

Exhibit A:

Regulation 16

Mark-up Draft

ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION



REGULATION NO. 16

~~REGULATION OF THE STATE OF~~ ~~ARKANSAS FOR WASTE REDUCTION,~~ ~~REUSE, OR RECYCLING INCOME TAX~~ ~~CREDITS~~

MARK-UP DRAFT

**Submitted to the Pollution Control and Ecology Commission
in June 2017**

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CHAPTER 1: GENERAL PROVISIONS

~~Reg.16.101~~ — ~~Effective Date~~

~~This regulation shall be effective 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~~101 Purpose

This regulation is promulgated pursuant to Ark. Code Ann. § 26-51-506, ~~which provides for concerning an income tax credit, as well as and a recapture of the credit in certain instances, and Ark. Code Ann. § 8-1-203(b)(1)(A).~~ The income tax credits are an incentive for taxpayers to engage in waste reduction, reuse, or recycling activities including the use of post-consumer recyclables generated in Arkansas.

~~Reg.16.103~~102 Definitions

~~For the purposes of this regulation, unless otherwise stated herein, As used in this regulation, the following definitions apply:~~

- (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 that~~ is not a finance lease but ~~which that~~ otherwise qualifies as a purchase under this 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) **“Department”** means the Arkansas Department of Environmental Quality;
- (C) **“Director”** means the director of the Arkansas Department of Environmental Quality;
- (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) **“Finance lease”** means a lease agreement ~~which that~~ is treated as a purchase by a lessee for Arkansas income tax purposes;
- (F) **“For commercial purposes”** means collecting, separating, processing, modifying, converting, or treating solid waste other than waste that is self-generated;
- (G) **“Home scrap”** means materials or by-products generated from and commonly reused within an original manufacturing process;
- (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) **“Motor vehicle”** means a vehicle or trailer that is licensed, or that normally would be

licensed, for use on highways in Arkansas;

- (J) **“Post-consumer waste”** means waste materials generated by a business, governmental entity, or consumer ~~which~~ that 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) **“Pre-consumer material”** means waste material generated during any step in the production of a product and recovered or otherwise diverted from the solid waste stream for the purpose of recycling but does not include home scrap;
- (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) **“Purchase”** means a transaction ~~under which~~ where title and possession to an item is transferred for valuable consideration, or a finance lease contract or finance lease transaction for a period of at least three (3) years regardless of whether title to the item is transferred at the end of ~~such period~~ three (3) years;
- “Qualified manufacturer of steel”** means any natural person, company, or corporation, and any holding company of any of the foregoing, engaged in the manufacture, refinement, or processing of steel whenever more than fifty percent (50%) of the electricity or natural gas consumed in the manufacture, refinement, or processing of steel is used to power an electric arc furnace or furnaces, continuous casting equipment, or rolling mill equipment in connection with the melting, continuous casting, or rolling of steel, or in the preheating of steel for processing through a rolling mill or mills, or both;
- (N) **“Recovered materials”** means those materials ~~which~~ that have been separated, diverted, or removed from the waste stream for the purpose of recycling and includes pre-consumer material and post-consumer waste but not home scrap;
- (O) **“Recycling”** means the systematic collecting, sorting, decontaminating, and returning of waste materials to commerce as commodities for use or exchange;
- (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) **“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) **“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~~ that 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~~ that are directly connected with or are an integral and

necessary part of ~~such~~ the machinery or equipment and are necessary for ~~such~~ the collection, separation, processing, modification, conversion, treatment, or manufacturing, but not motor vehicles. For qualified manufacturers of steel, the term also includes production, processing, and testing equipment used to manufacture products containing recovered materials.

