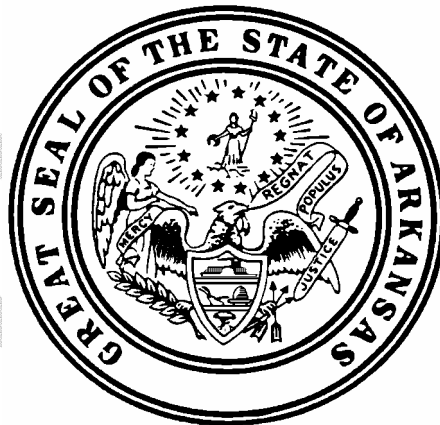


EXHIBIT A

**ARKANSAS POLLUTION CONTROL
AND ECOLOGY COMMISSION**

REGULATION NO. 16

**WASTE REDUCTION, REUSE, OR RECYCLING
TAX CREDITS**



Submitted to the Arkansas Pollution Control & Ecology Commission in March, 2004

EXHIBIT A

TABLE OF CONTENTS

CHAPTER I: GENERAL PROVISIONS

<u>16.101</u>	<u>Effective Date</u>	3
<u>16.102</u>	<u>Purpose</u>	3
<u>16.103</u>	<u>Definitions</u>	3
<u>16.104</u>	<u>Eligible Costs</u>	5
<u>16.105</u>	<u>Ineligible Costs</u>	6
<u>16.106</u>	<u>Record Keeping</u>	6
<u>16.107</u>	<u>Eligible Applicants</u>	7
<u>16.108</u>	<u>Application Forms</u>	7
<u>16.109</u>	<u>Credit Determination, Maximum, and Carryforward</u>	7
<u>16.110</u>	<u>Apportionment of Credit</u>	8
<u>16.111</u>	<u>Refund of Credit</u>	9
<u>16.112</u>	<u>Limitations on Other Deductions</u>	10
<u>16.113</u>	<u>Severability</u>	10

CHAPTER II: CERTIFICATION PROCEDURES

<u>16.201</u>	<u>Application Process</u>	12
<u>16.202</u>	<u>Deadlines</u>	14
<u>16.203</u>	<u>Determination of Eligibility</u>	14
<u>16.204</u>	<u>Informal Settlement</u>	15
<u>16.205</u>	<u>Preliminary Approval</u>	16
<u>16.206</u>	<u>Appeal of Director's Decision</u>	17

CHAPTER I-GENERAL PROVISIONS

Reg. 16.101 **A. — EFFECTIVE DATE** **Effective Date**

This regulation shall be effective ~~as of the date of promulgation~~ ten (10) days after filing the same with the Secretary of State, the State Library, and the Bureau of Legislative Research following adoption by the Commission.

Reg. 16.102 **B. — PURPOSE** **Purpose**

This regulation is promulgated pursuant to Ark. Code Ann. A.C.A. §26-51-506, which provides for an income tax credit, as well as recapture of the credit in certain instances, as an incentive for taxpayers to engage in waste reduction, reuse, ~~and/or~~ recycling activities including the use of post-consumer recyclables generated in Arkansas.

Reg. 16.103 **C. — DEFINITIONS** **Definitions**

For the purposes of ~~these regulations~~ this regulation, unless otherwise ~~required by their context~~ stated herein, the following definitions apply:

- a. (A) "Cost," in the case of a transfer of title or a finance lease, means the amount of the purchase price, and, in the case of a lease which is not a finance lease but which otherwise qualifies as a purchase under this ~~Aet~~ regulation, means the amount of the lease payments due to be paid during the term of the lease after deducting any portion of the lease payments attributable to interest, insurance, and taxes;
- b. (B) "Department" means the Arkansas Department of ~~Pollution Control and Ecology~~ Environmental Quality;
- c. (C) "Director" means the director of the Arkansas Department of ~~Pollution Control and Ecology~~ Environmental Quality;
- d. (D) "Equipment to service waste reduction, reuse, or recycling equipment" means expenditures, machinery, or equipment that keeps existing machinery or equipment in running order by providing repair, maintenance, adjustment, inspection, or supplies;
- e. (E) "Finance lease" means a lease agreement which is

