations presentation to Commission's **Regulations Committee** for approval to proceed to public comment period.

Date: September 28, 2007 By: Jamie Ewing

Comments/Approval: Committee recommended adoption of Petition to initiate rule-making

3. **Legal notice** of proposed regulations and public hearing.

<u>publication</u>	<u>dates of publication</u>
<u>Arkansas Democrat-Gazette</u>	<u>October 3 and 4, 2007</u>

4. Provide **Legislative Council** with three copies of proposed regulations and the legislative questionnaire at least ten days prior to the first public hearing.

5. Hold **public hearing(s)** on the proposed regulations.

<u>location</u>	<u>date</u>	<u>hearing chairman</u>
<u>ADEQ Headquarters, North Little Rock</u>	<u>November 7, 2007</u>	<u>Commissioner Randy Young</u>

6. Date of final day of public comment period: November 26, 2007, 4:30 p.m.

7. **Final proposed regulation** and **response to comments** prepared by Department.

Date initiated: January 4, 2008 Date completed: January 4, 2008

8. Formal presentation to the **Public Health & Welfare Committee** of the Legislative Council.



Date: December 10, 2007 By: Karen Bassett

Comments/Approval: Approval Received by Committee

9. Formal presentation of proposed final regulation to the **Administrative Rules & Regulations Subcommittee** of the Legislative Council (All Regs).

Date: December 6, 2007 By: Mary Leath

Comments/Approval: Approval Received by Committee

10. Presentation of proposed final regulation to Commission's **Regulations Committee**.

Date: January 25, 2008 By: Jamie Ewing

Comments/Approval: \_\_\_\_\_

11. Provide Commission members with copy of proposed final regulation prior to Commission meeting.

Date Delivered: January 4, 2008

12. Present proposed final regulation to the **Commission** for adoption.

Date: January 25, 2008 By: Jamie Ewing

Comments/Approval: \_\_\_\_\_

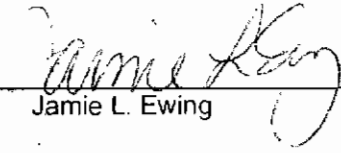
13. Send two copies of adopted regulation to **Secretary of State** (regulation becomes effective ten days after filing).

Date mailed: January 28, 2008

14. Formally submit adopted regulation to **EPA**.

Date mailed: Upon final promulgation of Regulation

PREPARED BY:  
AKANSAS DEPARTMENT  
OF ENVIRONMENTAL QUALITY

By:   
Jamie L. Ewing





# ADEQ

ARKANSAS  
Department of Environmental Quality

## MEMORANDUM

To: Commission Members

From: Ryan Benefield, P.E., Chief, Hazardous Waste Division *ORB*

Date: January 2, 2008

Subject: Permit and Permit Modification Issued for the Month of December 2007

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The following Permit and Permit Modification was issued by the Technical Branch of the Hazardous Waste Division during the month of December 2007:

### Permit Modifications

- Aerojet 8H-RN1 Class 1 Permit Modification (Fire Water Supply System); approved December 19, 2007.
- Pine Bluff Arsenal 1H-RN2 Permit Renewal; approved December 21, 2007.