Reg.16.104103 Eligible Costs

- (A) Expenditures eligible for income 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, including the cost of installation of ~~such~~ the equipment by outside contractors.
- (B)(1) ~~Waste~~ Except as provided under subsection (B)(2) of this section, waste reduction, reuse, or recycling 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.
 - (2) Waste reduction, reuse, or recycling equipment used by a qualified manufacturer of steel must be used:
 - (a) In the collection, separation, processing, modification, conversion, treatment, production, processing, or testing equipment; and
 - (b) To manufacture products that contain at least twenty-five percent (25%) 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 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.16.105104 Ineligible Costs

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

- ~~(A)~~(1) Expenditures for land and buildings;
- ~~(B)~~(2) Feasibility studies;
- ~~(C)~~(3) Engineering costs of buildings;
- ~~(D)~~(4) Equipment used to service the waste reduction, reuse, or recycling equipment;
- ~~(E)~~(5) Replacement parts ~~which~~ that serve only to keep existing waste reduction, reuse, or recycling equipment in its ordinary efficient operating condition;
- ~~(F)~~(6) Service contracts;

- ~~(G)~~(7) Sales tax;
- ~~(H)~~(8) Maintenance;
- ~~(I)~~(9) Repairs; and,
- ~~(J)~~(10) Expenditures for waste reduction, reuse, or recycling equipment for which a an income tax credit has been previously issued.

Reg.16.106105 Record Keeping

- (A) Taxpayers claiming a an income tax credit for waste reduction, reuse, or recycling equipment shall maintain accurate and timely records for all expenditures relating to ~~such~~ the equipment.
- (B) ~~In order to~~ 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.

Reg.16.107106 Eligible Applicants

- (A) 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 income tax credit certification under this regulation.
- (B) A qualified manufacturer of steel shall either:
 - (1) Meet the requirements of Ark. Code Ann. § 26-51-506(d); or
 - (2) Obtain a certification from the Director of the Arkansas Department of Environmental Quality certifying to the Revenue Division of the Department of Finance and Administration that:
 - (a) The qualified manufacturer of steel is engaged in the business of reducing, reusing, or recycling solid waste material for commercial purposes, whether or not for profit;
 - (b) The machinery or equipment purchased is waste reduction, reuse, or recycling equipment;
 - (c) The machinery or equipment is being used in the collection, separation, processing, modification, conversion, treatment, or manufacturing of products containing at least twenty-five percent (25%) post-consumer waste; and
 - (d) The qualified manufacturer of steel has filed a statement with the Director acknowledging that it will make a good faith effort to utilize Arkansas post-consumer waste as a part of the materials used.

Reg.16.108107 Application Forms

The Department will furnish forms to be used in the certification and reporting processes.

Reg.16.109108 Credit Determination, Maximum, and Carry forward

- (A) Final determination of the amount of eligible cost and available income 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.
- (D) A qualified manufacturer of steel may carry forward any unused income tax credit that originated on or after January 1, 2015, for not more than fourteen (14) consecutive years following the taxable year in which the income tax credit originated. Income tax credits that would otherwise expire during the carry forward period shall be claimed first.

Reg. 16.110109 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~~ that 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 persons percentage of ownership.
- (C) In the case of an estate or trust:
 - (1) ~~the~~ The amount of the credit determined under this 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~~ 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.
- (D) If a Public Retirement System is an investor, the distribution of income tax credit will be governed by Ark. Code Ann. § 26-51-506(c).

Reg. 16.111110 Refund of Credit

- (A) The taxpayer shall refund the amount of the income tax credit determined under this regulation if, within three (3) tax years of the tax year for which a credit is allowed:
 - (1)(a) ~~the~~ 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;

(b) For the purposes of this section as applied to a qualified manufacturer of steel, reorganization transactions, changes in ownership and control, and sales and transfers of equipment among affiliates within the state that do not constitute sales or transfers to a third-party purchaser are not disposals, transfers, or cessations;
or;

- (2) ~~the~~ The Director finds that the taxpayer has demonstrated a pattern of intentional failure to comply with final administrative or judicial orders ~~which that~~ clearly indicates a disregard for environmental regulation or a pattern of prohibited conduct ~~which that~~ 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 income tax credit ~~which that~~ was deducted from income tax liability ~~which that~~ exceeds the following amounts:
- (1) ~~within~~ Within the first year, zero dollars (\$0);
- (2) ~~within~~ Within the second year, an amount equal to thirty-three percent (33%) of the amount of the credit allowed; and;
- (3) ~~within~~ 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.
- (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~~ the refund is required.