EXHIBIT A

- treated as a purchase by a lessee for Arkansas income tax purposes;
- f. (F) "For commercial purposes" means collecting, separating, processing, modifying, converting, or treating solid waste other than waste that is self-generated;
- g. (G) "Home scrap" means ~~those scrap~~ materials, ~~virgin content of a material,~~ or by-products generated from and commonly reused within an original manufacturing process;
- h. (H) "Maintenance" means expenditures, machinery, or equipment used to keep existing machinery or equipment in a condition that approaches or equates to its original condition;
- i. (I) "Motor vehicle" means a vehicle or trailer that is licensed, or that normally would be licensed, for use on highways in Arkansas;
- j. (J) "Post-consumer waste" means ~~products or other~~ waste materials generated by a business, governmental entity, or consumer which have served their intended end use and have been recovered from or otherwise diverted from the solid waste stream for the purpose of recycling. This term does not include home scrap and pre-consumer materials.
- k. (K) "Pre-consumer material" means ~~those materials~~ waste material generated during any step in the production of a product and ~~that have been~~ recovered from or otherwise diverted from the solid waste stream for the purpose of recycling but does not include ~~those materials, virgin content of a material, or by products generated from, and commonly reused within, an original manufacturing process~~ home scrap;
- l. (L) "Project start up" means the first day a waste reduction, reuse, or recycling project begins collecting, separating, processing, modifying, converting, or treating solid waste or manufacturing products containing recovered materials, as applicable;
- m. (M) "Purchase" means a transaction under which a title and possession to an item is transferred for valuable consideration, or a finance lease contract or finance lease transaction for a

EXHIBIT A

period of at least three (3) years regardless of whether title to the item is transferred at the end of such period;

n. (N) "Recovered materials" means those materials which have been separated, diverted, or removed from the waste stream for the purpose of recycling and includes ~~both~~ pre-consumer material and post-consumer waste but not home scrap;

o. (O) "Recycling" means the systematic ~~collection~~ collecting, sorting, decontaminating, and returning of waste materials to commerce as commodities for use or exchange;

p. (P) "Repair" means expenditures, machinery, or equipment used to restore existing machinery or equipment to its original or similar condition and capacity after damage or after deterioration from use;

q. (Q) "Solid waste" means all putrescible and nonputrescible wastes in solid or semisolid form, including, but not limited to, yard or food waste, waste glass, waste metals, waste plastics, waste papers, waste paperboard, and all other solid or semisolid wastes resulting from industrial, commercial, agricultural, community, and residential activities;

r. (R) "Waste reduction, reuse, or recycling equipment" means new or used machinery or equipment located and operating in Arkansas on the last day of the taxable year which is operated or used exclusively in Arkansas to collect, separate, process, modify, convert, or treat solid waste so that the resulting product may be used as a raw material or for productive use or to manufacture products containing recovered materials. The term also includes devices which are directly connected with or are an integral and necessary part of such machinery or equipment and are necessary for such collection, separation, processing, modification, conversion, treatment, or manufacturing, ~~The term does~~ but not include motor vehicles.