**From:** Owen, Pamela

**Sent:** Wednesday, January 02, 2008 10:16 AM

**To:** Goff, Patricia (Commission)

**Subject:** December Commission Report - air division

<b>Commission Query</b>					
<b>FACILITY</b>	<b>CSN</b>	<b>REQUESTS</b>	<b>PERMIT TYPE</b>	<b>PERMIT NUMBER</b>	<b>FINAL</b>
Statewide Steel & Wire, LLC	1800230	NEW	MINOR	1719-A	12/03/2007
Entergy - Independence Plant	3200042	MODIFICATION	TITLE V	0449-AOP-R5	12/07/2007
Arkansas Terminaling & Trading	6000440	MODIFICATION	TITLE V	0590-AOP-R11	12/07/2007
CenterPoint Energy - East Chismville Station	4200207	MODIFICATION	TITLE V	1906-AOP-R3	12/07/2007
CenterPoint Energy Gas Transmission - Hobbs Compressor Station	6600640	TITLE V RENEWAL	TITLE V	1203-AOP-R4	12/07/2007
3M Company Mineral Products Division	6000003	MINOR MOD	TITLE V	0039-AOP-R8	12/10/2007
Walker Creek Production Facility	1400175	MODIFICATION	MINOR	1126-AR-5	12/10/2007
LM-Glasfiber, Inc.	6004196	NEW	TITLE V	2152-AOP-R0	12/11/2007
Nucor Corporation (Nucor Steel)	4700233	MODIFICATION	TITLE V	1139-AOP-R9	12/12/2007
Futurefuel Chemical Company	3200036	MINOR MOD	TITLE V	1085-AOP-R7	12/17/2007
Dassault Falcon Jet Corp.	6000617	DE MINIMIS	MINOR	1876-AR-7	12/17/2007
Pinnacle Biofuels, Inc.	0200311	NEW	MINOR	2142-A	12/18/2007
Great Lakes Chemical - South Plant	7000037	MODIFICATION	TITLE V	0873-AOP-R7	12/18/2007
Hood Packaging Corporation	2200041	DE MINIMIS	MINOR	0742-AR-9	12/19/2007
Central Moloney, Inc.	3500304	DE MINIMIS	MINOR	1662-AR-3	12/19/2007
Baldor Electric Company	6600041	MINOR MOD	TITLE V	0996-AOP-R6	12/26/2007


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# ADEQ

ARKANSAS  
Department of Environmental Quality

## Memorandum

**To:** Commissioners  
Arkansas Pollution Control and Ecology Commission

**From:** Joe Hoover, Chief, Regulated Storage Tanks Division 

**Date:** January 8, 2008

**Subject:** RST Trust Fund Quarterly Report Ending December 31, 2007

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Pursuant to Arkansas Code Annotated §8-7-906(g)(3), the Commission shall review the balance of the Arkansas Petroleum Storage Tank Trust Fund, as adjusted to reflect the obligations and liabilities of the fund, at least quarterly and report the rate of collection for the fee for the upcoming quarter to the director. The environmental assurance fee is currently being collected at the maximum rate of the three-tenths of one cent per gallon on motor fuel and distillate special fuel purchased in or imported into Arkansas.

The RST Division submits the attached financial status report in compliance with the code.

# ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

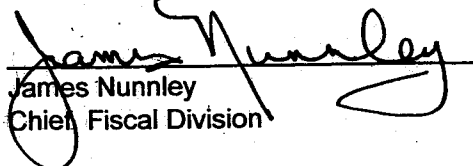
## RST Division - Petroleum Storage Tank State Trust Fund Financial Status Report for Period Ending December 31, 2007

I. Fund Balance on November 30, 2007 -----	\$	17,494,339.85
II. Receipts		
1. Previously reported -----	\$	84,782,347.92
2. December receipts -----	\$	<u>789,185.28</u>
Total receipts to date -----	\$	85,571,533.20
III. Expenditures		
1. Previously reported -----	\$	67,288,008.07
2. December expenditures -----	\$	<u>527,672.23</u>
Total expenditures to date -----	\$	<u>67,815,680.30</u>
IV. Fund Balance on December 31, 2007 -----	\$	17,755,852.90
V. Interest		
1. Previously reported -----	\$	8,914,508.95
2. December Interest -----	\$	<u>55,057.51</u>
Total interest to date -----	\$	<u>8,969,566.46</u>
VI. Total investments on December 31, 2007 -----	\$	<u>15,700,000.00</u>
VII. Funds available on December 31, 2007 -----	\$	<u><u>2,055,852.90</u></u>

### STATUS OF TRUST FUND

Fund balance on 12/31/07 -----	\$	17,755,852.90
Reserve for emergency projects -----	\$	350,000.00
Current claims received -----	\$	1,547,746.69
Claims approved but unpaid -----	\$	8,744,814.11
Other corrective action obligations (estimated) -----	\$	3,249,055.00
Potential third party obligations (estimated) -----	\$	<u>3,864,237.10</u>
Adjusted balance -----	\$	<u><u>3,864,237.10</u></u>

CERTIFIED TRUE AND CORRECT

  
 James Nunnley  
 Chief, Fiscal Division

# ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

## MEMORANDUM

**TO:** Commission Members

**FROM:** Steve Drown, Chief, Water Division *SD*

**DATE:** January 8, 2008

**SUBJECT:** Water Permits Issued During the Month of December

The following individual permits were issued by the Permits Branch of the Water Division during the month of December. In accordance with APC&EC Regulation No. 8, these individual permits became effective on or before January 1, 2008, unless public comments were received. If comments were received, those permits will become effective on or after February 1, 2008. In addition to the individual discharge permits, no-discharge permits, construction and industrial stormwater general permits, and individual general permits are also listed below.

