

BEFORE THE ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION

IN THE MATTER OF AMENDMENTS TO)
REGULATION NO. 22, SOLID WASTE) DOCKET NO. 04- -R
MANAGEMENT RULES)

PETITION TO INITIATE RULEMAKING TO AMEND
REGULATION NO. 22, SOLID WASTE MANAGEMENT

The Arkansas Department of Environmental Quality (hereinafter ADEQ or the Department), for its Petition to Initiate Rulemaking to Amend Regulation No. 22, the Regulation for Solid Waste Management, states:

1. The Department proposes several “housekeeping” changes to this Regulation. These changes involve the following areas:
 - (A) Renumbering of provisions to conform to standard format;
 - (B) The replacement of the word “Section” by a numerical reference to the Regulation and the pertinent section;
 - (C) Words to be defined are typed in boldface to conform to standard format;
 - (D) Commission references have been corrected to reflect the name as the Arkansas Pollution Control and Ecology Commission to conform with A.C.A. 8-1-302 (1);
 - (E) Department references have been corrected to reflect the name as the Department of Environmental Quality to conform with Acts 1999 No. 1164;
 - (F) Director has been defined as the Director of the Department of Environmental Quality to conform with A.C. A. § 8-1-302; and
 - (G) References to the existing effective date of Regulation 22 have been changed to May 7, 1995.
2. Several modifications and additions to definitions and new definitions are proposed for purposes of clarification. These changes involve the following terms:
 - (A) A definition of a Beneficial Fill;
 - (B) A change to the definition of Class 4 wastes to include the term industrial waste;
 - (C) A definition of Construction of Permitted Facilities or Construction;
 - (D) A definition of Construction and Demolition (C&D) waste;

- (E) An addition to the definition of contaminated soils to reflect that the substance is a threat to human health or the environment which requires that the soil be remediated, treated or disposed of in accordance with Regulation 22 to mitigate such threats;
- (F) A definition for General Permit;
- (G) An addition to the definition of hauler to clarify that a hauler does not include a person transporting non-commercial waste;
- (E) A definition of Individual Permit;
- (I) An addition to the definition of industrial solid waste to clarify that such waste is produced as a result of manufacturing or industrial processes;
- (J) An addition to the definition of Material Recycling Facility to clarify that the term refers to a facility engaged solely in practices related to the management or diversion of source separated recoverable materials from the waste stream including storage, processing, marketing or reuse of recovered materials;
- (K) An addition of the words “conditionally exempt” small quantity generator to the definition of Municipal solid waste landfill unit;
- (L) The substitution of the words operating procedures for operation to define Operating Plan;
- (M) An addition to the definition of operator to distinguish the definition in Regulation 22 and Regulation 27;
- (N) An addition in the definition of scavenging;
- (O) A change in the definition of seismic impact zone of a reduction from ten percent (10%) to (2%) or greater; a change from 250 years to 50 years;
- (P) An addition to the definition of a solid waste recovery facility (WRF) facility to clarify that WRF operations are required to meet all permitting requirements for transfer stations;
- (Q) An addition of verbiage to the definition of transfer stations to clarify that these facilities engage in segregation and processing and transfer; and
- (R) the applicability of Regulation 22 was amended to include the following Class 3 (3N) NonCommercial facilities, Class 3 Commercial (3C) facilities, 3Tire (3T) facilities, Composting facilities (CY) accepting only vegetation, Composting facilities (C) wastes and approved organic wastes, Composting facilities (CS) accept vegetative materials and approved solid wastes, transfer station and solid waste recovery facilities.

3. The Department has proposed the following changes to Regulation 22, Chapter 2:
 - (A) The deletion of sections 22.201-22.203 as these provisions have been moved to Regulation No. 11;
 - (B) A change in the definition of host community to “all governmental units possessing zoning authority encompassed within a twelve-mile radius of the proposed high-impact solid waste management facility” to conform with A.C.A. § 8-6-1502 (4);
 - (C) A change in the definition of Certificate of Need (CON) to reflect that a CON is required for both landfills and transfer stations;
 - (D) A change to the petition requirements to reflect that applicant must demonstrate that the proposed disposal facility does not conflict with an archeological site as recognized by the Arkansas Historic Preservation Program instead of the Arkansas Archeological Survey;
 - (E) A change to allow the regional board to permit a projected capacity in excess of thirty years if the city or county government approves the excess through the adoption of a resolution;
 - (F) An addition to conform with A.C.A. § 8-6-706 that requires the district provide to the Director an allocation of waste capacity of each permitted landfill within the district’s jurisdiction landfill for an excess of thirty years; and
 - (G) A clarification that the parties involved in a CON appeal may request Commission review of the Director’s decision.
4. The Department has proposed the following changes to Regulation 22, Chapter 3:
 - (A) A clarification that all applicants for class 1, Class 3 and Class 4 landfill must retain geologists and engineers registered in the State of Arkansas to develop geotechnical and hydrogeologic studies, permit plans and specifications and operating plans.
 - (B) A clarification that applicants for new solid waste disposal permits and “lateral expansions into unpermitted areas must submit a permit pre-application;
 - (C) A change to require landfill applicants to give a mailing address for the applicant and facility owner and a physical address of the facility;
 - (D) Changes to the application contents for landfills to require a description of soil characteristics of the site, a current boundary survey of the property by a registered land surveyor, a 7.5 minute USGS quadrangle map showing disposal or processing boundaries showing the facility on an appropriate scale city or county map, a narrative description of the

access roads and steams in proximity of the site, documentation from appropriate agencies showing that the selected site conforms with airport safety, floodplain, wetlands separations distances and locations restrictions, and protective of endangered species, historic archeology, and flora and fauna