EXHIBIT A

Reg. 16.104 **D. ~~ELIGIBLE COSTS~~ Eligible Costs**

- (A) Expenditures eligible for tax credit certification by the Director include waste reduction, reuse, or recycling equipment used exclusively for waste reduction, reuse, or recycling of solid waste for commercial purposes, whether or not for profit, ~~and the cost of installation of such equipment by outside contractors~~ including the cost of installation of such equipment by outside contractors.
- (B) Waste reduction, reuse, or recycling ~~Such~~ equipment must be used in the collection, separation, processing, modification, conversion, treatment, or manufacturing of products containing at least fifty percent (50%) recovered materials, of which at least ten percent (10%) of the recovered materials shall be post-consumer waste.
- (C) The cost of replacing existing waste reduction, reuse, or recycling equipment shall be eligible for certification only if the replacement provides greater capacity ~~to reduce, reuse or recycle for recycling~~ or provides the capability to collect, separate, process, modify, convert, treat, or manufacture additional or a different type of solid waste.
- (D) The amount of credit allowed under this regulation shall be equal to thirty percent (30%) of the cost of waste reduction, reuse, or recycling equipment, including the cost of installation by outside contractors.

Reg. 16.105 **E. ~~INELIGIBLE COSTS~~ Ineligible Costs**

The following costs shall be ineligible for computing the allowable tax credit:

- (A) Expenditures for land and buildings;
- (B) Feasibility studies;
- (C) Engineering costs of buildings;
- (D) Equipment used to service the waste reduction, reuse, or recycling equipment;
- (E) Replacement parts which serve only to keep existing waste reduction, reuse, or recycling equipment in its ordinary efficient operating condition;

EXHIBIT A

- (F) Service contracts;
- (G) Sales tax;
- (H) Maintenance;
- (I) Repairs; and,
- (J) Expenditures for waste reduction, reuse, or recycling equipment for which a tax credit has been previously issued ~~are not eligible for tax credit certification.~~

Reg. 16.106 **F. ~~RECORD KEEPING~~ Record Keeping**

- (A) Taxpayers claiming a tax credit for waste reduction, reuse, or recycling equipment shall maintain accurate and timely records for all expenditures relating to such equipment.
- (B) In order to determine eligibility for the credit or to ensure that the machinery or equipment is being utilized in the required manner, the Department shall have the right to inspect facilities and records of a taxpayer requesting or receiving a credit under this section.

~~Accurate and up-to-date records of all expenditures in accordance with the Arkansas Tax Procedure Act for the approved project shall be maintained by the taxpayer. The records shall be available for inspection and audit by the Commissioner of Revenues, pursuant to the Arkansas Tax Procedure Act and A.C.A. §26-51-506(k), and to the Department pursuant to the later.~~

Reg. 16.107 **G. ~~ELIGIBLE APPLICANTS~~ Eligible Applicants**

A taxpayer must be engaged in the business of reducing, reusing, or recycling solid waste material for commercial purposes in Arkansas, whether or not for profit, in order to be eligible for tax credit certification under this regulation.

~~Taxpayers must own and be engaged in the business of reduction, reuse, or recycling solid waste for commercial purposes in Arkansas in order to be eligible for tax credit certification under this regulation.~~

Reg. 16.108 **H. ~~APPLICATION FORMS~~ Application Forms**

The Department will ~~may~~ furnish forms to be used in the

EXHIBIT A

certification ~~process~~ and reporting processes.

Reg. 16.109 **Credit Determination, Maximum, and Carryforward**

~~**I. TAX CREDITS:** Final determination of the amount of eligible costs and available tax credits will determined by the Commissioner of Revenues based upon inspection and audit, pursuant to the Arkansas Tax Procedure Act and A.C.A. §26-51-506(k). Tax credits identified pursuant to A.C.A. §26-51-506 may be carried over a maximum of three (3) consecutive years following the taxable year in which the credit originated.~~

- ~~(A) Final determination of the amount of eligible cost and available tax credits will be determined by the Commissioner of Revenues.~~
- ~~(B) The amount of the credit that may be used by a taxpayer for a taxable year may not exceed the amount of state, individual, or corporate income tax otherwise due.~~
- ~~(C) Any unused credit may be carried over for a maximum of three (3) consecutive tax years following the taxable year for which the credit was certified.~~