Individual Discharge Permits				
Permit Number	Facility Name	County	Receiving Stream	Permit Action
AR0000523	Stratcor, Inc.	Garland	Outfall 001: Lake Catherine, thence to the Ouachita River Outfalls 002: unnamed tributary, thence to Lake Catherine, thence to the Ouachita River Outfall 003: unnamed tributary, thence to Lake Catherine, thence to the Ouachita River Outfall 008: unnamed tributary of Wilson Creek, thence to Wilson Creek, thence to Lake Catherine, thence to the Ouachita River	modification
AR0020648	USDA Forest Service Cass Civilian Conservation Center	Franklin	Mulberry River thence to the Arkansas River	renewal
AR0021601	Searcy Wastewater Treatment Facility	White	the Little Red River and thence to the White River	renewal
AR0022578	City of Blytheville - South Treatment Facility	Mississippi	unnamed tributary of Ditch No. 17, thence to Ditch No. 17, thence to Ditch No. 6, thence to Ditch No. 1, thence to the St. Francis River	renewal
AR0034258	Village Wastewater Company, Inc. (North)	Benton	Little Sugar Creek	modification
AR0034401	Fairfield Bay Wastewater Corporation Dave Creek WWT	Van Buren	Dave Creek, thence to Greers Ferry Lake, thence to the Little Red River, thence to the White River	construction
AR0035432	USA-COE - Caddo Drive Recreation Area	Hot Spring	from the plant site through a 6" pipe to DeGray Lake, thence to the Caddo River, thence to the Ouachita River	renewal
AR0036021	U.S. Army Corps of Engineers - Spillway/Dam Recreation Area	Clark	unnamed tributary of Caddo River, thence to the Caddo River, thence to the Ouachita River	renewal
AR0041416	Timber Ridge NeuroRehabilitation Center	Saline	Dog Creek, thence to the North Fork Saline River, thence to the Ouachita River.	renewal
AR0042609	City of Harrell	Calhoun	Spring Branch, thence to Blann Creek, thence to Lloyd Creek, thence to Moro Creek, and thence to the Ouachita River	renewal

### Individual Discharge Permits

Permit Number	Facility Name	County	Receiving Stream	Permit Action
AR0046299	Maverick Transportation, Inc.	Pulaski	from the plant site to a drainage ditch, thence to an unnamed tributary of Stark Bend, thence to Stark Bend, and thence to Faulkner Lake	renewal
AR0046469	Monsanto AG Research	Arkansas	an unnamed tributary of Wildcat Ditch, thence to Wildcat Ditch, thence to Bennett Reservoir, thence to Little LaGrue Bayou, thence to LaGrue Bayou, thence to the White River	renewal
AR0046523	Maverick Tube LLC	Mississippi	from the plant site through a six-inch pipe to Ditch No. 38, thence to Crooked Bayou, thence to Pemiscot Bayou (Ditch No. 29), thence to Little St. Francis River, thence to St. Francis River	renewal
AR0047121	City of Vilonia	Faulkner	Cypress Bayou, thence to Bayou Des Arc, thence to the White River	modification
AR0048356	Tyson Foods, Inc. - River Valley Animal Foods	Miller	Red River	renewal
AR0048402	LMJ Trailer Park	Craighead	unnamed tributary of Big Creek Ditch, thence to Big Creek Ditch, thence to Bayou Devieu, thence to Cache River, thence to the White River	renewal
AR0049808	Saint-Gobain Proppants, Inc	Sebastian	A drainage ditch parallel to Clayton Expressway, under expressway via stormwater drainage and thence to the Arkansas River	renewal
AR0050768	William Sterling and Associates Sterling Meadows Subdivision WWTP	Faulkner	an unnamed tributary of Greenbrier Creek, thence to Greenbrier Creek, thence to Cadron Creek, and thence to the Arkansas River	issuance