(E) A change to require a proposed permittee to demonstrate financial assurance prior to the transfer of a permit;

(F) An addition to the definition of a major modifications to state that a major modification is an increase of ten percent (10%) or greater in the total permitted capacity of the disposal facility; and

(G) An addition of a provision to clarify that authority to place waste ceases when a facility places waste beyond the permitted boundaries or exceeds the permitted capacity, fill volume or elevations, and that a permit may be revoked for failure to comply with regulations or failure to maintain permit fees.

5. The Department has proposed the following changes to Regulation 22, Chapter 4:

(A) A change to incorporate provisions of the Section 503 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (Ford Act), Pub. L. 106-181 (49 U.S.C. 44718 note) which requires FAA notification of proposed siting of a new landfill within a five-mile radius of any airport runway end used for turbojet or piston-type aircraft and prohibits construction of new Class 1 landfills within a six-mile radius of any runway end;

(B) Changes to require the owner or operator to provide demonstration to the Director that new units or lateral expansions located in seismic zones are designed to resist the maximum horizontal acceleration in lithified earth material for the site and new units in unstable areas have incorporated engineering measures to ensure the integrity of the structural components;

(C) A change to limit multiple working faces unless specifically approved in the working plan;

(D) A clarification stating the surface water control activities that the owner or operator must comply with to control erosion;

(E) A clarification that owners or operators must implement a plan for excluding hazardous waste, to include coverage of wastes regulated under the Toxic Substances Control Act (TSCA) as defined in 40 CFR Part 761 which requires each facility to develop a written

protocol that describes the procedures it will follow to determine whether to accept or reject industrial or process waste;

(F) A change to state the requirements for interim cover materials;

(G) Changes to require the owner or operator to include detailed location and design plans for explosive gas probes and to require the Director to review and approve gas monitoring plans;

(H) A change to require Annual Engineering reports to include updated contour maps that depict the extent of the active and inactive fill areas, the survey grid system and the location of surface features, updated financial assurance documentation and an updated facility closure plan;

(I) Changes to require fines content of the liner or final barrier to pass the #200 sieve by 50% or greater, leak detection systems that meet the standards for leachate collection system design and construction, reducing the final cover slope to 4% or greater in Boone and St. Joe Formations landfills;

(J) A change to require liner materials to be chemically compatible with the expected waste, leachate and soil characteristics;

(K) Clarification of final cover requirements;

(L) A change to permit the facility to develop a grid system consistent with the State Plane Coordinate System of the Transverse Mercator System;

(M) A change to require the survey to show the perimeter of the flexible membrane liner;

(N) A change to specify that granular materials used in liner and final cover design and construction shall be free of organic materials and contain less than 5% by weight which passes the #200 sieve, that carbonate rock should be avoided and that permits the approval of alternative drainage layer materials upon demonstration that the layer meets requirements of this section;

(O) A change to require new leachate removal systems to be designed for anticipated peak flow and requiring the installation of storage tanks and alarm systems to assure reliability;

(P) An addition to the certification requirement to require the inclusion of sump locations with elevations and leachate pump station locations and elevations;

(Q) The addition of a provision on leachate screening and monitoring to require each landfill to install leachate collection systems and sample leachate as required under Chapter 12; and

- (R) An addition to require owners or operators to reclaim borrow areas.
6. The Department has proposed the following changes to Regulation 22, Chapter 5:
- (A) An addition to clarify that applicants for all new facilities and expansions shall ascertain the minimum separation distances and buffer zones at the earliest date the notification or application is made to local or regional authorities;
 - (B) Changes to require that best management practices for the control of surface water shall be in accordance with any stormwater permit issued for the site, shall be described in the operating narrative, and shall be included in the permit plans as appropriate; and to require final and interim slope stabilization to conform with Reg.22.427(f).
 - (C) To require Class 3 Noncommercial landfills to provide the Director with the procedures it will follow to prevent the disposal of regulated hazardous wastes and polychlorinated biphenyls (PCB) wastes;
 - (D) To provide a deadline for the Annual Engineering Inspection Report; and
 - (E) A change to require Annual Engineering Reports to include estimated volumetric capacities, documentation of compliance, updated contour maps that depict the horizontal and vertical extent of the active and inactive fill areas, the status of each permitted landfill unit, the survey grid, the location of surface features, the location of leachate recirculated, updated financial assurance documentation and an updated facility closure plan;
 - (F) A change in the designation of Class 3 monofills; and
 - (G) The removal of provisions addressing the handling of tires since these requirements are addressed in Regulation No. 14.
7. The Department has proposed the following changes to Regulation 22, Chapter 6:
- (A) An addition to require all operations at the Class 4 landfills to be in accordance with all other applicable regulations and not just the permit, approved plans and operating narrative;
 - (B) A change to specify that multiple working faces shall not be allowed unless specifically approved in the facility operating plan;
 - (C) Changes to require that best management practices for the control of surface water shall be in accordance with any stormwater permit issued for the site, shall be described in the operating narrative, and shall be included in the permit plans as appropriate, and to require final and interim slope stabilization to conform with Reg.22.427(f);