Reg. 16.110 **Apportionment of Credit**

- ~~(A) In the case of a proprietorship or partnership engaged in the business of waste reduction, reuse, or recycling of solid waste, the amount of the credit determined under this regulation for any tax year shall be apportioned to each proprietor or partner in proportion to the amount of income from the entity which the proprietor or partner is required to include as gross income.~~
- ~~(B) In the case of a Subchapter S corporation, the amount of the credit determined under this regulation for any taxable year shall be apportioned among the persons who are shareholders of the corporation on the last day of the taxable year based on each person's percentage of ownership.~~
- ~~(C) In the case of an estate or trust:~~
 - ~~(1) the amount of the credit determined under this~~

EXHIBIT A

- regulation for any taxable year shall be apportioned between the estate or trust and the beneficiaries on the basis of income of the estate or trust allocable to each; and,
- (2) any beneficiary to whom any amount has been apportioned under this section shall be allowed, subject to limitations contained in this regulation, a credit under this section for the amount.

Reg. 16.111 **Refund of Credit**

- (A) The taxpayer shall refund the amount of the tax credit determined under this regulation if, within three (3) tax years of the tax year for which a credit is allowed:
- (1) the waste reduction, reuse, or recycling equipment is removed from Arkansas, is disposed of, is transferred to another person, or the taxpayer otherwise ceases to use the required materials or operate in the manner required by this regulation; or,
- (2) the Director finds that the taxpayer has demonstrated a pattern of intentional failure to comply with final administrative or judicial orders which clearly indicates a disregard for environmental regulation or a pattern of prohibited conduct which could reasonably be expected to result in adverse environmental impact.
- (B) If the provisions of subsection (A) above apply, the taxpayer shall refund the amount of the tax credit which was deducted from income tax liability which exceeds the following amounts:
- (1) within the first year, zero dollars (\$0);
- (2) within the second year, an amount equal to thirty-three percent (33%) of the amount of the credit allowed; and,
- (3) within the third year, an amount equal to sixty-seven percent (67%) of the credit allowed.
- (C) Any refund required by this section shall apply only to the credit given for the particular waste reduction, reuse, or recycling equipment to which subsection (A) above applies.

EXHIBIT A

- (D) Any taxpayer who is required to refund part of a credit pursuant to this section shall no longer be eligible to carry forward any amount of that credit which had not been used as of the date such refund is required.

~~If the equipment on which a tax credit has been certified is removed from the state of Arkansas, is disposed of, is transferred to another person, or otherwise ceases to use the required materials or operate in a manner required by A.C.A. §26-51-506, or if the Director finds the taxpayer has demonstrated a pattern of intentional failure to comply with final administrative or judicial orders, which clearly indicates a disregard for environmental regulation or a pattern of prohibited conduct which could reasonably be expected to result in adverse environmental impact, the taxpayer shall refund the amount of the tax credit deducted from income tax liability which exceeds the following: within the first year, zero dollars; within the second year, an amount equal to thirty three percent (33%) of the amount of credit allowed; within the third year, an amount equal to sixty seven percent (67%) of the credit allowed. Any taxpayer who is required to refund part of a credit shall no longer carry forward any amount of that credit which has not been used as of the date such refund is required. These provisions regarding refunds apply only to credits which were certified as a result of applications filed on or after July 1, 1993. These provisions do not apply to applications filed before July 1, 1993, or to taxpayers who have a written notice and a project plan filed with the Department by July 1, 1993, and provide all necessary information to complete the application by December 31, 1993.~~

Reg. 16.112 **Limitations on Other Deductions**

A taxpayer who receives a credit under this regulation shall not be entitled to claim any other state or local tax credit or deduction based on the purchase of the waste reduction, reuse, or recycling equipment, except for the deduction for normal depreciation.