### NO-DISCHARGE PERMITS

Permit Type: A = Agricultural  
 B = Salt Water Disposal  
 I = Industrial  
 M = Municipal  
 1 = UIC Class I

Permit No.	Facility Name	County	Permit Type
4694-WR-1	Sheridan Wastewater Treatment Facility	Grant	M
2850-WR-3	Brumwell Hog Farm	Montgomery	A
0711-WG-SW	Frank Thompson Oil Co., LLC	Bradley	B
0709-WG-SW	LaRay Oil, LLC	Union	B
0691-WG-SW-1	Well Wishers, LLC	Union	B
0517-WG-SW-2	Quantum Resources Management, LLC	Columbia	B
0518-WG-SW-1	Quantum Resources Management, LLC	Columbia	B
0515-WG-SW-2	Quantum Resources Management, LLC	Columbia	B
0514-WG-SW-1	Quantum Resources Management, LLC	Columbia	B
0480-WG-SW-2	Well Wishers, LLC	Union	B
0479-WG-SW-2	Well Wishers, LLC	Union	B
0478-WG-SW-2	Well Wishers, LLC	Union	B
0476-WG-SW-2	Well Wishers, LLC	Union	B



4950-W	SEECO, Inc.	Conway	I
2868-WR-1	Capstone Oilfield Disposal of Arkansas	Johnson	I
4309-WR-3	Capstone Oilfield Disposal of Arkansas	Franklin	I
4970-W	Riverbend Park	Sharp	I
4422-WR-2	Quanex Corporation, McSteel Division	Sebastian	I
4698-WR-1	Midway Oaks Mobile Home Park Laundromat	Baxter	I
4484-WR-2	Lake DeGray Solid Waste Transfer Station	Clark	I
4478-WR-2	Entergy Services, Inc.	Pulaski	I
4476-WR-2	Two Pine Landfill	Pulaski	I
4485-WR-7	Terra Renewal Services, Inc.	Yell	I
4987-W	SEECO, Inc.	Faulkner	I
4986-W	SEECO, Inc.	Faulkner	I
4486-WR-4	Terra Renewal Services, Inc.	Crawford	I
2018-WR-8	ConAgra Frozen Foods	Independence	I
4852-WG-CW-1	Hornet's C Store	Van Buren	I
4961-W	S & W Environmental Solutions, LLC	Pope	I

#### SW Construction Permits

Permit Number	Permittee	Project Name	County or Counties	NOI Issued
ARR152545	Phase 1, Turnkey, Inc.	Royal Oak Subdivision	Benton	12/21/2007
ARR152393	City of Rogers	Pleasant Grove Road Phase I	Benton	12/7/2007
ARR152558	Links at Eagle Hill A.L.P.	Eagle Hill Apartments	Pulaski	12/6/2007
ARR152560	Meadowview Estates	Meadowview Estates	Johnson	12/10/2007
ARR152561	Integrity First Bank	Temporary Bank Facility	Craighead	12/4/2007
ARR152562	Town of Mount Pleasant	Mount Pleasant Water- Needmore Road Extension	Sharp and IZard	12/10/2007
ARR152565	City of Foreman	Foreman Recreational Park	Little River	12/21/2007
ARR152478	Sorrels Brothers, Inc.	Plantation Hills Subdivision Phase II	Saline	12/13/2007
ARR152521	The Kroger Co.	Kroger Y-606	Pulaski	12/3/2007
ARR152533	David Davis	Grand View Estates	Cleburne	12/13/2007
ARR152567	Forest Home Church of the Nazarene	Youth/Childrens Center	Craighead	12/17/2007
ARR152568	Deltic Timber Corporation	Chenal Valley Subdivision, Phase 34	Pulaski	12/21/2007
ARR152569	Oakwood Construction, Inc.	Hickory Meadows Estates	Lonoke	12/21/2007
ARR152571	Ozark Electric Cooperative Corporation	Ozarks Electric Expansion	Washington	12/28/2007
ARR152572	City of Fayetteville	Zion Road Improvements	Washington	12/28/2007
ARR152573	WTH Development Co.	Sage Meadows Subdivision	Pulaski	12/28/2007
ARR152574	Ken LaBuy	Forest Ridge Estates	Garland	12/28/2007