- (D) A change to permit removal and disposal of unauthorized waste from a Class 4 landfill to other approved facilities;
- (E) An addition to the cover material requirements limiting the generation of leachate;
- (F) A change to require the owner or operator to retain an operating record at the facility unless an alternative location is approved by the Director;
- (G) An addition to provide a deadline for the submittal of Annual Engineering Inspection Reports:
- (H) A change to require Annual Engineering Inspection Reports to include the estimated remaining volumetric capacity, documentation of compliance with fill progression and approved plans, specifications and operating narrative and any other applicable regulations, an updated contour maps that depict the extent of the active and inactive fill areas, the survey grid system and the location of surface features, updated financial assurance documentation and an updated facility closure plan; and
- (I) A change to clarify final cover requirements.

8. The Department has proposed the following changes to Regulation 22, Chapter 7:

- (A) A change limiting acceptance of special materials by transfer stations, composting facilities, and solid waste recovery facilities unless written permission is granted by the Department or receipt of the waste is authorized under Chapter 8;
- (B) A statement that asbestos containing material (ACM) shall be handled and disposed of in accordance with Regulation Number 21, the Arkansas Asbestos Abatement Regulation;
- (C) A statement that landfill, owners and operators are encouraged to handle known or suspected ACM in a manner that will not cause visible emissions to the atmosphere and to provide a six inch soil cover to the waste on the same day that known or suspected ACM is discovered or received;
- (D) The deletion of other provisions addressing friable asbestos material since these provisions are in Regulation Number 21;
- (E) A clarification addressing fill operations of whole tires;
- (F) A change to define tire processing residuals as consisting less than $\frac{1}{4}$ (one quarter) of the whole tire by size; and
- (G) The deletion of provisions addressing petroleum contaminated since by definition if soils meet non-hazardous designations under RCRA they may be placed for disposal in a landfill.

9. The Department has proposed the following changes to Regulation 22, Chapter 8:
- (A) The addition of a requirement to obtain an individual permit or general permit to construct or operate a composting facility;
 - (B) A clarification of the terms solid waste including household garbage and nonhazardous commercial wastes to reflect that they are amenable to treatment by composting;
 - (C) The inclusion of a definition of silvacultural activities;
 - (D) The deletion of provisions addressing existing facilities generically and the insertion of provisions specific to the siting and location of each type of composting facilities;
 - (E) The classification of composting facilities by the types of materials received and treated;
 - (F) The addition of a requirement that applicants for composting permits shall give notice to the Solid Waste Management District of their intention to operate and a requirement that applicants comply with any District rules;
 - (G) The modification of existing provisions to distinguish the location restrictions and siting requirements by each type of composting facility;
 - (H) The modification of existing provisions to distinguish permit application procedures by each type of composting facility;
 - (I) The modification of existing provisions to distinguish operating requirements by each type of composting facility;
 - (J) The modification of existing provisions to distinguish the design requirements by each type of composting facility;
 - (K) The inclusion of facility specific provisions for testing run-off and compost;
 - (L) The requirement that Type Y composting facilities shall retain records on the quantity, type and source of incoming waste on a monthly basis; quantity, of compost sold or distributed on a monthly basis; quantity of residue removed for disposal, and the date and location of disposal; any testing data including sampling information, chain-of-custody, and sample results that may be taken of compost products generated at the site; in addition to any other required records;
 - (M) An additional requirement for Type O and Type S Facilities to retain application documents, permits, design drawings, operating plans, modifications, Department correspondence and annual reports and data for compiling annual reports;