Reg. 16.113 **K. ~~SEVERABILITY~~ Severability**

If any provision of this regulation or the application

EXHIBIT A

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

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CHAPTER II-CERTIFICATION PROCEDURES

SECTION II: PROCEDURE FOR APPLYING FOR TAX CREDIT CERTIFICATION

Reg. 16.201 Application Process

- (A) Taxpayers must submit an application for tax credit certification no later than ninety (90) days following the calendar year in which (1) waste reduction, reuse, or recycling equipment was purchased, (2) final equipment expenditures are made, or, (3) project start-up occurs, whichever is later. Final equipment expenditures for purposes of this section include installation costs, construction progress payments, and payments of retainage, but do not include finance lease payments, financing payments, or installment payments following purchase according to an installment payment plan. For equipment bought or leased on installment, the date of the last expenditure shall be the date of the last purchase, not the last installment payment. Expenditures made for routine maintenance or repairs shall not be considered equipment expenditures.
- (B) Taxpayers must use a form provided by the Department.
- (C) Complete applications shall contain the following:
- (1) a completed application form;
 - (2) invoices detailing each expenditure which include:
 - (a) the seller's name;
 - (b) the cost of each item claimed as waste reduction, reuse, or recycling equipment;
 - (c) the date on which such equipment was purchased;
 - (3) the cost of installation;
 - (4) a narrative describing the project or equipment purpose. The narrative must also contain a list of suppliers and approximate percentage of recovered materials and post consumer waste, and products collected, separated, processed, modified, converted, treated, or manufactured;
 - (5) an acknowledgment that, to the best of the taxpayer's knowledge, a good faith effort is being made to utilize post-consumer waste generated in

EXHIBIT A

- Arkansas as at least ten percent (10%) of the post-consumer waste being used in such equipment, to the extent available at a competitive price; and,
- (6) the signature of the taxpayer claiming the credit. The taxpayer's signature shall be by an officer if a corporation; partner or authorized manager if a partnership; member or manager if a limited liability company; proprietor if a sole proprietorship; or the individual applicant if the taxpayer is an individual.
- (D) The Department may require the taxpayer to report the serial number for each piece of such equipment, or in the absence of a serial number, the Department may require the taxpayer to assign a number to the equipment and permanently affix it thereto when applicable.
- (E) The application must be mailed or delivered to the address specified by the Department.

~~A. Not more than 90 days following the completion of eligible project expenditures or project startup, whichever is later, the taxpayer must submit an application to the Director. The project application shall address the following: 1. Total cost for each project The taxpayer shall detail costs for each piece of equipment purchased and installed and shall provide serial numbers and copies of invoices of each purchase for which certification is requested. If eligible equipment does not have a serial number, a company assigned number must be permanently imprinted in an accessible location on the machinery. 2. Time frame The taxpayer should identify the time frame involved for each project indicating start date and completion date. 3. Contractors It is encouraged that Arkansas based contractors be used whenever possible. It is encouraged that applicants use as much post consumer waste generated in Arkansas as is available at a competitive price. 4. Product or service The taxpayer should include a description of the product(s) or service(s) provided in each project. 5. Acknowledgment The taxpayer must submit a statement to the Director acknowledging that the taxpayer shall make a good faith effort to utilize post consumer waste generated in Arkansas as at least ten percent (10%) of the post-consumer waste being used in the equipment, to the extent available at a competitive price.~~

EXHIBIT A

~~B. Any taxpayer who has previously been designated as an "Eligible Applicant" may, at the taxpayer's discretion, group individual equipment expenditures of twelve thousand five hundred dollars (\$12,500) or less per item and file a request for certification on a semi-annual basis in the months of January and July. For equipment expenditures in excess of twelve thousand five hundred dollars (\$12,500), all taxpayers shall follow the procedures outlined in Section II(A).~~

~~C. The application must contain the signature of the Chief Executive officer, an officer of the corporation, or the officer primarily responsible for plant operations, of the taxpayer applying for the tax credits.~~

Reg. 16.202 Deadlines

If any applicable deadline under this Regulation falls on a Saturday, Sunday, or legal holiday, the application shall be due on the next business day.