Reg.16.112111 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 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 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.~~

CHAPTER H 2: CERTIFICATION PROCEDURES

Reg.16.201 Application Process

- (A) Taxpayers must submit an application for income 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~~ A completed application form;
 - (2) ~~invoices~~ Invoices detailing each expenditure ~~which~~ that include:
 - (a) ~~the~~ The seller's name;
 - (b) ~~the~~ The cost of each item claimed as waste reduction, reuse, or recycling equipment;
 - (c) ~~the~~ The date ~~on which such~~ when equipment was purchased;
 - (3) ~~the~~ The cost of installation;
 - (4) ~~a~~ 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~~ 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 Arkansas as at least ten percent (10%) of the post-consumer waste being used in ~~such~~ the equipment, to the extent available at a competitive price;
 - (6) Qualified manufacturers of steel must file a statement with the Director acknowledging that they will make a good faith effort to utilize Arkansas post-consumer waste as part of the materials used; and;
 - ~~(6)~~(7) ~~the~~ 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, emailed, or delivered to the address specified by the Department.

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.

Reg.16.203 Determination of Eligibility

- (A) Applications for certification of income 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~~ that is determined to be 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.

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~~ the dispute no later than fifteen (15) days from the date ~~which~~ that appears on the decision.
- (B) The Director shall meet with the aggrieved taxpayer within fifteen (15) days of ~~his~~ the receipt of the taxpayer's dispute of the decision.
- (C) The Director shall render an opinion within thirty (30) days following the meeting.

Reg.16.205 Preliminary Approval

- (A) The Arkansas Pollution Control and Ecology Commission recognizes that the waste reduction, reuse, or recycling equipment income tax credit was enacted in part to stimulate economic development. ~~In order to~~ 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~~ To request preliminary approval for a potential income tax credit, the taxpayer must do the following:
 - (1) At least thirty (30) days prior to purchasing any equipment or machinery ~~which~~ that may, either individually or as part of a waste reduction, reuse, or recycling project, be eligible for a an income 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 A narrative describing the project purpose and the ~~product(s)~~ product or ~~service(s)~~ service expected to be produced or provided;
 - (b) a A brief description of each piece of waste reduction, reuse, or recycling equipment expected to be purchased;
 - (c) ~~the~~ The expected costs to be incurred;
 - (d) ~~the~~ 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~~ The expected cost of installation;
 - (f) ~~the~~ 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~~ If the taxpayer is a Subchapter C corporation, the treasurer or chief executive officer will sign the application.
- (C) The Director shall, ~~within thirty (30) days of the receipt of a complete preliminary approval application,~~ notify the taxpayer of ~~his~~ the decision concerning income tax credit eligibility within thirty (30) days of the receipt of a complete preliminary approval application.
- (D) The Director may request any additional information from the taxpayer ~~which he deems that is determined to be 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~~ that receive preliminary approval by the Director, the taxpayer shall timely submit an application for income tax credit certification as otherwise required herein.
- (F) ~~In the event~~ If 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 made under this regulation may file an appeal under Regulation 8 and thereafter to the courts in the manner provided in Ark. Code Ann. §§ 8-4-222 – 8-4-229.

CHAPTER 3: REPEALER, SEVERABILITY, AND EFFECTIVE DATE

Reg.16.301 Repealer

All regulations and parts of regulations promulgated by the Arkansas Pollution Control and Ecology Commission that are in conflict with this regulation are repealed to the extent of the conflict.

Reg.16.302 Severability

The provisions of this regulation are severable. If any part of this regulation is declared invalid or unenforceable by a court, the remainder of the regulation will continue to be valid and enforceable.

Reg.16.303 Effective Date

This regulation shall be effective ten (10) days after filing with the Secretary of State, the State Library, and the Bureau of Legislative Research.