- (N) An addition to clarify that compost produced from Type S facilities that is offered for sale or distribution must contain a label indicating recommended safe use and application rates, and restrictions, if any, on use of the product;
 - (O) An addition to clarify that the posting of financial assurance is required; and
 - (P) The inclusion of financial assurance mechanisms that may be used by owners or operators.
10. The Department has proposed the following changes to Regulation 22, Chapter 9:
- (A) An addition to clarify that solid waste transfer stations by definition include solid waste recovery facilities;
 - (B) A change to clarify that an individual permit or a general permit is required to operate a transfer station;
 - (C) A change to clarify that the design and operation rules contained in this section are applicable for operations that are not required to obtain permitting but are used to process solid waste at landfill facilities;
 - (D) The authorization for the Department to waive specific design requirements for facilities in existence prior to May 7, 1995, due to physical constraints at the facility;
 - (E) The requirements for applicants for transfer station permits to provide notice to the Solid Waste Management District in which the facility is proposed to be located and to obtain a Certificate of Need from the District pursuant to A.C.A. § 8-6-701 et seq.;
 - (F) The requirement for Department approval to accept asbestos waste;
 - (G) An addition to clarify that external storage of solid waste containing putrescible material is prohibited. Nonputrescible solid waste which the facility has recovered for recycling may be stored out-of-doors at the facility for a period not to exceed one week unless the material is properly containerized so that there is no opportunity for rainfall to come into contact with the waste unless the facility has a storm water permit that includes the storage area;
 - (H) An addition to clarify that all drainage from cleaning, unloading and processing areas must be discharged to sanitary sewers or permitted on-site treatment facilities;
 - (I) A deadline of March 31 for the filing of Annual Reports;
 - (J) An addition to the design requirements to require the owner or operator to provide facilities and equipment shall be provided for the periodic washdown of all processing, tipping, sorting, storage and compaction areas;

(K) A requirement for owners or operators to post financial assurance and maintain the financial assurance until site closure;

(L) A requirement for all facilities to have on file with ADEQ a current closure plan containing schedules and descriptions of the steps necessary to close the facility with a detailed estimate of the cost required for a third party to perform the approved closure activities shall be included in the facility Closure Plan;

(M) Requirements for the owner or operator to retain at the facility: any required location restriction demonstrations of the permitted facility; approved closure plans; cost estimates and financial assurance documentation; records of any periodic inspections; and any other records required by Regulation 22;

(N) A requirement for owner or operators to record the amount of waste that is received by the facility; and

(O) A requirement that the owner or operator maintain the records required permanently unless destruction of the records is authorized by the Director.

11. The Department has proposed the following changes to Regulation 22, Chapter 10:

(A) A deletion of the word material from the terms for solid waste recovery facilities solid waste recovery facilities (WRF) and material recycling facilities (MRF);

(B) A clarification that owners or operators must obtain a permit or general permit authorization;

(C) The deletion of obsolete provisions addressing facilities in operation prior to 1995;

(D) The deletion of the site restriction on airport runways;

(E) Clarification that the application requirements in this section applies to an individual permit for Construction and Demolition recovery facilities;

(F) An addition to clarify that that the facility may receive only Class 4 types of solid waste that will be treated or processed for the recovery of recyclables unless the facility is permitted by the Department as a solid waste transfer station;

(G) An addition to clarify that all drainage from cleaning, unloading and processing areas must be discharged to sanitary sewers or permitted on-site systems and storm water discharges from the site shall conform to Department storm water permitting requirements;

- (H) A reduction in storage periods for incoming putrescible solid waste and recovery residuals from 3 days to not more than 24 hours unless the waste is placed in a water-tight enclosed container;
- (I) A requirement for the posting of hours of operation and the types of solid waste and recyclable materials accepted and not accepted if the facility will be open to the public;
- (J) A requirement for sanitary restroom facilities for employees;
- (K) A revision of the operating plan requirements to make the Construction and Demolition recovery facilities requirements consistent with existing requirements for other processing facilities;
- (L) A deadline for annual reports of March 31;
- (M) A change to require the submittal of a revised or updated facility Closure Plan with the annual report;
- (N) The inclusion of a requirement for the operation of the C&DRF and the storage and handling of all Class 4 types of solid waste and recovered materials shall be practiced so as to prevent the attraction, harborage or breeding of insects, rodents and other vectors and to eliminate conditions which cause or may potentially cause harm to the public health and the environment;
- (O) An addition to clarify only household waste, commercial, and industrial waste shall be accepted by C&DRF;
- (P) An addition to clarify that all solid waste passing through the C&DRF must be ultimately reclaimed or recovered, or disposed of at a permitted landfill;
- (Q) A requirement for all processing, tipping, sorting, storage, compaction, and related activities to be conducted in an enclosed or covered area or, if outdoor areas are provided for these functions, within curbed areas where drainage is routed to an approved collection and treatment system;
- (R) A requirement that sanitary conditions shall be maintained through the periodic wash-down or other appropriate cleaning method of the C&DRF and transfer vehicles;
- (S) A requirement that loading and unloading areas must be adequate in size and design to facilitate efficient loading and unloading from collection vehicles and the unobstructed movement of vehicles;
- (T) A requirement that the engineering report identify the types of material to be stored;

- (U) A requirement that the design criteria contain adequate facilities and equipment for the periodic washdown of all processing, tipping, sorting, storage and compaction areas;
- (V) The deletion of the requirement for manufacturers drawings of mechanical equipment;
- (W) A requirement that on-site roads must be passable by loaded collection and transfer vehicles in all weather conditions; and
- (X) The inclusion of closure plan requirements.