~~D. The application shall be submitted to the following address not more than ninety (90) days following final equipment expenditures or project startup, whichever is later: Director, Arkansas Department of Pollution Control and Ecology, 8001 National Drive, P.O. Box 8913, Little Rock, Arkansas, 72219-8913.~~

Reg. 16.203 Determination of Eligibility

- (A) Applications for certification of tax credits made under this regulation shall be reviewed by the Department for completeness and accuracy. The Director shall make a determination on the application within ninety (90) days of its receipt.
- (B) The Director shall notify the Revenue Division of the Department of Finance and Administration and the taxpayer in writing of his decision.
- (C) The Director may request any additional information from the taxpayer which he deems necessary to properly evaluate the taxpayer's application. The Department shall have the right to inspect facilities and records in order to assist the Director in his decision.

EXHIBIT A

~~SECTION III: PROJECT APPROVAL~~

~~A. Within sixty (60) days of the receipt of a complete application from a taxpayer applying for the tax credit certification provided by A.C.A. §26-51-506, the Director will certify to the Commissioner of Revenues those credits for which the taxpayer is entitled. Notice shall also be provided within sixty (60) days of the receipt of the application to the taxpayer on the qualification for said tax credits.~~

~~B. The Director shall use any resources necessary to review the application to determine eligibility for tax credit certification. In order to determine eligibility for the credit or to determine that the machinery or equipment is being utilized in the required manner, the Department shall have the right to inspect facilities and records of a taxpayer requesting or receiving a credit.~~

Reg. 16.204 Informal Settlement

- (A) If a taxpayer disputes a decision on eligibility rendered by the Director, the taxpayer shall give notice in writing of said dispute no later than fifteen (15) days from the date which appears on the decision.
- (B) The Director shall meet with the aggrieved taxpayer within fifteen (15) days of his receipt of the taxpayer's dispute of the decision.
- (C) The Director shall render an opinion within thirty (30) days following the meeting.

~~C. In the event the taxpayer disagrees with the decision qualification rendered by the Director, the taxpayer shall, within fifteen (15) days of receipt of notification of ineligibility from the Director, give notice of said disagreement and request a meeting to review the project application. The Director shall arrange for a meeting to discuss the disagreement within fifteen (15) days of the taxpayer's notification of the disagreement.~~

EXHIBIT A

Reg. 16.205 **Preliminary Approval**

- (A) The Arkansas Pollution Control and Ecology Commission recognizes that the waste reduction, reuse, or recycling equipment tax credit was enacted in part to stimulate economic development. In order to achieve this purpose, a taxpayer may ask the Director for preliminary approval regarding an anticipated purchase of waste reduction, reuse, or recycling equipment or construction of a waste reduction, reuse, or recycling project.
- (B) In order to request preliminary approval for a potential tax credit, the taxpayer must do the following:
- (1) At least thirty (30) days prior to purchasing any equipment or machinery which may, either individually or as part of a waste reduction, reuse, or recycling project, be eligible for a tax credit under this regulation, submit an application for preliminary approval and any other necessary forms to the Department.
- (2) The application for preliminary approval must contain the following:
- (a) a narrative describing the project purpose and the product(s) or service(s) expected to be produced or provided;
- (b) a brief description of each piece of waste reduction, reuse, or recycling equipment expected to be purchased;
- (c) the expected costs to be incurred;
- (d) the date waste reduction, reuse, or recycling equipment is expected to be purchased or the date a waste reduction, reuse, or recycling project is expected to become operational;
- (e) the expected cost of installation;
- (f) the signature of the taxpayer that will claim the credit if an individual, partner, or shareholder of a Subchapter S corporation. In the case of a Subchapter C corporation, the treasurer or chief executive officer will sign the application.
- (C) The Director shall, within thirty (30) days of the