**SW Construction Permits**

Permit Number	Permittee	Project Name	County or Counties	NOI Issued
ARR152577	AHTD Construction Division	I-540 - Hwy. 64B (S)	Crawford	12/28/2007
ARR152578	AHTD Construction Division	Hwy 167 - Hwy. 394 (Batesville) (S)	Independence	12/28/2007
ARR152579	AHTD Construction Division	Branch of Cadron Creek Str. & Apprs. (S)	White	12/28/2007
ARR152580	AHTD Construction Division	Hwy. 12 - Eureka Springs (Passing Lane)(S)	Carroll	12/28/2007
ARR152581	AHTD Construction Division	Hwy. 412 - Hwy. 135 (S)	Greene	12/28/2007

**SW Industrial Permits**

Permit Number	Facility Name	No Exposure Certification Date	County	Date NOI Issued
ARR000333	Alberto Culver		Craighead	12/4/2007
ARR000334	Strateline Industries, Inc.		Benton	12/3/2007
ARR000339	Federal Express - MPJA		Faulkner	12/7/2007
ARR000338	Federal Express - WMHA		Baxter	12/7/2007
ARR000337	Federal Express - ROGA		Benton	12/7/2007
ARR000329	Rineco Transportation, L.L.C.	12/10/2007	Saline	12/13/2007
ARR000340	Steed Properties LLC		Hempstead	12/18/2007
ARR000343	UAP Distribution, Inc.		Jefferson	12/31/2007
ARR000342	UAP Distribution, Inc.		Prairie	12/21/2007
ARR000341	UAP Distribution, Inc.		Prairie	12/21/2007

**Individual General Permit**

Permit Number	Project Name	County	Effective Date
ARG670394	CEGT - Line E, Discharge 2	Union	12/5/2007
ARG670395	Fairmount Road	Benton	12/3/2007
ARG670396	Laudis 1-4H	Van Buren	12/4/2007
ARG670397	Cato Trust 1-12H	White	12/5/2007
ARG670398	Wayne Dawson 1-15H	White	12/11/2007
ARG670399	Thomas Moore 1-29H	White	12/11/2007
ARG670400	Caldwell Farms 1-20H	White	12/11/2007
ARG670402	Clark 1-4H	Van Buren	12/17/2007
ARG670401	Spurlock 1-14H	White	12/17/2007
ARG550310	Drillers Court	Faulkner	12/19/2007
ARG550311	Ruff Trade Services	Pulaski	12/21/2007

TO: Arkansas Pollution Control and Ecology Commission

FROM: James F. Stephens, Chief, Mining Division *JFS*

DATE: January 9, 2008

SUBJECT: Quarterly Crooked Creek Written Report No. 24

This Quarterly Report is being furnished to the commission as requested for information purposes and not as a regular agenda item. Questions will be answered as necessary.

1. We have not received any new applications for in-stream mining permits.
2. No permits have been issued since the last report.
3. There have not been any complaints received for the Crooked Creek area during this reporting period.
4. There have been no new enforcement actions initiated.
5. There have not been inspections during this reporting period.



ARKANSAS  
Department of Environmental Quality

## MEMORANDUM

TO: Arkansas Pollution Control and Ecology Commission

FROM: James F. Stephens, Chief, Surface Mining and Reclamation Division *JFS*

DATE: January 9, 2008

SUBJECT: Monthly Permit/Authorization Decisions

Since the last report, the Mining Division has issued the following permits/authorizations:

### Open-Cut Permit Renewal

0263-MN-A5	Acme Brick	Hot Spring County
0445-MN-A3	Acme Brick	Johnson County
0492-MN-A3	Les Rogers, Inc.	Washington County

### New Quarry Authorization

0054-MQ	Cedar Ridge Quarries, LLC	Washington County
0055-MQ	Aday Quarry	Van Buren County



ARKANSAS  
Department of Environmental Quality

# Memorandum

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**TO :** Arkansas Pollution Control and Ecology Commission

**FROM :** Steve Martin, Chief, Solid Waste Division

**DATE :** January 3, 2008

**SUBJECT :** Monthly Permit Decisions

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During December 2007, the Solid Waste Division issued the following permits:

<b>Permit Number</b>	<b>Facility Name and Action</b>	<b>Effective Date</b>
0019-STSW-MC	Desha County Transfer Station – reissue general permit coverage	12/10/07