12. The Department has proposed the following changes to Regulation 22, Chapter 11:

- (A) An addition that the following information must be obtained from the subsurface study: thickness and areal extent of each distinct lithologic unit; rock quality designation and percent core recovery; and fracture density, width and orientation;
- (B) Clarification that hydraulic communication between units must be based upon pump tests using appropriate methodology for the aquifer and utilizing multiple observation wells;
- (C) A provision that St. Joe Formations of Northern Arkansas, which will receive municipal solid waste or waste with a high potential for adversely impacting surface or ground water quality (Class 1 or Class 3), may be required to perform additional studies in order to adequately characterize the site. This may include a detailed surface mapping of all karst features including, but not limited to, sinkholes, springs, losing stream segments, caves, and dolines; a subsurface exploration program which consists of core drilling at a minimum spacing of one boring per one acre; a down-hole video log and/or a geophysical log, obtained by one of the methods under Reg. 22.1102(c)(4)(vi), must be conducted for each boring; and a ground water dye trace study shall be performed to test the accuracy of the site's conceptual hydrogeologic model. The dye study methodology must be approved by the Department and shall consist of a sufficient number of monitoring locations, which will include wells/piezometers, streams, and springs;
- (D) A requirement that if one or more of the ground water standards are exceeded in the leachate or synthetic rainfall leaching procedure analytical results, the minimum site characterization requirements as described for Class 1 landfills shall be met;
- (E) An addition to clarify that each well shall be developed to the degree necessary to insure low turbidity samples which are representative of formation ground water quality;

(F) An addition to the water sampling procedures requiring the stabilization of turbidity values prior to sampling and the evaluation of the integrity of the well if during background or routine sampling, the turbidity values consistently remain above 10 NTU's;

(G) A requirement that a well must be replaced if it is found to be unreliable for generating representative water quality samples;

(H) A requirement that each completed monitoring well be surveyed following the guidelines under Reg.22.426 and that the survey establish the elevation (referenced to mean sea level) of the ground surface and the top of the casing for each well location;

(I) A requirement that applicants for new permits and expansions of the permitted boundaries of all Class 4 landfills and Class 3 landfills disposing only Class 4 waste demonstrate that the top of any bottom liner system will be located five (5) feet above the seasonal high water table surface, and within a soil or geologic unit with an insitu hydraulic conductivity of 1×10^{-5} cm/sec or less, or that an appropriate containment structure has been provided;

(J) A requirement that test pits and/or borings must be used to demonstrate the depth and site stratigraphy to a depth of no less than ten feet below the bottom of the containment structure; and

(K) An addition to clarify that Soil hydraulic conductivity tests shall be determined using undisturbed soil samples or an Insitu test utilizing an acceptable methodology.

13. The Department has proposed the following changes to Regulation 22, Chapter 12:

(A) A definition for a Qualified Ground Water Scientist;

(B) The removal of provisions within this Chapter for Casing Well Construction and Decommissioning Requirements. (These sentences were moved to Chapter 11 for consistency with chapter and section content);

(C) A requirement that the analytical methods utilized in ground water sampling should conform SW-486 or the most current EPA approved analytical method. Primary Drinking Water Standard MCL's shall be superceded by the publication of new standards from EPA;

(D) A requirement for the owner or operator must establish background ground water quality in the hydraulically up gradient or background well(s) and the downgradient wells and for background ground water quality to be determined through the collection of, at a minimum, eight (8) independent samples from each well (background and downgradient);

- (E) A requirement that in the event recommended EPA guidance changes the statistical method selection should follow current EPA guidance directives;
- (F) A requirement that the method detection limit (MDL) that is used in the statistical method shall be no more than ten percent (10%) of the US EPA maximum contaminate level for primary drinking water standards or if a US EPA primary drinking water standard is not established then US EPA secondary drinking water standard;
- (G) A requirement that all verifiable, positive detections above the constituent practical quantitation limit (PQL) must be reported and included in the statistical analysis;
- (H) A requirement that the owner or operator must determine whether or not there is a statistically significant increase or decrease over background values for pH. The owner or operator must determine whether or not there is a statistically significant increase for each parameter or constituent required in the particular ground water monitoring program that applies to the MSWLF unit landfill;
- (I) A requirement that the owners or operators shall develop and implement a Department approved site specific written sampling and analysis plan. The sampling and analysis plan and all reports to ADEQ required under the sampling and analysis plan shall be certified by a qualified ground water scientist. The sampling and analysis plan must include the following elements: (1) detailed procedures used to collect reliable samples from the ground water monitoring system including: (2) equipment to be used to maintain a clean working area; (3) equipment utilized to purge wells and to extract samples from wells;
- (J) A requirement for the owner or operator to use detailed procedures to collect reliable samples from the ground water monitoring system;
- (K) A requirement that the owner or operator sample quarterly for Class 1 and Class 3C landfills located in the outcrop area of the Boone and St. Joe geologic formations and unless another sampling schedule has been approved by the Director, a minimum of four eight (8), quarterly, independent samples from each well (background and downgradient) must be collected and analyzed;
- (L) A requirement that –At least one sample from each well (background and downgradient) must be collected and analyzed during subsequent semiannual sampling events following the establishment of background ground water quality as required under Reg.22.1203(e);.