EXHIBIT A

- receipt of a complete preliminary approval application, notify the taxpayer of his decision concerning tax credit eligibility.
- (D) The Director may request any additional information from the taxpayer which he deems necessary to properly evaluate the taxpayer's application. The Department shall have ten (10) days to examine any requested information, regardless of the deadline imposed by (C) above. The Department shall have the right to inspect facilities and records in order to assist the Director in his decision.
- (E) For any items which the Director preliminarily approves, the taxpayer shall timely submit an application for tax credit certification as otherwise required herein.
- (F) In the event the taxpayer disagrees with any decision of the Director concerning the preliminary approval process, the settlement and appeal sections of this regulation shall apply.

Reg. 16.206 Appeal of Director's Decision

Any person or legal entity aggrieved by a decision of the Director under A.C.A. ~~§26-51-506(d)(regarding certification) or §26-51-506(f)(1)(B)(regarding refunds for environmental violations)~~ made under this regulation may file an appeal pursuant to Pollution Control and Ecology under Regulation 8 Administrative Procedures, as set out in Part IV, Grants Decisions, therein. Thereafter, an appeal may be taken from the decision of the Pollution Control and Ecology Commission and thereafter to the courts in the manner provided in A.C.A. Ark. Code Ann. §§8-4-222-8-4-229.

SECTION IV: ~~ALTERNATE PROCEDURE-PRELIMINARY PROJECT APPROVAL~~

~~A. In the event the taxpayer is considering the possibility of other tax credits that may be available, the tax payer may submit a project plan to the Director for the purpose of obtaining preliminary project approval. The procedures~~

EXHIBIT A

~~contained in Section IV shall apply should the taxpayer wish to obtain preliminary project approval.~~

~~B. At least thirty (30) days prior to the start of eligible project expenditures, the taxpayer must submit a complete project plan to the Director. The project plan shall address the following: 1. Total project cost The plan should estimate expenditures for each item of equipment to be purchased and installed as part of the project. 2. Time frame The plan should address the time frames involved in the project indicating start dates and expected completion dates. 3. Contractors It is encouraged that Arkansas based contractors be used whenever possible. It is encouraged that applicants plan to sue as much recovered materials from Arkansas as is available at a competitive price. 4. Product or service the plan should include a description of the product(s) or service(s) to be provided. 5. Acknowledgment The taxpayer must submit a statement to the Director acknowledging that upon implementation of the plan the taxpayer will make a good faith effort to utilize post consumer waste generated in Arkansas as at least ten (10%) of the post consumer waste being used in the equipment, to the extent available at a competitive price.~~

~~C. The project plan must contain the signature of the Chief Executive officer, an officer of the corporation, or the officer primarily responsibility for plant operations, of the taxpayer applying for tax credit certification.~~

~~D. The project plan shall be submitted to the same address as listed in Section II(D) at least thirty (30) days prior to the start of eligible project expenditures.~~

~~E. Within thirty (30) days of the receipt of a complete project plan from a taxpayer applying for the tax credit certification provided by A.C.A. §26-51-506, the Director will notify the taxpayer whether the project does, or does not, qualify for preliminary approval.~~

~~F. The Director shall have the right to use resources or perform inspections as described in Section III(B) as necessary to review the project plan to determine preliminary qualification for the tax credit.~~

~~G. In the event the taxpayer disagrees with the decision on~~

EXHIBIT A

~~preliminary qualification rendered by the Director, the taxpayer will, within fifteen (15) days of receipt of notification of ineligibility from the Director, give notice of the disagreement and request a meeting to review the project plan. The Director shall arrange for a meeting to discuss the disagreement within fifteen (15) days of the taxpayer's notification of the disagreement. An appeal of the Director's decision on preliminary qualification may be taken in the same manner as described in Section III(C).~~

~~H. For those projects which receive preliminary project approval, the taxpayer shall notify the Director upon completion of project expenditures and shall request certification for tax credit as outlined in Section II.~~