(M) A requirement that only Department approved test methods shall be used in the analysis of ground water monitoring parameters;

(N) A requirement that ground water analytical data submittal procedures shall include provisions for direct submittal of certified analytical results electronically from the approved third-party laboratory to the ADEQ;

(O) A requirement that the statistical evaluation should be performed by a third party independent from the contract laboratory analyzing the ground water;

(P) A requirement that within ninety (90) days of triggering an assessment monitoring program, and annually thereafter, the owner or operator must take A minimum of one sample from each downgradient well, and any other well which contained a statistically significant increase;

(Q) Within ninety (90) days, and on at least a ~~semiannual~~ quarterly basis thereafter, resample all wells specified by Section 22.1202(a), Reg. 22.1202(a), conduct analyses for all assessment monitoring constituents (AMC) and record their concentrations in the facility operating record. At least one (1) sample from each well (background and downgradient) must be collected and analyzed during these sampling events; and

(R) A provision authorizing the Director to approve semiannual AMC sampling and analysis after the first year of assessment monitoring.

14. The Department has proposed the following changes to Regulation 22, Chapter 13:

(A) An addition to clarify that a flexible membrane liner shall be incorporated into the final cover design where the bottom liner design includes a composite liner;

(B) A requirement that the owner or operator of all Class 1, Class 3, and Class 4 landfills prepare a closure plan meeting the requirements of this Chapter, place the closure plan in the operating record, and submit the closure plan to the Department for approval with the application for a new landfill permit or no later than the compliance date specified in Reg.22.103(f);

(C) A requirement that the landfill owner or operator shall notify the Department when the landfill or a landfill unit stops receiving wastes for disposal;

(E) the date on which the unit receives the known final receipt of wastes; or

when the unit has reached its final permitted elevations; or if the unit has remaining capacity and there is a reasonable likelihood that the unit will receive additional wastes, no later than one (1) year after the most recent receipt of wastes;

(D) A provision authorizing extensions beyond the one (1) year deadline for beginning closure may be granted by the Director if the owner or operator demonstrates that the unit has the capacity to receive additional wastes and the owner or operator has taken and will continue to take all steps necessary to prevent threats to human health and the environment from the unclosed unit;

(E) An addition to clarify that the owner or operator of all landfill units must complete closure activities of each unit in accordance with the approved closure plan within one hundred eighty (180) days following the beginning of closure as specified in paragraph (f) of this section;

(F) An addition to clarify that erosion control measures shall be implemented as necessary to protect the final cover and prevent off-site sedimentation;

(G) An addition requiring other permanent features such as benchmarks, access roads, buildings, gas monitoring, collection and processing systems, leachate collection, removal and storage systems, and any run-on and run-off control systems to be shown on the final survey;

(H) A requirement that the owner or operator shall record a notation on the deed to the landfill facility property, or some other instrument that is normally examined during title search and provide a copy of the file marked deed notation to the Department;

(I) A requirement that the notation on the deed must in perpetuity notify any potential purchaser of the property of the survey plot and record of the location and quantity of asbestos containing waste disposed of within the disposal site required in Regulation Number 21;

(J) An addition to clarify that residential land use restriction shall not apply to residential structures that were in existence and in use as of August 13, 1993 or to landfills that stopped accepting waste for disposal prior to August 13, 1968;

(K) An addition to require the owner or operator to comply with post closure care requirements including correcting leachate seepage;

(L) A requirement for the owner or operator to maintain the gas monitoring system and surface water control systems until such time as a permanent erosion control measures have been established at the site;

(M) A requirement for the owner or operator of all Class 1, Class 3 and Class 4 landfills shall prepare a post-closure care plan, place the plan in the operating record, and submit the post closure care plan to the Department for approval;

(N) An addition to require the owner or operator to provide a written certification to the Director, signed by an independent registered professional engineer, verifying that post-closure care has been completed in accordance with the post-closure care plan; and

(O) A requirement that post-closure use of the property shall not disturb the integrity of the final cover, liner(s), or any other components of the containment system, or the function of the collection, control, processing, and monitoring systems unless said act is approved by the Director.

15. The Department has proposed the following changes to Regulation 22, Chapter 14:

(A) An addition to require that all facilities required to post financial assurance must do so by the effective date of this amendment; and provides for incremental filing of financial assurance.

(B) An addition to require owners and operators of solid waste processing facilities that are required to post financial assurance to use a mechanism identified in Reg.22.1405 and comply with the provisions of Reg.22.1406;

(C) A statement that the closure requirements of Reg.22.1402, the post-closure requirements of Reg.22.1403 and the corrective action requirements of Reg.22.1404 do not apply to solid waste processing facilities;

(D) A requirement that the owners or operators of solid waste processing facilities must comply with the closure requirements of: Reg.22.810 for compost facilities; Reg.22.907 for transfer stations; or Reg.22.1007 for solid waste recovery facilities;

(E) An addition to conform to the requirements of A.C.A. § 8-6-1003 (e), that all owners and operators required to maintain financial assurance must provide continuous coverage for 100% of the cost for post-closure care until released from financial assurance requirements or unless they pay disposal fees into the post closure trust fund in which case they may elect to provide financial assurance in an amount not less than twenty (20) percent of estimated post-

closure maintenance costs through a financial mechanism readily negotiable by the department to cash funds (e.g., letter of credit, surety bond, irrevocable trust, insurance, or other mechanism approved by the department);

(F) An addition to conform to the requirements of A.C.A. § 8-6-1003 (e)(1) to permit the department if it reasonably determines that the owner or operator cannot be located or cannot otherwise satisfy, in whole or part, post-closure maintenance obligations, to authorized the expenditure of necessary funds from the Post-Closure Trust Fund to satisfy the requirements of state and federal law for post closure care and to prevent or abate releases to the environment;

(G) An addition to conform to the requirements of A.C.A. § 8-6-1003 (e)(2) to permit the department to pursue collection and recovery of the funds by issuing an Administrative Order notifying the owner or operator by certified mail of the action taken by the department and the amount of funds expended from the Fund;

(H) A requirement for an owner or operator to provide the Director with a copy of the financial mechanism they used to demonstrate financial assurance under this Chapter (e.g. trust fund, surety bond, letter of credit, insurance policy) and to maintain a copy in the facility's operating record;

(I) A requirement that the Director approve the trust agreement, surety bond, letter of credit, insurance policy;

(J) A provision authorizing the Director to reduce the amount of corrective action cost estimate upon justification and a revised cost estimate;

(K) A requirement for the trustee to notify the Director of each disbursement from the trust fund to the owner or operator;

(L) A requirement for an owner or operator using insurance to demonstrate financial assurance must use an insurer licensed or eligible to provide insurance as an excess or surplus lines insurer, in the State of Arkansas;

(M) The addition of the use of a Corporate Financial Test as a financial assurance mechanism that meets the requirements of 40 CFR §258.74(e). The owner or operator must demonstrate financial assurance by satisfying one of the following three conditions: (1) a current rating for its senior unsubordinated 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 (2) a ratio of less than 1.5 comparing total

liabilities to net worth; or (3) a ratio of greater than 0.10 comparing the sum of net income plus depreciation, depletion and amortization, minus \$10 million, to total liabilities. The tangible net worth of the owner or operator must be greater than: the sum of the current closure, post-closure care, corrective action cost estimates and any other environmental obligations, including guarantees, covered by a financial test plus \$10 million or, if approved by the Director, \$10 million in net worth plus the amount of any guarantees that have not been recognized as liabilities on the financial statements provided all of the current closure, post-closure care, and corrective action costs and any other environmental obligations covered by a financial test are recognized as liabilities on the owner's or operator's audited financial statements;

(N) A requirement of the owner or operator to have assets located in the United States amounting to at least the sum of current closure, post-closure care, corrective action cost estimates and any other environmental obligations covered by a financial test;

(O) A requirement that the owner or operator place the following items into the facility's operating record and furnish those records to the Director for approval: a letter signed by the owner's or operator's chief financial officer that: (1) lists all the current cost estimates covered by a financial test and all required cost estimates; and (2) provides evidence demonstrating that the firm meets the conditions of 40 CFR § 258.74 (e); (3) 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. 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;

(P) The requirement of a special report if the chief financial officer's letter providing evidence of financial assurance includes financial data are different from data in the audited financial statements or any other audited financial statement or data filed with the SEC, 40 CFR 258.74;

(Q) A requirement for a report from an independent certified public accountant to verify that all of the environmental obligations covered by a financial test have been recognized as liabilities on the audited financial statements;

(R) A requirement that the owner or operator must annually update the information, place updated information in the operating record and provide the information to the Director for approval;

(S) A statement that the owner or operator is no longer required to submit the items specified above if the owner or operator substitutes alternate financial assurance or is released from these requirements ;

(T) A requirement that if the owner or operator no longer meets the requirements, within 120 days following the close of the owner or operator's fiscal year, the owner or operator must obtain alternative financial assurance that meets the requirements of this section, place the required submissions for that assurance in the operating record, and notify the Director;

(U) A provision authorizing the Director, based on a reasonable belief that the owner or operator may no longer meet the requirements, require at any time the owner or operator to provide reports of its financial condition in addition to or including current financial test documentation;

(V) The addition of a provision which conforms to 40 CFR § 258.74 (f) authorizing the owner or operator to use a financial test to demonstrate financial assurance for closure, post-closure care and corrective action costs up to a specified maximum limit (i). The local government owner or operator must satisfy a Bond Rating Requirement or a Financial Ratio Alternative. If the owner or operator has outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, it must have a current rating of Aaa, As, A, or Baa, as issued by Moody's; or AAA, AA, A, or BBB, as issued by Standard and Poor's on all such general obligation bonds; or the owner or operator must satisfy each of the following financial ratios based on the owner or operator's most recent audited annual financial statement: (1)a ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05; and (2)a ratio of annual debt service to total expenditures less than or equal to 0.20;

(W) A requirement consistent with 40 CFR § 258.74 (f) for the local government owner or operator to prepare its financial statements in conformity with Generally Accepted

Accounting Principles have its financial statements audited by an independent certified public accountant (or appropriate State agency);

(X) An amendment, in conformance with 40 CFR § 258.74 (f) to deny a local government eligibility to assure its obligations by a local government financial test if the local government is: 1) currently in default on any outstanding general obligation bonds; or; 2) has any outstanding general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard and Poor's; or 3) operated at a deficit equal to five percent or more of total annual revenue in each of the past two fiscal years; or 4) receives an adverse opinion, disclaimer of opinion, or other qualified opinion from the independent certified public accountant (or appropriate State agency) auditing its financial statement;

(Y) A requirement consistent with 40 CFR § 258.74 (f) for the local government owner or operator must place a reference to the closure and post-closure care costs assured through the financial test into its next comprehensive annual financial report (CAFR) after the effective date of this section or prior to the initial receipt of waste at the facility and disclosure the nature and source of closure and post-closure care requirements, the reported liability the estimated total closure and post-closure care cost remaining to be recognized, the percentage of landfill capacity used to date, and the estimated landfill life in years;

(Z) A requirement consistent with 40 CFR § 258.74 (f) for the local government owner or operator must place the following documentation in the facility's operating record and furnish the information to the Director for approval: a letter signed by the local government's chief financial officer that: lists all the current cost estimates covered by a financial test, provides evidence and certifies that the local government meets the conditions of 40 CFR § 258.74 (f); a report from the local government's independent certified public accountant (CPA) or the appropriate State agency; and a copy of the comprehensive annual financial report;

(AA) A provision consistent with 40 CFR § 258.74 (f) that permits the local government owner or operator, if it does not assure other environmental obligations through a financial test, to assure closure, post-closure care, and corrective action costs that equal up to 43 percent of the local government's total annual revenue;

(BB) A change to authorize the use of a Corporate Guarantee as a financial mechanism as allowed by 40 CFR § 258.74 (g) 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 requirement set forth in 40 CFR § 258.74 (g) (1) The terms of the guarantee must provide that if the owner or operator fails to perform closure, post-closure care, and/or corrective action of a facility covered by the guarantee, the guarantor will perform, or pay a third party to perform, closure, post-closure care, and/or corrective action as required (performance guarantee); or establish a fully funded trust fund in the name of the owner or operator (payment guarantee);

(CC) A change to authorize the use of a Local Government Guarantee as a financial mechanism as allowed by 40 CFR § 258.74 (h). The guarantor must meet the requirements of the local government financial test in 40 CFR § 258.74 (h). The terms of the guarantee must provide that if the owner or operator fails to perform closure, post-closure care, and/or corrective action of a facility covered by the guarantee, the guarantor will perform, or pay a third party to perform, closure, post-closure care, and/or corrective action as required (performance guarantee); or establish a fully funded trust fund in the name of the owner or operator (payment guarantee);

(DD) An addition consistent with 40 CFR § 258.74 (h) to clarify that an owner or operator use multiple financial assurance mechanisms to demonstrate financial assurance for closure, post-closure, and corrective action, except that mechanisms guaranteeing performance rather than payment, may not be combined with other instruments;

(EE) A provision to authorize a municipality or county to satisfy the requirements of this section by executing a contract of obligation with the Department; and

(FF) An addition to require existing financial assurance mechanisms and responsibilities must remain in full force and effect until such time as the proposed new permittee owner or operator has filed the required replacement financial assurance mechanism.

16. The Department has proposed the following changes to Regulation 22, Chapter 15:

(A) An addition to clarify that no person shall violate any rule, regulation, or order of the Commission or a permit issued under this subchapter.

17. The Department has proposed that the effective date in Regulation 22, Chapter 16 conform to the requirements set forth in the Pollution Control & Ecology Commission Regulation Formatting and Drafting guide.

18. Anne Weinstein and/or Steve Martin from ADEQ 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. A copy of a financial impact statement for the proposed revision is attached as Exhibit “B”. A copy of the Questionnaire is attached as Exhibit “C”. These exhibits are hereby incorporated by reference. A proposed minute order is attached as Exhibit “D” and is hereby incorporated by reference. WHEREFORE, ADEQ requests that the Commission initiate the rulemaking process, adopt the proposed Minute Order, and adopt the proposed amendments to Regulation No. 22.

Respectfully Submitted,

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